

A case for regulated industrial democracy post-Covid-19

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Abstract

Covid-19 is reshaping the domestic workforce. Thousands have lost their jobs throughout this pandemic, and we are seeing a decline in private sector unionism that is unlikely to recover under the current regulatory settings. The implications for democracy are considerable. Using the aviation industry as an example, this article defines industrial democracy, provides an insight into industrial democracy in New Zealand, and argues the case for the regulation of industrial democracy post-Covid-19.

Keywords: industrial democracy, Covid-19, pandemic, co-determination, unionism, deregulation, aviation

The advent of Covid-19 will see a decline in private sector unionism. As 3000 aviation sector workers and 900 casino workers, to name a few, lose their jobs, we are witnessing a reshaping of the domestic workforce through this crisis. It is certain that people will fly and gamble again en masse, but unionism may not rise to pre-Covid-19 levels, and the implications for democracy are considerable.

Collectivisation of the private sector has never recovered from deregulation under the Employment Contracts Act (ECA) 1991; poverty and inequality grew and became entrenched, and productivity levels have persisted as a well-researched, but seemingly unresolvable, problem for governments in this country. Service sector unions that have hung on through hard work, tenacity and mergers now look into a long dark night of restructures, redundancies and retrenchment.

In a democracy, people aspire to have some agency over their lives and, aside from the ballot box, that power is expressed through the organisations of civil society; cripple those organisations and you cripple democracy. Covid-19 presents a challenge beyond capital investment to the workers who invest their labour in businesses, like Air New Zealand and Sky City Casino. Rebuilding the economy and rebuilding democracy are two sides of the same coin and ensuring it is better than before requires an intentional approach to the reshaping of industrial law; one that supports collectivisation of workers and stable private sector unionism for the first time in nearly three decades. One measure of a successful recovery should be the strength of workers' collective voice in the economy, through the only independent civil society organisations that exist to represent those voices – unions. If private sector unionism increases post-Covid-19, then we have a better and more resilient democracy to withstand future crises.

This article addresses the challenge of building the economy post-Covid-19 so that our democracy is more resilient because workers are valued for the investment they make and the contribution they can bring to a more equitable economy. Recognised as both employees and citizens, their voice in workplaces and industries would contribute to greater wellbeing of the community and our society. Drawing on the evident failure of the voluntary model of industrial democracy at Air New Zealand to

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engage workers during a crisis, we argue that it is time to regulate for a model of genuine co-determination for private sector businesses in New Zealand.

The aviation industry under Covid-19

Thousands of workers are being laid off, furloughed, and restructured in the aviation sector because of national and international lockdowns, and closed borders designed to keep the global pandemic, Covid-19, at bay. In April 2020, passenger movements at Auckland International Airport were down 97.5 per cent; in May 2020, passenger movements were down 94.7 per cent; and in June 2020, passengers movements were down 84.9 per cent (Auckland Airport, n.d.). By July 2020, about 2600 E tū union members had lost their jobs. Restructuring continues across the aviation sector, from airlines to baggage handling to engineering and property services.

Public investment in this industry of corporations has been significant during this period. Qantas, Jetstar, Air New Zealand and Air Nelson secured \$124,773,631 in wage subsidies. In March 2020, the New Zealand government, which owns 52 per cent of Air New Zealand's shares, announced that it would make a \$900 million loan available to the airline (RNZ, 2020), which comes with the possibility of turning the loan into shares, consequently, increasing the government's shareholding in the company. The government also provided \$600 million of Covid-19 support to the aviation industry to subsidise the transportation of essential imports and exports and, through the Essential Transport Connectivity scheme, maintains a network that delivers effective regional connectivity (Ministry of Transport, 2020).

High Performance Engagement at Air New Zealand

The government-owned national airline boasted, for many years, a form of industrial democracy called High Performance Engagement (HPE), implemented by Air New Zealand in 2015. This was a model that emulated Kaiser Permanente's Management Partnership. Established in 1997, the Kaiser Permanente partnership model was the most extensive of its kind, with the exception of General Motors' Partnership Model, which was established in the 1980s. The underlying method of partnering between 57,000 workers at Kaiser Permanente and their management was interest-based problem solving (Eaton et al., 2003).

Air New Zealand's HPE charter was developed and signed between the company and unions in 2015. The charter states that the aspirations of the parties are to enable "direct and substantive involvement" of workers in decision-making processes, to facilitate a collaborative relationship, and use the method to resolve disputes "rather than (through) adversarial processes" (Air New Zealand, 2015, p. 1). The charter defines HPE as "a way of working. This involves employees, management and unions working collaboratively to achieve mutual beneficial outcomes" (p.1).

During the Covid-19 crisis, the company opted not to consult with the union under the HPE model to manage its operations and business decisions. Instead the company chose to engage in minimal consultation and legally defensible actions. The result was that employees of the company had no control over the consequences on their working lives or the loss of jobs. This company disregard for the model was reflected in the growing employee cynicism about HPE. A review in 2019 found that close to half of its workers did not believe that the partnership was delivering on its purpose, highlighting transparency and trust as issues, and questioning whether it was appropriate for pay and conditions of work to be negotiated under HPE. Notably, most workers believed the *intent* of the model was nevertheless important.

