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Chapter One

The Challenge of Employee Democracy

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Glenn Patmore ©

In the last year thousands of Australians have lost their jobs. Many of these job losses occurred as a result of major corporate collapses in companies such as Ansett, HIH Insurance and One.Tel. Other job losses have been the result of a dramatic increase in corporate restructuring, resulting in site closures, relocations, mergers and redundancy programs. On one estimate, this amounted to 50,000 job losses in 2001 (Shaw 2002). While the extent of job losses is dramatic, even more astonishing is the manner in which employees are commonly informed of the news. Many people first heard the announcement through the media or through their company email. Such a scenario raises the question of why employees don't have the right to know at an early stage, and to have meaningful input into decisions which fundamentally affect their lives and livelihoods .

Simultaneously, there have been some seemingly unconnected developments. For the second year running, and after so many years of decline, the number of employees who belong to a trade union has increased. The annual increase of 900 extra members in 2001 may be a significant development. Is this just a coincidence, or are we seeing something new evolving in Australian workplaces? Are we seeing the reversal of the trend of declining union membership? Significantly, the increase was achieved in sectors where there were heavy job losses – the unions' heartland areas of manufacturing and the public service. This, however, was not the full story. Part-time and casual workers also contributed much to the increase. Significant growth also occurred in the service sector, in for example, hospitality and communications. Nonetheless, the fact remains that less than 25 per cent of the overall workforce are union members, and in the private sector the figure is only 19 per cent (ABS 2001).

How have employers responded to the decline in employee representation, and filled the gap left open by declining union membership? Employers could develop new schemes for consulting employees about such matters as technological change, contracting out, and the introduction of new work methods. Regrettably, survey data indicates that such workplace decisions are increasingly being left to employers and managers alone. Although there has been an increase in joint decision making between management and employees over recent years, the empirical studies of workplace relations indicate that joint decision-making practices are relatively underdeveloped in Australia. (Morehead et al. 1997; ACIRRT 1994 and 1999; Department of Employment, Education and Training 1995; Mitchell, Naughton and Sorensen 1997). These developments have led to what has become known as the Australian employee representation gap. The absence of employee input is a very serious omission in Australian corporate decision-making. The situation here can be unfavourably contrasted with the superior representation and involvement of employees in Europe (see Campling and Gollan 2000, esp. chapter 7).

This employee representation gap has been exacerbated by a range of strategies and tactics used in non-unionised workplaces. Companies have introduced individualised reward structures and appraisal systems linked to individual performance. Some organisations have formalised such arrangements by adopting individual employment contracts. These contracts result from direct negotiations between the employer and employee, and often differ from and supplant 'the relevant award or collective agreement' (Wooden 2000). Individualised arrangements have purportedly been aimed at achieving higher levels of productivity and performance, but have

also in some cases had the effect of limiting union organisation. Given employees' lack of bargaining power, they often view these individual schemes as unfair and unequitable.

Individualised initiatives need not displace consultative committees. Some Australian companies have retained schemes of employee representation to achieve the desired levels of productivity and performance (Campling and Gollan, 1999). In fact the two approaches can be complementary and reinforce each other. Evidence from a study of non-union workplaces by Campling and Gollan (1999) suggests there is greater satisfaction with management, and greater employee commitment, if a higher level of employee participation and involvement is sought. However, the research noted that the lack of readily defined collective structures in non-unionised workplaces meant greater reliance was placed on management's ability to implement processes of change, which may involve a considerable investment of management time and resources. This survey evidence challenges the traditional orthodoxy of complete managerial control. We may therefore be approaching a new era of creative and consultative managerialism.

This collection of essays explores how a higher level of employee participation and involvement can be realistically achieved in Australian workplaces. It is clear that legislative reform is necessary to provide workable and straightforward models of employee consultation that can be implemented readily by businesses. The book also delves into and contributes to new debates about contemporary employee relations. Its themes are:

- a) An introduction to the new industrial landscape, the debates about employee democracy and partnership at work, and a consideration of their significance.
- b) Exploring rationales for employees having rights to participate in workplace decision making.
- c) The enhancement of employee representation, including future directions for Australian trade unions, as well as the development of new alternative structures for representing employee interests to management.
- d) A review of key international developments in employee participation.

All the contributors consider that we are at a turning point in industrial relations, and that it is time to rethink our current paradigm. This raises many important questions: can we be simultaneously happy, efficient and secure in our employment? If so, how? Can the goal of flexibility be reconciled with the goal of job security? The authors provide a diverse range of ways to enhance employee participation, offering fresh insights and practical proposals for change.

