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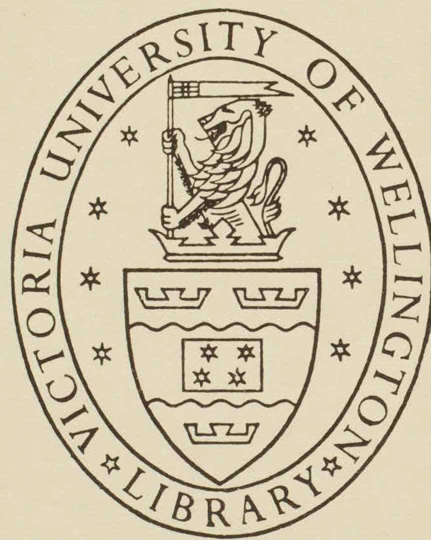
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ANDREW G. ARCHER

INDUSTRIAL DEMOCRACY - PROSPECTS FOR NEW ZEALAND

Research paper in the Law of Bodies Corporate
and Unincorporate for the LL.M. degree
(Laws 523, 524)

Victoria University of Wellington,
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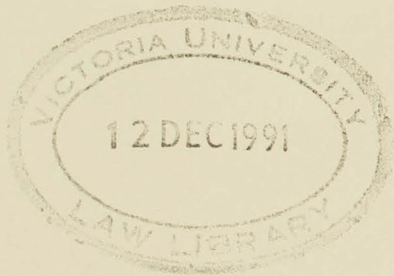
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TABLE OF CONTENTS

Page

INTRODUCTION 1

I CONCEPTS OF INDUSTRIAL DEMOCRACY IN PERSPECTIVE 4

A. THE PRINCIPAL OPERATIONAL CONCEPTS OF INDUSTRIAL DEMOCRACY 5

1. Industrial Democracy through Direct Shop Floor Participation

2. Industrial Democracy through Collective Bargaining

3. Industrial Democracy through Representative Integrative Participation

B. THE EUROPEAN WORKER PARTICIPATION EXPERIENCE 7

1. West Germany 8

2. Scandinavia 9

3. The Netherlands 9

4. Belgium 10

5. Luxembourg 10

6. France 10

7. Yugoslavia 10

8. Poland 11

9. Britain 11

10. The European Economic Community 13

C. SOME MAJOR PROBLEMS OF REPRESENTATIVE INTEGRATIVE PARTICIPATION 14

II THE FORCES BEHIND INDUSTRIAL DEMOCRATISATION 18

A. CHANGES IN THE INDUSTRIAL ENVIRONMENT 18

B. CHANGES AND PRESSURES ON THE CORPORATE ORGANISATION 22

1. Organisational Ideologies 22

(a) the unitary ideology

(b) management prerogatives

(c) the pluralist ideology

Folder Industrial

		Page
	2. Changing Enterprises and Changing Management	23
	3. The New Social Responsibilities of the Enterprise	25
	4. Recognising the "New Agenda"	29
III	THE NEW ENTERPRISE : THE RESTATEMENT OF OBJECTIVES	31
	Some Preliminary Points	31
	A. DIRECTORS LEGAL DUTIES	32
	1. "Best Interests of the Company"	33
	2. Duty to act in Good Faith	34
	(a) conflict of duty and interest	
	(b) unfettered discretion	
	(c) other duties unaffected	
	(c) confidentiality	
	3. Duty of Care and Skill	39
	B. THE BOARDS LEGALLY ASCRIBED FUNCTIONS	40
	Effect of these Modifications	41
	(a) the board and senior management	
	(b) the board and the shareholders	
	C. BROADER POLICIES FOR REFORM OF THE INDUSTRIAL RELATIONS SYSTEM	43
IV	INDUSTRIAL DEMOCRACY AND THE NEW ZEALAND CASE	48
	A. THE NEW ZEALAND INDUSTRIAL RELATIONS SYSTEM	48
	1. The Industrial Relations System Established	48
	2. The Implications of Compulsory Conciliation and Arbitration	50
	(a) collective bargaining further inhibited	
	3. New Industrial Relations Legislation: Regression or Progression?	54
	(a) the build up to new legislation	
	(b) the Industrial Relations Act 1973	
	B. THE INDUSTRIAL SETTING OF NEW ZEALAND	58
	1. The General Background and Scene	58
	2. New Zealand's Experience with Participative Industrial Democracy	63

Folder Industrial

Page

(a) legislative provisions

(b) existing worker participation schemes

3. The Parties and their Respective Viewpoints 65

(a) the Government

(b) the employers : management

(c) the Trade Unions

(d) the Individual worker

C. LOOKING FORWARD - SOME CONCLUDING OBSERVATIONS 77

APPENDIX 1. Table 1. Features of Board level Representation in Europe 84

Table 2. Forms of Worker Participation below board level in Europe

APPENDIX 2. Decision Making Structure of the European Company. 85

APPENDIX 3. Model Rules for the Operation of a Works Council 86

APPENDIX 4. Types of Workers Participation Groups by Size Group in New Zealand 90

BIBLIOGRAPHY 92

Folder Industrial

INTRODUCTION:

In February of 1977 the Bullock Committee in Britain presented its report of inquiry on Industrial Democracy[1] and in so doing jolted employers, employees (and their organisations), Parliamentarians and other groups within society at large into the realisation that this commonly coined, and yet vague, term "Industrial Democracy" was a reality and upon them now. For years the term had been disparagingly discussed in relation to socialistic aspirations for joint ownership in the shape of workers co-operatives, akin to Yugoslavia's socialist brand of industry.[2] Here then was the Bullock Committee Report recommending the re-structuring of British companies to accommodate workers in the highest level of decision-making, as employee representatives on company boards of directors. The idea was not novel, it had simply come to fruition.

With the announcement of the formation of a committee to examine employee representation there was a prodigious undertaking by all forms of interest groups throughout Britain into the practical implications and ramifications of the concept of "worker directors", and more broadly, into the wider concept of industrial democracy. The Committee's findings and proposals provided an added impetus to this massive propogation of research, investigation and conceptualisation of industrial democracy. Hence, literature on all subjects has in the past year abounded with the debate on industrial democracy, and such activity has not been confined to Britain.

Worker representation is a part of, and dominant part for the present, of a larger concept denoted "Industrial Democracy". Industrial democracy cannot be more narrowly defined than the extension of democracy into the workplace.

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(1) Report of the Committee of Inquiry on Industrial Democracy, (Cmnd.6706, H.M.S.O., London, January 1977), hereinafter referred to as "Bullock Committee".

(2) See The European Worker Participation Experience, post.

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Folder Industrial

The concept itself implies fundamental and substantial changes to many institutions in society. Included within the term there exists an enormous number of different schemes each of which may assume variations and upon which there is a diversity of viewpoints. "Participative democracy" encompasses a large proportion of industrial democracy, and employee representation on company boards is one such scheme. The introduction of worker participation schemes, such as board level representation, involves a re-organisation of the workplace at all levels, and may necessarily, indeed, it may ultimately, lead to reform of entire industrial relations systems and the whole of company law.

This paper focuses on the concept of industrial democracy and attempts to provide an overall outline of how and where the concept fits into industrial relations systems and the structure of company law. It does so primarily from the participative orientation of industrial democracy, but always with the realisation that there is an underlying concept of far wider proportions.

Firstly the paper examines the fundamental operational concepts of industrial democracy and includes a skeletal examination of worker participation practices in Europe. In realising that to each operational scheme there are innumerable practical problems the paper incorporates a list of some of the major problems associated with the principal form of participative democracy - representative integrative participation. In so doing it is purported to identify and recognise the difficulties that do arise and so provide, at least, a better perspective, and further, a better viewpoint for an examination of the New Zealand situation. Throughout the paper some of the problems and difficulties will become more apparent.

The paper goes on to assess the forces behind the movement for the introduction of participative democracy in the workplace and makes a closer examination of the corporate organisation, its structure, changes that its form and management are undergoing, and where further change is required. The paper then examines the new "enterprise" that must be developed to

accommodate participative concepts, especially the introduction of employee representatives on boards of directors. This section focuses mainly on the restrictions placed upon directors of companies in the form of legal duties, and if and how they must be altered. The section concludes with a brief look at some wider policies for reforming company law and industrial relations systems.

From this standpoint the paper then examines the "New Zealand Case". In doing so the cardinal principle of industrial democracy, that any such policy must be clearly consistent with the system of industrial relations and general industrial environment of the particular country, is specifically given consideration. On this basis the paper carefully examines the nature and type of industrial relations system in existence in New Zealand and then makes some relevant observations on the industrial setting, including the respective viewpoints of the major parties concerned. In this examination of the "New Zealand Case" the paper draws attention to some significant factors that are either conducive to, or, obstacles for the emergence of the concept of industrial democracy.

The conclusion of this paper makes some tentative suggestions with respect to New Zealand's future moves toward industrial democracy. The suggestions are based on some significant elements that have become identifiable throughout the paper, especially in relation to New Zealand's present position vis-a-vis industrial democracy.

Folder Industrial

I CONCEPTS OF INDUSTRIAL DEMOCRACY IN PERSPECTIVE:

Ever since man began to try to put democracy into practice in the political sphere, he has been attracted by the idea of extending democracy to economic life and into the organisation in which he performs his daily work. The essential idea has been that workers should have some influence on the decisions of management analagous to the influence which they exert upon the policies and processes of the democractic government.

In the 19th century the notion of industrial democracy appealed to many theorists of socialism(3) and the debate was conducted primarily on an ideological level with utopian goals. In the 20th century these ideologies have been tested by many countries putting one or another concept of industrial democracy into practice. Now, as we enter the last quarter of the 20th century, urged on by powerful societal changes, the debate moves beyond the dogmatic discussion of ideologies to the consideration of operational concepts of industrial democracy and the practical problems of translating these into reality. The embodiment of just one operational concept of industrial democracy into a concrete institutional arrangement may take a variety of forms, of which no one form may be pre-conceived as being more suitable than the others. These many forms of industrial democracy have caused definitional problems and in turn created no small amount of confusion. Each form involves varying degrees of workers' participation or involvement in the workforce. At one extreme there is a system of worker self-management(4) which identifies with a revolutionary, socialistic aspiration for workers' control. At the other extreme is the system involving merely increased worker identification or satisfaction with his immediate job, whilst management retain the right to make decisions. Between these two poles lies a whole range of possible democratic extensions of worker involvement.

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(3) John Stuart Mills ("Principles of Political Economy", 1871) regarded industrial democracy as an inevitable development of the evolution of the enterprise.

(4) See for example the Yugoslav system, post.

Folder Industrial

A. THE PRINCIPAL OPERATIONAL CONCEPTS OF INDUSTRIAL DEMOCRACY

It is convenient here to identify the principal operational concepts of industrial democracy. It is reminded that within each concept there lies a wide variety of forms that it can include.

1. Industrial Democracy Through Direct "Shop Floor Participation":

This concept of industrial democracy envisages the worker involved in decisions concerning his daily work and his immediate work situation. The common element is to make the worker's job more interesting by giving him more responsibility, and therefore providing him with job satisfaction. This concept is fundamentally concerned with countering the notion of worker "alienation" which identifies that with industrialisation there is a division of labour and rationalisation of job procedure which renders the work of the individual meaninglessly repetitive. With shop floor participation the design of jobs includes simple managerial functions such as planning, organising and checking on results which the independent, self-employed craftsman performs himself. Schemes such as "job enrichment",(5) "job enlargement",(6) "job rotation",(7) "job re-design",(8) "job integration"(9) and "autonomous workgroups"(10) are all within the scope of shop floor participation, and, are common to most industries throughout the world including New Zealand. It is important

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(5) Job enrichment involves making the workplace and the work task more interesting, and canvasses the implementation of the other schemes.

(6) Job enlargement extends the worker's job task to incorporate more activities and tasks and thus reduces repetitiveness.

(7) Job rotation places the worker on different job tasks each day or week and so reduces the monotony associated with performing the same job day after day.

(8) Job re-design involves re-constructing the layout of the workplace and the actual work task itself so that working becomes more interesting.

(9) Job integration combines a worker's immediate task with others in the workplace and the worker has a better identification with his part in the process and the final product.

(10) Autonomous workgroups are a composition of workers who control their workplace (quality, methods, speed, hours etc) and are responsible for the completion of a whole product.

Folder Industrial

to note that such programs are not focused primarily on democracy, indeed, most stress is laid upon the personal fulfilment of the worker rather than his control over his life at work.

2. Industrial Democracy Through Collective Bargaining:

This concept involves the interests of workers being advanced by representatives who are a part of the formal structure not of the industrial organisation but of another independent organisation - the union. It implies the existence of trade unions to bargain effectively with management through institutionalised negotiation procedures. Whether collective bargaining is an adequate vehicle for dealing with broader social issues depends upon the social system of its environment, the type of collective bargaining and its role in the industrial relations system.

Whilst collective bargaining has an important role to play, it is not the complete solution to the problem of establishing an effective industrial democracy unless it undergoes considerable modification and development.

Collective bargaining is an obvious, and, in some countries, a most important manner of worker participation. As will be seen later its existence in New Zealand, to this end, is ineffectual.

3. Industrial Democracy Through Representative Integrative Participation:

This concept provides for the participation of workers in the decisions that affect them, through representatives in various decision making bodies of the corporate enterprise, and implies changes in the formal structure of the organisation. It involves modification to include worker representatives rather than, as in the collective bargaining concept, interaction with a separate outside body.

Representative integrative participation schemes primarily include joint consultation committees, works councils and worker representation on boards of directors.[11] Each of

(11) For illustration of these schemes see Appendix 1.

Folder Industrial

these schemes may vary on each of these dimensions:

a) the scope and level of decisions participated in,

b) the degree of power exerted by representatives in the decision making process,

c) the size and shape of the body represented (which is related to the process of selecting representatives),

d) its manner of imposition (by legislation, from the result of a collective agreement, by voluntary action of management).

It is with this last concept that industrial democracy is at present of greater concern. However, it must be noted here that any movement towards an industrial democracy must necessarily involve the extension of each one of the operational concepts together. Democratisation of the work place through collective bargaining and shop floor participation has, and is being undertaken, but with respect to the concept of participatory democracy in the decision making process there is a limited amount of experience. This concept is the most dramatic of the three and implies a substantial and unprecedented alteration of capitalist society's most dominant institution - the corporate enterprise. The complications of its introduction are worsened by the diversity of viewpoints in existence and the objections heralded by those fearful of the socialistic aspirations associated with its extreme form, and who see the ultimate ruination of capitalism. In order to reach a better basis from which to examine industrial democracy it is proposed to look at some of the various forms of worker representation in existence and to briefly outline the major problems that have been experienced. Coincidentally, such an examination is useful because many of the new institutions being considered for New Zealand have been pioneered in these countries in Europe.

B. THE EUROPEAN WORKER PARTICIPATION EXPERIENCE[12]

Initiatives in representative integrative participation

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(12) For a diagrammatical comparison see Appendix 1 and 2.

Folder Industrial

have been pursued in both Socialist and non-Socialist countries throughout Europe. Legislation to this effect exists in West Germany, Austria, Luxembourg, The Netherlands, Denmark, Norway, Sweden, France, Italy and in Yugoslavia and Poland. Britain at present has no legislative program, however such a move seems evident with the recent release of a policy paper by the British Government.[13]

West Germany.[14]

Historically worker directors (employee representatives on boards of directors) can be traced back to the 1920's in Germany. For practical purposes however, legislation only firmly established the system after the Second World War, and created a system of "codetermination" or Mitbestimmung. Three fundamental laws determine its functioning: The Works Constitution Act of 1972, which covers all enterprises with at least five employees; The Codetermination Act of 1951, as amended in 1955, which covers only the coal and steel industries; and the new Codetermination Act of 1976 which covers corporations with more than 2000 employees. German companies have a "two-tier" board structure. The ultimate board is the supervisory board which is charged with the function of setting long term goals for company policy and the appointment and control of the management board. The management board deals more with the organisation of the day to day activities of the company. Companies that employ over 2000 employees are required to have their supervisory board composed of half elected by shareholders and half elected by employees of whom one must be nominated by employees exercising managerial functions, one-third must be nominated by unions and two-thirds by the works councils. In companies that employ 500-2000 employees two-thirds of the supervisory board consist of shareholder representatives and the remaining third of employee representatives, nominated by works councils but

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(13) White Paper on Industrial Democracy (Cmnd.7231, H.M.S.O., May 1978). See post.

(14) See generally, Frederich Furstenburg, "West German Experience with Industrial Democracy", in, Industrial Democracy in International Perspective, The Annals of the American Academy of Political and Social Science, (special ed., John P. Windmuller, May 1977) 431 p.45.

Folder Industrial

elected by the employees. Coal and steel industries have parity representation but unlike the boards of companies with over 2000 employees the chairman is a neutral, co-opted by both employee and shareholder representatives. With the former board the chairman with the casting vote is the shareholders' choice. The composition of the management board is determined by the decision of the supervisory board. Works councils are elected by all employees and have a legally autonomous status. The works council members, despite being drawn from the whole workforce, are usually union members. The works council has legal rights to information, consultation, and codetermination and deal with all matters of concern to employees. This council meets regularly with management.

Scandinavia.

All three Scandinavian countries have granted to their employees legal representation on company boards.(15) In Norway (1974) and Denmark (1974) companies employing 50 employees or more are required to have two directors elected by employees. In Sweden two employee representatives were to be permitted on company boards employing over 100 employees, but since a 1976 amendment the number of employees has been dropped to 25. A majority vote in favour of employee representation is a prerequisite within the three countries. Each country has some form of formal works council or committee that forwards recommendations to the company boards. The trade union movements of each country are directly involved in the process and have strong influence over the extension of industrial democracy throughout the rest of the company.

The Netherlands.

Since 1973 the members of the supervisory councils of companies with substantial capital employing at least 100 persons have been required to be appointed by a process of co-option, with both the enterprise council (workers council) and the shareholders meeting having the right to object to a proposal for a nomination taking effect on the ground that the

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(15) See generally Brent Schiller, "Industrial Democracy in Scandinavia", Ibid., p.63.

Folder Industrial

nominee is not qualified or that the nomination will lead to an improper board composition. This objection may be overruled on appeal to the Social and Economic Council (a tri-partite body at national level).

Belgium.

The members of the enterprise council are first elected by the employees of enterprises of more than a certain size from lists of candidates presented by nationally recognised trade unions. But the chief executive (of the company) is a member of the council and can designate delegates to assist him up to the point at which the council has an equal number of employees' and employer's representatives. Belgium does not have employee representation at board level.

Luxembourg.

In all companies having 1000 or more employees, or, that receive the benefit of 25% or more State financial participation, employees elect one-third of the members of the "conseil d'administration", or, in the case of a company having one, a supervisory council. Luxembourg has also instituted mixed committees composed of employer and employee representatives.

