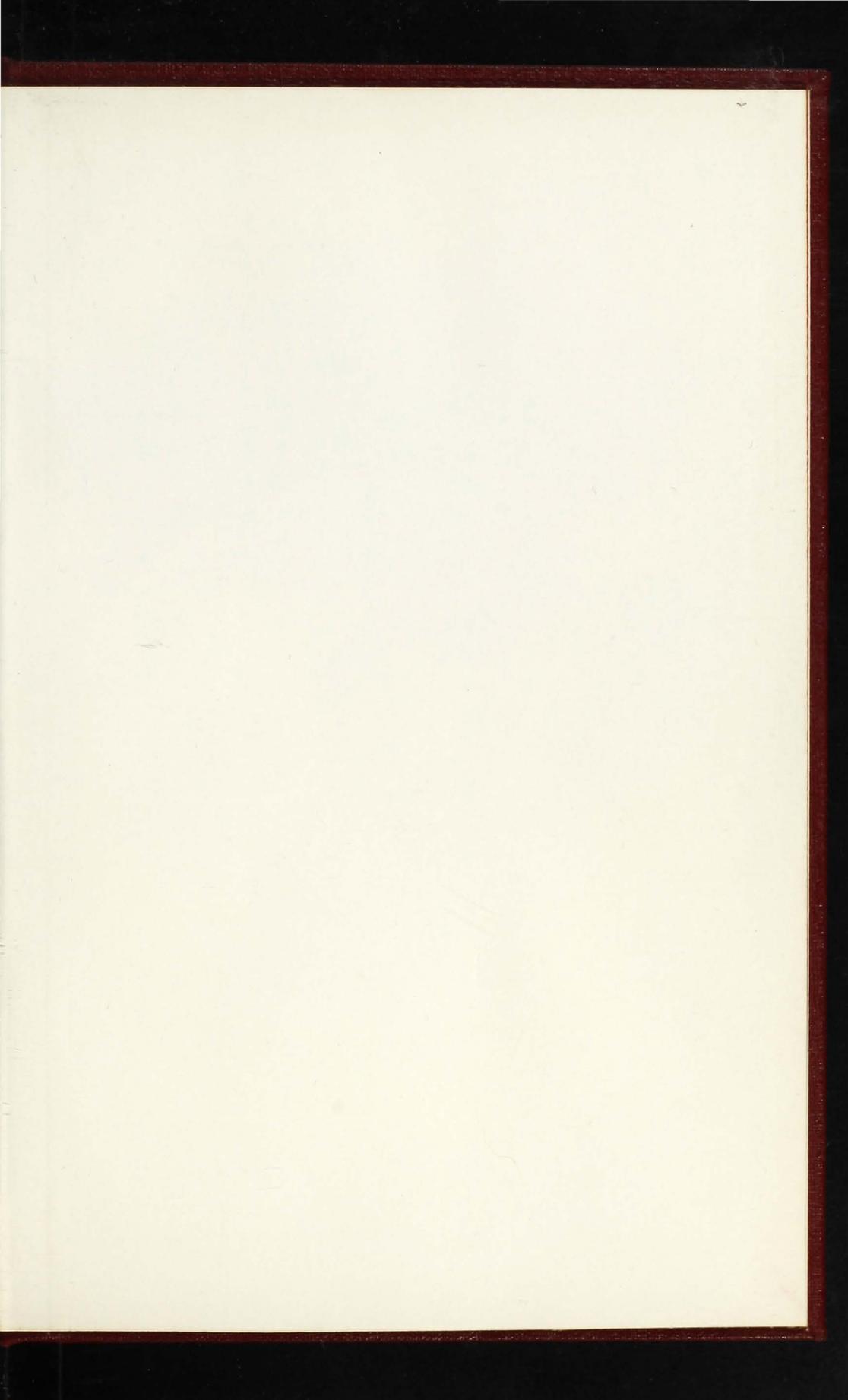


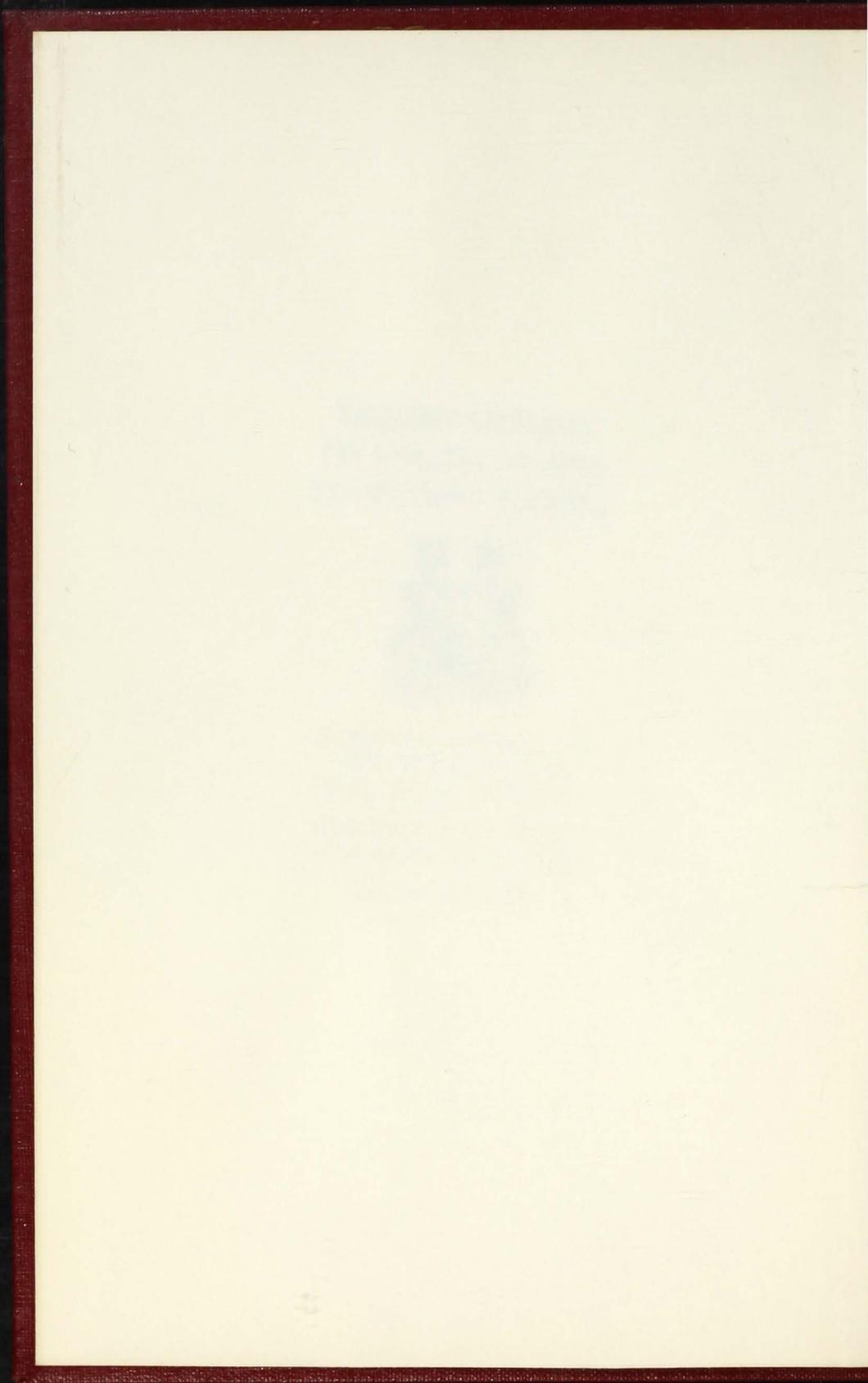
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# WORKERS IN THE BOARDROOM