The new industrial landscape

Partnership at work

Recently Australians have begun to debate the merits of developing European-style notions of partnerships at work. This debate has drawn upon the more highly developed discussion in the UK and Europe. Prior to the late 1990s the debate over the concept of partnership in the UK had been hindered by a lack of coherence in the definition of what actually constitutes partnership at work (see Involvement and Participation Association, 2002). The Involvement and Participation Association (2002) have suggested that while most actors in the industrial relations landscape have advocated some form of partnership, 'the competing interpretations suggest a church so broad that, to some in the congregation, it seems happy to welcome heretics, atheists and apostolates'. In a very general sense, partnership refers to the intra-relations of the firm, such as the relations between employees and employers, or between trade unions and management teams at the workplace level (Involvement and Participation Association, 2002). In essence, workplace partnerships foster consultative arrangements among the participants of the firm.

UK notions of partnership tend to encapsulate a number of key features, notably:

- a) joint commitment of the parties to the success of the enterprise;
- b) the building of trust relations by recognising legitimate roles and interests;
- c) addressing quality of working life;

- d) equal opportunities and fair treatment for all;
- e) an attempt to address the issue of employment security in exchange for flexibility;
- f) provision of quality enhancing training programmes; and
- g) the provision for information sharing and joint problem-solving between managers and employees, whether under formal or informal arrangements.

In the UK, support for the concept of partnership straddles the unitarist-pluralist divide. Unitarists see an alignment between employer and employee interests and focus on the individual aspects of the employment contract. They typically refuse to acknowledge the potential for conflict between employer and employee, believing that any conflict that occurs is a consequence of 'misunderstandings' and they regard third parties, such as trade unions, as undesirable and unnecessary. Supporters of this approach see partnership between the employer and employee as a means of developing better organisational outcomes and increasing commitment to the firm. This is a view held by many employer-based organisations in the UK, such as the Confederation of British Industry (CBI) and the Chartered Institute of Personnel and Development (CIPD) (Involvement and Participation Association, 2002).

On the other hand, pluralists acknowledge and accept the separate interests of workers and employers, and recognise these different interests as natural and unavoidable. Pluralists believe that such differing interest can be managed to avoid open conflict and can be channeled to produce more positive outcomes (Involvement and Participation Association, 2002). Such advocates generally see the partnership concept as part of the framework underpinning such an endeavour. This view is shared by many union groups, including the peak union council the Trade Union Congress (TUC). Indeed, the TUC not only endorses the notion of partnership at work, but has established a new body to promote partnership agreements between unions and employers, the TUC's Partnership Institute. The Partnership Institute states that 'We aim to create a sea change in British workplaces by establishing partnership as the modern and successful approach to industrial relations'.

Recently, the concept of partnership in the UK has been boosted by the Blair government's endorsement. With the introduction of the Employment Relations Act 1999, the Labour government provided £5 million through a 'Partnership Fund.' This was part of a set of legislative reforms encouraging industry to embrace the concept of partnership through the adoption of best practice initiatives at the workplace.

In Europe, there is a more aspirational definition of 'social partnership'. This model moves beyond a very narrow conception of the employment relationship as involving only the intra-relations of the firm, and considers work in a broader social context. Under the European model, employees and employers possess important social rights and responsibilities. Most importantly, some of these social rights have been enshrined in law in nations in the European Union.

In the EU, the term 'social partner' refers to various actors such as government, employers, employees and union representatives (Flynn 1999). According to the social partnership model, participants in a business enterprise have both an economic and a social function. At heart, the social partnership model promotes consultative arrangements to achieve social, economic and cultural objectives.

This social partnership model is well illustrated by European Directives which legally mandate information and consultation processes for large, small and medium-sized enterprises (EU 1994, Explanatory Memorandum; 1998). These directives, issued by the European Parliament, are a form of law that applies to all member states. Two directives are especially relevant - the European Works Council Directive (EWCD) and the Commission Directive for Information and Consultation (CDIC) The European conception of social partnership has been a particularly effective model for incorporating employee democracy into law. The success of social partnership can be explained in terms of the role that 'social dialogue' plays in both developing and maintaining statutory forms of employee participation.

Overall the aim of the European Commission in forging the social partnership agenda is to develop a framework for the modernisation of the organisation of work. As the European Commission has suggested, this modernisation could be achieved through the creation of, and support for, joint understanding, through joint declarations, or through binding legal initiatives (European Union, 1997). This raises several important questions for Australia in considering the social partnership approach. If Australia intends to adopt the social partnership model: who is to regulate the new organisation of work? Public authorities through legislation? The social partners (employers and unions) through institutional collective bargaining? Or individual employers through enlightened individual employment contracts based on best practice principles? (see Involvement and Participation Association, 2002).

These models appear to be practical and workable, but it is necessary to consider how these arrangements might be received in the Australian context.