France.

Here the law provides that in companies having more than 50 employees, delegates from the enterprise committee shall be present in a consultative capacity (non-voting) at the meetings of the council of administration, or where appropriate the supervisory council. The enterprise council, required in all such companies, is composed of employee elected members and is presided over by the chief executive or his representative.

Yugoslavia.

Full management by workers has been operating in Yugoslavia for the last twenty-five years. Ultimate authority for the management of the enterprise rests with the "work collective", comprising the whole of the workers of the enterprise. In larger enterprises, a "works council" operates in a manner similar to a board of directors. Lower levels of the enterprise are divided into "work units" which are

Folder Industrial

economically integral units which can operate on the market and have a degree of self-management.

Poland.

The "self-management conference" exercises functions which correspond broadly with those of a board of directors. "Workshop councils" and "workers councils" are established at other levels of the organisation.

Britain.

The Bullock Committee proposals recommended employee representatives on the present single-tier board of directors of companies employing 2000 or more employees. The committee envisaged that with time the number of employees would be reduced to 1000. The boards were to be reconstituted to compose of three elements - an equal number of employee representatives and shareholder representatives and a third group of co-opted members chosen for their expertise and experience. This co-opted group should be an uneven number greater than one and form less than one third of the total board. This the Bullock Committee coined the 2X + Y formula. On this point the sole solicitor of the committee dissented recommending instead that the number of employee representatives should depend on the size, structure, homogenity and other chæracteristics of the workforce, and not on the number of shareholder representatives.

The system of representation of employees would be based on trade union machinery. The new system is not to be imposed by law, but introduced into each company separately at the request of a union representing at least 20% of the company's workforce. There follows a secret ballot at which each employee, irrespective of union membership, is to vote. For success an affirmative vote of one third of all those eligible to vote and a majority of those voting is required.

The minority members of the Bullock Committee forwarded their own report which recommended a "two-tier" board structure. Employee representatives would sit on Supervisory Boards which would exercise general supervision over the conduct of the company's affairs by the Board of Management but

Folder Industrial

should not participate directly in the management of the company, nor be empowered to initiate policies. The Supervisory Board should consist of one-third elected by employees, one-third elected by shareholders and one-third independent members co-opted by the previous two groups. The one-third elected employees should comprise at least one member from the shopfloor, one from salaried staff employees and one from management, and, each member's eligibility is confined to employment with the Company for a minimum of ten years, membership of a sub-board council/committee for not less than three years and completion of adequate and appropriate training. As a prerequisite for change there should be: the existence for three years of an employee or company council representative of all employees of the enterprise and supported by effective sub-structures right down to the place of work; the calling of a ballot either by the unanimous approach of all independent Trade Unions recognised by the Company or by a two-thirds majority of the employee council; and a result of such ballot supporting the introduction of a Supervisory Board (defined above) by a simple majority of all employees who had completed one year's service.

The British Government has since released a policy paper[16] proposing legislation which would introduce employee representation on boards of companies employing 2000 employees or more. Firstly the Government proposes the setting up of Joint Representation Committees (J.R.C.) for companies employing 500 employees. These Committees would largely consist of shop stewards and would be given statutory rights of consultation on all important company issues affecting employees including investment plans, mergers, takeovers and closure proposals. Whilst employers and employees would be left to figure out themselves what arrangements are appropriate, there is to be a statutory fall back right for employees and unions in cases

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(16) White Paper on Industrial Democracy, op.cit., as reviewed in The Times 24 May 1978. (At the date of writing this paper the actual Command Paper was not available and therefore these proposals are subject to verification and expansion).

Folder Industrial

of dispute. Similarly board level representation is to be voluntarily worked out between the company and employees, but where agreement is not reached the employees, in companies employing 2000 or more employees, may invoke a statutory right to representation on the company board. This statutory right would not come into effect until the J.R.C. had been in existence for three to four years. In such an instance the Government proposes legislation that will provide for a two-tier board structure with separate policy and management boards. Employees would be limited to representation of one-third of the policy board, but this could later be increased to one-half, and such representatives must be selected through trade union machinery. To facilitate the introduction of these schemes of industrial democracy the Government proposed the setting up of an Industrial Democracy Commission with conciliatory and advisory functions, as the Bullock Report recommended.

European Economic Community.

Within the E.E.C., the draft Statute for the European Company provides for employee representation at board level and also for a works council. Since then the E.E.C. has released its Commission's report on company structure and the Draft Fifth Directive[17] proposes employee representation on boards based either on the German two-tier model or the Dutch model. That is, either one third of the supervisory boards would have to be elected by employees, or some body representing employees would have the right to veto appointments to supervisory boards.

The E.E.C. released a subsequent "Green Paper" on "Employee Participation and Company Structure in the European Communities"[18] in which it adopted a more flexible approach recognising that a considerable divergence exists between and within the Member Countries. The Commission nevertheless proposed that the Member States should commit themselves to the

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(17) Proposal for a Fifth Directive on the Structure of Societes Anonymes Bulletin of the European Communities Supplement, 10/72.

(18) Employee Participation and Company Structures in the European Communities, the Green Paper of the Commission of the European Communities, 8/75.

Folder Industrial

basic principle of employee participation envisaging further moves towards industrial democracy in the future.

C. MAJOR PROBLEMS OF REPRESENTATIVE INTEGRATIVE PARTICIPATION

From this skeletal outline of European systems of employee participative schemes the very obvious assumption that arises is the great diversity of the means employed. This diversity arises out of the different dominating viewpoints which, in turn, relate to the historical role that various parties have played in the development of each particular industrial relations system.

Facing any government, that is considering "democratising the workplace", are some significant issues which present both technical and philosophical problems for policy determination.

To give these problems a proper evaluation and do justice to the respective views and implications on each one is beyond the scope of this paper. Accordingly some of the more contentious and prominent problems can only be listed.

- How far can or must unions accept responsibility for the decisions taken at board level? Conversely for employers, will the changes merely take bargaining into the boardroom without achieving the objective of co-operation in implementing company policy?

- What is the likely impact of employee representation on boards on the efficiency of companys? Is it likely to be no more than a nuisance value? Is it likely to disrupt the management of the company detrimentally?[19]

- What is the possibility of role conflict of employee representatives? Are the "worker directors" on the board as experts with a specialist knowledge from their background, or, are they there as nominees representing the interests of their group?

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(19) Note the contrasting views in the Bullock Report. The majority considered that board level representation will have beneficial effects on the performance of companies. (Ch.6, para.32). The minority were completely opposed to employee representatives being introduced on to present boards with the view, "the dilution of management expertise, the confusion of objectives and the risk of a blocking vote ... seems to us a sure recipe for decline in management, leadership and initiative." (Minority Report, para.32).

Folder Industrial

- Should there be a two-tier structure of boards and if so how should the powers be divided between the two? Should it be a unitary single-tier board or like the Dutch, a modified two-tier structure?

- Should worker directors be solely the representatives of trade unions or should they also cover non-unionists? Can worker representation be equated with trade union representation? What about representation of managers? What about non-unionised companies?

- What proportion of worker directors should there be? Will their introduction involve the unwieldy extension of the size of company boards.

- Should worker directors be elected directly or indirectly, or appointed? Should there be an eligibility requirement such as years with the company? Satisfactory knowledge of boardroom issues? Experience on below board work councils?

- Is it necessary that companies have a fully developed structure of participation below board level? What yardstick should be used to measure the sufficiency of such sub-structure? Would board level representation be a guarantee and catalyst for effective participation at lower levels?(20) If so, is there a need for structures established by legislation?

- Should there be powers of recall of worker directors in certain circumstances? What should be the responsibilities of worker directors? How should the workers themselves be involved given the dangers of remoteness from their representatives?

- How should the system of collective bargaining operate if the board has overall responsibility for industrial relations policies? Do the objectives of board level representation and collective bargaining conflict and is such

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(20) The Bullock majority felt that this would be the case (Ch.6, para.11).

Folder Industrial

representation therefore a potential source of antagonism?[21]

- How will enough suitable worker directors be discovered, trained and serviced by their unions?
- How can difficulties of secrecy and confidentiality of company information be overcome?
- What should be the authority of the shareholders meeting?
- Should there be differences in sizes of companies?
- Should the system be mandatory or voluntary?
- What should be done to reconcile disagreements in implementing the change, including differences among unions in a system of multiple union representation?
- Looking at some wider issues, will employee representation on company boards damage the confidence of investors? What will become of the consumers' interests?

These many issues and problems and their associated strands of thought indicate three fundamental concerns underlying the whole debate of industrial democracy:

1. The sharing of control and power between management and workers over all levels of the enterprise.
2. Effective collaboration and co-operation between all members of the enterprise in the interests of efficiency and industrial peace.
3. The personal fulfilment of the workers of the enterprise.

The Bullock Committee was confronted with "a formidable number of difficulties" submitted in evidence, which include all of the above issues and problems, however, they "confidently" concluded that none were insurmountable.[22]

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(21) Note that the Bullock Committee's terms of reference expressly required that the Trades Union Congress report on Industrial Democracy be particularly taken into account. And, also, the majority's comment, "the dangers of proceeding with industrial relations legislation without trade union support have been amply demonstrated and we think it is impractical to contemplate a system of representation on the board which does not have the support of the trade union movement." (Ch.10, para.5).

(22) Bullock Report, op.cit., Ch.6, para.51.

Folder Industrial

Beneath the surface of this conclusion there lie some strong forces generating the desire and need for this new "agenda" of industrial democracy. It is to these forces that the paper now turns to examine.

Folder Industrial

II THE FORCES BEHIND INDUSTRIAL DEMOCRATISATION:

The E.E.C. Green Paper on Employee Participation stated:(23)

> "it is widely admitted that the laws applicable to enterprises, including company laws, have to a certain extent lagged behind evolving practices, leading to tension between the laws and the realities of life and consequently to legal insecurity, or simply have ceased to respond adequately to contemporary requirements."

This summarily describes the arguments and pressures for the introduction of revised enterprise decision making along participative lines.

First, this section will briefly outline changing social conditions that are providing the impetus for change at the place of work. Secondly, the paper will identify changes inside the corporate organisation, caused mainly by external changes, and then proceed to examine the new enterprise and the obligations and requirements upon it in contemporary society.

A. CHANGES IN THE INDUSTRIAL ENVIRONMENT

Over the last decade changes to industrial organisations have been a significant factor in the debate on industrial democracy. With successive mergers, and, centralisation of the decision making process, economic power has been concentrated in the hands of fewer and fewer companies. With this trend there has been a corresponding move to remoteness of companies from the communities in which they operate and from people whom they employ. In addition, there has been a growing realisation that a company's economic decisions now possess far ranging social and economic implications, all of which the people being affected have no control over.

Society is not as prepared, as it was in the past, to unquestioningly accept decisions handed down unilaterally from authoritarian groups. There is a spreading feeling that those

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(23) Op.cit., Part 1, p.26.

Folder Industrial

who will be substantially affected by decisions, made by such institutions, must be involved in the making of those decisions. People have a "right" to a say in the decision process over matters that affect their economic, social and mental well being. Why should ownership of capital lead to an exclusive right to direct both capital and labour? The worker has invested his labour and has a definitive interest and resultant stake in the company. Accordingly he should be able to influence the decisions of the enterprise that employs him, as a democratic right.

The claim for this say as a "right" is not unique to the industrial enterprise. It emanates from an attitude throughout most of the community of increasing dissatisfaction with bureaucratic practices at work as well as with all of the traditional forms of political and organisational democracy. The attitude is common to a widening range of employees, union members, consumers, students, teachers, lawyers, politicians and even managers themselves.

During this same period of change there has been a rapid advancement in industrial technology and work organisation. With the advent and growth of large assembly line production factories jobs have become highly rationalised and repetitive. The worker loses intrinsic job satisfaction and becomes alienated from his job. He drifts into a state of "unproductive apathy". Worker participation schemes indentify the worker not as a productive input unit but as a psychological human being, with inborn capacities that may be nurtured in a suitable environment. By providing opportunities for the worker with the use of worker participative schemes, his satisfaction and personal development will be fulfilled. As the worker becomes less antagonistic toward his work, productivity advances will be made thus improving the economic performance of the enterprise. Overall economic efficiency is seen as a by-product of worker participation schemes. Workers will accept decisions better if they have a say in their formulation. Workers will also work harder, more intelligently and more co-operatively with each other and with management if they share in decisions

Folder Industrial

that affect them.[24] Not only is efficiency seen as improving from the shop floor, but also, with the expanded responsibility upon management, they will have to think decisions out more carefully and so managerial decisions will benefit with efficiency.

The growing dissatisfaction with bureaucratic organisations combined with general market and economic trends toward instability and depression have forced the governments to enter the debate. The increasing tensions within the industrial system, illustrated by growing activities of industrial stoppages, delays and waste, have provided governments with a seemingly insoluble headache. This industrial ferment has driven governments in an anxious search for untried prescriptions offering a possible way out of their country's economic malaise. Consequently the extension of worker participation, and more broadly, industrial democracy, as a means to industrial harmony and the fostering of co-operative attitudes between workers and management is seen as a viable alternative.

Underlying these pressures for industrial democracy there is a hint of a more forceful and yet intangible factor. This is, that the trend toward industrial democracy is part of a historical transformation. One commentator recently wrote:

> "One of the disturbing features of the majority Bullock Report is the impression it gives that its proposals are in the mainstream of European thinking, and that they have a kind of 'wave of the future' inevitability about them."(25)

This ideology was prominent amongst early socialist theorists on industrial democracy. In fact John Stuart Mill in his "Principles of Political Economy" (1871) regarded industrial democracy as an inevitable development of the evolution of the enterprise.

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(24) These are recognised thoughts from the psychological school of management. See Tom Lupton, Management and the Social Sciences, (Penguin, London, 1975), p.88 ff.

(25) Michael Shanks, "Workers on the Board: Are we misreading the European Experience?", The Times, 15 February 1977, as cited in, Brian Chiplin and John Coyne, "Property Rights and the Bullock Report", published in "Can Workers Manage? Post-Bullock Essays", London Institute of Economic Affairs, Hobart Papers 77, 1977 p.36.

Folder Industrial

The idea of industrial democracy as an evolutionary inevitability is strongly apparent in the E.E.C.'s "Green Paper" on Employee Participation.(26) The Commission considered that if society is to retain a democratic character there is no alternative but to reform company structures, and, this reform should take account of some important evolutions which have been gathering momentum for some time.

The first evolution, as we have already seen, is the increasing recognition being given to the "democratic imperative."

The second, is a growing awareness of the need for institutions which can effectively respond to change, this being based on the realisation that the present era is one characterised by change. The Commission stated(27) that all countries.

> "are thus faced with the prospect of having to implement changes, sometimes of a radical nature, as regards their economic and social structures, both immediately and for the forseeable future.... The enterprise being an institution in which fundamental decisions are taken, cannot escape this re-organisation of the relationships between those who have the power to make decisions and those who must carry them out. And the reform of laws relating to decision making structures of companies inevitably involves consideration of these broad and fundamental issues of human and social relations."

> "... The framework, for these measures to be adopted, must take proper account of the current, broad developments in economic and social policy, for they are responses to certain unavoidable realities of the contemporary world: the democratic aspirations of the citizens, and the continually changing character of the economic and social environment in which they live."

The Commission stated further;

> "Moreover, for this reason also, proposals concerning employee participation in the decision making structures of companies should not be considered in isolation from other developments as to industrial relations, such as programmes aimed at increased

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(26) Op.cit., Part 1, p.26.

(27) Idem.

Folder Industrial

humanisation of work processes. Similarly proposals concerning employee participation at enterprise level should be seen in the context of proposals which will be made to secure a sufficient degree of participation at other levels in the economy."

B. CHANGES AND PRESSURES ON THE CORPORATE ORGANISATION

It has just been seen that legislative proposals for the reform of the company structure to revise the corporate decision making process for the extension of industrial democracy should take account of "foreseeable future developments". Some of these future developments are reflected in changes within society itself. Other future developments are foreseeable in the changes to the corporate enterprise, and, in the pressures and new obligations being imposed on the present enterprise. This gradual reform of the corporate enterprise is filtering through as the "new theory of the enterprise" and is commonly coined as the transformation of "company law" to "enterprise law".

1. Organisational Ideologies.[28]

Before examining this new era of the corporate enterprise it is useful first to briefly consider two contrasting management ideologies about the industrial organisation.

(a) The unitary ideology: The dominant theme here is that the company is seen as a unit or team the members of which strive jointly toward common objectives. The company is a unity based on authority, structured on status, and requiring loyalty. Management sets the objectives and policies of the company and directs its activities with absolute control. Members of a company are expected to support management in pursuit of its goals.

Management's prerogatives: An important belief with this ideology is that of "management's prerogatives," which ostensibly epitomizes management's right to manage. The sources of this notion are that management's rights stem from the property rights of the owners of the business, or, that they stem from the special knowledge and expertise held by managers themselves, or, that they stem from a functional need

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(28) See generally, John Deeks, "Ideology and Industrial Relations in New Zealand," New Zealand Journal of Industrial Relations, (1976) Vol.1, No.2, p.26.

Folder Industrial

for co-ordination and order within the company. In defending the legal ownership rights therefore, management will tend to resist employee or union demands for a share in decision making on grounds that employee interests do not coincide with those of shareholders, and, that if shareholders' interests are to be served, the fullest possible discretion must be retained by the shareholders' agents - the management.

(b) The pluralistic ideology: This, in contrast, views the company as a coalition of individuals and groups, each pursuing its own goals and objectives but dependent upon the others for mutual survival. Each of the various groups preserve their different identities and engage in the company for different objectives. The ideology acknowledges that conflict can and does arise and the process of managing such an organisation becomes a balancing exercise of trying to satisfy the various parties' interest - the shareholders, the consumers, the creditors, the employees and the managerial interest itself. Here, therefore, management's prerogatives are curbed because management must pursue a consensus. It must recognise that it rarely has the power to impose decisions or solutions unilaterally, if those decisions impinge in any way on what other groups see as their interests, and, it must involve itself in a bargaining process which must take place on the basis of a recognition of divergent interests.

With these ideologies brought into focus a better viewpoint is provided to observe the changing trends affecting the "enterprise".

2. Changing Enterprises and Changing Management.

When the managers of most private enterprises were also their owners the managerial prerogative was virtually unchallenged from any source. A noted Australian commentator observed: [29]

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(29) Dr. Dexter Dunphy, (Professor of Business Administration, and Head of the Department of Behavioural Studies, University of New South Wales), "Industrial Democracy - the Implications for Management", Industrial Democracy in Australia, (ed. Robert L. Pritchard, North Ryde, N.S.W. CCH. Australia, 1976) p.80.