THE CHANGING FACE OF  
CORPORATE AMERICA

BY  
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WITH  
AN AFTERWORD BY  
THE AUTHOR

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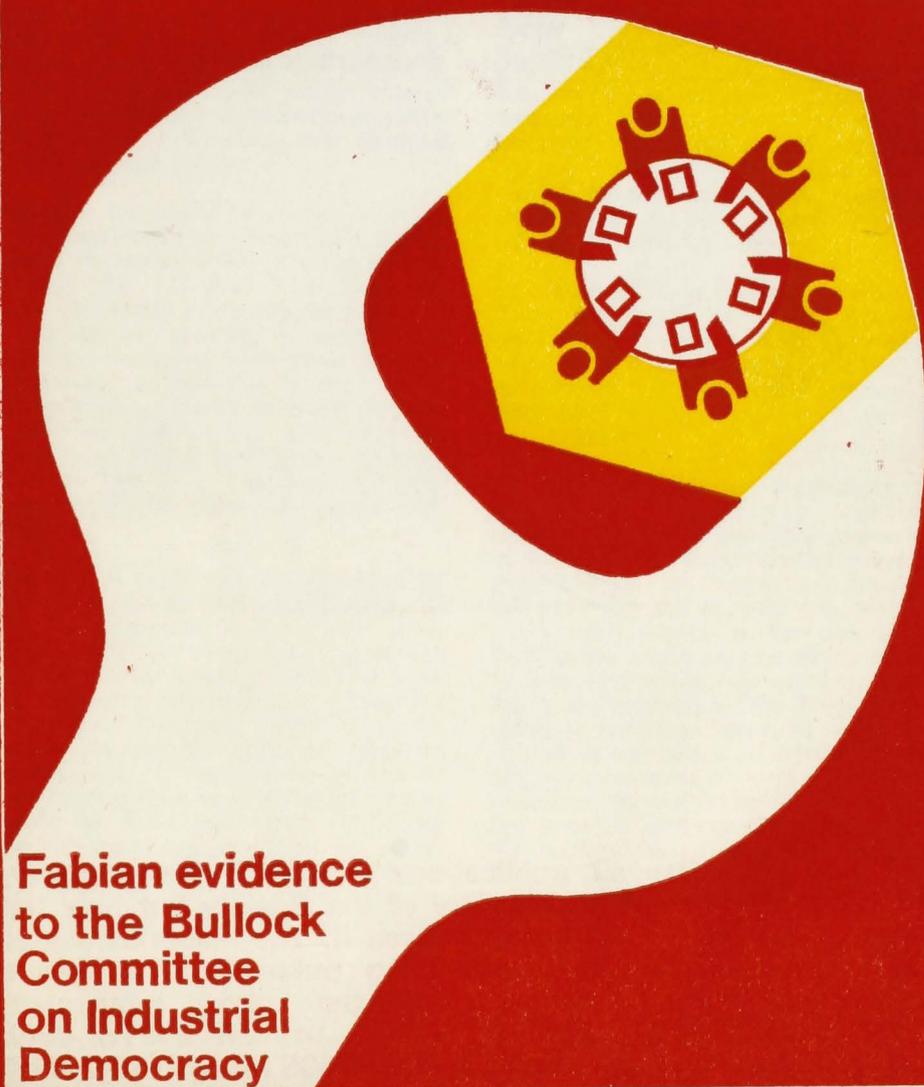
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# workers in the boardroom

a fabian group  
fabian tract 441

35p



**Fabian evidence  
to the Bullock  
Committee  
on Industrial  
Democracy**

# fabian tract 441

## workers in the boardroom

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# introduction

## Giles Radice and Roy Lewis

This pamphlet, which is the second produced by the Fabian Working Party on Industrial Democracy, has been submitted as Fabian evidence to the Bullock Committee of Enquiry into employee representation on boards of companies in the private sector. Inevitably, because of the Committee's terms of reference, it is mainly confined to boardroom representation. We point out, however, that industrial democracy should be a comprehensive process, involving participation in *all* levels of decision making, including the boardroom. Our proposals include 50 per cent employee representation (elected through trade union machinery) on supervisory boards, with powers over all issues of fundamental policy.

The case for participation by employee representatives at boardroom level is that, despite the achievements of collective bargaining, the "strategic" decisions remain exclusively in managerial hands. In a period of growing economic and industrial weakness, trade unionists have increasingly realised that if, they are to escape from a situation in which they are always reacting to top level decisions which have already been taken by management, then they must have the right to participate in forward corporate planning.

This shift in union opinion persuaded the TUC to reverse its traditional hostility to direct participation at boardroom level. At the 1974 TUC Congress, a report was adopted which concluded that, as even the extension of collective bargaining would leave "a wide range of fundamental managerial decisions affecting work people . . . beyond the control of work people", the trade union movement should opt for a new system of 50 per cent employee representation on supervisory boards—the supreme authority in the enterprise, which would also be responsible for appointing the management board.

In its October 1974 Manifesto, the Labour Party, also concerned about the conflict between democratic values and the authoritarian structure of industry, made industrial democracy an important part of

its programme. It said that "our aim is to make industry democratic—to develop joint control and action by management and workers across the whole range of industry, commerce and the public services. This objective involves strong trade union organisation and widening the scope of collective bargaining. In addition, however, it will mean the provision of new rights for workers through changes in company law." In 1973, a Labour Party Green Paper had argued in favour of the creation of a two tier system of management, where the top board would be charged with formulating corporate policy and taking strategic decisions, and would consist of at least 50 per cent workers' representatives elected through trade union machinery, accountable to their constituents and subject to recall by them.

In August 1975, the Secretary of State for Trade announced the setting up of a committee of enquiry under the chairmanship of Lord Bullock, to advise the government on "questions relating to representation at board level in the private sector".

The committee has the following terms of reference: "Accepting the need for a radical extension of industrial democracy in the control of companies by means of representation on boards of directors, and accepting the essential role of trade union organisations in this process, to consider how such an extension can best be achieved, taking into account in particular the proposals of the Trades Union Congress report on industrial democracy as well as experience in Britain, the EEC and other countries. Having regard to the interest of the national economy, employees, investors and consumers, to analyse the implications of such representation for the efficient management of companies and for company law."

The concept of trade unionists in the boardroom has provoked predictable opposition from the apologists of private enterprise. The influential City Company Law Committee has raised the spectre of further shortage of funds available for investment in British manufacturing in-

dustry. The CBI has rejected the TUC proposals as an unacceptable erosion of both managerial prerogative and private property rights, and instead, in a nostalgic reference to the unsuccessful post-war consultative committees, has advocated a scheme of "participation" agreements.

