

Workers in the Boardroom

The historical perspective

Following the surprise announcement as Theresa May became Prime Minister that she would introduce worker representation in to the Boardroom, the H&P Trade Union Forum decided to hold a seminar to examine the historical attempts to achieve this and the lessons to be learnt. By the time of the seminar on December 10th, a swift u-turn had been performed following the reaction of employer organisations which mirrored that of the 1970's. The seminar proceeded with contributions from two leading academics in this field, Dr Adrian Williamson and Prof Michael Gold, along with Janet Williamson from the TUC and a worker director Geoff Hayward, from Unite.

Adrian Williamson opened up the seminar with a look back at the events of the 1970's and in particular the Bullock Report. (The Committee of Inquiry on Industrial Democracy - chaired by Lord Bullock). The lead up to the commissioning of the Bullock Report started in the 1960's as interest in industrial democracy stemmed from the Institute for Workers Control. The context in which the left started to argue that industrial democracy was a logical extension of trade unionism with Jack Jones and Hugh Scanlon, was the close relationship between the elite of the TUC and the elite of the Labour party; trade unionism reaching its highest ever membership levels with new areas of the workforce joining unions for the first time, such as women and white collar workers; and the experience of the 64-70 Wilson government leading to recognition of the need for an industrial policy where government was more integrated into the workings of the economy.

After the collapse of the Heath government in 1974, the new Labour government brought forward ideas developed in opposition on industrial democracy proposing two tier boards with 50/50 representation for workers and shareholders and workers elected by union machinery. On taking office the Labour government faced severe economic issues and were not keen to prioritise industrial democracy, however a private members bill proposed implementation of the manifesto commitment and the result was referral to a Committee chaired by Lord Bullock. The Committee was appointed in 1975 and comprised 3 trade unionists, Jack Jones, Clive Jenkins and David Lea, with 3 academics (including Lord Bullock as Chair) and four industrialists. Although the outcome was predetermined by the terms of reference and the composition of the Committee, there was a lot of doubt as to whether the desired outcome was feasible. The earlier Donovan Commission had favoured voluntarism as the dominant theme of industrial relations, the Tory's industrial Act of 1971 had been a fiasco and there was lot of opposition from within the trade union movement. The CBI absolutely hated the idea of any form of industrial democracy and it was against this background that the report was published in January 1977. The majority report supported the TUC position of having shareholder representatives and worker representatives on the Board alongside a third group of independent directors. The minority report came up with much diluted proposals which achieved nothing.

As a result of the failure to achieve consensus, the original idea of appointing a Committee, with the Tory party opposed, many in the union movement opposed and the Institute of Directors against it and the Institute for Workers Control unimpressed, progress was halted. The fall of the Labour government in 1979 and the lack enthusiasm of the Tories meant that all that arose out of this was a change to the Companies Act requiring directors to take account of the interest of employees which had little effect. Since then little has happened, the involvement of workers in decision making in business remains astonishingly low.

Why do we need worker representation at board level?

Professor Michael Gold said that the real point about Board level participation is that it covers the stages of decision making. The point being is that the Board is where business strategy is made and if workers don't have access to the very earliest stages of decision making then they are always lagging behind. A decision is first of all a glimmer in somebody's eye, then it's discussed with colleagues, then it becomes a proposal, then it has to be agreed, then it has to be

implemented and monitored. A lot of different stages to a business decision. In Britain unions only get involved later on at below Board levels, by which stage the decision has already been taken.

Elements that need to be present to ensure effectiveness of board level representation include board level representation being statutory, it has to be mandatory in companies over a certain size to prevent fragmentation of the whole system; and also you have to ensure that there is a minimum number of worker directors on the board in comparison to shareholder representatives. Not least to be able to discuss issues with colleagues in order to clarify ideas in order to get some kind of feedback.

When you look at specific European countries you find that size of the company is an important feature which determines whether you have worker directors. There's also a variation by board structure, some countries allow for unitary systems, others for supervisory systems. And the methods for electing worker directors varies a lot. And the proportion of worker directors to shareholder directors varies quite a lot. These issues are fairly negotiable in terms of policy making.

The other essential features, which Janet Williamson from the TUC agreed with in her presentation, is the need for unions to ensure that a union network or employee rep network of the work council type exists to provide some accountability back into union and work council networks. You also need a union to guarantee training independently from the company and also to reinforce the role as an expert in employment issues. One of the points that emerges from European research is that worker directors tend to specialise in employment matters as a sphere of their own expertise as a means of establishing their own credibility on a board.

European Perspective

Elsewhere in Europe, the norm is worker representation at board level. Where you have state owned and private companies the threshold which generates Board level representation ranges in France with companies of about 1000 employees to Sweden at 25 employees, a very low level. Other countries have employee board level representation just in the state sector. This leaves just a small number of countries where you have no representation at all, Britain, Belgium, Italy, Bulgaria and Rumania and the Baltic States. The UK, along with Italy, is by far the largest country where you have no institutional form.

What is apparent when you look at the European experience is that it reflects a pluralist not a unitarian perspective. The managers and the employers in Germany, Netherlands, Scandinavia and other countries have an assumption that the workers have a legitimate view to express. You don't tend to find the unitarist view of many British or American managers that you have to keep out the unions because they are something awful or you have to suck them in to make sure they are marginalised and have no value. The unions, the works council system are both seen as part of the structure of the way in which decisions are taken.