Folder Industrial

> "In the early industrial revolution, a small elite had access to the critical factors in organisational life, namely finance, expertise and social status. From the early industrial revolution until this century the mass of workers in industry were illiterate and relatively unskilled. In business bureaucracies, such as large banks, clerical workers were also minimally educated. This situation ensured that a strong tradition of control from the top was established ... conformity to restrictive social norms and deference to those in authority were powerful social values reinforcing acceptance by the workforce of managerial prerogatives".

And continuing:

> "With the development of the public company there was a separation of ownership and management and this led to limitations being placed on the unilateral power of the chief executive. Shareholders owned and the boards of directors controlled, the company's operations and they were often the same people. Shareholders elected the board and the board appointed the chief executive so that while there were few shareholders and small enterprises, ownership and control of the firm were virtually synonymous. However, the increasing size and complexity of organisations, the range of special expertise involved, the professional character of management and the increase in numbers of shareholders has progressively shifted control to the professional manager".

Other writers[(30)] have noted this significant change of the shareholder's traditional position in the enterprise, as owner with the ultimate and final authority, to the situation where the business and affairs are managed by a board of directors.[(31)] There is a "permanent delegation of authority to a self-elected and self-perpetuating managerial elite". Annual meetings are the only situation in which top management is regularly and publicly exposed to comment and scrutiny, and, even here, those

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(30) See J.A.C. Hetherington, "Fact and Legal Theory: Shareholders, Managers, and Corporate Responsibility", Stanford Law Review, (1968-69) Vol.21 p.248, and also Tom Haden, Company Law and Capitalism, (Wiedenfield and Nicolson, London, 1972) Part III.

(31) Note that this is reflected in Company Acts. N.Z. Companies Act 1955, Table A, Article 80, "The business of the company shall be managed by the directors who may exercise all such powers of the company as are not by the Act or by these regulations required to be exercised by the company in general meeting ...".

Folder Industrial

who have sufficient ownership of the company to react - the major shareholders - are executive directors themselves and "passive and reactive gentlemen". It is the confidence of these "gentlemen" that the board is held in and so primarily left to themselves.

It is therefore argued, that shareholders are not concerned with this loss of control. First, they are not capable of active concern because of the diverse distribution of shares to numerous individuals and also the complexity and technicalities of modern corporate operations requiring sufficient expertise and the time for familiarisation of day to day activities. Secondly, with the availability of the stockmarket as a means of investment the shareholder lacks any interest other than the comparative value of their shares and return on investment.

The effective power of the company is therefore with its board of directors and this is recognised by company law principles. Gower, after reviewing the cases states:(32)

> "The modern rule, therefore, is that under an article in the terms of Table A the members in general meeting cannot give directions on how the company's affairs are to be managed, nor can they overrule any decision come to by the directors in the conduct of its business. And this applies even as regards matters not specifically delegated to the directors provided they are not expressly reserved to a general meeting by the Act or the articles."

It is seen, therefore, that with this divorce between the ownership and control of the company, the introduction of worker directors and passage of control to them may be seen realistically as not usurping the power of the owners. This will be expanded on in the next area of a company's new responsibilities.

3. The New Social Responsibilities of the Enterprise.

There is a changing definition of company's responsibilities in the minds both of directors and managers themselves and of employees and the public. Companies no longer dispute that there are other groups other than their owners who have an interest or stake in the success and operations of the company.

(32) L.C.B. Gower, The Principles of Modern Company Law, (3rd ed. Stephens and Sons, London, 1969) p.132.

Folder Industrial

Accordingly, the company has responsibilities not only to shareholders, but to employees, customers, suppliers or creditors and the community at large. This duty owed is not merely, as in traditional company law, an incidental way of conciliating the goodwill necessary to the owner's business. It is more than that of benevolence, welfare and handouts.

There is less agreement, however, about how these responsibilities should be fulfilled. Differences arise particularly over the extent to which enterprises should be made accountable to the different parties to whom they accept that they have responsibilities, and, the institutional means through which their behaviour should be controlled. There is a critical distinction here between the ideas of "responsibilities towards" and "accountability to."[33]

The views of British directors and managers from surveys and seminars have been accurately reflected in the policy proposals and positions of various groups and political parties. The last Conservative government's White Paper on Company Law Reform[34] insisted on the manifest obligation of directors towards "all those with whom they have dealings and none more so than employees of the company." That government's Companies Bill[35] proposed to create for the first time a positive duty for directors to have regard to the interests of the employees. The Secretary of State would have been empowered to require directors to include in their annual reports information about employment, turnover, aggregate remuneration, industrial relations, personnel policies and compliance with laws dealing with competition and consumer protection.

The Institute of Directors[36] and the British Institute of Management (B.I.M.) acknowledged that directors faced duties to employees, customers, creditors and the state.

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(33) This distinction is largely adopted and follows Michael Fogarty, Company Responsibility and Participation : A New Agenda, (Political and Economic Broadsheet, No.554, 1975), Part 1.

(34) White Paper on Company Law Reform, (Cmnd.5391, H.M.S.O., London, 1973).

(35) Companies Bill 1973, Clse. 53.

(36) Institute of Directors, "Guidelines for Directors", as cited in Fogarty, op.cit., p.11.

Folder Industrial

Similarly they recognize the duty of a company and its directors to act as a "good citizen".

Whilst the Institute of Directors, The Confederation of British Industry (C.B.I.) and the B.I.M. acknowledge these new obligations, they do not extend them to "accountability to". The distinction is seen where the company as such is "a company of shareholders". It has its obligations to the community and to "those categories of persons with whom the company deals at arms length". The shareholders are seen, however, as not merely another group of people with whom the company deals with at arms length. The Institute of Directors, C.B.I. and B.I.M. see the shareholders as the company whereas employees and other arms length groups do not. Director's duties they say must be interpreted accordingly. The paramount interest of the company must continue to be to serve the long term interests of the shareholders. Their view is that the direct and immediate authority to appoint the directors of an enterprise, to determine its general course and to call them to account is seen as belonging to the company of shareholders.

It is this distinction which is at the centre of the debate over participation in the direction and management of enterprises. At the heart of the dispute over accountability is not so much the question "Accountable to whom?", as, "Accountable how?".

Under traditional company law a working arrangement has been reached which gives shareholders the necessary powers to appoint and dismiss directors, determine the general purpose of their company, obtain accounts and reports, and approve certain decisions of special importance to themselves. But at the same time it protects the freedom of directors to determine the policies, take the decisions and negotiate the relations with customers, employees and other parties needed to keep the company viable. This freedom is seen as management's prerogative in a pluralistic organisation.

Management and directors accept their wider responsibilities. By doing so they acknowledge the existence of enterprises as

Folder Industrial

pluralistic organisations. Management's business is to negotiate a deal satisfactory enough to both parties (i.e., any one of the interested groups and the company) to justify them in continuing to collaborate. Management aims to arrive at deals which all parties will find to their advantage, but, because these deals are not isolated they may impinge on others. Management business must balance these interests; weave them into a pattern which allows the system as a whole to remain viable.

> "A socially responsible firm is one which takes note of the interests of all its partners and succeeds both in negotiating mutually satisfactory deals with all the parties and in maintaining overall viability." (37)

The prerogative is therefore claimed here as a functional justification, which is claimed as necessary to enable them to negotiate, manoeuvre, strategise and finally to co-ordinate. The heart of the question of accountability, and hence in relation to participative schemes, is the reasonable fear of management that this freedom, "which is essential to the interests of all concerned within an enterprise," maybe unduly limited if they are made accountable to parties other than shareholders without the protection of matured law and practice such as defines their relations to shareholders. Some forms of participation do not directly converge on to the issue of management prerogative. What does is the growth of participation of the representative integrative kind. This involves the injection of workers' representatives into the decision making process at the top, and consequently implies an encroachment into what had up until now been the shareholders exclusive and ultimate domain. It is here that managers themselves see the strongest force for re-defining both their responsibilities and accountability.

The implications of this phenomenon become evident in management's orientation to worker participation. Management prefers an "integrative orientation"(38) which emphasises

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(37) Fogarty, op.cit., p.16.

(38) Adopting the distinctions drawn by Derek Fatchett, Industrial Democracy: Prospects after Bullock, (University of Leeds, Leeds, 1977) p.2-3.

Folder Industrial

harmonisation of objectives by ceding a degree of control to the workers which will result in increasing organisational efficiency. The stand reflects a mixture of the unitary and pluralist ideologies with the traditional unitary one predominating.

In contrast to this there is the "distributive orientation"(38) which emphasises a re-distribution of control towards workers to counter their powerlessness. This outlook is a strictly pluralist one favouring forms of participation that are conflict based.

4. Recognising the "New Agenda".

It has just been seen that directors, managers and shareholders have some difficulty in grasping this new agenda of industrial democracy and are reluctant to part with control. It was noted that they were viewing industrial democracy and its pluralist concepts with "unitary eyes."

The outcome of the Bullock Committee's Report clearly displayed this position, where the three industrialists on the Committee of ten[39] dissented, and gave a minority report with a distinctly "integrative orientation."

The Bullock Committee's terms of reference were extremely narrow, allowing only a consideration of how to achieve industrial democracy and not whether or if it was practicable. However, whenever the Committee was faced with unyielding opposition, in the form of that outlined above, it did make some effort to explain the emergence of the "new agenda" and demonstrate that employee representation on boards of directors was only a part of industrial democracy; a new era that society will have to adjust to. Throughout the report there are fleeting references to this as the "new legitimacy" and the "new partnership."[40] In one passage the Committee managed

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(39) The majority was composed of three trade unionists, three academics and one solicitor.

(40) For contrasting view points as to what the Committee meant by these vague terms see Sir Otto Kahn-Freund, "Industrial Democracy", Industrial Law Journal, (1977) p.65, and, Paul Davies and Wedderburn of Charlton, "The Land of Industrial Democracy", Industrial Law Journal, (1977) p.197.

Folder Industrial

to enunciate further:

> "The new concept of a partnership between capital and labour in the control of companies superseding the ideal that a company and its shareholders are one and the same thing." (41)

The Committee left it to their brief conclusion to make any attempt at reconciling the difficulties between the members. After noting the restrictive terms of reference the Committee says:

> "The way to release these energies, (i.e. the workforces' potential capabilities), to promote greater satisfaction in the workplace and to assist in raising the level of productivity and efficiency in British industry - and with it the living standards of the nation - is not by recrimination or exhortation, but by putting the relationship between capital and labour on to a new basis which will involve not just the management but the whole workforce in sharing responsibility for the success and profitability of the enterprise."(42)

And later:

> "... if we look beyond our immediate problems it appears to us certain that the criterion of efficiency in the world of tomorrow, even more than that of today, will be the capacity of industry to adapt to an increasing rate of economic and social change." (43)

Thus, the Bullock Committee, in its last phrases, recognised, and adequately summed up, this notion of "foreseeable future changes" and the need to acknowledge, in the restructuring of companies and other institutions, that the present era is one characterised by change.

The paper will now examine some of the necessary changes required for the introduction of participation schemes, and, broader changes to accommodate the principle of industrial democracy, and outline the implications for our present company law.

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(41) Bullock Report, op.cit., (Ch.8, para.26)

(42) Ibid., (Conclusion, para.2)

(43) Ibid., (Conclusion, para.8)

Folder Industrial

III THE NEW ENTERPRISE - THE RESTATEMENT OF OBJECTIVES:

With the introduction of employee representatives on boards of directors positive changes to present company law will be essential. These changes are seen to mark the start of greater reform to come in industrial relations systems that will ultimately accomodate industrial democracy in its entirety.

Some Preliminary Points.

First it must be noted that these changes arise from the approach that the Bullock Committee adopted to the implementation of worker director schemes and which most other literature also holds. This position is best summed up by the Committee itself.

> "We believe that real involvement of employees in decision making and the practical benefits for companies which will result from such involvement cannot be achieved by adding employee directors to the present system. The extension of industrial democracy to which our terms of reference refer can only be achieved, in our view, if there is direct representation of employees on company boards in just the same way as there is direct representation of shareholders on boards at present. It is that essential representation element which necessitates major changes in company law, and, in consequence, in the way companies operate. These changes are particularly important in the extent to which they encourage the development of a new partnership between capital and labour in the control of companies, and improve their efficient operation." (44)

Secondly it must be noted that in practice there is very little difference between reality and the proposed changes. It has been seen that the traditional definition is that directors are appointed to promote the long term interests of the shareholders, but, to do this they need the goodwill of customers, employees, suppliers, the government and the local community. Despite this, difficulties do arise in marginal cases where the literal stringency of the law can be asserted over real interests,[45] and it is here that the need for change becomes glaringly obvious. In addition to these

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(44) Ibid., (Ch.8, paras. 1-2).

(45) See for example, Parke v. Daily News Ltd. /1962/ Ch.286, (post.)

Folder Industrial

situations, there is a real need for legal change to ensure people's interests are taken into account despite the view that this may be the case regardless of the law.

Thirdly, it is interesting to note that the Bullock Committee recommended the codification of a director's legal duties.

> "We believe that there must be one place where a director, and particularly the new employee representative, can see a statement of the basic duties he owes to the company."(46)

The difficulty here is that any attempt to define the duties of directors more clearly would involve the risk that, since it would be impossible to define such duties exhaustively, there would be inevitable lacunae which might well make it more difficult to determine in any sort of circumstances what those duties are. Notwithstanding this danger, there would appear to be a consensus that a general statement of the basic fiduciary duties of directors to their companies might well be useful.(47)

Fourthly, another principle that guided the Bullock Committee in their recommendations was that all directors should have the same legal duties and liabilities. The important point was that the creation of dual standards "would not be conducive to the development of co-operation between employee and shareholder representatives on the board, nor ultimately to the efficient management of thecompany."(48)

Finally it is worthy of mention that reform in this area of law is long overdue, with the changed shape and responsibilities of the company. The matter becomes pressing however in this context of representation on the board.

A. DIRECTORS LEGAL DUTIES

Directors, in the performance of their duties, stand in a fiduciary relationship to their principal, the company. As with all fiduciaries the law imposes legal duties to ensure

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(46) Bullock Report, op.cit. (Ch.8, para.38)

(47) See: The Jenkins Committee Report, The United Kingdom Committee on Company Law, (Cmnd.1749, H.M.S.O., London, 1962), para.16, and, The MaCarthur Report, Final Report of the Special Committee to Review the Companies Act, (New Zealand, 1973), para.310

(48) Bullock Report, op.cit., (Ch.8, para.37)

Folder Industrial

that no improper use is made of the special position that they are in. These duties are imposed by the company's articles of association and by the Companies Acts. However the many more fundamental duties arise out of case law. These common law duties of directors fall into two parts: the fiduciary duties of loyalty and good faith, and, the duties of care and skill.

1. "Best Interests of the Company".

One of the a director's foremost duties is that he must act in what he[49] considers is in the "best interests of the company".

The line of cases[50] defining the phrase "best interests of the company", culminated in Parke v. Daily News Ltd.[51] The present law states that it is only the interests of the shareholders, present and future, to which directors are entitled to have regard; the interests of the employees, the consumers, or the nation as a whole being legally irrelevant. Earlier in this paper it was shown that directors consider that they have obligations to various "stakeholders" in the company to whom they must pay regard. Whilst the company is an ongoing concern the directors are fully within their powers to consider those interests because in doing so the future prosperity of the company, with the establishment of "good will", is being assured. Thus, with this being so, and, the fact that it is a purely subjective test, no action could be sustained.

In the Parke v. Daily News Ltd. case the facts displayed the real difficulty which arises. When a company's business is about to cease, no commercial purpose can be achieved by keeping other interests content, therefore, the interests of the company was the economic interest of its members, the present

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(49) This being a subjective test. See, Re Smith and Fawcett Ltd. /1942/ Ch.304.

(50) The progressive development of the courts interpretation maybe traced through the line of cases: Hampson v. Prices Patent Candle Co. (1876) 45 L.J. Ch. 437; Hutton v. West Cork Railway Co. (1883) 23 Ch.D.654; Re Lee Behrens & Co. /1932/ 2 Ch.46; Mills v. Mills (1938) 60 C.L.R. 150; Re Smith & Fawcett /1942/ Ch.304; Greenhalgh v. Arderne Cinemas Ltd. /1951/ Ch.286; Parke v. Daily News Ltd. /1962/ Ch.927; Re W. & M. Roith Ltd. /1967/ 1 W.L.R. 432.

(51) /1962/ Ch. 927

Folder Industrial

shareholders. There the court considered that the directors' scheme to use the funds of the wound up company to reward former employees, was, despite its laudable purpose, outside the scope of the law - not in the best interests of the company.

The "best interests of the company" is a very important change to effect worker representation on boards of directors. Hence, the Bullock Committee recommended that the director's duty to act in the best interests of the company should take account of the interests of employees as well as shareholders.

The Committee preferred an interpretation that imposed a clear legal 'obligation' on directors rather than one that 'entitled' them to have such regard. Therefore, the proposed duty was:

> "The matters to which the directors of a company shall have regard in exercising their powers shall include the interests of the company's workers generally as well as the interests of its shareholders." (52)

The Committee also considered it important that the members of a parent or holding company board should be entitled to take into account the interests of the employees and shareholders of subsidiaries and sub-subsidiaries of that company. This is another change from the accepted rule that directors acts must be measured for the benefit of the single company involved despite the formation of a wholly owned group.(53) The Committee left open the question whether directors of a subsidiary company should be able to have regard to the interests of the shareholders and employees of the holding group or its other subsidiaries.

2. Duty to Act in Good Faith.

A director acting in the best interests of the company must at all times act in good faith. The Bullock Committee considered that this duty would be largely unaffected by worker directors and no change would be necessary.

However a problem does arise with respect to the fact

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(52) Bullock Report, op.cit., (Ch.8, para.38).

(53) See: Walker v. Wimbourne /1976/ 50 A.L.J.R. 446, and also, Gower, op.cit., (Ch.8, para.38)

Folder Industrial

that worker directors are in an analagous position to nominee directors and hence the directors duty to act in good faith, and the antecedent duties, to exercise their powers for a proper purpose, not to fetter their discretion and to avoid positions that cause conflict between their duty and interest, require some attention.

<u>Conflict of duty and interest</u>: The requirement upon directors, as fiduciaries, to display the utmost good faith raises the matter of not placing themselves in a position in which there is a conflict between their duties to the company and their personal interest. The difficulty here with worker directors is implicit in the contention that the interests of employees are essentially opposed to the interests of shareholders, present and future. The Bullock Committee considered that the company was a pluralistic organisation and so the director's duty was one of balancing a number of interests. Generally, they saw, there was a large measure of coincidence between shareholder and employee interests.[54]

However, it is clearly conceivable that issues will arise on the board's agenda to which there may be some sharply contrasting viewpoints. Demanning, closures and redundancies are highly contentious issues and ones which it would be unreasonable and unrealistic to expect employee representatives not to argue forcefully at board level in favour of the interests of their constituents and to be accordingly influenced in casting their vote. Indeed, one of the objectives of putting them on the board in the first place is to ensure that the workers voice is heard at the very top of the decision making hierarchy. Furthermore, this situation becomes especially difficult with the trade union links proposed by the Bullock Committee, because here the nominated director will certainly feel some duty or obligation towards his union and union members.