The TUC plans gained strong support from some major trade unions such as the TGWU and NUPE, whilst similar proposals have come from the Labour Party, the Fabian Society, the Institute for Workers' Control and the Labour MPs from a politically wide spectrum who sponsored the Industrial Democracy Bill. However, some parts of the Labour movement (such as the GMWU) whilst not opposed in principle to the TUC plans, have favoured the extension of industrial democracy through statutory backing for collective bargaining, including the joint regulation of corporate strategy. It was significant that in addition to the adoption of the industrial democracy report, the 1974 TUC Congress also passed a composite resolution calling for statutory backing for collective bargaining as the most practical way of extending industrial democracy. Like the 1974 Congress, the Fabian evidence works on the assumption that statutory backing for bargaining and boardroom representation are complementary lines of advance.

Outright opposition to the TUC proposals has nevertheless emerged from an unholy alliance between the Communist Party and the Right of Labour's political spectrum, represented by the EEPFU. The communist line is that, under capitalism, collective bargaining is the only viable tactic for trade unions and worker directors would merely be integrated into the managerial structure. Meanwhile, for the Right wing, tough collective bargaining represents the legitimate limit of trade union and worker aspirations. It is noticeable that both of these groups tend to make the cardinal error of equating the TUC proposals with the highly integrationist German and Common Market models of worker directors.

What the critics forget is that the danger of incorporating trade union negotiators

into the management and State apparatus exists even under the present system of joint regulation through collective bargaining. But we have sufficient faith in the trade unions to believe that they will seize the opportunity of jointly regulating the fundamental issues of policy and top level decision making which so vitally affect their members' interests, whilst retaining their independence. We also believe, as democratic socialists, that a democratic framework of company law will help to secure that shift in the balance of power for which the Labour Party called in the 1974 elections, and, at the same time, make a significant contribution to restoring the industrial base of the United Kingdom.

# 1. worker directors and industrial democracy

## a Fabian Group

Though the terms of reference of the Bullock Committee enquiry are confined to an investigation of employee representation on Boards of Directors in the private sector, we take the view that industrial democracy is a far larger issue, relating to *all* levels of decision making in both the public and private sectors. In the Fabian pamphlet *Working Power* (Fabian Society, 1974) on which this evidence is partly based, it was suggested that a strategy for the effective promotion of industrial democracy would need to be based on the following principles—a single channel of representation, a strengthening and extension of collective bargaining, a multi-dimensional approach capable of affecting all levels of decision-making, and a democratic advance in both the private and public sectors. A wide ranging programme was proposed, including a radical extension of shop floor bargaining, the development of company and group bargaining, the introduction of a system of worker directors through the election of employee representatives to 50 per cent of the seats on the top board, and a major expansion of trade union educational, research and recruitment efforts (see appendix one which contains the conclusions of *Working Power*). We would emphasise that it is very important that different levels of participation are considered coherently—particularly by government. At the moment, the Department of Industry is responsible for the industrial democracy implications of the 1975 Industry Act and for assistance to worker co-operatives under the 1972 Industry Act, the Department of Employment for the extension of collective bargaining under the 1975 Employment Protection Act and for stimulating programmes of job enrichment and autonomy in work, and the Department of Trade for representative systems at boardroom level. A comprehensive view—by government, management and trade unions alike—is required.

In our evidence, however, we concentrate on the question of worker directors. We analyse the case for employee representation on the board, examine how such a system would work and consider its implications for management, trade unions

and the wider community. The details of our proposals are drawn in part from the Industrial Democracy Bill which was withdrawn on the announcement of the Bullock Committee (extracts from the Bill are given in appendix two).

## the case for more industrial democracy

We argue the case for more industrial democracy on four main grounds, human, moral, social and economic. There is overwhelming evidence that the deeper the involvement in work the greater the satisfaction. Work can and should be a major source of fulfilment and growth for the individual and not merely a means of meeting his basic needs. Yet, for most employees, the design, organisation, and control of their work allows little room for development. A comprehensive democratic strategy which gave a much wider degree of participation and joint determination in formulation of policy at boardroom as well as workplace level would go far to give industry a "human" face. "It is almost a matter of common sense that men will take greater pride and pleasure in their work if they are allowed to participate in shaping the policies and decisions which affect that work" (Blumberg, *Industrial Democracy, The Sociology of Participation*, Constable, 1968).

The democratic case within industry has the same moral basis as democratic arguments elsewhere—that every individual should have a say in those decisions which affect his life. And at a time when democratic values are widely recognised throughout society, it is difficult to deny their validity within the factory and office. As the then Director General of the CBI told his members in 1970: "The process of decision making will have to be more and more justified and demonstrated to be right in order to command the respect not only of the people working in the company but the community as a whole." The move away from a "deferential" community towards a more "assertive" one has had a major impact on industry. Employees, particularly those of a younger generation, are questioning managerial authority and are demanding

more control over their working environment. As a result, it is becoming increasingly impossible to manage industry on the traditional basis.

The undermining of managerial authority has profound economic implications. For, if it is true, as we believe, that our prospects for economic recovery depend largely on industry, then the need for a new basis of consent becomes even more vital. In many companies and industries, it will not be possible to carry through the necessary investment and reorganisation programmes unless the employees themselves are fully involved (as British Leyland, Chrysler, Alfred Herbert and the British Steel Corporation highlight).

### **boardroom representation**

We believe that industrial democracy should be a comprehensive, multi-dimensional process, capable of influencing *all* levels of decision making. To be fully effective, it must involve both participation by employees at lower levels *and* participation at boardroom level. The distinction which the CBI spokesmen have tried to make between "participation" (a good thing) and employee representation at boardroom level (in its view, a highly doubtful proposition), is not a real one. Both involve "participation"—though at different levels. Presumably what the CBI is concerned about is the "power sharing" aspect of the employee director system. Yet "participation" without a sharing of power (as with many consultation schemes set up after the war) is not worthy of the name—at whatever level it takes place. We would fully accept that, unless there is effective participation at lower levels, the employee director system is unlikely to work. We believe, however, that, if employees are to influence the "strategic" decisions, then there should be employee representation in the boardroom.

The case for participation by employee representatives in managerial decision making at boardroom level is that (despite all that has been achieved by collective bargaining) most of the "strategic"

decision making remains exclusively in managerial hands. Yet, as employees have found to their cost, decisions at this level can profoundly affect their lives. Certainly, the main impact of decisions about investment or closures and redundancies are felt at shop floor level. Indeed, most top level decisions, even if about such apparently remote matters as financial control or marketing, can have profound shop floor consequences. So employees, whether or not they fully understand it, have a direct interest in what happens at boardroom level.

Some trade unionists have argued that it is not necessary to have employee representation in the boardroom. Collective bargaining, if suitably reformed and extended, can, by itself, provide an effective way forward. We agree that collective bargaining is the essential basis of a democratic strategy, because it combines so effectively participation with a check on managerial prerogative. We believe, however, that, in most cases, there will be a need for additional control at boardroom level. So far, collective bargaining has been a largely reactive process, a response to more fundamental decisions taken elsewhere. Whereas matters linked to pay and conditions arise naturally out of the immediate preoccupations of employees, more remote but vitally important issues can normally be introduced artificially and certainly rather slowly into collective bargaining. As the EEC Green Paper rightly pointed out, "Employee representation on company boards, alone among existing forms of employee participation, provides an opportunity for the employees of an enterprise to be involved on a relatively *continuous* (our italics) basis in the process of strategic decision making at the highest level of the enterprise by which they are employed." So, if employees are to influence strategic decisions they will, in most cases, need to be directly represented in the boardroom.