Three main arguments can be made against the partnership model. Firstly, information and consultation mechanisms based upon the European directives are incompatible with Australia's free market economy. Since our industrial relations system is one which is based on conflictual, rather than consultative negotiations over wages and conditions. (Cameron 2001). In addition, Cameron argues that the current attitudes and cultures of employers and government in Australia stand as a major barrier to the establishment of effective representative works councils. He concludes that in the present economic, industrial and political climate of Australia, it would be, at best, premature to devote time and resources to establish new European-style information and consultation structures.

Cameron's argument can be criticised. The EU directive has been successfully applied to a broad range of different national industrial relations systems throughout Europe. Cameron's argument seems to assume that the attitudes of governments and employers in Australia are immutable and unchanging. In fact, the EU directives are designed to change and improve information and consultation procedures, and have done so in many cases.

The second criticism made of the partnership idea is that it is misleading, and creates a false impression that there is an equality of bargaining power between employers and employees (Christodoulou 2001; Glassbeck 2002). It is further argued that even though it may be possible for the idea of partnership to be given more substantive meaning, without equal bargaining power it will not be possible to actually achieve a non-adversarial model of workplace democracy as is presupposed by partnership. Glassbeck argues that the law of employment reinforces the inequality between employees and employers. The law clearly states that workers are not employers' partners, and are instead legally subordinate to employers. That which the employees sell – their bodies, intellects, skill etc – are subjugated to the dictates of the employer. This creates a fundamental conflict between employees and employers such that the employment relationship is not treated as a partnership by law and cannot be a partnership in fact – no matter how cooperative employers and employees become, within existing structures.

In our view, the mere idea of partnership may not be sufficient to change social consciousness and work practices. However, the EU directives usher in new legal arrangements, creating new legal rights and entitlements for employees. They thus serve a power-balancing function, seeking to redress some of the inequalities in the employment relationship that have been commonly criticised. Moreover, the word 'social' qualifies the word 'partnership,' and endeavours to create a new form of social consciousness.

The third criticism of partnership is that it is a confusing idea and offers little in the way of direction. Debates have raged in the UK over the meaning of partnership, and it has been described as 'all things to all people'. In the UK, it has been suggested that this lack of clarity is an obstacle in the dissemination and implementation of ideas of partnership (Involvement and Participation Association 2002). In response, the European model of social partnership is not a term without content. This model is grounded in specific laws and directives, which provide coherence and definition to the concept.

Whatever their relative merits, the value of such objections and their counterpoints is that they clarify the process of implementing European-style mechanisms for employee representation in Australia, and highlight some potential pitfalls. While these issues and concerns have merit we believe that information and consultation structures based on the social partnership model provide possibilities for greater democracy and equity in the Australian workplace.

Employee democracy

There is a long tradition of debate about employee and industrial democracy in Australia. Industrial democracy is a field of study at times seen as distinct from debates over partnership at work. Edward Davis and Russell Lansbury have explained its meaning and currency. They describe industrial democracy: as a continuum, from workers having virtually no influence, through to workers having control equivalent to management. According to Davis and Lansbury, industrial democracy was a commonly used term in the 1980s, but was not favoured by employers because it suggested a challenge to managerial prerogative. They preferred the softer term, 'employee participation and consultation,' which subsequently became more popular in the 1990s. In this context, employee participation can be understood as a means via which the goal of industrial democracy can be achieved (Davis and Lansbury 1999, p.2). The terms 'industrial democracy', 'employee democracy' and 'employee participation' are often used synonymously, and we adopt this approach. When using these terms, we mean the rights and entitlements of employees to influence decisions affecting their working lives.

Russell Lansbury and Nick Wailes further explore these definitional issues. They argue that greater clarity is needed in defining the meaning of industrial democracy. They note that the debate in Australia has been confused at times by a tendency among both advocates and opponents to be unclear about the form and content of the type of scheme that they are proposing. Much of the recent discussion has focused on the connection between industrial democracy and economic outcomes, reflecting the general shift towards neo-liberalism. While employers have generally argued that they should be free to make decisions without constraint, Lansbury and Wailes argue that strong workplace unionism or an effective consultation mechanism is needed in order to preserve the resources of the firm and ensure better strategy development and implementation.

Unions, however, need to have effective mechanisms for representing the interests of workers at the level of the workplace. Furthermore, simply waiting until there is a revival of trade union membership to previous levels may mean missing an opportunity to consider alternative forms of providing workers with a voice in decision making. They argue that the preconditions for achieving industrial democracy in Australia are: a reinvigorated union movement with a coherent policy on the issue; employers interested in developing more cooperative workplace relationships; and a government that encourages such developments.

The rationales for employee democracy

We now shift our focus from the meaning of industrial democracy to its various rationales. The critical question is why employees should have rights to participate in workplace decision-making. There are a number of justifications offered for employees having participatory rights, including: remedying power imbalances between employers and employees; introducing democratic principles into the workplace; creating firms that respond to a variety of community interests; promoting economic efficiency; and developing more co-operative work relationships.