As the law stands at present, if an employee representative

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(54) Bullock Report, op.cit. (Ch.8 para.37)

Folder Industrial

voted in a particular way solely because of the interests of the group he was appointed from, then he would be in breach of this duty.(55) Therefore, so long as directors act as representatives and not as delegates, and weigh up all the varying viewpoints and arrive at a balanced conclusion which they genuinely believe to be in the company's overall best interests, then no liability will attach. As soon as a group's nominee becomes a member of the board he is subject to his duty to serve the interests of the company in preference, on every occasion upon which conflict might arise, to serving the interests of the group which appointed him.

Thus, on the more contentious issues, a worker director will be faced with, and will feel, a conflict of interest far more than most other "kinds"(56) of directors. To introduce worker directors on to boards of directors and then leave them open to liability for performing a role that their position necessarily requires is to guarantee the collapse of any such scheme.

An understanding of this "type"(57) of problem was demonstrated in the Australian case of Mills v. Mills(58) where Latham C.J. stated:(59)

> "I do not read the general phrases which are found in the authorities with reference to the obligations of directors to act solely in the interests of the company as meaning that they are prohibited from acting in any matter where their own interests are affected by what they do in their capacity as directors. It would be ignoring realities and creating impossibilities in the administration of companies to require that directors should not advert to or consider in any way the effect of a particular decision upon their own interest. ... A rule which laid down such a principle would paralyse the management of companies in many directions. Accordingly, the judicial observations

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(55) Serlangor United Rubber Estates v. Craddock /1968/ 2 All E.R. 1073; Scottish Co-operative Wholesale Society Ltd. v. Meyer /1959/ A.C. 324, per Lord Denning.

(56) That is, directors who are representing other interest groups be they shareholders, associated companies or some other interested party.

(57) In Mills v. Mills the court was dealing with conflict involving personal self-interest, however, the approach taken is referrable to this situation.

(58) (1938) 60 C.L.R. 150.

(59) Ibid., at pp.163-164.

Folder Industrial

> which suggest that directors should consider only the interests of the company and never their own interests should not be pressed to a limit which would create a quite impossible situation".

Whilst a judicial approach such as this may not quite overcome, or completely reach, the problem with this duty of conflicting interests, it does display what any solution must attempt to reflect.

Re-defining the interests of the company to include the interests of the employees would certainly alleviate the difficulty here, but it would not deal with it completely. A worker director nominated through trade union machinery who must address issues such as redundancy proposals would conceivably feel an overriding duty to uphold the interests of his constituent above those of the company shareholders[60] and thereby be in breach of his duty.

A solution is not easily attainable for it must involve a consideration of the fundamental ideologies and objectives sought with the implementation of any such scheme.

Furthermore, any solution becomes even more complicated when it is observed that the courts in general have had difficulties in grappling with general approaches and with the formulation of judicial tests and rules in determining whether a director's fiduciary duties have been breached. Consequently the law is not as certain or clear as it should ideally be. Whilst this situation is more prominent with some duties than others, the close inter-relation of fiduciary duties under the broad duty on directors to act "bona fide in the best interests of the company" makes the whole area generally affected.[61] This, plus the fact that a court

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(60) This very situation, and the antecedent view that shareholders' interests conflict with employee interests, is often posited in relation to the formidable and seemingly insoluble problems that will face worker director schemes and which therefore, suggest that such schemes are unworkable. As stated before, the consideration of this issue alone entails a lengthy dissertation. Consequently, this paper proceeded on the basis (like the Bullock Committee) of how rather than whether participative democracy could be implemented.

(61) Howard Smith Ltd. v. Ampol Petroleum /1974/ 1 All E.R. 1126; Walker v. Wimbourne /1976/ 50 A.L.J.R. 446, are recent cases illustrating the courts' uncertainty with directors' fiduciary duties (even though these cases were primarily concerned with "proper purpose" and "misfeasance")

Folder Industrial
democracy

dealing with breach of fiduciary duties by a worker director will be on untried ground, presents more problems.

Whatever solution is attempted, be it by statute or case law, it is clear that if it is to enhance the success of the particular scheme, and, more broadly, industrial democracy, it must be instilled with the general tenor of the Mills v. Mills approach.

Unfettered discretion: Directors are in breach of their duty to act bona fide if they fetter their discretion to exercise their powers by binding themselves or contracting to act in a particular way. Of this duty Lord Denning M.R. stated[62] that it was unlawful for a director to bind himself to act in accordance with the instructions of another person or body. It followed, inter alia, that a nominee director may not bind himself to act in accordance with the directions or interests of his patron or to subordinate the interests of the company to the interests of his patron.

Such a position may be a real possibility where potential representatives are vying for nomination from their trade unions, and accordingly they must prove themselves to be of more "benefit" to the union (among other interests) than others. To "promise" to carry out the instructions of that trade union once on the board would be a breach of this duty.

The duty ensures the directors act bona fide at all times and is particularly referrable in our situation to the "puppet" director who binds himself to his union, or some other group, and blindly disregards the other interests of the company. With regard to the aforementioned changes, this duty is unaffected by the introduction of worker directors.

Other duties unaffected: That a director must exercise his powers for a proper purpose is another duty under the general duty to act bona fide and is primarily concerned with re-arranging a company's share structure to the detriment of an interested party. No problem arises because the necessary changes outlined above cater for this duty. With respect to other fiduciary duties the Bullock Committee rightly

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(62) Boulting v. Association of Cinematograph /1963/ 2 Q.B. 606, 626-627.

Folder Industrial

concluded:

> "There seems to be no reason to exempt any director from the duties concerning "secret profits" or any law regulating "insider trading." (63)

Confidentiality: The Bullock Committee took a specific look at the matter of confidentiality.[64] There is a general duty upon directors not to abuse their special position by making improper use of information that comes to them by nature of their fiduciary relationship. With the imposition of this duty it is conceivable that worker directors may be unnecessarily constrained from reporting back and informing their constituents, which is essential to the purpose of having employee directors. Instances of this situation, however, would not arise very regularly after the initial "break in" period when worker directors would become familiar with what type of information was or should be kept confidentially. In addition, the Bullock Committee considered that there was a growing willingness in industry to more open disclosure. The West German and Swedish experience showed that breaches of confidentiality by worker directors were rare. In the British Steel Corporation's experiment with worker directors the directors themselves commented that it was a matter of common sense.[65]

3. Duty of Care and Skill.

Other than these fiduciary duties a director has other legal duties of which the duty of care and skill is notable. This duty is far from onerous. Re City Equitable Fire Insurance Co.[66] expounded the accepted legal principles :- a director is not obliged to give continuous attention to his company's affairs andhe is generally entitled to leave matters to properly delegated officers of the company unless his suspicions as to their trustworthiness is raised. The

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(63) Bullock Report, op.cit., (Ch.8, para.41).

(64) Ibid., (Ch.8, paras. 51-58).

(65) John Bank, Ken Jones, Worker Directors Speak: The British Steel Corporation Employee Directors, (Gower Press, England, 1977).

(66) /1925/ Ch.407, per Roper C.J., at p.428 et. seq.

Folder Industrial

degree of skill, care and diligence is low - that which may reasonably be expected from a person of his knowledge and experience. Although a director's conduct must not fall below what is expected from a reasonable man, the employee director would not have any difficulties with this duty.

B. THE BOARD'S LEGALLY ASCRIBED FUNCTIONS

It was seen earlier that over the years there have been changes within the management of companies. There is a growing gap between the ownership and control of the company. With the increasing complexity of business affairs and the trend toward rationalising specific matters and functions, and, the extensive delegation of these functions to specialists and experts,(67) the company board today has lost a lot of its influence.

The Bullock Committee considered this situation(68) and noted that employee representatives may be put upon boards whose real function was "rubber stamping". The Committee again stressed the need for representation upon boards where there was a real opportunity to influence decisions, and considered that this could be hindered by the board's ability to delegate. In particular the Committee noted the existence of a large proportion of senior management on company boards who actively prepared the policies and plans for the board's approval. Similarly, the Committee commented that the shareholders' power of the final and ultimate approval or rejection (despite the rarity of such rejection) meant, that decisions on which employees participate could always be overruled. Safeguards were needed and consequently the Committee proposed changes to company law(69) which would specify certain areas where the ultimate responsibility would

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(67) The Companies Acts of both Britain and New Zealand expressly enable the delegation of functions to committees and managing and executive directors by virtue of the articles of their Tables.

(68) Bullock Report, op.cit., (Ch.7, paras. 19-26).

(69) The British Government's latest policy paper adopts the Bullock Report's proposal here. (ante.)

Folder Industrial
An democracy

rest with the board and authority for these decisions would not be delegatable.(70)

The board would have a number of attributed functions. It would have the exclusive non-delegatable power of submitting to the shareholders' meeting resolutions for: the winding up of the company, changes in the memorandum or articles, the payment of dividends, changes in the capital structure of the company, the disposal of a substantial part of the undertaking. It would also have the ultimate, but delegatable, responsibility for the allocation or disposition of resources not constituting a substantial part of the undertaking, and, the non-delegatable power to appoint, remove, and control managerial employees and to determine their remuneration. The Committee made these proposals against the background first, of a realisation of the diversity of the role of a board of directors,(71) and secondly, of a recognition of the need to maintain the flexibility of the present system and avoidance of any rigid or inappropriate legal formula.(72)

Effect of these Modifications.

The Bullock Committee then went on to consider how these modifications to the functions of existing boards would affect their relationship first, with the senior management, and second, with the shareholders. The effects are best summed up in the following intermittent quotes from the report itself.

(a) The Board and senior management:(73)

> "... In many respects the relationship between the board and senior management will be largely unaffected by the legal changes which we are proposing. The main change is that management will not be able to take action unilaterally. This does not mean that either at the request of the board itself or on their own initiative, management will not be able to carry out the detailed work on the consideration of

(70) Bullock Report, op.cit., (Ch.8, paras. 16-19.)

(71) Ibid., (Ch.7 paras. 13-19.)

(72) Ibid., (Ch.7, paras. 39-31).

(73) Ibid., (Ch.8 paras. 21-25).

Folder Industrial

options and the formulation of policy in these areas. But they will be required to refer the matter to the board for a final decision.

... Most important of all, the board will retain full powers, within the limits of its attributed functions, to delegate authority, as it does now.

... The delegation of considerable authority for both the formulation and implementation of policy to senior executives and their subordinates is essential to the efficient operation of companies, particularly large and complex ones. We do not believe that employee representatives will be less capable than anyone else of recognising the need for such delegation."

(b) The board and the shareholders:(74)

"... We are proposing considerable changes in the legal rights of shareholders, though in practice the changes may not be as great as they seem.

... Our proposal for attributing to the board a number of functions affects the present powers of shareholders in five important areas: changing the company's constitution, winding-up, changes in the company's capital structure, the fixing of dividends, and the disposal of a substantial part of the undertaking. These are all matters of central importance to the interests of shareholders as investors in the company: they concern the objectives and organisation of the enterprise and the long term value of the shareholders holding in it. At present as a general rule, in all these matters the shareholders not only retain ultimate control by approving or rejecting proposals put to them by the board but also the power of initiative by requisitioning an extraordinary general meeting pursuant to section 132 of the Companies Act.(75) These are also issues, however, which closely affect the interests of employees and which are directly related to their future employment and pay prospects.

... We have suggested an approach therefore which distributes the power to take decisions in these areas between the board and the shareholders' meeting. The exclusive right to convene a meeting for the purpose of considering resolutions in these areas should belong to the board, but the shareholders' meeting should retain the right to decide whether to pass the resolutions or not.

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(74) Ibid., (Ch.8, paras. 26-34)

(75) s.36 N.Z. Companies Act 1955.

Folder Industrial
Ar democracy

> ... In practice these changes will not be as great as they may seem. The law amended on the lines outlined above will more closely reflect current practice in large companies. The shareholders meeting was most commonly a reactive and passive body, rarely acting of its own accord without or against the advice of the board of directors.
>
> ... Essentially therefore our proposals will have the effect of bringing the law into line with reality, rather than reducing any real power or valuable rights that shareholders possess. At the same time they will ensure that in the unusual case the shareholders cannot propose a change of policy in these areas without the approval of the board."

It is important to remember that these proposals were made for a board that would be reconstituted to have parity of shareholder and employee representation and a third co-opted independent group (2X + Y formula). Accordingly, if boards were to be composed of a minority representation of employees, these proposals would be ineffectual.

Whilst these changes were seen as necessary for the introduction of employee representation upon boards of directors, it is important to remember that they are the first real stage of changes in the ultimate re-structuring that must take place to accommodate the overall move towards industrial democracy. There are other changes that will need to be implemented to follow those outlined above, and still further changes as problems are met and must be overcome.

However it is to some of these other broader changes and their implications that the paper now turns to review as a further re-statement of the new enterprise's objectives.

C. BROADER POLICIES FOR REFORM OF THE INDUSTRIAL RELATIONS SYSTEM

Some of the more fundamental problems posed for the introduction of "participatory systems" are closely related to the wider context of the economic market system.

Economic theory assumes that firms are profit maximisers and that profit is an index of efficiency. In the new circumstances where business goals are widened beyond the long term financial interests of shareholders, the term "profit"

Folder Industrial

must take this into account. To avoid worker interests being offset by the long run economic gains for the organisation the term profit must cease to be profit for the owners, or, any single related index. For worker participation, and its deeper overtones of an industrial democracy, to be accommodated, firms must in some sense maximise or at least satisfy minimum conditions in each one of the relationships between the enterprise and the various parties on which it depends. Economic profit still remains an objective, but it must account for or include these wider aspirations.

Michael Fogarty writing in "Company Responsibility and Participation"(76) outlines several areas of company accounting and reporting that should adjust to this new agenda.

Profitability.

Fogarty outlines a new definition of profitability where "profitability" whilst it still reflects a monetary target, must be understood as "the healthy condition for the benefit of all concerned with an enterprise, which results from the efficient use of resources to meet market needs, and not simply as the ability to pay dividends or to re-invest for the advantage of owners."(77)

This notion of profitability is a major condition of mutually satisfying relationships at every point where an enterprise interacts with other interests. Fogarty stresses, however, that such satisfaction cannot be confined to money alone, or expressed in terms of a money equivalent or trade off against money. Such an operation can only exist within strict limits.

Accounts and Reports.

Fogarty then considers, that given this multiplicity of objectives, "a payoff to each of the main parties in terms of both profitability in its wide sense and of meeting non-monetary standards," how then must the measure of the

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(76) Michael P. Fogarty, Company Responsibility and Participation: A New Agenda (Political and Economic Planning Broadsheet, No. 554, 1975) Ch.2.

(77) Ibid., 28.

Folder Industrial

firms widening responsibility towards the various interests be included in accounts and reports?

Financial accounts for management, not only assures honest book-keeping, but has become one of the chief tools of management, where they have a coherent picture of all the firm's activities and from which priorities may be sorted out. Each of the respective interest groups need a coherent picture of how management is handling its wider responsibilities, and, the firms must not only provide information that answers questions but also in the former terms, depicts the firm as an association of a plurality of interests and claims where any decision necessarily incorporates the claims of all the other groups.

This information will necessarily vary in its form, but it must not in its substance. "It must tell basically the same story that goes to management."

Financial Accounting.

Financial accounting, Fogarty points out, has been central to accountancy practices and procedures for years. The law has tried to maintain this "true and fair view" of the balance sheet, whereby it is free from fraudulent manipulation and it protects investors. Fogarty looks at the possibility of changing the basis of financial accounts from "profit-loss," to that of "net value added" which reflect the company's wider responsibilities.

> "Net value added accounting puts the emphasis not, as in profit-loss accounting, on the margin which remains after all other claimants, except the shareholders, have been paid off but, on the global sum available to an enterprise for all purposes after meeting the claims due to outsiders, such as the suppliers of materials, equipment services and debt finance." (78)

The decision on distributing the global sum is entered into by all remaining parties - employees, shareholders, local community - on the basis that each is equally entitled to put a claim forward.

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(78) Ibid., 31.

Folder Industrial

This type of financial accounting focuses on profitability in the wider sense, it provides a better basis for acruing out a consensus on how a firm's "global resources" are to be used. It also provides a better basis for justifying the profit to the wider public.

Fogarty concludes however that there is a problem in translating the net value added system into workable practice since its application to western companies is only an interesting theoretical exercise and its imposition as a legal norm is accordingly a long way off.

Social Accounting : Codes of General Business Conduct.

The idea of social accounting involves, for example, check lists for use by directors and managers at their own discretion and codes which they are called upon to observe, and, on their own observance of which they should accordingly be expected to report. Another aspect of this area is the attainability of company information, which is presently open only for shareholder inspection, for those interest groups and more generally the public.

These wider policies of reform to accommodate the broader aspects of industrial democracy are, at this stage, in their infancy. As the changes necessary to incorporate employee representatives on boards come into existence there will then be a better basis to examine these wider issues and others that may need examination to proceed further with the ultimate trend to industrial democracy.

One aspect of the whole debate on industrial democracy that has not been specifically mentioned is the variance of industrial relations systems from country to country. Accordingly, one of the most difficult considerations is how this new brand of company law can be fitted within the overall objectives and operation of the particular system. It is simply not possible to "slot" in any standardised form of worker participation scheme into any industrial relations system.

The New Zealand industrial relations system, as will be seen in the next part of the paper, is one marked by state

Folder Industrial

intervention and is predicated on the belief that the two social partners are seized of opposing interests and therefore, the public interest requires that they be compelled to negotiate and settle their disputes before an independent authority. The question to be addressed in this next part is therefore how does New Zealand's industrial relations system, and industrial setting, face up to the concepts of worker participation and more broadly, industrial democracy.

Folder Industrial

IV INDUSTRIAL DEMOCRACY AND THE NEW ZEALAND CASE:

The paper has so far revealed that the trend for new systems of social relationships in industry are, broadly speaking, attributable to wider changes which are taking place in society and filtering through into corporate enterprises in the shape of widening responsibilities and obligations. This process was demonstrated by the use of, and meanings attached to, this age as the "democratic imperative". Worker participation, it has been seen, is part of this "new agenda" of industrial relations. It is a form of industrial democracy, and one which may take a variety of shapes and forms. Whatever scheme is adopted, it is clear that it will have legal implications requiring change to our company law, and further, it will involve consideration of some wider issues in terms of accommodating that scheme and preparing the way for an extension of industrial democracy.