### **employee directors and the shop floor**

In the past, employee participation has been successful mainly at shop floor and office level. Is it likely that there will be

sustained employee involvement in any development of higher level participation? Paradoxically, the best way to ensure that employee representation at boardroom level increases involvement is by the development of a strong shop floor and office democracy. For, while employees who have no say in those decisions which are not immediate to them will normally be little interested in matters which are more remote, those employees who have a real measure of control over their working environment become more aware of the connection between what happens at shop floor level and decisions in the boardroom—and, therefore, are likely to be more concerned about the activities of their representatives in the boardroom. In their turn, employee directors, who are backed by strong “representative institutions” at lower levels, will not only be more effective at boardroom level; they will also provide an increased and regular flow of information about the company to employees at “grass roots” level. The EEC Green Paper on Employee Participation and Company Structure commented that “an important point of the attractiveness of employee participation is that such participation appears to have a generally positive effect on the other forms of employee participation existing in relation to the companies in question.”

### employee directors and collective bargaining

The central role of collective bargaining in a British democratic strategy has already been stressed. The latest survey into plant bargaining (*Workplace Industrial Relations 1972*, HMSO, 1974) confirmed its range and extent, while industry wide collective bargaining has been firmly entrenched since 1945. Though we believe that future developments are needed, particularly in company and group bargaining, we agree with McCarthy and Ellis that “collective bargaining represents participation in its most acceptable form” and provides the essential forum “for joint discussion and decisions” (W. E. J. McCarthy and N. D. Ellis, *Management by Agreement*, Hutchinson, 1973). If employee directors in boardrooms are to re-

tain the respect of their constituents, they must, like negotiators, be *representatives*, subject to election and recall. Their involvement should also lead to *joint regulation* of “strategic” decisions. To this extent, boardroom representation will be *complementary* to collective bargaining. We do not wish to imply that employee directors will have no obligations to the enterprise as a whole, or no responsibility for strategic decision making. We do suggest, however, that the introduction of a system of employee directors would, for the first time, enable the voice of those who are mainly affected by its decisions to be heard within the board—and also for the first time, provide a means for the resolution of the different attitudes and interests between management and employees on the major corporate issues.

As the issues dealt with at boardroom level are usually concerned with longer term strategic issues, they would be distinct from the normal matters for collective bargaining. This would enable the two processes—joint regulation at boardroom level and collective bargaining—to be kept broadly separate. We would expect employee directors normally to be drawn from the shop floor, though, in some circumstances, employees may decide that they would prefer a full time trade union official to represent them.

### single channel of representation

We favour a single channel of representation through *trade union* machinery. There are four main arguments for a single channel: (a) In this country trade union organisation is deep rooted and powerful. We estimate that, in the 400 enterprises employing over 2,000 workers, at least 75 per cent of all employees are trade unionists, and that the overwhelming proportion of these enterprises recognise trade unions for bargaining purposes. In these enterprises, trade union machinery provides the obvious link with the shop floor. Indeed, without it, employee directors would quickly lose touch with those they represent. They also need the independent training and back-up services which only trade unions can give.

(b) If any new system of representation (whether through a consultative assembly or works councils) was introduced in a unionised firm, this would divide the work force unnecessarily. It could not only lead to disputes but would also probably fatally weaken the employee director system. (c) In non-unionised firms, it might be possible to set up new forms of representative systems. Normally these would do little more than act as democratic plumage for authoritarian structures (as with employer dominated staff associations). If they become independent, inevitably they are indistinguishable from trade unions. Indeed, there are examples of staff associations which have developed into trade unions. Trade unions have survived not because they have a divine right to exist, but because they provide the most effective means yet devised of representing employee interests. (d) Finally, as was seen with the consultative schemes introduced after the war, any democratic strategy which does not receive trade union support is unlikely to be widely successful. The trade union movement must be fully involved with the development of the employee director scheme.

In arguing for a single channel of representation based on trade union machinery, we would emphasise the added responsibility that this imposes on trade unions to recruit non-trade unionists into membership. Because of the importance we attach to a single channel of representation, we believe that, at least initially, employee directors should be confined to the enterprise employing 2,000 workers or over (see clause 2 of the Industrial Democracy Bill in appendix two). The extension of the system would depend on extending trade union membership.

## 2. the mechanics of representation

There are several practical problems related to employee representation on the board which are of critical importance. We believe that the role of trade unionists in the boardroom should be considered in the context of a *two tier* board structure. Worker representatives should sit on the top, supervisory board, while a lower level management board would be responsible for the "day to day" management of the enterprise. It is not proposed that employees would form part of the latter, in part because of the difficulty of avoiding overlap with day to day collective bargaining. The two tier board structure also reflects an existing reality. Within the existing unitary board structure, non-executive directors may perform a supervisory role (though not always an effective one), whilst the executive directors and senior management carry out and formulate major policies. A two tier structure could help to clarify the relationship between the different types of director and the shareholders, especially in the context of the growth of institutional and State shareholding. However, we recognise that circumstances vary and our subsequent proposals are intended to allow for the possibility of 50 per cent employee representation on unitary boards.

### directors' duties

The employee members of the supervisory board would be directors of the company. At present, directors must act only in the "interests of the company" which the law defines as the interests of shareholders, that is, the owners. If directors seek to safeguard other interests, such as those of employees or the general public they run the risk of acting outside the law (*Parke v Daily News*, 1962). It is time this outmoded and reactionary principle was swept aside. The directors' obligations should have a proper regard for the employees who invest their working lives in their jobs, and this would have to follow the appointment of employee representatives in the boardroom accountable to the shop-floor. The Industrial Democracy Bill (clause 1) followed the 1973 Companies

Bill and instructed all directors to have regard to the "interests of the company's workers generally as well as the interests of its shareholders" (see appendix two). We support this formulation, but would go further and include the interests of the community and the investment and planning needs of the British economy as being amongst the matters to which directors would have regard.

The employees on the supervisory board should have some responsibility to the company. They should bear certain of the basic fiduciary duties which attach to directors, such as not profiting from their office and not passing on trade secrets (see the Industrial Democracy Bill in appendix two, clause 1). But as the Labour Party's Green Paper put it: "We do not believe the sense of responsibility of those who meet in a Working Men's Club would fall below that of their critics who often converse after dinner in their London Clubs with directors from other companies" (*The Community and the Company*, 1974). The confidentiality of the director's duties must be circumscribed but not in such a way as to interfere with the duty of reporting back through the trade union machinery.

### the 50/50 board

If workers are to exercise power and effective influence over top level decision making, they must occupy 50 per cent of the seats of the top, supervisory board. We believe that the TUC is correct in its assertion that nothing less will suffice. There seems little doubt that one of the reasons why the system of worker directors in Germany (outside of the iron, steel and coal industries) has failed to extend the principle of joint regulation over policy making is that, under that system, the workers only have one third of the seats on the supervisory board. Minority representation will not facilitate any shift in the existing power relationships. Indeed, it would virtually guarantee the outflanking of the worker representatives by informal meetings of the shareholders' directors deciding policy in advance of board meetings, and by the

likely practice of delegating matters to sub-committees. In Germany, it seems that worker directors rarely participate in the work of sub-committees dealing with finance. In order to avoid this pitfall we suggest that the industrial democracy legislation should contain a section similar to clause 10(7) of the Industrial Democracy Bill: "Where the supervisory board establishes any committees for any purpose whatsoever the membership of such committee shall include workers' representatives and shareholders' representatives in equal numbers."