In Europe worker directors did not appreciate the British issue of "incorporation". There is this paradox that if you are a worker director on the board either you are integrated into the board system and you become part of the board system and thereby you risk losing the accountability back to your employees, your constituents see you as merely another board member, they see you going native. Or alternatively the employers fear if you are independent and maintain your links back to your constituents then you risk bringing confrontation and adversarial approaches onto the board. Adrian Williamson quoted Frank Chapel to illustrate this with - "if you go live in Australia you end up talking like an Australian". Michael Gold's research however showed that the Germans, Dutch and Scandinavians really had no concepts of this problem as being a problem. In response to his questions it was clear that all the worker directors interviewed had tight relationships with their works councils and trade unions, they were very often very active in their trade union. (This was replicated in Geoff Hayward's experience as a worker director in Allianz se. Geoff also chaired the Works Council and was a Branch Secretary in Unite).

The way in which worker directors operated was to focus on employment relations. They would focus on the employment relations aspects of the business strategy being discussed. They all said they had a professional relationship with the shareholder representatives and specialised in employment relations rather than general strategy to try to give a worker perspective to discussions on the board. - Two quotes illustrate this -

“We think of the employees who other board members sometimes forget reminding members of the board that workers actually are rather an important part of the company”

“I try to ensure that a return on capital is not the only criterion of company policy”

And the discourse generally reflected a sense of common purpose with other board members.

Geoff Hayward described his time as a worker director on the Allianz Supervisory Board. Meetings would be held in the same week as the Works Council. Pre-meetings would seek to arrive at consensus before the formal meeting. The main board will try before the formal meeting to seek consensus so that the board itself can be consensual. Which means that compromise is a key element on board level discussions. Although working directors said open discussion is important in its own right, but implicit is this readiness to compromise.

Another critical issue is confidentiality. At the time of Bullock, employers were very exercised by this issue. How can all these worker directors be trusted to keep commercial secrets which they will hear about on the Board? In Europe the evidence was that all worker directors had developed strategies of one form or another to deal with that. Geoff mentioned these were leading questions through European Works Councils as being one way through it. One refused all confidential information unless it affected the workforce. Others removed certain figures, some asked for prior clarification of what they could or couldn't divulge. The point is that in every case confidentiality was not seen as a serious barrier to the operation of worker directors. In every case the issues were taken into account by the board and solutions found to them.

Conclusions

The real question about whether these issues - common purpose, compromise, notion of critical consensus, confidentiality will actually transfer into a British context. These are the kind of things that need to be discussed when seeking to transfer practice from one system to another .

The key elements for an effective system:

- role played by trade unions is critically important because worker directors link back into these representational structures;
- the training they receive from trade unions independent of the company critically important to retaining independence;
- and also that they have the skills required which can be the result of their union experience in order to maintain trusting and fruitful relationships with shareholder representatives.
- the real issue here is the question of trust. If worker directors can ensure that trust on the board but in such a way that they maintain trust of both their membership and of the shareholder representatives.

That's the tightrope they have to walk. If they can do that then that is when they are effective.

Janet Williamson explained that the TUC perspective viewed worker directors in the context of corporate governance. Interestingly the TUC concluded that corporate governance was absolutely central to the relationship between capital and labour, which is clearly at the heart of the trade union movement. Shareholders have many privileges but the greatest of these is the requirement under company law that directors should promote the success of the company for the benefit of shareholder interests rather than any other stakeholders. This central role of shareholders is not some kind of anachronism or accident. Its been a very direct result of public policy over the last 20

years or so which has served to increase the accountability to shareholders rather than regulation as the means of improving corporate practice. The TUC has for many years had concerns about the reliance on shareholders in corporate governance and opposes shareholder primacy as a matter of principle. One thing that has changed over recent years is the patterns of share ownership and that has made the existing system increasingly dysfunctional even in its own terms to the extent that it presents a serious challenge to the reliance on shareholders within the UK's corporate governance system. The shift of share ownership to overseas also has serious democratic implications with less engagement between shareholders and the company.

Janet argues that there is a yet more fundamental problem with shareholder primacy. The current system can only be justified if it is assumed the interests of shareholders converge with the long term interests of the company. But the increasing reliance on share trading among shareholders changes fundamentally the nature of shareholder interests. If you have a long term shareholder whose main interest in the company is receiving a dividend over a long period of time then there should at least in theory be a reasonable convergence of interest between the shareholder, other company stakeholders and crucially the company itself. But if you take a short term share trader, their interest is in selling their share for more money than they bought it for. Their interest therefore lies in short term strategies to raise the share price regardless of the impact on long term organic growth.

The TUC position is that it believes that including workers on company boards would help companies prioritise long term success of the company rather than being distracted by short term financial engineering. In addition to that workers bring with them in-depth knowledge of how their company operates and are well placed to contribute to a whole range of different strategic and operational decisions which are essential to board decision making. Worker directors would also help to increase diversity on boards, especially socially economic diversity and help to challenge group think on boards.

The TUC's own proposals on how this should work in practice are all set out in a lot more detail in the "All Aboard" publication¹. These include:-

- Workers having an automatic right to board level representation in all listed and private companies with 250 or more workers
- Workers in smaller companies (100 or more workers) should be able to trigger worker board and representation rights through their unions
- Worker representatives should comprise a minimum of one third of the board and in smaller boards there should be a minimum of two worker representatives per board
- Recognised trade unions should be able to nominate candidates for election and that alongside that nomination should also be open to other workers with a minimum number of nominations by other workers
- Selection should be by the entire workforce, including overseas staff
- Workers would share the same legal duties with other company directors

The current government green paper offers none of this. Their proposals for a stakeholders advisory committee operating below Board level is not offering board level representation. If trade unions took part in these then that would have to be in the context of a direct representative of the workforce, directly representing their interests and the TUC would be concerned that such a system should not be allowed to undermine trade union structures where they exist.

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¹ ALL ABOARD - Making worker representation on company boards a reality- TUC Report issued October 2016 -https://www.tuc.org.uk/sites/default/files/All_Aboard_2016_0.pdf