From this standpoint, the paper now examines the New Zealand situation. The industrial relations system and its important characteristics, the industrial setting including its size and shape, the experience of industrial democracy to date and the viewpoints of the major social partners will all be closely studied in an attempt to evaluate how New Zealand measures up to industrial democracy. Basically, this section of the paper examines the New Zealand industrial situation both internally and externally, and observes how it stands vis-a-vis industrial democracy. The paper is concluded in this section where some threads will be tentatively drawn from all the material, in search of a possible approach for New Zealand.

A. THE NEW ZEALAND INDUSTRIAL RELATIONS SYSTEM

1. The Industrial Relations System Established.

The New Zealand system of industrial relations is embedded in nearly eighty years of established machinery and

Folder Industrial

has produced a system unique to New Zealand. Our basic legislation was adopted in 1894 (Industrial Conciliation and Arbitration Act), and the brand of system introduced then has in substance remained until today. Consequently, in understanding why such a system, which still remains, was introduced it is important to briefly consider the background to the 1894 Act.

The situation in New Zealand in the 1880's reveals young and relatively small industries that were largely unregulated. The country was faced with an economic depression during which the employers attempted to save themselves at the expense of working conditions and their staff. Sporadic strikes increased industrial tension which eventually came to a head with the first nation wide strike - the Maritime Union Strike of 1890. The strike became a struggle to settle the relative authority and position of employers and unions, and resulted in a crushing defeat of the unions. Of this defeat it has been commented:

> "The Trade Union movement as a whole suffered a setback in self-confidence and turned to Parliament to give it the things it could not win for itself - recognition, freedom from victimisation, the right to negotiate under the shelter of an Arbitration Court and the enforcement of minimum conditions." (79)

This event, and the general community feeling for an end to the abuses of industrial employment and avoidance of a repetition of the recent industrial strife, led to the passage of the Industrial Conciliation and Arbitration Act 1894 (I.C. & A. Act) by a newly elected Liberal Party whose principal desire was the fostering of trade unionism.

The system of industrial relations established by the I.C. & A. Act of 1894, and carried through in the subsequent re-enactments,[(80)] was one headed by State intervention in a process coined compulsory conciliation and arbitration.

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(79) N.S. Woods, "Industrial Relations Legislation in the Private Sector," Labour and Industrial Relations in New Zealand, eds. J.M. Howells, N.S. Woods, F.J.L. Young, (Pitman Pacific Australia Pty. Ltd. 1974), p.83.

(80) I.C. & A. Act re-enacted in 1908, 1925, 1954.

Folder Industrial
Ar democracy

Recognition was the theme and this was achieved by registration. Although registration was voluntary, the benefits that accrued; namely, compulsion for employers to negotiate, assurance of a settlement or an award, protection against competing unions, and legal enforcement of awards, were substantial enough so that most unions registered. In return for registration the unions had to forgo the use of the strike weapon and accept surveillance of the rules and restrictions upon their activities. The settlement of disputes follows precise procedures and where no agreement is reached a final and binding decision is imposed by the Arbitration Court.

2. The Implications of Compulsory Conciliation and Arbitration.

New Zealand's industrial relations system with its philosophy of conciliation and arbitration perceives two sides in industry each representing opposed interests with the apparent potential for industrial disruption of such a degree that the two parties must be compelled, in the public interest, to come together and negotiate under the supervision of the State. With this distinct flavour of State intervention there is the consequential withdrawal of the ultimate power of settlement from the hands of the primary disputants and therefore in most cases the parties never get to resolve their disputes themselves. By this method of intervention, collective bargaining has lost (or, more properly, never found) any real significance and has become a mere preparatory step for the conciliation and arbitration process. Any view that decisions made in the Arbitration Court are merely a continuation of collective bargaining is unacceptable on the ground of the meanings inherent in the different methods alone. A collective agreement is a compromise whereas a tribunal imposes its decision on the parties by will. The two are contradictory and it has been said that the latter is the antithesis of collective bargaining.[81]

The significance of this is inherent in the fact (pointed out earlier in the paper) that collective bargaining is itself a form of industrial democracy. Trade unions, and their ability to bargain effectively with management, is a method of bringing the worker into the decision making process,

(81) D.L. Mathieson, Industrial Law in New Zealand, (Sweet & Maxwell, Wellington, 1970,) p.240.

Folder Industrial
Ar democracy

be it by way of collective agreement with management or by industrial pressure and coercion. This fact is no better illustrated than the situation in America. America's system of industrial relations contrasts strongly with New Zealand in that the primary emphasis is upon collective bargaining.(82) So advanced is this system that, in America, the theme of industrial democracy in the European context has received little discussion or attention. The view is that industrial democracy has already been widely achieved through collective bargaining.(83)

However, the implications of New Zealand's industrial relations system go further than this. Industrial democracy itself implies a state of co-operation and understanding between employers and employees where mutual respect for the other sides point of view is encouraged, and a willingness to negotiate and work matters out is fostered. Accordingly, a system in which free collective bargaining is prevalent is one which possesses these qualities, and therefore, is conducive to the introduction of industrial democracy schemes. The Bullock Committee recognised this where the majority, in discussing the readiness and preparatory state of British companies for board level participation, considered that the extension of the scope of collective bargaining over the years was the most important element in achieving this.(84) The New Zealand system, in stressing state intervention through precisely defined conciliation and arbitration procedures, denies the employers and employees of ever having the opportunity of pursuing bargaining practices and undertaking the responsibilities associated therein. Such a system deems the introduction of worker participation schemes a very dubious operation because it would suddenly thrust the two social partners into a situation where mutual co-operation and understanding is the tonic of success.

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(82) See generally, John Seidman, Industrial Relations Systems of the United States and New Zealand : A Comparison, (Occasional Paper, 0.16, Industrial Relations Centre Wellington, 1975).

(83) See M. Derber, "Collective Bargaining : the American Route", Industrial Democracy in International Perspective, (Annals, A.A.P.S.S.) op.cit., p.84.

(84) Bullock Report, op.cit., (Ch.6, para.8).

Folder Industrial

Collective bargaining further inhibited: Professor Kahn-Freund commented that "collective bargaining is unthinkable without social sanctions" and "it cannot work without the ultimate sanction of the strike and lockout."(85) In the Amercian situation, again, the willingness to accept the losses and inconveniences incidental to industrial stoppages is a hallmark of that system and its desire to make collective bargaining functional. There exists an inbred acceptance of the strike as an unpleasant but necessary sanction to the successful operation of collective bargaining.(86) In contrast to this, New Zealand legislation is adamant in its prohibition of industrial stoppages and strikes and has provided a veritable armoury of penalties and sanctions to this end.

Under the old I.C. & A. Act strikes were illegal and breaches were liable to monetary penalties and/or deregistration. Stiffer penalties were included in the Industrial Relations Act 1973 and amendments since then(87) have widened the definition of "strike" and removed any form of intent - "any stoppage for any reason". Liability is now on a per day basis, fourteen days notice is required and persons who are party to a strike are also liable.

The significance of this legislative attitude to strikes is, in Professor Kahn-Freund's terms, that free collective bargaining in New Zealand is untenable and non-existent and consequently this reinforces the "hopelessness" of a situation in which industrial democracy thrives.

In addition to this aspect of our industrial relations system there has developed a tendency to make matters regarding the workplace a concern of the Legislature and thereby much of the subject matter commonly found in the collective bargaining process (and for other industrial democracy schemes) is removed. Safety and health are statutory matters(88) and we

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(85) As cited in, A. Szakats, "Some Comments on Legislation in the Private Sector", Labour and Industrial Relations in New Zealand, (eds. Howells, et.al.), op.cit., p.154

(86) See M. Derber, loc.cit.

(87) Industrial Relations Amendment Act 1976.

(88) Factories Act 1946; Shops and Offices Act 1955; Machinery Act 1950 and other acts that canvass this area.

Folder Industrial
Ar democracy

have a thorough welfare state which offers sickness benefits and free treatment, and has put the duty to support injured workers on the entire country through the Accident Compensation Commission.[89] Furthermore there are universal superannuation and age benefit schemes in existence.

More importantly, however, is the legislation of another matter - wage negotiation - which is dealt with by economic stabilisation policies. New Zealand's long history of economic stabilisation[90] has removed the very heart of free collective bargaining by completely disregarding and cutting through any existing industrial relations arrangements. With the super-imposition of economic control measures, not only is there a causal deterioration of faith in the arbitration system, but also, there is an effective counteractive force to the evolution of free collective bargaining. Whilst the ultimate purpose of such legislation - the curtailment of spiralling wages and prices, and halting of inflation - is highly desirable, the implication for collective bargaining is drastic because:

> "In practice wages remain the centre of the dispute, the lifeblood of any settlement reached, and the restrictions not only deprive the bargaining of its freedom but make the whole process anaemic."[91]

With this complexity of highly legalistic and detailed regulations the New Zealand government has played a highly influential, if not determinant, role in setting out the subject matter for collective bargaining and thereby severely inhibited the operation of a free collective bargaining system. As was indicated earlier, an advanced system of collective bargaining acts as a "lubricant" for the passage of participatory schemes. The existence of a system of industrial relations

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(89) Established by the Accident Compensation Act 1972, Part I.

(90) Implemented by: "Blanket Clauses"; i.e. the Arbitration Court's power to make industry wide awards (1905); Standard Wage Pronouncements (S.W.P.); General Wage Orders (G.W.O), Economic Stabilisation Act 1948; and the Remuneration Authority. See generally: N.S. Woods, "Industrial Relations Legislation in the Private Sector", and also, A. Szakats, "Some Comments on Legislation in the Private Sector", op.cit.

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(91) A. Szakats, "New Vista for Collective Bargaining: Restriction or Extension", New Zealand Journal of Industrial Relations, (Vol.1, No.3, 1976), p.53.

Folder Industrial
Ar democracy

that regulates and constrains the activities of collective bargaining, and promotes a system in which conflict and confrontation are the focal point, is far from conducive to industrial democracy.

3. New Industrial Relations Legislation: Regression or Progression?

The situation created by New Zealand's unique brand of industrial relations gradually led to growing disenchantment and pressures for change. This culminated in the passage of a new act - the Industrial Relations Act 1973 - which replaced the long history of the I.C. & A. Act. It therefore remains to be seen whether this recent legislation has initiated any major changes and created a shift from the traditional concept of industrial relations (as outlined above), or, merely continued, or even further restricted, the concept, and if so, how. Before looking at the Industrial Relations Act of 1973, it is of some importance to briefly outline the build up to this new legislation. This, in itself, will reveal some of the societal changes that have appeared in New Zealand in the period immediately preceeding the 1973 Act, and which Part II of this paper considered as forces behind the movement toward industrial democracy.

The build up to new legislation:[92] The external system of industrial relations (representing the formal legal framework created by a history of unchanged legislation) gradually became antiquated and outmoded with the rapid change of the interal system (that is, all that the external system controls - the workplace and day to day industrial relations up and down the country) which took place through the 1950's and 1960's. Industrialisation causes rapid changes and developments in any industry and the pressures and strains are born out in a diversity of forms. At the ground, or shop floor, level the main effect of mechanisation and technological change is a feeling of job insecurity. For the organisation facing a new scale of modern operations and changes in the patterns of the

(92) Refer, Brian Brooks, "The System of Industrial Relations in New Zealand", New Zealand Law Journal, (1973), p.407, from which the terms "external" and "internal" systems were adopted.

Folder Industrial
Ar democracy

workforce, where once there was conformity to a common pattern there now exists diversity. It is to this diversity that the external system of industrial relations should adapt to give expression to new structures that permit the growth of organisations which represent this diversity. Mr. B. Brooks says of this:

> "In short, the whole social fabric is put under stress by new values receiving acceptance. These value changes upset traditional priorities and are met with the structural inertia of existing institutions. ... On the broad front of industrial relations the tensions result from the structural inertia of existing institutions. And the most resistant structure has been that form of institutionalised industrial relations found in the 1894 Act ... the machinery of the I.C.& A. Act acted as a straight-jacket rather than a stimulant to employer and employee organisations ... the Act's restrictive influences on the structure and growth of industrial relations organisations derived not so much from inappropriateness of the registration requirements in relation to the circumstances of 1891 as from the perpetuation of those requirements and of procedures after the circumstances had changed." (93)

The uncomfortable "gap" between the external and internal systems was creating a newfounded uneasiness with the traditional system of industrial relations, however, such a feeling did not manifest itself in an expressive desire for reform until the end of the 1960's. The reason in part lies with the relatively sluggish beginnings of the technological innovation, and the generally conservative attitude of the New Zealand public, however, a more profound answer lies in the economic conditions of the day.

The 1960's was a period that prospered after the economic boom of the 1950's. Amongst such stable and buoyant economic conditions, the system of wage restraints operated successfully, unhindered by pressure for wage orders. Workers were not unduly concerned by small price and wage differentials that accrued in the interim from their last adjustment to the expiry date of that award. The stable 1960's began to "tighten" up toward

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(93) Ibid, p.408. (Emphasis added).

Folder Industrial
Ar democracy

the middle of the decade and, with the standstill in wage rate increases, the unions confidently applied to the Arbitration Court for a General Wage Order increase in 1968. The Court refused. Its grounds for refusal were that such an order was incompatible with the economic conditions in New Zealand and overseas. As a result:

> "The nil decision in 1968 seriously undermined the legitimacy of conciliation and arbitration in New Zealand; the Court was seen as too conservative and unions were left to direct bargaining backed by the threat of direct action. The inevitable result was a patchwork of agreements outside the system, often negotiated by amateurs in the art of negotiation who were not aware of the industry wide implications." (94)

Within the next few years it became obvious that the country's "run" on an economic "high" had ended. As the effects of the overseas depression filtered through and market "multiplying" factors came into play, the New Zealand economy was gathering momentum in its downward turn.

The detrimental effects of "amateur" negotiation, reinforced by the increasing inflation level, produced widening wage and price differentials which were maintained by wage stabilisation regulation. Award rates could not be re-adjusted until the expiry date and consequently workers began to see their weekly wage seriously eroded. Wage claims became frequent when awards and agreements were still current, and the unaccommodatory responses to these claims precipitated the advent of industrial unrest and dissatisfaction with the present system. The traditional I.C. & A. legislation was not coping with the problems or disputes:

> "The realities of institutional employment were clearly at odds with the ideology of the I.C. & A. Act." (95)

These more immediate and visible problems for the work force together with the pressures of a changing society and the new

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(94) John M. Howells, "Industrial Conflict - the last twenty years", Labour and Industrial Relations in New Zealand, (eds. Howells et.al.), op.cit., p.174.

(95) F.J.L. Young, "New Zealand Industrial Relations : Retrospect and Prospect", New Zealand Journal of Industrial Relations, (Vol.1, No.1, 1976) p.34.

Folder Industrial
Ar democracy

born unattractiveness of economic depression, rendered the legislation designed for early century conditions impracticable, and led to a growing expectation of change.[96]

The Industrial Relations Act 1973: This new piece of legislation did not, as was hoped, initiate a reformed system of industrial relations. The new Act retains the long established tradition of conciliation and arbitration and the structures within that system. The Act focuses on procedural improvements and changes.

However, within these new institutions and procedures there is a recognisable shift away from the traditional constraintive elements upon collective bargaining. The new statute encourages the social partners to make their own rules and resolve their own problems as far as possible.

The former "industrial disputes" is replaced by: a) a "dispute of interest", which is defined as a "dispute created with the intent to procure a collective agreement or award setting terms and conditions of employment of workers in any industry," and, b) a "dispute of rights" which is a dispute concerning the interpretation, application and operation of a collective agreement or award and any related enactment or contract.[97] Similarly the "industrial agreement" is replaced by the "collective agreement" - an agreement in writing registered by the industrial commission and made in amicable settlement of a dispute of interest between employer(s) and union(s) and containing terms and conditions of employment of workers.

The part of the new Act dealing with voluntary settlements, although more brief than its counterpart, is dealt with in more specific terms. This difference prompted a highly respected

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(96) For a well illustrated review of the growing need and expectation for change, refer; N.S. Woods, Industrial Relations Legislation Re-constructed, (Occasional Paper, O.4, Industrial Relations Centre, Wellington, 1971); N.S. Woods, Needed Reforms in Industrial Conciliation and Arbitration (Occasional Paper, O.2, Industrial Relations Centre, Wellington, 1970); A. Szakats, Recent Changes in Industrial Law, (Occasional Paper, O.5, Industrial Relations Centre, Wellington, 1970).

(97) The old Arbitration Court is divided into: the Industrial Commission, which has jurisdiction over disputes of interest; the Industrial Court, which deals with disputes of right (amongst other matters.)

Folder Industrial
Ar democracy

industrial relations commentator[98] to note that this changed statutory outlook tends toward a new emphasis on voluntary settlements of the old I.C. & A. Act 1954. Woods comments that Part V dealing with voluntary settlements reads more as a preamble to Part VI dealing with conciliation and arbitration, unlike the new Act. The new Industrial Court appears to take on the role of a back stop, resolving issues of particular difficulty or of general interest.

Of this observed shift in the underlying philosophy of the industrial relations system, Professor Young comments:

> "The full ramifications of this change have yet to develop. They have certainly not yet been grasped by the wider community and even by some within the ranks of the social partners." (99)

He later concludes in a note of caution that:

> "Until 1973 the legislation was a positive deterrant to the creation of modern industrial relations practice. To expect the system to be reconstructured in two years after 80 years of rigid control is really too much." (100)

B. THE INDUSTRIAL SETTING OF NEW ZEALAND

The previous section reviews what has been termed the "external" system of industrial relations in New Zealand. It was seen that the corresponding "internal" system eventually developed "labour pains" for an unaccommodatory and outmoded system which were not satisfactorily relieved by the passage of new legislation, although some outlet has been provided.

It is now necessary to turn our attention to the New Zealand setting in a broader scope to evaluate the appropriateness, or inappropriateness, as the case may be, of initiating industrial participative schemes.

1. The General Background and Scene.

It has been seen that New Zealand has a deeply entrenched and long history of conciliation and arbitration undermined by a large degree of state intervention. This is set against

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(98) Mr. Noel S. Woods, "Industrial Relations Act 1973", (I.R.C., O.11) op. cit.

(99) F.J.L. Young, "New Zealand Industrial Relations: Retrospect and Prospect", op.cit., p.3.

(100) Ibid., p.7.

Folder Industrial
Ar democracy

the background of a country with a wide acceptance of legal control and a strong distaste of industrial warfare which is revealed by public hostility to disruptive union behaviour. Of the New Zealand industrial scene, a British observer was prompted to state:(101)

> "It cannot be easy in a conservative, stable, prosperous and egalitarian country to whip up a feeling that there are injustices so great as to justify unemployment and general disruption of community life."