Another advantage of the 50/50 principle is that it emphasises the complementary nature of boardroom representation and collective bargaining. As has already been pointed out, in Britain, the demand for worker directors stems from a recognition of the inadequate reach of collective bargaining over matters which may be summed up as corporate planning, such as investment, mergers, product mix and pricing policy. Such matters are of vital interest to employees and can no longer be confined to an area of managerial prerogative. The boardroom would be the most appropriate arena for joint regulation of the corporate plan. Providing the employee representatives held half the seats on the board, they would have a veto over corporate planning proposals. They would negotiate to safeguard the interests of their constituents, and management in their turn would seek to secure employee consent to the broad lines of corporate development, a process similar to productivity bargaining.

The degree of power flowing from 50 per cent representation would also help to safeguard the position of the employee director *vis-à-vis* his constituents within the enterprise. Minority representation, with its inherent dangers of domination and manipulation by the shareholders' representatives and by the management, would sooner or later lead to problems with the membership. The rank and file would not be impressed either by perpetual but ineffective opposition, or alternatively, by the rubber stamping of perhaps unpopular decisions made partly by representatives who were unable to

control or even veto those decisions. Responsibility without power is a disastrous recipe for any system of representation. Of course, the enhanced sense of responsibility associated with effective participation in decision making is one of the strongest arguments in favour of the TUC proposals. But such responsibility, if it is to be acceptable to union members, can only operate in the context of real power and that must mean the adoption of the 50/50 principle.

Finally, we can hardly ignore the fact that the most recent German proposal for legislation on worker directors extends the 50/50 principle beyond coal and steel and yet simultaneously weakens that principle by ensuring that the chairman of the board is, in the last resort, always a shareholders' nominee, and by reserving a seat on the *workers' side* for a representative of managerial employees.

It is true that a problem inherent in the 50/50 principle is the possibility of deadlock in a vote, though it is easy to over-emphasise this since deadlock need hardly be the norm. Nevertheless, the possibility exists and the industrial democracy legislation ought to anticipate it. We favour the Labour Party's Green Paper solution, namely, the adoption of the German coal and steel industries' method whereby the two sides agree on an "eleventh man" as chairman with a casting vote (*op cit*). In the absence of agreement some form of arbitration or third party recommendation was suggested. Alternatively, the solution could be left to a form decided by the board. In any event, it is essential that the shareholders' representatives should not have the power to nominate a permanent chairman, since that would erode the 50/50 principle.

A similar danger stems from the idea of reserved management representation on the *employee* side of the supervisory board. Members of top management will anyway constitute the management board, and in that capacity are likely to be invited to attend meetings of the supervisory board. Also, senior managers who are not members of the management

board could conceivably be elected as shareholders' representatives on the supervisory board. Meanwhile, outside of the magic circle of top management, and perhaps even within it, it is increasingly the trend for managerial grades to join trade unions. Indeed, the general extension of collective bargaining is firmly entrenched in the policy of our labour laws: the Employment Protection Act 1975 section 1 lays it down as a major responsibility of the Advisory Conciliation and Arbitration Service. This policy will be further promoted when the industrial democracy legislation embodies the principle of the single channel of representation. In the future, recognised trade unions may decide that it would be advantageous to include in the union team on the supervisory board a trade unionist whose constituency covers management. But a specially reserved seat for managerial employees without regard to the single channel principle would not only possibly give management a fourth "bite of the cherry" but also destroy the essential 50/50 balance.

## the powers of the supervisory board

We agree with the contention of the TUC that, if the concept of joint control over corporate planning is to be viable, the supervisory board must be the supreme constitutional authority within the enterprise. This has radical implications both for shareholders and for top management. Under present company law, ultimate constitutional authority is vested with the shareholders. Under the Companies Act 1948 certain corporate actions (the main examples of which are the approval of a scheme of arrangement, the passing of a resolution for a voluntary winding up, alteration of articles or memorandum of association, and a reduction or increase of capital) are within the exclusive control of the shareholders' meeting. Such company law is incompatible with industrial democracy. Future legislation must specify which of the major functions of the general meeting of the shareholders are to be discharged by the supervisory board (see clause 13 of the Industrial Democracy Bill, appendix two).

Top management's position will also be affected. Despite the existing company law structure, and despite the growth of institutional shareholding, most observers have concluded that effective management in large corporations usually rests with executive directors and even with senior management not on the board (see, for example, M. Mace, *Directors: Myth and Reality*, 1971, and S. Florence, *The Logic of British and American Industry*). The industrial democracy legislation, therefore, will have to deal specifically with the powers of the supervisory board in relation to the management board.

The top management will no doubt retain great power, but it should be made emphatically clear that the supervisory board is supreme. What happens when the management board is more powerful in a two tier structure is illustrated by the German experience. In 1937 the Nazi Government passed a law, which is still in force, embodying the so called "fuhrer principle" which encouraged the management board to give a strong lead to the shareholders. Subsequently German law has accorded the supervisory board mere reviewing power and not a controlling influence over the management board, whilst still preserving wide constitutional powers for the shareholders. As P. L. Davies, a company and labour lawyer, commented: "Thus, it is on a body with essentially limited powers, certainly with powers that fall far short of an effective voice in corporate planning, that the employees are represented in Germany" (*Modern Law Review*, 38, 1975; see also W. Dauber, "Co-Determination: The German Experience", *Industrial Law Journal*, 1975).

In meeting the problem of defining the supervisory board's powers, the Industrial Democracy Bill once again provides an interesting model. According to clause 9 the supervisory board is to appoint the management board, and (in clause 10) to determine "all issues of fundamental policy", meaning investment, capital expenditure, actual and intended disposal or acquisition of assets, the number of persons employed, company rationalisation and reorganisation, winding up

and mergers, the issue of shares and debentures and the declaration of dividends, remuneration to members of the supervisory and management boards, and all other matters which the supervisory board determines are of major importance to the prosperity of the company (see appendix two). We suggest that the projected Government sponsored legislation should contain an equally broad definition of the supervisory board's tasks.

The superior constitutional position of the supervisory board amounts to more than a technical reform in company law. It is manifestly a direct challenge to the traditional power of the owners of capital. The 1975 report of the City Company Law Committee on Employee Participation was apparently so alarmed at the prospects of shareholders losing ultimate control that it was moved to suggest "it might well jeopardise the ability of companies to borrow money and to raise equity capital, and thus seriously weaken the foundations of our present mixed economy". It has been found that equity capital raised for cash accounted for less than five per cent of funds flowing to companies in the period 1962-72 (Royal Commission on the Distribution of Income and Wealth, Report Number 2, *Incomes from Companies and its Distribution*, cmnd. 6172, HMSO, 1975, chap. 8). The nub of the threat, therefore, is the deliberate drying up of loan capital. This tactic would be extremely damaging to the national interest, and might indeed lead to a rapid restructuring of the mixed economy.