Andrew Mitchell explores two rationales: democracy and power. The power rationale seeks to address the inherent power imbalance in the employer/employee relationship. This imbalance flows, in particular, from the way in which the labour market operates. Mitchell concludes that the authoritarian nature of the employer/employee relationship must be checked by applying democratic principles in the workplace. The democratic rationale seeks to extend notions of democracy from Parliament to the workplace. It is derived from principles of liberty and autonomy, viewed in the light of the parallels between the citizen's relationship with the state and the employee's relationship with the firm. A careful analysis reveals that employees are

under the authority of the firm in a manner similar to citizens under the authority of the state. By analogy, it is claimed that employees should be entitled to direct control of their firms. Other stakeholders in the firm are not subject to the same authority, and therefore should only be entitled to indirect control.

By contrast, Ray Markey and Jennifer Hill advocate a different rationale for employee involvement in management decisions. They explain that the dominant corporate governance debates and theories of corporate law promote a conception of the corporation which rests exclusively on the relationship between the shareholder and the firm. A fundamental limitation in the corporate governance debate has been the undue emphasis on the rights of shareholders, at the expense of employees. This has been brought into sharp focus with the recent large corporate collapses in Australia which has called into question the due diligence of directors and auditors. Markey suggests that an exclusive focus on profitability may hinder development of longer-term policy and due recognition of the social responsibilities of the company. Markey and Hill conceive of the firm not merely as an organisation generating profit, but as an actor in a broader social context, with attendant social responsibilities. Under this model, those who are affected need to have their views heard. This perception of the firm respects all stakeholder interests, including those of shareholders, employees, the wider community and the environment. Markey and Hill thus advocate a stakeholder rationale for employee involvement in workplace decision-making.

Robert McClelland advances a more pragmatic rationale for employee participation in workplace decision making, focussing on its economic benefits and social consequences. He observes that the forces of international competition and globalisation currently confronting the Australian workforce have created a feeling of fear, insecurity and resentment amongst some workers about the security of their jobs. In response to this climate of insecurity, McClelland believes that it is vital to involve workers in the enterprise decision-making process, not merely as economic 'inputs', but as partners in production.

McClelland argues that employee involvement should provide the means not only of addressing the problem of job insecurity, but also of economic renewal and prosperity. He argues that placing participation at the heart of our industrial relations system would generate real gains in productivity. The challenge is to create partnerships at work where employers and employees are prepared to deal with each other as equals in an atmosphere of mutual recognition and respect. It is only from this point that they can work together to create a talented, committed, productive and flexible workforce. He believes that workplace partnerships should be high on the enterprise bargaining agenda. McClelland states that partnerships have the potential to facilitate open communication, expand the range of ideas flowing into the decision-making process and ensure that management and labour work as far as possible for a common purpose. The task of government is not to create division but to put in place a more co-operative industrial relations framework to help build these partnerships through genuine enterprise bargaining. He advocates a broad view of workplace partnership, and participation lies at the heart of this conception. He argues that new workplace partnerships will produce a range of economic and social benefits.

Each of these authors provide different rationales, and these rationales aim at different outcomes. What they all have in common is their agreement that increased employee participation in the workplace is vital. The next task then is to explore how to enhance the democratic representation of Australian employees.

Employee democracy in action

As the various rationales suggest, there is a strong case for democratising the workplace. This being so, a vital question is: how can employees be better represented? There are two main ways. One would be to enhance trade union representation. The other involves the development of new, alternative structures for representing employee interests to management.

Trade union representation

Trade unions currently play a very significant role in the representation of employees. The effectiveness of their representation depends on their internal governance and on how effectively they can externally represent the interests of their members, particularly in relation to enterprise bargaining.

Carol Fox tackles the challenging and often complex issues surrounding the internal governance of trade unions. She gives an historical account of how in many countries unions emerged spontaneously in the face of industrial conflict in the early phases of industrialisation. Given that their primary purpose was to bring democracy to the workplace, some argue that they themselves should be democratic. However, an alternative view of unions, which does not see internal democracy as an imperative, places greater weight on the 'conflictual army' metaphor. According to this view, to bring democracy to the workplace or to a national political system, unions will sometimes need to be on a war footing in their dealings with employers, or when in negotiation with a hostile government. Internal democracy may need to be sacrificed. Nonetheless, it is strongly contended that the war metaphor does not justify the abandonment of democratic processes.

Carol Fox also explores the relationship between the state and the unions as creators and regulators of union democracy. Australia has in principle endorsed the ILO benchmark of unfettered union independence. However, its approach provides a striking example of state control in practice. Union democracy is structured and designed through the combined efforts of parliament, the bureaucracy and the judiciary. Historically, this design function has been supported by Labor and Liberal governments alike. However, state control over unions has had its problems. In particular, Liberal governments have historically cultivated a public perception that the adoption of selective democracy measures is the antidote for alleged excesses of union power. The aim of this approach has often been to weaken the power of unions generally. Fox concludes that if the Parliament is to continue its role as the principal architect of union democracy, it should do so in a non-partisan fashion, and should respect the importance of the subject in its own right.