Whilst this must be accepted as a generalisation made from a comparative standpoint, the observation does in fact bear out some very real elements of New Zealand society.

In relation to "conservatism" in New Zealand, John Deeks, writing of "Ideology and Industrial Relations in New Zealand",(102) has noted that New Zealand has an "ideology of no ideology" which emphasises "the pragmatic, the day to day, the piecemeal and partial adjustment of the system on the basis of expediency." An "ideology of no ideology" is conservative based and inhibits the longer term adjustment of industrial relations to a changing social, economic and technological environment.

> "The very notions of an industrial relations 'policy' or the 'development' of industrial relations would seem to require some underpinning political or industrial relations philosophy or ideology that spelt out the long term goals being pursued, that explicitly faced up to the relative 'rights' of employees and 'prerogatives' of management, or at the very least, accepted the distinction and the underlying conflict it implies. Essentially, therefore, the ideology of no ideology must be seen as a defence of the status quo." (103)

This New Zealand attitude is important in the context of considering possible reform because such reform can only be

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(101) Arthur Beecham, writing the forward to, Labour and Industrial Relations in New Zealand", op.cit., xi

(102) John Deeks, "Ideology and Industrial Relations in New Zealand", New Zealand Journal of Industrial Relations, (Vol.1, No.2, 1976) p.26.

(103) Ibid., p.31.

Folder Industrial
Ar democracy

truely operational if it is acceptable.[104] To a large extent this attitude may be attributable to our industrial relations legislation. One example of this is collective bargaining, where it has been seen that this potent source of industrial co-operation has been prevented from advancing beyond mere infancy and as such is an ineffectual institution. Professor Young notes:

> "Organisation based on legal fiat may well have been unavoidable in the 1890's. In the long run however, it created an atmosphere of 'legalism, statism and placidity', which emphasised the status quo rather than reformulation of practices and procedures." (105)

Another plausible explanation for this "attitude" (and a factor of the New Zealand scene) is New Zealand's "enviable" record of peaceful industrial relations in comparison with other more advanced countries. Statistical appraisal reveals a low level of strike activity. Fewer than fifty stoppages in most years before 1940, and only on seven occasions before 1960 did annual stoppages exceed one hundred. This record is strongly impressionistic of a view that the New Zealand system "with its paraphernalia of compulsory conciliation and arbitration, and penalties for strikes, does successfully control the excesses of industrial conflict and nothing else would serve as efficiently in maintaining industrial peace."[106]

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(104) Support for this proposition is clearly evident in the fate and downfall of the British Industrial Relations Act 1971. Against a well nutured approach of voluntarism and industrial autonomy, characteristic of the British system of industrial relations, the Conservative Government enacted the I.R.A. 1971 in a modest attempt to assert some standardisation into industrial relations procedures and bring into it more order within a framework of positive laws. The British trade union movement was bitterly resentful of this legislation, and their hostility and revulsion was expressed in a committment by the Trades Union Congress and its major unions, not only to secure its repeal, but to make its provisions unworkable. In the face of such attitudes the Act was repealed by the Labour Government in 1974 and its originator, the Conservative Party, pledged not to bring it back. (Refer, Fogarty, op.cit., p.45).

(105) F.J.L. Young, "The Labour Market in New Zealand," Labour and Industrial Relations in New Zealand, op.cit. 236.

(106) J.M. Howells, "Industrial Conflict in New Zealand: the last twenty years", op.cit., p.161.

Folder Industrial
Ar democracy

However, it is arguable(107) that this absence of industrial turbulence is not in fact due to the effectiveness of controlling legislation but to a set of factors outside the role of the law. This is supported by the colossal increase in the number of strikes since 1970(108) when the traditional "smooth running" pattern was abruptly broken, despite subsequent legislation increasing the penalties available. Some of these factors can be seen in the forthcoming look at New Zealand's industrial business scene and workforce.

New Zealand industrial legislation has fostered the emergence and protected the existence of a large number of very small and weak unions. At the very outset, the short title of the I.C. & A. Act 1894 was "an Act to encourage the formation of Industrial Unions and Associations". As few as fifteen workers could seek registration as an industrial union, and it was not until 1936 that registration of multi-district and New Zealand unions was provided for. The right to amalgamate was until 1962 a highly complex and difficult manoeuvre. In this light the formation of fragmented and parochial unions was encouraged, resulting in a lack of unity and solidarity which, if it exists, is a potent weapon for reinforcing industrial demands. Today there are three hundred registered unions, some companies having ten to fifteen in the one plant. This high proliferation of unions makes the structure of collective bargaining an extremely messy and painful process. The advent of fewer, stronger well founded unions would make for more effective and more responsible collective bargaining (which at present the Federation of Labour is in fact reviewing). This union structure contrasts sharply with the monolithic West German situation in which union members are organised into sixteen industrial unions.

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(107) As Howells goes on to argue. Idem.

(108) In 1970 the number of stoppages doubled from the previous year to an unprecedented 323. In 1975, after a years operation of the I.R.A. 1973 with its stiffer penalties the number of stoppages reached 428. In the year that the I.R.A. was amended (1976) with very "heavy handed" strike penalties, the number of stoppages further increased to 490, and, the number of working days lost doubled from that lost in 1975 with 60 stoppages less.

Folder Industrial
democracy

The typical business enterprise in New Zealand is characteristic of the country's small and sparse population. In 1970 New Zealand had 58,000 odd undertakings employing 904,400 people.(109) Of those undertakings 95% employed 50 persons or less, and 57% employed between two and five persons! The percentage of undertakings employing over 100 persons was 2%. This effectively means that only 2%, or 1,300 undertakings within New Zealand, can only seriously be considered as likely prospects for any substantive scheme of worker participation.(110) The force of these statistics suggest that with such a small scale of applicable undertakings, the introduction of industrial participation would be perfunctory and unnecessary. However, what these statistics presently neglect to display is the fact that the remaining 5% of undertakings employing over 50 people, accounts for 54% of the entire workforce, and it is to this percentage of the workforce that worker participation is concerned with. Industrial democracy is not concerned with the number of affected undertakings so much as it is with the people employed therein.

In Britain nearly 30% of the total workforce is employed by large enterprises. The Bullock Committee's proposals to apply employee representatives to boards of directors to companies employing 2000 or more employees would affect 738 enterprises employing one third of the total employment.(111) The proposal to extend the application later to 1000 employees would affect a further 500 enterprises employing only 4% or so of the total employment.

The industrial setting of New Zealand, therefore, displays an advantage in the high proportion of the workforce employed by relatively few undertakings which is indicative of the ease and effectiveness that would become an industrial democratist in terms of democratising the workplace of a large proportion

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(109) Source of these figures: Department of Labour, as cited in, F.J.L. Young, "The Labour Market in New Zealand", op.cit.p.239.

(110) This is using the company size applicable as 100 employees. 517 (0.9%) undertakings employ over 200 employees totalling 29% of the workforce. 166 (0.3%) undertakings employ over 500 employees totalling 17% of the workforce. cf. European Systems, ante, and also Appendix 1.

(111) Bullock Report, op.cit., (Ch.11, para.5).

Folder Industrial
Ar democracy

of the total workforce. There are of course other advantages and disadvantages arising from those statistics.

The distribution of the labour market indicates a significant proportion of the population living in rural communities, where, in terms of its implication, the cleavage between employee and employers is non-existent and the "rampant injustice and inequality" of the industrial system is barely a major source of social conflict, and as such, a non-issue. Today, 11% of the labour force is involved with primary production, 34% with secondary industry and 54% with services. By proportion, therefore, New Zealand has a service industry intense labourforce. On this basis it may be posited that, accepting worker participative schemes are "foremostly" concerned with the typical manufacturing company (which is indicative in the German context[(112)] where "co-determination" was exclusive to the heavy coal, iron and steel industry in the early stages), then with so small a sector of secondary industry in New Zealand, the extension of industrial democracy would be a worthless exercise. Whilst this generalisation has its pitfalls and maybe countervailed by evidence of the general applicability of industrial democracy, it nevertheless carries no small amount of conviction and displays an attractiveness in its logic.

2. New Zealand's Experience with Participative Industrial Democracy.

(a) Legislative provisions: Firstly it is pertinent to briefly examine what schemes of participation the New Zealand legislation expressly provides for.

Section 233 of the present Industrial Relations Act enables the establishment of works committees on a voluntary basis, representative of workers and employers in relation to any industries, or undertakings or branches thereof, for the purpose of improving and maintaining harmonious industrial relations and for the purpose of improving and maintaining the welfare, safety and health of workers. The Act, to some extent, reinforces section 233, and its purpose, in its enumeration of the functions of the Industrial Relations Council

(112) See, the European Worker Participation Experience, ante.

Folder Industrial
Ar democracy

in section 16. Included therein is the function to recommend to the Government ways and means of improving industrial relations, industrial organisations and industrial welfare. Section 233 explicitly provides for employer-employee co-operation on joint committees at the level of the individual undertaking and leaves open the multiplicity of possible extensions both in form and use.

The effectiveness of this legislation is, however, doubtful, when it is appreciated that:

> "Section 233 of the I.R.A. 1973 represents no advance on almost idential legislation enacted three decades earlier; legislation which failed to yield more than a token gesture towards the concept of worker participation." (113)

The legislation "three decades earlier" was contained in section 7 of the Industrial Relations Act of 1947 which similarly provided for the establishment of works councils.

One other legislative expression in this field is found in section 67 of the Companies Act 1955[114] in its provision for "labour shares". Section 67 simply empowers a company to issue "labour shares" to persons for the time being employed in the service of the company, its aim being to provide a means of enabling employees to share in the progress of a trading company. The Macarthur Report[115] observed the rare instances of the section being invoked and saw it as "unattractive and ill-designed for modern economic and industrial conditions." Consequently, the Committee considered it was not serving any useful purpose and recommended its repeal.[116]

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(113) Brian Brooks, "Works Committees and Industrial Relations", New Zealand Law Journal, (1976), 89, 91.

(114) This section first appeared in the Companies Empowering Act 1924 and was amended to its present form by the Companies Empowering Amendment Act 1971.

(115) Op.cit. para.151.

(116) For an interesting discussion of the proposed repeal of s.67 and the retention of s.233, see Brian Brooks, "Works Committees and Industrial Relations, op.cit. p.93.

Folder Industrial
democracy

(b) Existing worker participation schemes: In 1972 the New Zealand Labour Department undertook a study of worker participation in New Zealand.(117) The study involved a postal survey of 2,236 employment units employing twenty people or more and was confined to manufacturing industries. Of the 2,027 respondents, 253 (12.5%) operated some form of worker participation scheme, or a combination of schemes. The Department's definition of worker participation is noteworthy for its broad scope. It included joint consultation, autonomous workgroups, job enrichment programs, joint management (worker representation in management), profit sharing schemes and employee shareholding. By breakdown of the 253 firms nearly 60% of the instances of participation were joint consultation alone or in association with some other scheme. Autonomous work groups were present in 24% of the cases while profit sharing and tradeable shares were found in 15% and 20% respectively. The study indicated that as the labour employed increased so too did the incidence of participation, however, one element, that of autonomous work groups, decreased in frequency. There was no evidence of any worker representation on boards of directors or other forms of participation in top management.

A later survey by the Department in 1975(118) of sixty-five manufacturing firms with worker participation schemes did not reveal representation on boards. Consequently, apart from a few attempts no serious endeavour has been made in New Zealand to introduce forms of worker participation.

3. The Parties and their Respective Viewpoints.

Democratisation of industry has widespread and critical implications for not just the direct parties of the workplace but also for society as a whole. Knowing about the parties and each of their viewpoints is absolutely essential to any debate on industrial democracy in any country for it is with

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(117) New Zealand Department of Labour, An Introduction to Worker Participation, (July 1972); 1973), See Appendix 4.

(118) New Zealand Department of Labour, Worker Participation: A Background Paper (Research and Planning Division, May 1975)

Folder Industrial
Ar democracy

these groups and not the particular form employed, that the acceptance or rejection and failure or success of any system lies.

The Government: Industrial democracy has important effects on the longer term economic condition of an industrial system and consequently any government has a real concern and interest in such developments. Whilst it is contended that any form of unilaterally imposed legislation has very little chance of success the ultimate responsibility for the adoption of any system lies with Government as legislators. The paper revealed earlier, that up until now Government and its legislative policies have created a conflictual and polarised relationship between the two major social partners, the employers and the employees. Consequently, Government has a duty to take the initiative and bring these two forces together to negotiate and identify a course of action for the country.(119)

In the past ten years Government has been pre-occupied with policies to smooth the rough created by economic depression and the rippling disturbances appearing on the local fronts throughout New Zealand industry. Inflation and economic recession are likely to stay with us for a long time to come, and the Government's combatting wage stabilisation policies with their restrictive effects are likely to continue. It would be unrealistic to deny the deteriorating level of industrial unrest and tension between the social partners, and, the pressure build up from a narrowly confined "internal system" that is struggling amidst increasing social and industrial change. Faced with these dynamic factors, Government must start formulating the steps it should take.

Regarding the viewpoints of the two major political parties, it maybe postulated that the National Party favours

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(119) The inclusion of employer and employee leaders in direct consultation on specific and broader aspects of issues facing Government is a sensible approach which has been adopted in the past. In 1972 the New Zealand Federation of Labour and theNew Zealand Employer's Federation combined their efforts in the submission of joint proposals to the Government on revised industrial legislation.

Folder Industrial
Ar democracy

a unitary outlook, while the Labour Party is more inclined to a pluralistic position.

In 1973 the Labour Government announced in its Budget statement their intention to introduce a scheme to encourage a "greater identity of interest between the employer and the employee." This idea planned to encourage companies to give employees a stake in their industry in the form of interest free loans, shares and debentures. The fact that very few companies availed themselves of the optional statutory schemes outlined above, and, that financial participation is not in itself an efficient method of improving employer-employee relations (for it bears no relation to the benefits to be gained from job satisfaction, nor does it enable any practical participation in the management of the business) prompted Mr. Brian Brooks to comment:

> "Thus the expression of intention in the 1973 Budget to encourage a greater identity of interest between employer and employee, will remain a pious hope unless the envisaged 'stake' is to have a wider meaning." (120)

In 1974 the Honourable E.S.F. Holland introduced a Joint Consultation in Industry Bill into Parliament which proposed the setting up of works councils with the theme of encouraging employee-employer relations. The Bill was received by both sides of the House as constructive and potentially sound.(121) However, the then Minister of Labour, the Honourable Hugh Watt, referred it to the Industrial Relations Council for examination and nothing became of it. Whilst this may demonstrate that both the Labour and National parties have a similar outlook on industrial democracy, it was observed earlier in this paper that schemes such as works councils are acceptable to a unitary viewpoint because the unilateral and authoritarian structures are still retained, as always, with no obligation to effectuate workers proposals. The telling point is a scheme that places workers directly on

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(120) Brian Brooks, "Works Committees and Industrial Relations", op.cit., p.91.

(121) New Zealand Parliamentary Debates, (Vol.392, 1974), 2797-2809.

Folder Industrial
Ar democracy

management decision-making bodies with the power to influence decisions. Although a small point, there is some significance in a passing remark by the Honourable E.S.F. Holland where a distinction was drawn between the establishment of works councils and the establishment of worker control. To some extent this may reflect the previous suggestion.

The only positive trend that has emerged is that, notwithstanding fleeting, commendatory appraisal of worker participation schemes, there has been no real effort by either party to provoke or initiate actual legislative measures. The National Party, for example, buttered its 1975 election manifesto with proposals relating to joint consultation, worker participation, and employment and training policies, however, in its three year legislative programme it chose to bring forward only the restrictive side of its industrial relations policy.

The employers : management: An initial warning should be paid heed to here about generalising in an area where the viewpoints vary from one manager to another. Nevertheless, there are some definite consistencies throughout these varying strands of opinion that may be referrable in indicating a representative outlook.

Management is in the "hot seat", as it were, in the debate on worker participation. It is here that change and reform are necessary as the management group of industry must shift about to "accommodate" in an area that has historically been their exclusive domain.

Loosely speaking, the prevalent management ideology in New Zealand has been authoritarian and reactive with resistence to change frequently entrenched at the top of organisations. This unitary, paternalistic sentiment has been seen[122] to rest on two propositions of management theory unique to New Zealand:

> "First, a deep-rooted belief that the worker is not displaying the proper attitude to his job, and

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(122) Brian Brooks, "The System of Industrial Relations in New Zealand", loc.cit.

Folder Industrial
Ar democracy

> second, smug acceptance of the fallacy that the 'self-made man' is best fitted to manage in an industrial society." (123)

Thus the 'self-made man' whilst an expert in technical production, pays little attention to his most important resource - his employees. Hence the observation, commonly made, that:

> "Despite the benefits of fourteen years research in human behaviour at their disposal, the overwhelming majority of companies continue to manage the day-lights out of the plant and financial half of their assets, while thinking of the people half as a luxury or frill." (124)

This outlook on management ideology in New Zealand must be qualified with respect to rapid changes and adapting attitudes just in the last five to eight years. The changing shape and values of society within this period have at least filtered through, although not necessarily transformed, the management side of the industrial system. Management has, at the least, become cognisant with "industrial, human relations". To this end managers and directors (in the context of an earlier part of this paper) have become aware of new and wider obligations and responsibilities upon them. This change in responsibility owed, however, is nothing beyond a mere awareness. Meeting these obligations and becoming accountable to wider responsibilities is the theme that the abovementioned management ideology should be qualified in its applicability. In such terms it is useful to observe the way management adjust to technological development by restructuring and re-organising their production layout, but not by following through similar changes with respect to developing social patterns within the workforce. It is as such that management is reactive, negative and defensive.

In part this attitude may be attributable to the effects of eighty years of state intervention with compulsory conciliation and arbitration procedures which discharge management of their responsibilities and obligations toward

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(123) Ibid., p.410

(124) R.H. Borland, Managing Director of Management Resources Ltd., in an address on 7 April 1970, as cited by Brian Brooks. Idem.

Folder Industrial
Ar democracy

their work place. Theirs is a reactive role, sitting and waiting for the process to be activated and to come to them.

A recent survey of New Zealand management practices(125) revealed that 69% of the companies surveyed reported that they never hold conferences with employees to inform them of relevant company information such as changes in plans, objectives or profit goals, and, that 93% of New Zealand managers believe that matters of company policy are the responsibility of management alone.