Conversations with E tū organisers, who have operated under the model, recalled that prior to HPE, high industrial tension and rate of disputes tarnished the company's image, and that the model was a solution to reduce the costs of industrial disputes and protect the company's brand. It is feasible to conclude that the primary driver for the model was not with the intent to establish advanced industrial democracy practices within the workplace, but to reduce cost and adversarial relations. Hence, in practice, the underlying attitudes of the parties remained intact, despite a new way of working and commitment from some of the company's and union's leaders.

Tested under the pressure of a global pandemic, the voluntarist HPE failed to give workers a voice when it really mattered. It is timely to take up the challenge of articulating a model of industrial democracy based on international best practice; a model that recognises the role of workers as citizens; and the value of their labour as an investment in private sector firms in New Zealand.

Defining industrial democracy

The International Labour Organization (ILO) defined industrial democracy as “an ideal in which citizenship rights in employment are held to include partial or complete participation by the workforce in the running of an industrial or commercial organization” (Arrgio & Casale, 2010, p.104). The many concepts, models and theories that actualise ‘industrial democracy’ can be placed on a continuum that represents the degree of real power shared with the worker in decision making (Arrgio & Casale, 2010), from workers’ ownership of the means of production to simple forms of sharing information with employees. The various forms of industrial democracy can be placed on a spectrum from very low (or *artificial*) to very high (and *authentic*) sharing of power in decision making with workers.

New Zealand's private sector workers have largely experienced industrial democracy at the low end of the power sharing spectrum, through tools designed largely by human resource management to increase productivity and profitability of the business, such as self-directed work teams and engagement of workers in process-improvement decisions.

Co-determination as authentic industrial democracy

It is necessary to look to Europe for examples of authentic industrial democracy, such as regulated *co-determination*. These are public policies that grant workers a meaningful voice through legal provisions that re-balance the collective power of workers in counterweight to the power of corporations (Budd & Zagelmeyer, 2010). For example, Austria, Germany, Italy and Sweden allow worker representatives on works councils to veto management decisions, which gives them genuine ability to co-determine (Oesingmann, 2015; Baker & McKenzie, 2009). Co-determination rights enable workers to meaningfully engage in and influence decisions that materially impact their working conditions; this includes a wide range of issues, such as remuneration, working hours, leave arrangements, conduct and incidents management and prevention, or fringe benefits. The company cannot make decisions on these matters without agreement (Budd & Zagelmeyer, 2010).

Representation of workers within corporate governance structures is uncommon in New Zealand (as in all other Anglo-Saxon countries) but is legislated for in European countries, providing the basis for co-determination via the representation of workers on the boards of directors. The laws prescribe how workers might be appointed or elected, and what proportion of the board should be represented by them. This enables workers to have insight and influence on the decision-making of companies at the

highest level, as exemplified in Denmark, Finland, Germany, Greece, Ireland, and Norway. However, the regulation varies. Representation on boards of directors is most effective when mixed with other forms of employee representation such as works councils and unions (Child, 2020).

Industrial democracy in New Zealand history

While co-determination is an unfamiliar term in New Zealand, action to improve and facilitate genuine forms of industrial democracy can be traced through New Zealand's history. Dr A.E.C Hare, an industrial researcher, wrote in 1946, of the need for works councils in our country (Haynes, et al., 2006). Dr Hare's research was then cited during parliamentary debates on the Industrial Relations Bill 1949 by the Honourable John Mathison of the first Labour Government. Mathison debated in favour of the need and benefit of "worker participation in industry": "I remember reading thirty years ago about the possibility of there being a scheme some day whereby workers would participate in the management of profits of industry. It is not a new thing" (McKeen, 1949, p.759).

He then went on to read a reference: "every citizen should have a voice in the conduct of the business or industry which is carried on by means of his labour and the satisfaction of knowing that his labour is directed to the well-being of the community" (McKeen, 1949, p.756).

The Industrial Relations Act 1949 provisions for "Works Committees" also remained in the subsequent legislation but was never utilised (Haynes, et al., 2006). Haynes et al. (2006) point to a mutual disinterest (between unions and management) for close cooperation in the workplace as being a feature of industrial relations in New Zealand prior to the 1960s. During the 1960s and 70s, industrial democracy peaked in popularity abroad and in New Zealand, materialising in the form of British models, such as works councils and joint consultation. In 1989, the Minister of Labour, the Honourable Stan Roger, appointed a chief judge of the Labour Court, a representative of the unions, and a representative of employers to enquire into industrial democracy. The aims of the enquiry were to firstly, determine whether industrial democracy would result in economic and labour market improvements; and secondly, to advise of the framework that would facilitate and support industrial democracy initiatives. The enquiry defined industrial democracy as "the meaningful participation of workers in decisions affecting their working lives" (Department of Labour, 1989, p.12) and applied the following assumptions: that industrial democracy includes "the involvement of labour market participants at the national, industry and workplace levels" (p.12), and that industrial democracy would be facilitated "through individual and/or union channels, including the system of workplace delegates" (p.12). In their submissions to the committee of enquiry, employers were concerned about the consequences of sharing real power. Unions, on the other hand, were concerned with the consequences of industrial democracy models bypassing their involvement. Employers universally opposed the introduction of any legislation that would require industrial democracy, and preferred that "industrial democracy" (which would largely be limited to consultation) was facilitated directly between themselves and the workers, rejecting the wider role of the union and proposing that the, then, existing Labour Relations Act 1987 be amended to allow enterprise bargaining. On the other hand, unions deemed legislation necessary to compel employers' participation in industrial democracy; and suggested amendments to the Companies Act 1955 to allow worker directors on the boards of companies (Department of Labour, 1989).