Within prevailing state control, Parliament has left some matters to be dealt with by unions themselves. In recent years ACTU policy has incorporated the design of democracy as a union prerogative in accord with the ILO benchmark. Therefore, while Australian unions have been reconfiguring union democracy, for the most part as a by-product of institutional goals and strategies, some challenges remain. These challenges include unions establishing a vision in relation to member participation; creating union government at the workplace level; and incorporating new concepts such as gender and minority rights into their democratic models.

Linda Rubenstein confronts the difficulties faced by trade unions in representing their members within a hostile corporate and government environment. She highlights two critical issues: freedom of association and union security. Union security is premised on the ability of unions to collectively bargain on behalf of employees. Significantly, Australian law has never required that collective bargaining be compulsory. There is no obligation imposed on employers to negotiate with unions. Employer offensives have also been beaten back in some cases by the creative use of the legal system.

Rubenstein argues that the Coalition government's 'freedom of association' amendments to the *Workplace Relations Act 1996* (Cth) protect the right of employees not to join a union. However, unions must nonetheless bargain on behalf of all employees at the workplace, including non-Union members. The *WR Act 1996* (Cth) prohibits the certification of agreements which cover only union members, as well as prohibiting different wages and conditions based on membership status. This 'freeloader' problem has been temporarily resolved through charging non-members a bargaining fee to represent them. While the bargaining fee was held to be valid by the AIRC, this decision has been appealed to the Federal Court of Australia.

Alternative Models of Employee Representation

Trade union representation of employees is of obvious importance in building an improved system of employee participation. There are challenges to confront in creating new forms of employee representation in Australia. Our current legal system creates barriers to enhancing employee representation.

Jennifer Hill argues that Anglo-American and Australian corporate law is restricted to governing the relationship between corporate managers and shareholders. This shareholder-centred model can create a range of socially undesirable consequences, as well as the possibility of a backlash at a political level. Corporate law views employees as “outsiders” to the corporation. The vulnerability of employees demonstrated by recent industrial disputes and corporate collapses can ultimately be traced to their ‘outsider’ status. The increasing significance of human capital, particularly in the era of the knowledge worker, undermines the fixation of modern corporate governance on the shareholder-manager relationship.

There is another theory which conceptualises employees, like shareholders, as being owed a fiduciary duty by directors. Such a theory expands the notion of the ‘best interests of the company’ to include consideration of employee interests. In Europe this expanded notion of firm’s best interest, and therefore of industrial democracy, has led to greater participation of employees in corporate governance. Given the narrow focus of Australian corporate law, Hill looks at other ways in which the interests of employees are currently being legally integrated within corporate governance. For example, new areas of criminal liability have increased directors’ incentives to be aware of their social responsibilities, and legislative ‘safety nets’ now partially protect employee entitlements when companies become insolvent.

It is thus evident that corporate law has excluded employees from the firm, while other areas of law have attempted to address this exclusion, albeit in a very fragmented, minimal manner. Three industrial relations schemes which would place employee interests within the scope of the firm will now be examined: works councils; employee board representation; and co-operatives.

Works Councils

Unlike citizens in European democracies, under Commonwealth law Australians do not have a general right to be consulted in their workplaces.¹ Australians have no general right to become “industrial citizens”, and have no legal right to elect a consultative body to participate in workplace governance. In Western Europe there exist quite extensive legislative mechanisms which provide employees with a general right of consultation and representation. This mainly takes the form of bodies known as works councils.

The discussion of works councils as a possible reform of the industrial relations system in Australia is now on the mainstream political agenda. Calls for consideration of reform have come from a broad range of people. Many contributors in this volume number in their ranks: Combet, Forsyth, Lansbury, Gollan, McClelland, Glenn Patmore, Greg Patmore, Rubenstein and Wailes. Given this groundswell of support, the topic warrants in-depth description and analysis.

The inspiration for the adoption of works councils in Australia is mainly drawn from overseas experience. The European Union has been particularly active in promoting legal mechanisms for information and consultation of employees (EU 1994, Explanatory Memorandum, EU 1998) A particularly significant development has been the introduction by the European Union of its European Works Councils Directive (issued in 1994 in 1997) (EU Directives), mandating the establishment of European Works Councils (EWCs) in large, multinational enterprises.

An EWC is an elected committee of employees (containing between 3 and 30 members) that consults regularly with management about major issues affecting the company. In particular, EWCs’ discussions include:

- a) the ‘structure, economic and financial situation’ of the company;

- b) the 'probable development of the business'; and
- c) the 'situation and probable trend of employment', mergers, cut-backs and closures of undertakings, and collective redundancies (EU 1994, annex 2).