### **a flexible approach**

We do not recommend a *mandatory* system of employee representation. There is, we believe, a strong case for the provision of 50 per cent employee representation as an *option*. An optional system would ensure a flexible introduction of worker democracy at boardroom level.

We suggest that the employee representative option should be "triggered off" by a request from the recognised trade union or trade unions (where there was more

than one trade union the request would have to be unanimous). At the same time, the trade unions would decide whether they would prefer the two tier or unitary board structure. Though in normal circumstances employers would not be able to refuse a request for employee representation, we would support the idea of an appeal system on the lines of that contained in clause 4 of the Industrial Democracy Bill. If a company can satisfy a relevant body (perhaps a new "Industrial Democracy" division of ACAS) that there is already joint determination of the issues of fundamental policy, then it need not agree to having workers' representatives on boards. There could also be grounds for appeal where trade unions fail to agree on appropriate representational machinery (see clause 7 (5) and (6) of the Industrial Democracy Bill, appendix two).

Though we would argue strongly that the strategic corporate decisions should be subject to control by employee representatives, we do not wish to imply that such an extension of industrial democracy need take only one institutional form. If it was possible to establish joint regulation of these kinds of decisions through collective bargaining, we would welcome it. So we suggest that any new system should leave room for such a development.

# 3. wider implications

It is no part of our proposals to attempt to undermine the management function. We seek not to weaken management but to democratize it. We have already stressed the need for a different basis for industrial authority. It is our belief that the democratic structure we have outlined will clarify the position of management.

## implications for management

In a democratic enterprise, management's authority will be clearly derived from joint decisions at boardroom level rather than from a dubiously based and frequently resented prerogative. In the new context, it should become far easier to innovate. Democratic management will also be able to tap a pool of ideas and skills which has not been available in the past. So, the close involvement of employees and their representatives will enable the enterprise to operate more—and not less—effectively than in the past.

We accept that our proposals will involve some managements in drastic changes of attitude. But those managements whose style is already democratic should be able to adapt themselves quickly enough, in the knowledge that jointly determined policies are far more likely to “stick” than those which are unilaterally decided. In any case, two elements in our proposals should go far to allay management fears. We have already considered above the possibility of an independent chairman. Such a device would enable decisions to be reached, in the case of deadlock. In addition, the adoption of a two tier board system will leave the day-to-day running of the enterprise in the hands of managers (though it would, of course, have to operate within the context of supervisory board policy).

## implications for trade unions

The reforms will also throw heavy new responsibilities on the trade union movement, particularly in three areas: in accountability, in structure and organ-

isation, and in training and education. As far as accountability is concerned, clause 7 of the Industrial Democracy Bill made provision for the election and recall of employee directors, while clause 4 laid a special duty on them to report back on the activities of the supervisory board (appendix two). So, if the employee director experiment is to succeed, trade union democratic machinery must be fully effective. The TUC should, therefore, ask individual unions, as a matter of urgency, to examine their electoral and report-back machinery with great care, in order to ensure that employee directors represent the views of, and remain in close contact with, their constituents.

Employee representatives who become remote could “spark off” a shop floor revolt against the whole idea of industrial democracy.

There will be a need to examine existing trade union structures. The successful introduction of a system of employee representation is bound to strengthen work place trade unionism and lead to a reinforcement of shop steward combine committees. Trade unions will have to consider the relationships of regional and national officials and their governing bodies with the shopfloor in the light of this development. They should also look at inter-union links, particularly in view of the necessity to establish multi-union representation.

The onus will be on trade unions to expand the democratic system. If the argument for a single channel of representation is to be sustained, there must be a major drive to spread union organisation beyond its base in the large companies. Here again, the TUC should take a new initiative in stimulating successful recruitment in the unorganised sectors and enterprises.

There will also have to be a massive expansion of trade union education, training and research facilities. It will be partly a question of equipping employee directors for their new functions and seeing that they get the back-up services they require. Equally important, however, is

the general educational effort that will be needed if the employees and their shop floor representatives are to understand the implications and advantages of the new democratic system, and be in a position to question and control their boardroom representatives. It is important that a large proportion of the money needed to finance this development comes from trade union resources. However, there may also be a case for some form of supplementary government aid.

### consumer and community representation

Industrial democracy does not imply unchallenged producer sovereignty. Production is for use, not for its own sake.

The consumer and the community also have an interest in seeing that the enterprise does not enrich itself at their expense. In classical economic theory, the producer serves the good of the community by looking after his own. Competition ensured the consumer freedom of choice. In practice, a combination of oligopoly and private and state monopoly has meant that consumers have far less choice than the "classical" economists supposed.

We have already proposed that consumer and community interests be written into the director's duties. It is, however, difficult to see how their interests can be directly represented within the enterprise. There is no identifiable constituency. Thus the complexities of appointing consumer representatives on the board of every company would be great. How would they be appointed and how would they carry out such a general responsibility?

In view of these problems, it may well be that, except perhaps in the nationalised industries, it would be unreasonable to hope for direct consumer representation. It is certainly the case that with the extension of public participation in the private sector there will be more government appointments on the boards of some companies to represent the public interest. But elsewhere the government will remain the real representative of the consumer—

and it will be by the extension of law and regulations, and through government policy on pricing and taxation that the consumer interest will be best represented.

### democratic boards and planning

The constitutional supremacy of the joint supervisory board should enable it to take a firm grip on corporate planning. Such planning is also a major focus of the new relationship between the State and manufacturing industry envisaged by the Industry Act 1975, with its provisions on the National Enterprise Board, planning agreements and the wider disclosure of information. The rationale of this development is the need to combat the inadequate investment in British manufacturing industry by large and frequently multinational corporations (*The Regeneration of British Industry*, cmnd 5710, HMSO, 1974). Concern over investment, especially when its absence leads to redundancies, was one of the main reasons for TUC interest in employee representation in the boardroom. It is therefore curious that (with the exception of some passing remarks in a LEFTA pamphlet, J. Bromborough and D. Smyth, *Planning Agreements in Practice*, 1975) there has been virtually no attempt to link joint supervisory boards with the new instruments of State planning. It is our submission that joint supervisory boards would provide a most appropriate vehicle for facilitating employee involvement in NEB holdings and planning agreements.

It is abundantly clear that trade unions are intended to play an important role under the Industry Act. The prescribed NEB functions include "promoting industrial democracy" (section 2(2)(d) of the Industry Act 1975) in its holdings, and the White Paper envisaged the "full involvement of employees in decision making at all levels" (*op cit*, para. 26). The White Paper, and also the Department of Industry's discussion document *The Contents of a Planning Agreement* 1975, regarded close union consultations with management and government in the planning agreement system as constituting "an important advance in the part to be

played by industrial democracy in the planning of company strategy" (*op cit*, para. 19). Whether in the NEB sphere, or for the purposes of planning agreements, or indeed in the more traditional NEDC approach, trade union participation is dependent upon disclosure of information by management. Here the Industry Act is weak as it merely gives the Minister a reserve statutory power to require information from a manufacturing concern, then a discretion to pass it on to trade unions, and anyway the scope of the information is hedged in by extensive exemption heads. An "arms length" union role in planning, therefore, is unlikely to be meaningful, and the legal structure will be of very limited assistance.