The New Zealand Employers Federation (N.Z.E.F.) has just recently released a booklet described as an introduction and guide to worker participation for New Zealand employers.(126) The publication's objective, as clearly stated by the N.Z.E.F. President, Mr. D.E.R. Sutcliffe, in the introduction, is to introduce the concept of employee "involvement",(127) and to guide employers towards an acceptance of its principles. The booklet stresses the process of evolution rather than revolution of worker involvement, the development of which must be guided rather than imposed. The N.Z.E.F. consider the benefits that may accrue to employees and employers and proceed to outline the new role of managers as the initiator of discussion and provider of encouragement to participation and involvement. The biggest role change will be the need to "discuss" rather than to "demand". The booklet examines the alternative forms of "involvement" and considers that in addition to the improvement of direct personal involvement of the worker over his immediate tasks, the encouragement of informal joint consultation committees is the most favourable. Direct and personal relations are considered the most suitable form for the New Zealand environment "with its close-knit

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(125) G. Hines, The New Zealand Manager, (1973), as cited in Brian Brooks, "Works Committees and Industrial Relations", op.cit., p.92.

(126) New Zealand Employers Federation, Employee Involvement in the New Zealand Workplace, (ed. R. Oram, N.Z.E.F.Research and Information Services Division, 1977).

(127) The term "involvement" is preferred by the Federation instead of "participation" or other commonly used terms. Whilst this may be a trite point the term "involvement" does have unitary inclined connotations.

Folder Industrial
democracy

workplaces" and any form of management, or, board representation is considered as being of marginal benefit. Of this latter form of "involvement" the Federation deemed it as ineffectual and effort-wasting because the individual employee "has no real sense of participation". Mr. Sutcliffe clearly enunciated the Federation's stand where he said:

> "By promoting greater involvement, the Federation is not advocating a shift in power from investors and shareholders to employees. This has already largely occurred, with the power in industry and business today resting mainly with the people who manage the enterprise on the owners behalf. Rather, we are promoting a greater sharing of responsibility among all employees whether they be in management or not. Neither does the Federation advocate with this publication a reduction in managements decision-making: private enterprise will not survive long without management, the entrepreneur, the risk-taker (call him what you will) reserving the right to manage the resources effectively." (128)

The Federation identifies the strongest and most common motive for greater employee involvement as being the desire for changed employee-employer relations which have become strained because of New Zealands traditional adversary approach to industrial relations. It is important here, in understanding the N.Z.E.F. approach, to realise that there are two underlying justifications for industrial democracy. First, there is the "social responsibility" of the company, as mentioned above, where those who have an interest in the company - the "stake-holders" - are identified as persons to whom a responsibility is owed in terms of accountability. This recognises the idea of worker's participating as a "right" and is pluralistically based. Secondly, the movement toward industrial democracy is justified on strong commercial reasons of expediency. The basic propositions here are : workers have ideas that can be useful; communication upward is essential to accurate decision making at the top; workers will accept decisions better if they participate in them; workers will work harder and more co-operatively with each other and with

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(128) Employers Involvement in the New Zealand Workplace, op.cit., (vii)

Folder Industrial
Ar democracy

management if they share in decisions that affect them; this fostering of co-operation and industrial peace will raise efficiency and reduce stoppages; and managerial efficiency will improve because of the need to think decisions out more carefully. It is with this second justification that management more strongly believe in with their affirmation of the need for industrial democracy and therefore, proposed schemes here fall short of shifting control of the enterprise and are within a unitary framework.

It is in recognition of the features of the second justification that the N.Z.E.F. are ambitiously desirous of the need to foster the growth of "worker involvement".

The New Zealand employer's viewpoint generally coincides with their European counterparts except on one point. European employers, whilst opposed to parity board representation of employers and employees are on balance not unfavourable to minority representation on supervisory boards.[129]

The Trade Unions: There has been no clear response emerging from the trade union movement in New Zealand on the matter of worker participation. This follows the trend in other countries where the union movement has held back, unprepared to forward any policy, in a manner that is generally describable as "suspicious".

Mr. R. Trot, legal officer for the Federation of Labour (F.O.L.) provides three reasons for the absence of any general policy emulating from the trade union movement.[130] Firstly, he writes, that with the attitude of the present Government towards trade unions, there have necessarily arisen more pressing matters "than endeavouring to formulate policies on such apparently esoteric concepts as worker directors, workers councils and so on". Secondly, the initiative for the debate on worker participation has generally come from employers and this is very evident from overseas experience. This, Trot opines, is understandable because employers are attempting to "get in first", show that they are supporting

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(129) Refer, "Workers Participation", Report to O.E.C.D., 1975, as cited in Fogarty, op.cit., p.49.

(130) Rod G. Trot, Worker Participation - A Trade Union Viewpoint", Federation of Labour Bulletin, (Vol.7, No.15, 1977) p.10.

Folder Industrial
Ar democracy

the concept and then formulating the best alternatives in their own interests. The third reason is that New Zealand tends to lag behind in most areas of social and economic change. The trade union movement has been more concerned with pragmatic day to day responses to workplace matters.

In Trot's opinion the Government and employers are both putting forward the naive view that there is something called "worker participation" which, if the magic formula can be found for New Zealand conditions, will be embraced by trade unions, workers and employers, thus assuring the country's industrial relations future. This view he sees as a "dangerous view". Trot argues that from a trade union point of view there are two important practical questions that need to be answered in looking at any particular proposals: firstly, what kind of decisions do workers have a say in?, and he identifies the three major levels (shopfloor supervision, middle management, top management) and secondly, how much influence are workers going to exert? He says of this:

> "This is the crucial question that really gives the lie to the appearance of agreement between employers and trade unions on industrial democracy." (131)

Trot argues that "communication" is often seen as a means of industrial democracy, but whilst it can be of some use to workers it has too many pitfalls and may be too easily substituted for the real involvement of worker's representatives. The achievement of "joint consultation committees", "works councils" and the like may in itself represent a real increase in workers involvement on many cases, however, here management still takes the decisions. For this reason, Trot points out the existence of a body of opinion within trade union ranks against the extension of joint consultation machinery, particularly where its effects may be to undermine trade union organisation within an enterprise. It is of interest here that the N.Z.E.F. booklet emphasised the point of there being no hint of employers setting out to undermine the loyalty of the employee to the trade union, and, to this end greater involvement should not infringe on areas traditionally

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(131) Ibid., p.11.

Folder Industrial
Ar democracy

negotiable between employer and union.

On the question of worker directors or not, Trot notes that there are two opposing positions within the trade union movement which have been well illustrated by the conflicting evidence presented to the Bullock Committee in Britain. One view, represented by the central trade union organisation in the U.K., the Trades Union Congress (T.U.C.),[132] "considers that in the absence of board level representation trade unionists would find it impossible to influence such key decisions as the allocation of resources, company planning, managerial appointments and so on". The opposing view, represented by the large and influential Engineers, and, Electrical and Plumbing, unions, rejects this and basically sees worker directors representing responsibility without any real power, which could stunt the possible further growth of collective bargaining. This latter view sees worker directors as compromising the traditional role of trade unions. Trot observes that this view rejects the T.U.C. approach that collective bargaining can only go as far, and that boardroom representation is required thereafter.

Trot posits that in the immediate future the most significant trade union thrust for industrial democracy will come through an extension of collective bargaining. He draws attention to a committment within the trade union movement here, to the deepening and broadening of the collective bargaining process to cover more of the vital policy issues that management has traditionally treated as its preserve. For the achievement of this, Trot stresses that far reaching information disclosure would be necessary and vastly greater than the present law requires. Finally, Trot sums up the F.O.L. position:

> "It would be as naive to think that management is to voluntarily agree to greater disclosure as it is to think it is going to be prepared to bargain over a wider range of issues, and it seems probable that legislation would be required to enforce both disclosure and the duty to bargain. It would seem inappropriate for a considerable number of reasons

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(132) Note, the Bullock Committee was specifically required by its terms of reference to take particular account of the proposals of the T.U.C.

Folder Industrial
Ar democracy

> to consider the question of boardroom representation for trade union representatives until a radical extension of bargaining occurred. At that stage if it was found that there were limits to bargaining which could only be overcome by boardroom representation then the issue would have to be confronted." (133)

Despite this "back-seat" approach that unions have adopted industrial relations legislation without the support of the trade union movement would be a dangerous move. It is within reasonable contemplation that such legislation would create an unprecedented unity amongst the New Zealand trade union movement in a stand that could irreparably damage the country both economically and socially, especially in this vulnerable period. However, this note of caution should not be taken to the extreme, as it was by the Bullock Report, and result in legislation that is completely immersed in trade union machinery. The Bullock Committee considered that the dangers of initiating employee representation on boards of directors without trade union support were so great that proposed legislation was "doomed" if not based on trade union machinery. The Committee forwarded alternative justifications for this stand in, the likelihood of such a system ensuring that there would be no conflict with collective bargaining, and also, that such a system would be a natural extension of the already deep involvement of collective representation in industry. Notwithstanding that this view may be well justified in the British setting, it is open to an equally dangerous result in that the system has in fact created a power shift not to the workers, but to the trade unions. Trade unions would then have the means to get immediate action over collective bargaining matters which, although appealing, would unquestionably hinder board room efficiency and possibly cripple some industries. These two dangers must be heeded and a well-balanced system arrived at that checks them both.

The Individual worker: For the individual worker of any grade who is not directly involved in the machinery of collective

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(133) Trot, op.cit., p.12.

Folder Industrial
Ar democracy

representation, many of the considerations of interest to the different parties may well seem remote. There is a large body of opinion favouring the view that workers have no real interest or concern with such schemes that are supposedly for their real benefit. The view on the other side is mainly forwarded on the basis of human behavioural studies(134) which posits that workers are apathetic only to the extent that they do not themselves want to do the jobs of representatives or to know how it is done. However, they do in fact want to know that through their collective organisation they at least have some control of their situation and are not at the mercy, however benevolent, of their "work-place organisers". Accordingly, the most important point here is that the forms of participation must reach down fully to ordinary workers and represent their views accurately. This in turn must be reinforced by comprehensive reporting back machinery where representatives keep in close touch with their constituents.

From the behavioural scientist standpoint, workers dissatisfaction with their lack of control and the compulsion of carrying out unilateral commands manifests itself in hidden forms which ultimately result in sub-standard efficiency of production. Merely because the shopfloor worker does not express this dissatisfaction in terms that are comprehensible to management does not necessarily imply, nor warrant, the label "apathy" should be attached. With the development of "functional" forms of worker participation throughout all levels, the individual worker will realise and assess the benefits in his own capacity (and possibly develop a more scientific reasliation of his 'lot') and success will become evident in his improved "quality of working life"(135) and ultimately in the improved efficiency of the enterprise.

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(134) The most prominent and evolutionary study of human behaviour in the workplace was the famous Hawthorne Studies early this century.

(135) A correlative of the debate and movement of worker participation and industrial democracy is the study "quality of working life". The two overlap substantially.

Folder Industrial
Ar democracy

Whatever attitudes individual workers do have and how they may be interpreted is inevitably a very difficult thing to assess and is open to some wild accusations and unfounded speculation. A proper discussion of this must entertain the various ideologies, and their significance, and examine the numerous behaviouralist studies, which is all a subject within itself. It is the writer's firm opinion that even with such an examination, no tangible conclusions would emerge, and further, it is evident that with or without a proper assessment of worker attitudes there will still be a movement towards industrial democracy with the adoption of worker participation schemes.

C. LOOKING FORWARD - SOME CONCLUDING OBSERVATIONS

This paper has transcended vast areas and issues of a diverse character that all necessarily associate with the industrial democracy debate. In so doing, there has been no attempt to encourage a preference for any particular concept of industrial democracy, indeed, there has been no substantive examination of the advantages of any one concept, or scheme, over another. That in itself is a gigantic task, complicated by differing ideologies, and one which the writer believes would not prove any great purpose, because the assessment of any system of industrial democracy essentially begins from the starting point of the objectives of a particular country, which, are obtained only after an "identification" with the industrial and social systems existing therein. The scope of this paper, therefore, does not enable any definitive conclusions to be drawn with respect to the "ideal" system of industrial democracy for New Zealand.

However, notwithstanding this, some constructive observations may be made of the more identifiable themes throughout the paper, especially in the New Zealand context.

Whether industrial democracy is a reality for New Zealand may be answered affirmatively simply on the basis, per se, of the concept being a natural evolution of industrial society and as an historical inevitability. Already there is strong evidence in existence throughout industrial and social

Folder Industrial
Ar democracy

environments that is clearly indicative that change is in the air. General societal pressures arising from the continuim of social and technological development have created a troubling disparity with the legal precepts that control society. This has manifested itself in increasing disenchantment with the industrial system and, more specifically, in a refusal to further accept and obey unilateral instructions from remote sources about which the recipients have no say or control. Similar pressures are also finding form within the industrial sphere itself. Industrial organisations are by their nature slow to change, but they have nevertheless acknowledged such pressures by the acceptance of wider responsibilities and obligations upon them. Some degree of structural development and re-organisation has taken place, however, change as this may be, such organisations are still resilient to major reforms that are seen as necessary to accommodate this new era.

Although the different schemes, and their variations, all require differing structural reformation, there is an underlying theme amongst them in the transfer of power and control to those who are affected by decisions reached within organisations. Such a transfer may undertake various degrees depending on the objectives of the initiators and the type of scheme earmarked, which in turn, is determined by a multiplicity of factors.

A significant factor as such in New Zealand is the entrenched legal framework, unchanged in shape since the beginning of its legislative existence, and which has firmly moulded a unique brand of industrial relations. However, while this system has been influential in shaping the outlook of employers and employees, it has not shown itself as adequate enough to cope effectively with the build up of tension in the last ten years. This has been a result of a culmination of factors of which the downturn in the economy and the counteractive policies of government have played a significant role. If economic malaise then is a dominating cause, then it must be noted that this cycle of recession has not reached its bottom point. New Zealand governments have

Folder Industrial
democracy

borrowed heavily to cushion the effects of this economic slump and have only succeeded in postponing the worst.

In looking forward for New Zealand, it is imperative that any approach or system, that may eventuate, must be one that the industrial system will be conducive to. Hence, consideration of the country's industrial setting, the social and legal framework, the respective positions of the social partners and the economy as a whole must be undertaken. No one system can be lifted out of its operational context in a foreign country and "slotted" into the New Zealand setting. Whatever proposals eventuate, they must be decided upon after extensive debate and negotiation, and then, drafted out with the co-operation and mutual efforts of government and both social partners. Furthermore, whatever action is agreed upon it is essential to realise that because it has been mutually arrived at, its acceptance and instigation will not in itself guarantee "success", nor provide a panacea for all economic ills. Any approach must be carefully followed through, supported and believed in, especially with a climate noted for its confrontation rather than its co-operation. The road to industrial "efficiency" is distant and uphill.

There appears to be a great deal of controversy on the issue of how such system should be initiated. It is generally accepted that a unilaterally imposed system is potentially dangerous and therefore out of the question. Some quarters firmly believe that employers should be the initiators because not only is it with them that substantial change is required to accommodate a scheme of industrial democracy, but also, they will have a genuine interest of ensuring its success and extension. Similarly, it has been argued that the single most difficult hurdle for industrial democracy in New Zealand is the attitude and stance of employers, and therefore, re-education and training programmes must be undertaken by them. On the other hand there is a strong body of opinion that favours change initiated by the Legislature (but not unilaterally). Here it is believed that the Legislature provided and maintained the legal straightjacket and consequently the onus is upon that body

Folder Industrial
Ar democracy

to initiate reform. Similarly, such a view implies that legislation is a process of reflecting values in society and accordingly the movement should be generated from Parliament. The Federation of Labour considered the Legislature to be the appropriate reformer because management is an unreceptive body which only legislation can succumb.

It is contended that the attitudes reflected above which place the responsibility for an extension of industrial democracy in one camp or another, are erroneous and display ignorance about the very idea of industrial democracy itself. Clearly it is the responsibility of all the parties to initiate and promote the new "agenda", and any consequential changes, in their own camp. However, it is conceivable that matters of importance to the extension of industrial democracy may be left resting in a manner idiosyncratic of the New Zealand way. Accordingly, Government, as the ultimate legislating body, should preferably adopt a role of co-ordinator and perhaps work through such creatures as the Industrial Relations Council in consulting with employee and employer organisations in a combined effort to define some basic requirements.

Up until now the paper has been hesitant in any proposals or speculations for a particularly suitable approach or scheme of worker participation. It was not the object of this paper to search for the ideal New Zealand solution. However, in retrospect, the examination of the New Zealand case has revealed certain peculiarities that indicate some inappropriate avenues, and some preferable ones.

The introduction of worker directors would appear to be too "revolutionary" for New Zealand at present. This may be substantiated by such factors as New Zealand's infancy with the debate, the lack of any real experience in co-operation and consultation between the major social partners and the deficiency of enough skilled and proper resources within New Zealand industry. The better view tends to be that the dramatic change contemplated by such a scheme can only be a possible consideration when there is a sufficient development of a

Folder Industrial
Ar democracy

"participatory sub-structure" and adequate preparation in the form of educational readiness. It would be disastrous for the future of such a scheme if it failed before it even got off the ground, (not to mention the cost involved to the economy). This does not mean to say that it should be realised as a longer term goal. The introduction of board level representation should not be upon an assigned date, but rather, it should be introduced at appropriately evaluated developments (which may vary from company to company and industry to industry). Similarly the degree of representation should be a gradual process to enable the parties to "feel their way around" this totally new concept, rather than plunging boards into parity representation from the outset. Other forms of representative integrative participation face similar problems with New Zealand's lack of experience, both in the debate and in industrial co-operation. There are at present joint consultation schemes in existence in New Zealand industries, however, this does not reflect a general readiness by the whole industry. Uncontrolled development of joint consultation committees or works councils may be dangerous, especially if they might infringe trade union areas. Other than this there appears to be a general acceptance by employers of the introduction of such schemes and this presents itself as a viable area for development in the near future.

Direct shop floor participation is one area where development is, and should be, encouraged and promoted.

One of the more contentious areas of participation and its extension in New Zealand is collective bargaining. The paper has revealed that its growth and development has been severely inhibited by restrictive legislation. There is, to some small degree, a new opening for collective bargaining with the changes in the last legislation. The Federation of Labour is strongly in favour of the radical and far reaching extension of collective bargaining. Similarly, there is a strong sentiment amongst industrial democratists in New Zealand that the thrust for the future of New Zealand lies with the expansion of the collective bargaining process, and, that the widespread growth of worker participation in other directions

Folder Industrial
Ar democracy

would not seem likely to succeed until such an eventuality.[136] It is important that change in this direction should be aware that the industrial relations system, led by state intervention, has withdrawn the need for employers and employees to have any regard to the obligations and responsibilities associated with collective bargaining. Quite briefly, change here should not be hastily forced. The social partners will need time to determine priorities and substance, and time to familiarise those involved with the purposes and procedures of collective bargaining.