Although the EWC scheme is not a union-based scheme, it does not preclude union members running for election to EWCs. EWCs provide an additional form of employee participation in workplace decision-making designed to complement, not replace, union schemes of collective bargaining.

Furthermore, the EU Directives are binding on member and associate member States. All 18 States, comprising a range of industrial cultures and legal systems, were required to implement their provisions by 15 December 1999. (EU 1994, art. 5(2)(b); 1997, art. 2; Transnational Information and Consultation of Employees Regulations 1999 (UK).

More significant is the CDIC, a new EU Directive that was issued in 2002. The CDIC establishes a general framework for improving information and consultation rights of employees in small and medium sized enterprises. The principal purpose of the CDIC is to enhance the employability of Europeans through the provision of information and consultation on pertinent matters. Unlike the EWCD, the Directive does not mandate the establishment of a works council, but leaves open the kinds of arrangements that might be implemented. However, it is likely that many companies will adopt the works council model. This is because works councils operate already in many small and medium sized businesses in western European countries (see Forsyth and Patmore in this volume). Notably, it is estimated that the CDIC could cover about 60 per cent of employees within the EU (Burns 2000). In the UK, it is estimated to cover over some 65 per cent of the workforce. All EU Countries are required to implement the CDIC by 2006.

The debate in Australia is now exploring how works councils might be able to address some of our serious problems with employee relations. There is an increasing call for works councils to fill the 'employee representation gap.' There are a vast number of employees who have no one to act as their representative in the workplace. These employees number in the millions. Works Councils offer these people the possibility of participation and representation in vital workplace decisions that affect their lives. As ACTU Secretary Greg Combet points out, the topics for discussion by European-style works councils highlight the deprivation of entitlements of Australian employees. Australia is now decades behind EU developments in consultation rights

Through their representative structures, works councils perform a protective function, allowing employees to protect their own interests. Anthony Forsyth notes that Australian law fails to recognise the basic right to be informed and consulted when companies fail or engage in major workplace restructuring. While workers are directly affected in these situations, with their jobs and future livelihoods under threat, they are often kept in the dark.

Paul Gollan points out another important function of works councils which makes them particularly attractive to employers. He suggests that works councils can enhance corporate productivity. The pressures of globalisation have intensified competition in product and labour markets, underscoring the need for greater efficiency and productivity. This has led to a greater focus on the link between employee participation practices and business strategy. New mechanisms for employee information and consultation have significant potential to enhance job flexibility and productivity.

Glenn Patmore highlights a distinctive and perhaps unrecognised function of works councils. He argues that works councils in Australia would enhance job satisfaction. To explore this potential, he takes the Dutch system of works councils as a case study. Highlighting the link between democracy and happiness, he argues that happiness is a significant goal in any democratic system, and that promoting employee satisfaction is inherent in the industrial representative's role. Works councils perform this function by focusing primarily on personnel policy, which is significantly associated with job satisfaction. Patmore points out that works

councils implement the objectives of protection, efficiency and employee satisfaction in a dynamic and flexible manner, and advocates their legislative enactment. However, Forsyth notes that such legislation would have to be appropriately modified to suit Australia's economic, social and industrial relations conditions.

The Australian union movement has shown interest in works councils and there is an emerging debate over their adoption in Australia. Some union members have been critical of the works council idea. They have expressed the traditional fears that employers might use these new mechanisms to 'undermine the role of unions and to negotiate directly with workers'. (Rubenstein, in this volume). This may or may not be a potential problem, depending on the details of the proposal adopted. Other unionists have given qualified support, mostly limited to the councils playing a purely consultative role, primarily in relation to non-industrial matters. (Cameron, 2001).

Greg Combet provides a considered response to this debate. He observes that '[t]he debate about Works Councils in an Australian context is a debate about the right of employees to be informed and consulted about the decisions that affect their lives'. Emphasizing the importance of this debate, he contends that '[a]n employee's ability to participate in decision-making at work is arguably as critical to his or her citizenship in a democracy, as is the right to vote.' However, he warns that he would not support structures that negate, undermine or diminish the ability of unions to organise, represent and collectively bargain on behalf of their members. He believes that, if properly handled, the works council concept need not threaten this fundamental principle. Combet believes that it may be necessary to look beyond traditional union and workplace structures to secure for employees a genuine democratic right to information and consultation.

Interestingly, Sharan Burrows, President of the ACTU, also adopts an open-minded approach. She argues that debate over the merits of works councils should take place as part of discussions about 'encouragement of consultation, collective structures, organisation and bargaining' (Burrows 2001).