One method, and we acknowledge it is not the only method, of maximising trade union influence over planning would be to give the job to employee directors. From the vantage point of the boardroom, they would be in an excellent position to acquire all the necessary information, and to view the corporate strategy as it affects the company as a whole. Most importantly, they would have an interest in long term planning and investment at least as great as the shareholder representative. In view of the national importance of corporate planning and the interface with the State, we suggest that directors should as a matter of legal obligation have regard to national planning and investment needs.

We are also aware of the dangers of remote bureaucracy inherent in simultaneously expanding the role of the State and fostering a close relationship between it and the managerial elite. We therefore view the employee members of the supervisory board with their direct shop floor links as a valuable means of tempering bureaucratic power with grass roots democracy.

### **multi-national corporations**

The multi-national corporation presents a special problem. There is ample evidence that, at present, the UK subsidiary of a multinational may not be fully aware of

the parent company's overall operations. The introduction of employee representatives at boardroom level will certainly create a new pressure for change. But they will need additional support.

We would argue that all foreign companies intending to set up a subsidiary in this country should conclude a planning agreement with Government, one of the provisions of which is an agreement to disclose necessary information to worker representatives. As for existing multinational operations in the UK, the Government should seek to conclude planning agreements with the parent company. Another method of control might be to draw up a "code of practice" for multinational operations. Sanctions might have to be provided for, and one avenue to be explored would be that a recalcitrant parent company's shares would be deemed voteless, until such time as the workers representatives felt all necessary information had been divulged to them.

It has been suggested that legislation should require companies, operating or intending to operate in the UK, to divulge to its UK subsidiary information on its overall corporate strategy—likewise, UK companies should be required to divulge details of their overseas operations. Further consideration could be given to the proposal that all companies functioning in the UK should be required to operate through a UK registered company.

It will also be important to act in an EEC context, both in conjunction with the European trade union movement and at the level of EEC institutions. Otherwise, there could be the danger of multinationals transferring their operations—though recent developments in industrial democracy in other European countries are likely to minimise the risk.

## 4. conclusion

We believe that, as part of an overall democratic strategy, there is now an overwhelming case for the development in this country of a system of employee representation at boardroom level. Our proposals include the following points:

1. a flexible system, triggered off at trade union request.
2. 50 per cent employee representation at supervisory board level, elected through trade union machinery.
3. a supervisory board, with powers over "issues of fundamental policy" and to appoint a management board, responsible for the carrying out of supervisory board policy.
4. the possibility of a "neutral" chairman of a supervisory board.
5. trade unions to examine their electoral and representative machinery and to consider the implications of the new system for their existing structure and back-up services.
6. employee representatives at boardroom level to be involved in "planning agreements".
7. multi-national companies to divulge information on parent companies' operations to employee representatives on UK subsidiary boards.
8. consumer and community interests to be written into director's duties.

We do not underestimate the change in attitudes that full scale employee participation at boardroom level would imply. A massive educational effort by Government, management and trade unions will be needed. We believe, however, that only the presence of employee representatives on the board will give employees a "say" in the major decisions that shape their lives—and that, without such a development, British industry is likely to become increasingly difficult to run.

# appendix 1: conclusions of fabian tract "working power"

There is now a strong case for more industrial democracy all the way up from the shop floor to the boardroom. Evidence of substantial support amongst employees and their representatives for such a development suggests that new democratic structures would have firm foundations. It is essential, however, if democratic change is to be more than a facade, that it must be backed by trade union machinery and also build on existing collective bargaining systems.

Though there are problems to be overcome in the introduction of employee participation in management, some of the fears about trade union independence lose their validity if, as has been suggested, such participation is seen as an extension of the principles of collective bargaining (if not its actual form) to areas and levels which are now the subject of managerial prerogative. What is proposed is, in fact, a system of *dual* power (employees and management) throughout industry, including the private sector.

Labour's strategy to promote industrial democracy should be based on the following principles:

1. A single channel of representation.
2. Strengthening, extending and building on collective bargaining.
3. A multi-dimensional approach, capable of affecting managerial decision making at all levels from shop floor to boardroom.
4. Advancing democracy in the private sector as much as the public sector.

A programme to increase industrial democracy should include the following elements:

1. *the increase of trade union membership* by establishing the right to join a union, by enabling trade unions, in difficulty over recognition, to use the ACAS and, in the last resort, unilateral arbitration facilities through the court, by reforming wages councils, and by much more vigorous trade union recruitment.

2. *the extension of shop floor bargaining* by giving shop floor representatives minimum facilities as of right, by encouraging the codification of agreements, by widening their scope to include manpower planning, safety and work design (backed by government supported experiments) and by the statutory provision of information as of right.

3. *the development of company and group bargaining* to fill the missing gap between shop floor bargaining and employee representation on boards.

4. *the introduction of employee representatives on boards* by, as a first priority, introducing 50 per cent trade union representation on nationalised industry boards and, in the private sector, by setting up a two tier board structure, with a supreme supervisory board on which 50 per cent are trade union representatives, and by changing company obligations to take account of employee interests. In the private sector, employees should be given a choice as to whether they want representation on the boards or not—in organised firms through trade union machinery and in non organised firms, under ACAS supervision. The case for an independent chairman, elected by both sides of the supervisory board, ought to be considered.

5. *the recognition of trade union responsibility* for a major recruitment and educational effort, and also for a close watch against arbitrary exclusion and improper use of trade union machinery. Case for an independent tribunal as final court of appeal for aggrieved individuals to be considered.

If all, or even some, of the proposals suggested are implemented, they would result in a dramatic improvement in industrial democracy. We accept that they fall short of workers' self management. However, they are not a barrier to the achievement of such a goal. On the contrary, they represent an important step towards it. We should always remember democratic change is a movement towards rather than a final arrival.

# appendix 2: industrial democracy bill

The following excerpts are taken from the Industrial Democracy Bill (HMSO, 1975) which, having received a second reading, was withdrawn by the sponsor (Giles Radice) on the announcement of the setting up of the Bullock Committee of Enquiry on Industrial Democracy in December 1975.

## clause one

1. The matters to which the directors, the members of a supervisory board or the members of a management board 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.

2. A director, member of a supervisory board or member of a management board shall observe the utmost good faith towards the company in any transaction with it or on its behalf and act honestly in the exercise of the powers and discharge of the duties of his office, and in particular shall not make use of any money or other property of the company or any information assigned by him by virtue of his office to gain directly or indirectly an improper advantage for himself at the expense of the company.

## clause two

1. This section applies to any company:

(a) which employs 2,000 workers or more; or (b) which is one company in a group of companies in which any company employs 2,000 workers or more, and which recognises one or more independent trade unions for the purpose of negotiating collective agreements.

2. A company to which this section applies shall, subject to sections 4 and 7(6) of this Act, at the request of such trade union or, where more than one such trade union is recognised, of all such trade unions cause to be established a supervisory board and a management board, in this Act referred to as a "two tier board structure".

3. Nothing in a company's memorandum or articles of association shall affect the obligation of a company to fulfil its obligations under this section to establish a two tier board structure.

## clause four

1. This section applies to a company to which a request for a two tier board structure has been addressed under section 2(2) of this Act.

2. Within 28 days of such a request being presented to it, the company shall be entitled to appeal to the appropriate committee for an award that the company be relieved of its obligation to establish a two tier board structure.