As against this view, a forceful argument may be mounted on the fact that collective bargaining is simply not a strong point in New Zealand industrial relations, and, considering the relativity of change to New Zealand's culture, history and environment it would appear to be inappropriate for an extension here. Another related viewpoint is that collective bargaining should be undertaken only at the top level by intelligent interplay between unions and employers aided by the input of economists, sector leaders and government. This view is favoured by the New Zealand Planning Council[137] which stresses the need for a workforce that is "adequately informed regarding the economic and business facts of life". Similarly, the Council considers it desirous for employers to have "a background understanding of the difficulties faced by members of the workforce." Collective bargaining to determine wage structure is seen as being "ideally negotiated at national level on an industry basis by two well informed participants both of whom possess the best possible enconomic facts and projections".[138] In other words, the promotion of industry agreements as opposed to occupational agreements, especially in a country with an intense proliferation of weak and inexperienced

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(136) Refer, F.J.L. Young, "Worker Participation in New Zealand : Practice and Prospects", in, <u>Seminar with Theme Worker Participation - Examples from New Zealand Practice</u>, (New Zealand Institute of Economic Research, Discussion Paper 21, 1975).

(137) New Zealand Planning Council, <u>Working Together : Human Relations Aspects for Planning New Zealand's Development</u>, (N.Z.P.C. No.7, 14 June, 1978).

(138) Ibid., p.6.

Folder Industrial
Ar democracy

unions, is seen as a necessary goal.

Whatever approach, scheme or alternative is decided upon, it is ultimately to well framed industrial laws that society will look for an appropriate basis and guidance on this enigmatic and potentially explosive matter. New Zealand industrial laws to date have been highly legalistic and restrictive, and have consequently engendered disenchantment suspicion and disrespect. To continue this pattern in such a diverse area, (which emerges in a period characterised by change itself), is to trap in a rigid shell what is essentially a dynamic and undefinable matter. Legislation should therefore only provide a basis, in which worker participation is fostered, rather than narrowly channelled, or worse, forced. In the words of Professor Young:

> "New Zealand now stands at a watershed in industrial relations matters. On the one side lies the uncertainty associated with all innovation and experimentation. On the other, the prospect is one of retrogression associated with ideas and activities which are becoming more and more outmoded in a modern organised society." (139)

The immediate future for New Zealand and industrial democracy lies in a programme of research, negotiation, experimentation and then innovation undertaken in a combined effort by all employees, employers, academics, industrialists, lawyers and government alike.

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(139) F.J.L. Young, "New Zealand Industrial Relations: Retrospect and Prospect," op.cit., p.7.

Folder Industrial democracy

TABLE I

ESSENTIAL FEATURES OF BOARD LEVEL REPRESENTATIVE STRUCTURES IN MEMBER-STATES OF THE EEC COMPARED WITH THE UK BULLOCK COMMITTEE PROPOSALS

	Type of Company Board Structure	*Company Size Applicable (employees/capital)*	*Extent of Employee Representation*	*Principal Legislation by Year*	*Special Features/ Remarks*
DENMARK	One-tier	50	2 members on board in addition to shareholder nominees	Danish Companies Acts 370-371, 1973	Plans to extend participation through a 'Wage Earners Investment & Profit Fund'
GERMANY	Two-tier	C+S all others 500 now 2,000	5 reps. equiv. to no. of shareholders reps. (5+5+1)	Co-determination Act 1951; Co-determination Act 1956; Works Constitution Act 1952; New Act 1976	Current parity the result of a long process of change
FRANCE	Two-tier	50	2 members on administrative council in consultative capacity only	Ordinance 45-280, 1945	Sudreau Commission recommended an extension to max. of ⅓ rep. Remarked on need to preserve autonomy
LUXEMBOURG	One-tier	100 or where 25% govt. stake in company	⅓ board members or 1 per 100 employees, with min. of 3 to max. of ⅓	Company Law 1974	General govt. opposition to parity
NETHERLANDS	Two-tier	1.000/10 million Guilders	Help to appoint independents	Company Law 1971	Union dissatisfaction leading to demands for extension
ITALY	Two-tier*				
IRELAND	One-tier	—	—	—	No plans to introduce participation unless EEC forces it
BELGIUM	Variant on Two-tier				
UK BULLOCK PROPOSALS (?)	One-tier	2,000	Equal number of employee and shareholder reps. with a smaller group of independents	New legislation to be proposed (?)	Industrial Democracy Commission to be set up as Adviser & Conciliator

*Optional 3rd Board

Source: *Employee Participation & Company Structure*, Bulletin of the Economic Community (BEC) Supplement, 8/75.

TABLE II

FORMS OF WORKER PARTICIPATION BELOW BOARD LEVEL IN EEC COMPANIES

		Extent	*Applicability*	*Method of Choice of Reps.*	*Powers*	
BELGIUM[1]	Enterprise Councils	50% mgmt. 50% employees	Firms of more than 150 employees	Secret Ballot; TU may nominate candidates	Discuss: (1) alterations to work conditions (2) Recruitment	(3) welfare (4) lay-offs (5) work rules
DENMARK[3]	Co-operative Committees	50% mgmt. 50% employees	Firms of more than 150 employees	Elected shop stewards are *ipso facto* employee reps.	'Co-influence' on (1) day to day prdn. and work planning (2) alterations	(3) local work and welfare (4) staff policy
GERMANY[1]	Works Council	All employee reps.	Firms of more than 5 employees	Secret Ballot of all employees	Social, staff, & economic matters. Conduct of employees, working hours	Rights of participation & co-determination in a wide range of matters
FRANCE[1]	Enterprise Committees	3 to 11 employee reps. plus chief executive	Firms of more than 50 employees	Secret Ballot on proportional representation basis	Entirely consultative except for social welfare policy	Must be consulted on redundancies, employee work changes, etc.
IRELAND[1]	Safety Committees	Various forms	Workers in all factories have the right to set them up	Various	Limited to discussions of safety under Factory Act 1955	
ITALY[2]	Works Councils	All employee representatives	All firms	Secret Ballot of all members but TU's do nominate candidates	Represent employee interests at all stages. No formal *power*	
LUXEMBOURG[1]	Mixed Committees	50% employees 50% mgmt.	Firms of more than 150 employees	Elected by personnel delegates by Secret Ballot	Participation in admin. of welfare programme	Must be consulted on matters pertinent
NETHERLANDS[1]	Enterprise Councils	Up to 25 members depending on size of firm	Firms of more than 100 employees	Ballot of employees TU's can nominate candidates	Must be consulted on matters pertinent to employees, e.g.	to employees pensions, working time, holidays, safety and health

Sources: *Employee Participation and Company Structure*, BEC Supplement 8/75; International Labour Organisation, *Workers' Participation in Decisions within Undertakings*, ILO, 1976.

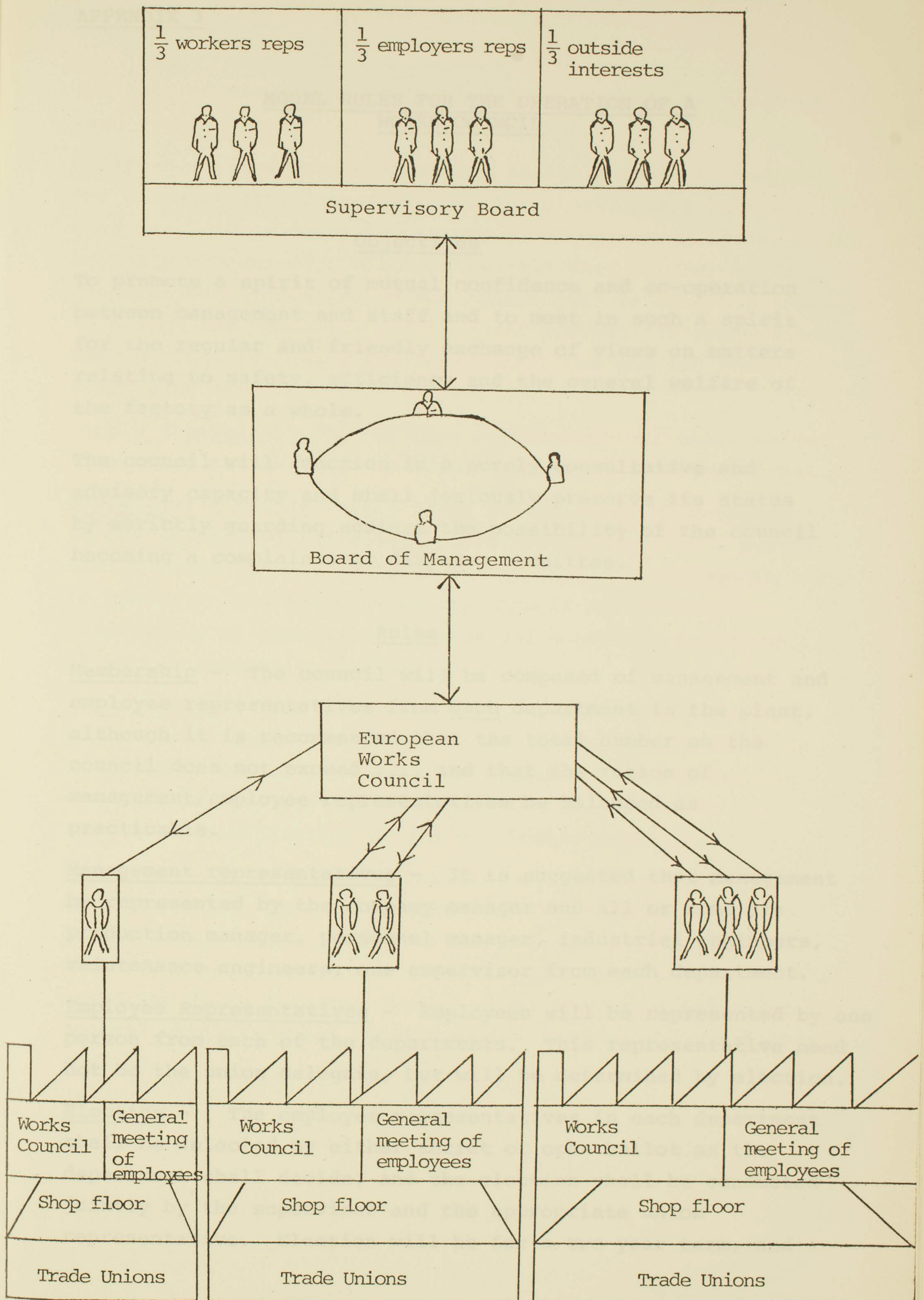
[1] Set up by legislation. [2] Set up by agreement with unions and employers but confirmed by Act in May 1970.

Reproduced from Brian Chiplin and John Coyne, "Property Rights, Industrial Democracy and the Bullock Report". Op.cit. p.

Folder Industrial
Ar democracy

APPENDIX 2

THE DECISION-MAKING STRUCTURE OF THE EUROPEAN COMPANY



Folder Industrial
Ar democracy

APPENDIX 3

MODEL RULES FOR THE OPERATION OF A WORKS COUNCIL

Objectives

To promote a spirit of mutual confidence and co-operation between management and staff and to meet in such a spirit for the regular and friendly exchange of views on matters relating to safety, efficiency and the general welfare of the factory as a whole.

The council will function in a purely consultative and advisory capacity and shall jealously preserve its status by strictly guarding against the possibility of the council becoming a complaints or disputes committee.

Rules

Membership - The council will be composed of management and employee representatives from each department in the plant, although it is recommended that the total number on the council does not exceed ..., and that the ration of management/employee representatives be balanced as practicable.

Management representatives - It is suggested that management be represented by the company manager and all or some of: production manager, personnel manager, industrial engineers, maintenance engineers, one supervisor from each department.

Employee Representatives - Employees will be represented by one person from each of the departments. This representative need not be the union delegate, but will be determined by election.

Election - The employee representatives in each department shall be delected by either secret or open ballot as the department shall decide, and the election shall be conducted jointly by the supervisor and the appropriate union representative. Election will be for a two year term, and

Folder Ar
Industrial democracy

one half of the elected council will be subject to election each year.

Chairman - The company manager, as the person responsible for the control and operation of the plant, shall be the chairman. (Note: The importance of a chairman's office must be fully recognised. While it is true that his/her basic function is to preside, he/she cannot fail to make his impact felt upon the council. He/She shall provide the proceedings with continuity, guide the representatives and aid them in expressing their views.

Deputy Chairman - The employee representatives shall select from among themselves, a person to serve as deputy-chairman.

Secretary - The secretary shall be nominated by management. He/She shall have the ability to write minutes, be a person who commands general confidence, and shall have adequate time to devote to the business of the council including the preparation of agenda and minutes and energetic follow-up of matters requiring action.

Co-operation - The council shall have the power to co-opt supervisors, union delegates, or any member of the staff in an advisory capacity as and when required, for the purpose of obtaining any pertinent information to facilitate the council's consideration of any particular matter.

Business - At each regular meeting of the council, the chairman shall, for the information of the council, review particulars of work in hand, future changes, modifications, alteration to work methods or plant, etc, and keep the committee fully informed regarding any proposals affecting the general activities and welfare of the factory and staff as a whole.

Folder Industrial
Ar democracy

SUBJECTS FOR DISCUSSION AT WORKS COUNCIL OR JOINT CONSULTATION COMMITTEE MEETINGS

The following are suggested as topics suitable for discussion:

- Codes of plant conduct and discipline
- Holiday arrangements
- Pension schemes
- Plant physical condition (cleanliness, ventilation, lighting and temperature, lavatory accommodation, cloakrooms, washing facilities)
- Technical and general educational and training; apprentice training
- Job enlargement
- Consideration of questions and statistics concerning absenteeism, labour turnover
- Interplant communications, plant newspapers, house magazines, publications
- Social aspects (social club, sports club, welfare fund, entertainment, recreation)
- Suggestion for the improvement of productivity and efficiency.
- Industrial engineering
- Plant safety and accident prevention, first aid facilities
- Expression of the employees' views on any particular matters not covered above
- Discussion of any other appropriate matter affecting the joint effort of management and employees to secure the efficiency of the works or plant
- Induction procedures and training
- Half-year and annual trading results
- Company annual report
- Procedure for reporting sickness
- Shift alterations
- Protective clothing
- Machine maintenance
- Shortage of cleaning materials
- Flexible working hours
- Fire evacuation drills

Folder Industrial
Ar democracy

- Cost avoidance plans
- Long service awards
- Pension scheme
- Job grading
- Car parking
- Improvement of working environment
- Transportation arrangement
- Trading prospects
- Production figures
- Scrap figures
- Disciplinary code
- Time-keeping
- New orders
- Site development
- Departmental targets
- Changes in location
- Purchases
- Quality of service
- Economy of materials
- Workload
- Production control

Topics suggested as being unsuitable for discussion at meetings:

- matters which normally are the subject of collective bargaining between management and trade unions (i.e. agreements covering wages and working conditions)
- Selection procedures
- Promotional procedures
- Personal grievances

Folder Industrial
Ar democracy

APPENDIX 4

TYPES OF WORKERS PARTICIPATION SCHEMES BY SIZE GROUP

Scheme Type \ Size Group	Size Unspecified	Less Than 20 (1)	20-50	51-100	101-500	More Than 500	TOTAL
Joint Consultation	–	1	32	29	33	10	105
Autonomous Workgroup	–	–	21	7	4	–	32
Joint Management	–	–	1	–	–	–	1
Profit Sharing	–	–	11	5	11	–	27
Tradeable Shares	–	1	17	7	13	–	38
Labour Shares	–	–	2	–	–	–	2
Others	–	–	1	–	–	–	1
J.C. and A.W.	1	–	12	6	5	–	24
J.C. and P.S.	1	–	2	2	1	–	6
J.C. and T.S.	–	–	2	–	5	1	8
J.C. and L.S.	–	–	–	1	–	–	1
A.W. and P.S.	–	–	2	–	1	–	3
A.W. and T.S.	–	–	–	–	1	–	1
P.S. and T.S.	–	–	–	–	1	–	1
J.C./P.S./T.S.	–	–	–	1	–	1	2
J.C./A.W./T.S.	–	–	1	–	–	–	1
Total	2	2	104	58	75	12	253
Number of schemes as a percentage of number of responses	(2)	(2)	10.9	12.9	18.2	19.4	12.5
Number of responses	89	63	951	449	413	62	2027

Footnotes:

(1) Firms employing less than 20 persons were not originally included in the survey, however from the time at which Districts determined the number of firms with greater than 20 persons to the time at which the survey was actually conducted, the total workforce of some units dropped to below 20.

(2) Not significant for analysis purposes.

TYPES OF WORKERS' PARTICIPATION SCHEMES
BY INDUSTRIAL GROUP (MANUFACTURING INDUSTRIES)

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Industry Code / Industry Group / Scheme Type	31 Food Beverages and Tobacco	32 Textiles Clothing and Leather	33 Wood and Wood Products	34 Paper, Paper Products Printing Publishing	35 Chemicals, Petroleum Coal, Rubber & Plastics	36 Non-Metallic Mineral Products except Coal and Petroleum	37 Basic Metal Industries	38 Fabricated Metal Products, Machinery and Equipment	39 Other Manufacturing	Total
Joint Consultation	20	17	4	11	13	5	1	34	-	105
Autonomous Work-groups	4	7	2	2	3	-	-	14	-	32
Joint Management	1	-	-	-	-	-	-	-	-	1
Profit Sharing	1	3	2	10	4	-	-	6	1	27
Tradeable Shares	2	7	3	5	2	5	1	13	-	38
Labour Shares	-	-	-	-	-	1	-	1	-	2
Others	-	-	-	-	-	-	-	1	-	1
J.C. and A.W.	5	1	2	4	3	2	-	6	1	24
J.C. and P.S.	-	-	1	2	1	-	-	2	-	6
J.C. and T.S.	1	1	-	1	2	1	-	2	-	8
J.C. and L.S.	-	-	-	-	-	1	-	-	-	1
A.W. and P.S.	-	1	-	1	-	-	-	-	1	3
A.W. and T.S.	-	-	-	-	-	-	-	-	1	1
P.S. and T.S	-	1	-	-	-	-	-	-	-	1
J.C./P.S. and T.S.	-	1	-	1	-	-	-	-	-	2
J.C./A.W. and T.S.	-	-	-	-	-	1	-	-	-	1
TOTAL	34	39	14	37	28	16	2	79	4	253
Numberoof schemes as percentage of responses	10.1	8.6	8.3	21.4	15.1	18.4	8.7	14.3	9.3	12.5
Number of Responses	338	455	169	173	186	87	23	553	43	2027

Both tables reproduced from New Zealand Department of Labour, An Introduction to Worker Participation, Loc.cit.

Folder Industrial democracy Ar

Folder Industrial
Ar democracy

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