Linda Rubenstein, another member of the ACTU, has emphasised the need to consider broadening 'the means by which collective representation can work at the enterprise level'. She points out that the imperative behind broadening the means of collective representation is to respond to the Coalition government's agenda to establish a workplace relations system 'characterised by direct dealings between employers and individual employees rather than through any representative structures'.

Consideration is now being given as to how new information and consultation mechanisms might be integrated into the Australian industrial relations context. Two options have been recently proposed. Firstly, a general right to consultation in the workplace could be conferred upon trade union representatives. However, this right could be delegated to an elected works council in un-unionised or unorganised enterprises, as Rubenstein and Forsyth point out. As Forsyth notes, 'given the extent of union membership decline in Australia since the mid-1980s there are strong arguments for allowing works councils to be established in non-union or lightly-unionised enterprises. This would ensure that, where unions are absent or their presence is weak, employees have access to an independent institutional forum through which consultation can occur'.

The second alternative is that the law would provide for the establishment of works councils as the channel for information provision and consultation in *both* union and non-union settings. In unionised workplaces, Forsyth argues that works councils would then operate alongside established unions, which would continue to perform their traditional collective bargaining role. From the point of view of encouraging workplace participation, there is considerable support for this option. The implementation of new representative structures is not simply about providing employees with additional representation rights. Rather, it is about creating a new culture of participation and consultation among all employees and employers.

Obviously, the support of unions for these new proposals is of vital importance. Equally important are the policies adopted by the non-conservative political parties, the Australian Labor Party, Democrats and the Greens. Each of the policies of these parties are supportive of the principle of increased employee representation and participation. Significantly, the Shadow Labor Relations Minister, Robert McClelland, maintains that the principles underpinning the European Works Councils are 'a sound starting point' for developing suitable, new representative workplace structures. McClelland describes the matters discussed by European Works Councils as "important," and considers them appropriate subjects for consultation in the twenty-first century. Similarly, Federal Labor MP, Nicola Roxon, has also expressed her support for the possible adoption of works councils in the Australian context.

Employee representation on boards

We now explore another model of employee representation in the workplace, a model based on employee members on company boards of management. Ray Markey notes that these arrangements are common in Western Europe. Underpinning these mechanisms, he identifies a model of corporate governance, where workers' representatives play an active role - as participants - in corporate management, in the process of strategic decision-making at the corporate level. This kind of model could be implemented by placing employee representatives on boards of management (ERB), or employee directors, which could represent a significant form of employee involvement in the governance processes. The purpose of this reform is to recognise both employees as legitimate stakeholders, and potentially provide a means for monitoring the activities of boards of directors and managers.

He argues that consideration of employee representation on management boards would broaden the contemporary corporate governance debate in Australia. For instance, he notes that in none of the national codes of corporate governance has ERB or other forms of employee participation been addressed in Australia. By contrast, European practice suggests that ERBs may play effective role in corporate governance, to the benefit of management, employees and organisations as a whole, in the private as well as public sectors. The European experience also suggests that ERBs work best in association with other extensive forms of employee participation, such as works councils and union representation.

While Markey acknowledges the difficulties in transporting such initiatives in the Australian context, he suggests the best approach for Australia would be to established employee elected representatives constituting a significant but minority bloc on management boards. This could be achieved by federal legislation without significant extra costs to employers. He argues that legislation is necessary to generalise the benefits of ERB, to provide equity in rights and obligations of ERBs between different companies, and to remove the process from the control or influence of either management or unions. Hence, this reform would contribute to building trust on both sides.

Co-operatives

We now turn from the consideration of employee representatives on boards of management as a possible model for enhancing employee participation to explore the possibility of embracing workplace co-operatives in Australia. Race Mathews considers the lessons for Australia of the co-operative model of industrial organisation as manifested in the Mondragon experience in Spain. Established in 1956, the organisation comprises 150 firms, from machine tools and appliances specialists to construction co-operatives and supermarket chains. It is largely inspired by the Basque priest Arizmendiarieta's ideas on social Catholicism, 'evolved distributism' and the democratisation of the workplace. The Mondragon experiment embodies the co-operative principle with its two cornerstones being employee ownership of the workplace and the role of the credit unions as engines of growth for the region. The latter provides cost-effective finance and advice to employee-owned businesses. The former enables labour to hire capital, rather than capital to hire labor. Most importantly, it is the employees who own and control the means of production. Mathews attributes the success of Mondragon to three factors: motivation on the

part of members of co-operatives, solidarity and mutual support within and between co-operatives, and competitive advantage in the marketplace due to agency cost savings.

While it is acknowledged that such an organisation could not be easily replicated in Australia in its entirety, Mathews believes that the Mondragon example can be drawn upon in Australia as an impressive exemplar of effective industrial democracy. In particular, Mathews suggests that Australian credit unions could shift from their focus on personal lending to large-scale community projects, thus becoming 'business incubators'. As such, the actual governance structure of Mondragon and the inter-dependency that underpins such an approach could be of some benefit to the formal organisation of the Australian workplace.