The recommendations of the enquiry proposed works councils for all firms with 40 or more employees but were divided on the need for legislative change. The recommendations included the advice for prescriptive legislation to be drafted should employers fail to create works councils voluntarily (Department of Labour, 1989). The findings of the enquiry were ignored (Haynes, et al., 2006). Within

two years, deregulation of the labour market by the introduction of the Employment Contracts Act 1991, individualised employment relationships, and the removal of “unions” as a concept from the law, had ended any aspirations for new forms of worker engagement in management or governance of the firm.

Evidence of industrial democracy at work

Eurofound (2018) has conducted what appears to be the most recent and comprehensive study on industrial democracy. The study found a strong correlation between industrial democracy and productivity (industrial competitiveness). This finding is supported by the Biedenkopf Commission that said of co-determination, it “does not diminish the competitiveness of production sites, that it is not an obstacle to foreign investment, that there is no proof of diminished stock market performance in companies in which codetermination is present” (Ferrerias, 2007, p.51)

However, Eurofound (2018) also showed that co-determination alone was insufficient and needed to be accompanied by other forms of regulation, such as works councils. This supports the view provided in other literature that collectivism alone, or legislation for industrial democracy alone, are not necessarily conducive to industrial democracy (Child, 2020; Gumbrell-McCormick & Hyman, 2010). Child (2020) finds that, while legislation is necessary to enable co-determination, co-determination is also a reflection of a pre-existing cultural lenience towards collectivism, such as in European countries where it is prevalent. Without the cultural predisposition, Child (2020) writes that there would likely be no impact on the existing hierarchical power structures. Several forms of industrial democracy must likely act together to enable its success and sustainability within a nation.

The OECD (2018) identified that the best outcomes were found under ‘organised decentralisation’, where sector agreements set a broad framework of conditions, while also allowing for firm level negotiations on detailed provision. The proposed Fair Pay Agreements policy of the Labour Party, being considered by our current government, would be an example of this.

Conclusion

Citizens within a democracy participate in political decision making, they vote for leaders of governments and are consulted with about legislative and policy decisions that affect them. It is not a characteristic of a democratic nation that one or few people make decisions about a nation and its future, or that these decisions are made by the few with profitability as their primary lens. However, democracy does not extend to the workplace within our democratic societies. Isabella Ferreras (2017) in her book titled *Firms as Political Entities: saving democracy though economic bicameralism* addresses the “despotic” power of the firm where corporate shareholders are all-powerful, yet only one form of investor. Ferreras maintains that the investment of labour is as necessary and legitimate as that of capital and should be represented in the governance of the firm just as citizens expect representation in the governance of the state. Ferreras argues for workers to be engaged beyond participation management to governance and “deliberation over ends and means,” or engagement in the firm’s strategies and end goals.

Since 1991, New Zealand’s employment relations system has rested on “self determination,” which protects the “integrity of individual choice”. Regulated rights to information and consultation within the ERA sit at the low *artificial* end of the spectrum of industrial democracy. Air New Zealand sought “direct and substantive involvement” of workers in decision-making processes through HPE but without accountability beyond itself, the company was able to abandon its industrial democracy

experiment in the Covid-19 crisis. In fact, this demise might have been foreseen by workers who were already questioning the cooperative relationship and the benefit of their collective bargaining for wages and conditions being conducted through HPE and its interest-based dispute resolution processes. Certainly, HPE failed the test of genuine industrial democracy from the 1989 New Zealand enquiry described as “the meaningful participation of workers in decisions affecting their working lives,” at a time when it was most needed.

It is clear that, despite attempts at both the state and company level to improve industrial democracy in New Zealand through the 20th and 21st centuries, we remain a nation with few forms of industrial democracy that truly redistribute power and decision making to workers. We continue to travel the Anglo-Saxon trajectory of low-level support for industrial democracy that largely relies on voluntarist efforts of companies for its existence. Those models that emerge, such as HPE at Air New Zealand, have failed workers during these Covid-19 times and that market failure is argument enough for government intervention. Legislation to support meaningful forms of industrial democracy, such as co-determination, is required for genuine democratic engagement of workers in the management and governance of the firm in New Zealand. However, evidence suggests co-determination must sit within a nest of laws for them to be meaningful. For this, we can first look to the future, where sector-based collective bargaining is envisaged through Fair Pay Agreements; and then look to the past, where in 1949 “Works Committees” were written into law but never brought to life – as we could perhaps do now.

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