3. The committee shall hear representations from any party appearing to it to be concerned in the appeal and shall make an award under subsection (2) if, but only if, it is satisfied both: (a) that the company recognises one or more independent trade unions for the purpose of negotiating collective agreements in respect of the terms and conditions of employment of all or most of its workers; and (b) that the company jointly determines by agreement with such trade union or all of such trade unions all issues of fundamental policy which might be the subject of a decision by a supervisory board within paragraphs (a) to (d), (f) and (g) of section 10(2) of this Act.

4. For the purposes of subsection 3(b) above, the committee shall interpret section 10(2) of this Act as if, for the opinion or decision of the supervisory board, there were substituted the opinion or decision of the ACAS; and it shall accordingly be the duty of the ACAS to advise the committee, where necessary, on the interpretation of "issues of fundamental policy" and any such interpretation by the ACAS shall be conclusive, not open to appeal to any court of tribunal whatsoever.

5. In this section, "the appropriate committee" means a committee established by the Secretary of State for Employment in consultation with the ACAS.

### **clause seven**

1. The workers' representatives shall be elected to the supervisory board through the appropriate machinery of the trade union or all the trade unions, if more than one, entitled to make a request under Section 2(2) of this Act.

2. Such representatives shall be elected for a maximum period of three years or such shorter period as is specified at the time of their election, but they shall be entitled to stand for re-election.

3. Notwithstanding any agreement or arrangement, any such representative may be removed from the board before the expiration of his period of office by the same machinery as that by which he was elected and shall have no right to recover damages or compensation by reason of such removal: provided that special notice of a proposal to remove him shall be given to the company and to each trade union party to the appropriate machinery, and such representatives shall have the right to make representations to the members of each such trade union who is employed by the company in a manner parallel to the rights of directors under section 184(2) and (3) of the Companies Act 1948, to make representations to shareholders.

4. In this section "appropriate machinery" means the machinery for election established by the recognised trade union or, where more than one is recognised, by all the recognised trade unions.

5. Where recognised trade unions are unable to reach agreement on such machinery, any of the trade unions involved may report the matter to the ACAS which shall, after satisfying itself on the matters set out in section 3(2)(b) of this Act, make recommendations to the trade unions involved.

6. If after such recommendations the trade unions involved are still unable to reach agreement on the appropriate machinery, the company shall be relieved of its obligation to establish a two tier

board structure until such agreement is reached: provided that where such trade unions include one or more trade unions affiliated and one or more trade unions not affiliated to the Trades Union Congress, agreement shall be deemed to have been reached if the recommendations of the ACAS are accepted by the trade union or by all the trade unions affiliated to the Trades Union Congress.

### **clause nine**

1. The management board shall be appointed by the supervisory board, and its members shall be appointed on such terms and subject to such conditions as to tenure and otherwise as the supervisory board determines from time to time.

2. Any member of the management board may be dismissed at any time by the supervisory board notwithstanding any agreement contract or arrangement: provided that nothing in this section shall deprive such a member of his right to compensation or damages for breach of contract in a manner parallel to the right of a director under section 184(6) of the Companies Act 1948.

3. No contract between a member of the management board and the company shall be made concerning the capacity of that person as a member of the management board without the agreement of the supervisory board.

### **clause ten**

1. The supervisory board shall determine all issues of fundamental policy, and any decision of the company or of the management board on any such issue shall be null and void and not binding on the company, notwithstanding section 9(1) of the European Communities Act 1972, unless: (a) the supervisory board has consented to such a decision; or (b) the supervisory board has established general guidelines of policy on such issues and the decision is one which falls, in the opinion of the supervisory board, within the orbit of such guidelines.

2. In this section "issues of fundamental policy" means: (a) matters affecting the investment of assets of the company or investment policy, or the company's capital expenditure, or any disposal or acquisition, or any intended disposal or acquisition of assets, where the assets or expenditure involved are in the opinion of the supervisory board substantial; (b) matters affecting to a degree regarded by the supervisory board as substantial, the number of persons employed by the company, the redeployment of its workers, the transfer closure or conversion of any of its plants, establishments or other places of work or changes in or reorganisation of the company's activities likely to affect the output of its goods or services or the productivity of its operations or the sale or export of its goods and services; (c) all matters touching or concerning arrangements, reconstructions or the winding up of the company under the Companies Acts 1948 to 1967 or its amalgamation, merger or long term association or co-operation with other companies or persons; (d) the issue of any shares in or debentures of the company or any matter relating thereto and any question touching the declaration of a dividend; (e) the payment of remuneration or emoluments to members of the supervisory board or the management board, or to the wife or husband of any such member or to any of his close relatives (within the meaning of paragraph 9(4) of Schedule 1 to the Trade Union and Labour Relations Act 1974); (f) all other matters which the supervisory board determines are of major importance to the prosperity of the company; (g) all other matters, which the Secretary of State for Trade and the Secretary of State for Employment jointly shall by order determine.

3. Subject to the following subsections the management board shall, notwithstanding any provisions in the company's memorandum or articles of association have power to manage the affairs of the company, and in particular shall have the powers and duties set out for directors in articles 79 to 87, articles 98 to 109 and articles 113 to 129 of Table A in the First Schedule to the Companies Act 1948.

4. The supervisory board may at any time require the management board to make a special report on the affairs of the company or any aspect thereof.

5. The management board shall not less than once every three months make a report to the supervisory board on the progress of the company's affairs.

6. Each member of the supervisory board shall be entitled to examine any report, document or information supplied to that board by the management board.

7. Where the supervisory board establishes any committees for any purpose whatsoever the membership of such committee shall include workers' representatives and shareholders' representatives in equal numbers.

8. Where it is necessary in order to enable the management board to draw up the directors' report or any other document in accordance with the provisions of any enactment, for a member of the supervisory board to supply the management board with information, it shall be his duty to provide that information to the management board.

### **clause thirteen**

1. On any matter to which this section applies, where a company has a two tier board structure, the functions of the general meeting of shareholders shall be discharged by the supervisory board, acting where necessary on a resolution passed by ordinary majority; and the general meeting shall have no power to determine any question or to act in relation to such matters.

2. The matters to which this section applies are: (a) ratification of: (i) any breach of duty owed to the company by any director or any act done by a director; or (ii) any such breach or act done by a member of the supervisory board, provided that a report of such ratification in the case of a member of the supervisory board shall be sent to the shareholders and to each trade union through

# fabian society the authors

the machinery of which workers' representatives are elected within one month of the date of the resolution; (b) alteration of the company's memorandum or articles of association under sections 5, 10 and 23 of the Companies Act 1948; (c) alteration or reduction of the Company's share capital or payment of interest out of capital or the capitalisation of profits within the meaning of sections 61, 65 and 66 of and articles 44 to 46 and articles 128 and 129 of Table A of the First Schedule to the Companies Act 1948; (d) the determination of shareholding qualifications, if any of directors; (e) appointment, removal and reports of the auditors under sections 159 to 162 of the Companies Act 1948; (f) investigation of the company's affairs in accordance with section 165 (a)(i) of the Companies Act 1948; (g) payments to directors for loss of office under sections 190 to 194 of the Companies Act 1948.

3. For the purposes of this section "directors" means members of the management board.

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