Key international developments in employee participation

In our last section we focused on three reform proposals: employee representation on boards; works councils; and developing new co-operative arrangements - each of which were drawn from Europe. We now review some key international developments and explore some important themes from Europe, the United States and New Zealand.

Paul Gollan explores current arrangements for employee participation in the UK and the latest European developments. He provides an overview of the main themes and issues emerging from the current debates in management and labor relations literature. He analyses the role of trade unions, the law regarding employee participation mechanisms and proceeds to discuss the importance of managerial choice and consultation outcomes. Overall, Gollan suggests that in organisations where greater employee participation has been introduced, it has been good for business in terms of improved performance and productivity, employee morale and the effectiveness of organisational change. He also states that the lack of employee involvement, especially representative participation or worker 'voice', could help to explain low levels of commitment among workers. Finally, he argues that the studies show that the new co-operative tendencies do not fully eliminate the adversarial and conflict element in organisations but channel it instead.

Greg Patmore explores the employer response to workplace democracy in the United States. In considering the North American experience, he examines whether employers can unilaterally initiate schemes of employee representation that genuinely give workers a voice in the governance of the workplace. What are the implications of such schemes for trade unions? Are they a union avoidance strategy and can they be used as a platform for union organisation? In the United States today, Greg Patmore points out that any contemporary efforts to democratise the workplace through employee representation schemes will require legislative intervention and a recognition of trade unions as an independent voice of workers' concerns. This is because in 1935 the United States Congress passed the National Labor Relations Act (NLRA), which through Section 8(a)(2) banned forms of corporate sponsored Employee Representation Plans (ERPs). These Plans, which were quite widespread, were viewed as attempts to deny workers the right to independent representation of their own choice. The legislation also had the longer-term implication of banning other types of representation such as European-style works councils. Recent attempts to reform this area of law have not changed this state of affairs.

Greg Patmore's review of ERPs focuses on their history and draws out several important lessons. It is not enough to rely on the goodwill of employers to establish such schemes. Their enthusiasm for worker involvement may vary according to the economic climate and the presence of sympathetic individuals in management's ranks. As such, without a legislative framework, the survival of any employer initiated programmes will depend upon the firm's economic performance and the fate of its management backers. Workers must be convinced that the scheme is going to be a permanent forum where they can discuss issues without fear of victimisation. In this context, unions have a vital role to provide an independent voice for workers which protects employees from such victimisation. To win union support for any scheme, legislation has to protect freedom of association and ensure a protective role for unions. Where there is a union presence in the workplace, union representation through delegates or officers should be encouraged. Finally, he suggests that the evidence indicates that union

representation on such plans promoted increased efficiency and effectively dealt with grievances.

Robyn May and Pat Walsh explore the development of union representation in New Zealand. They observe that New Zealand's compulsory arbitration system made trade unions a vital part of the country's industrial landscape from 1894-1991. However, following a dramatic shift to a more deregulated labour market, the union movement suffered a sharp decline in membership and influence in the 1990's. In October 2000, the recently established Labour-Alliance Coalition Government introduced the Employment Relations Act (ERA) which included new protection for registered trade unions. The early impact of the legislation has been to facilitate the formation of a plethora of new unions, most of whom have been enterprise-based and small in membership terms.

May and Walsh identify a number of important issues arising from the emergence of new unions which require consideration. These include: the extent of employer control of these bodies; the unions' influence and membership; and the criteria to test the effectiveness of these new bodies. They consider whether the new unions are innovative bargaining agents or merely mouthpieces of the employers, and thus another step to writing industry-level unions out of the picture.

Small membership, limited resources and a narrow range of services extend the comparison with the traditional unions. In other respects, however, they differ from traditional unions. They are creatures of quite a different state, and they exist in a very different institutional environment. Finally, the growth in these new unions has surprised many observers, including existing unions. It shows no sign of abating and indicates the emergence of a new form of workplace participation in New Zealand.

Conclusion

This book places new models of employee information and consultation firmly on the agenda for employees, employers, trade unions, Labour governments, and the non-conservative political parties. Some proposals, such as works councils, are already being debated. Others, such as the rethinking of corporate law, are looming in the background. We have looked abroad to learn from overseas experience, and have adopted the European approach of considering work in a broad social context.

New schemes of employee representation can produce great social, economic and cultural benefits. If these benefits are to be realised, it will be necessary to have an open-minded debate based on concrete proposals. We invite you to consider the options.

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ⁱ Please note that there are several limited legislative entitlements relating to redundancy. (*Workplace Relations Act 1996 (Cth)*, Part VIA, Division 3, Subdivisions D and E through some provisions achieved through bargaining and included in certified agreements; and in relation to health and safety matters under state legislation.