

Editorial

Law Democracy & Development (LDD) is privileged to publish in this issue a selection of papers emanating from a study of co-determinist structures at different levels of South African society, commissioned in mid-1996 by the National Labour and Economic Development Institute (NALEDI), a research institute associated with the Congress of South African Trade Unions (COSATU). Dr Glenn Adler, co-ordinator of that project, has kindly agreed to assist in the production of this issue in the capacity of guest editor.

"Co-determination" goes to the root of the democracy-building project as well as the developmental challenges facing South Africa. The term is used here to describe a participative mode of decision-making involving all parties (often with adversarial interests) to a process, rather than an exercise of power by those at the top of organisational hierarchies. Necessarily, it implies the empowerment, in terms of knowledge and skill, of those who had previously been excluded from decision-making. Its developmental significance lies in broadening the pool of human resources, and reinforcing the co-operative effort, that socio-economic progress ultimately depends on.

Why is co-determination on the agenda? To the extent that it forms part of the democratic transformation that South Africa has embarked on, it needs no special explanation. But there are other, very empirical influences promoting it also. In much of the private sector, enterprises are under growing pressure to become more flexible in their output. Global markets challenge them to meet a more diverse, rapidly-changing demand. Combined with these pressures has been the general imperative to improve productivity by means of improved industrial relations. A growing tendency towards new, more inclusive forms of management has been part of the response.

These influences are by no means confined to the private sector. Similar pressures towards democratised decision-making have begun to make themselves felt in the public sector. Most notably, the new South African constitution is a monument to the potency of an integrative process to achieve results that no single party could have imposed by force or persuasion. It provides a foundation for democratisation at all levels of society, as explored in the previous issue of *LDD* (Volume 1 November 1997). Throughout the new public service, the understanding is growing that participative decision-making works better.

Trite though much of this may be, the focus of our law has only begun to shift from the regulation of social power by means of traditional hierarchies to providing new, integrative mechanisms of decision-making more in keeping with democratic values. This issue is about the emergence of co-determinist decision-making in a number of key areas. Special attention is given to participatory institutions between employers, organised

labour and the state, of the statutory as well as non-statutory varieties. One reason for the emphasis on labour is that structured co-determination in this field, against a background of adversarial interaction combined with mutual dependency, is relatively highly developed. Another reason is that the employment relationship uniquely incorporates the legal subordination of one contracting party to another, reflecting the fundamental social inequality between employers and those whom they employ. Participation by employees in managerial decision-making thus represents a particularly significant advance from legal inequality towards greater political and economic democracy.

In keeping with *LDD's* multi-disciplinary approach, however, the socio-economic and political realities that give shape and direction to the law are equally at issue. The focus is not only on the legal provisions or practical developments in question but also on their evolution, practical significance and prospects. The result is a wide-ranging appraisal of a dynamic area of law and policy-making by specialists in a number of relevant areas.

Synopsis of articles

Adler examines the phenomenon of employee engagement in South Africa as a process extending from workplace and industry level to the state itself. While far-reaching and unique in many ways, the institutions that have emerged cannot but reflect the different agendas of the two major role-players, and that of the state, giving rise to tensions which render their future development problematical. Assessing labour's engagement with capital in South Africa against international trends, he concludes that it can deliver substantial benefits but that, to avert the risk of being incorporated into business-driven strategies, labour needs to develop its own strategic vision.

What should this vision be? Jarvis and Sitas provide an overview of the development of theory around the issue of co-determination. Tracing the debates which have been generated in the process, they critically examine the various political schools of thought that have taken shape on the subject. Centralised economic planning on the erstwhile eastern European model, they argue, has proved to be non-viable as objective or end product of a process of increasing worker control; but neither can a complex modern economy be governed by "direct democracy" of the producers. Instead they offer a challenging perspective of the organisation of production based on optimal participation and autonomy of the workforce, while recognising "management" as a distinct and necessary function within the overall division of labour.

This raises the question of (to borrow an expression of Karl Klare) the "democracy-enhancing" potential of workplace forums as the statutory instrument for worker participation in South Africa. Satgar challenges the "neo-pluralist" power-sharing paradigm embodied in Chapter 5 of the Labour Relations Act (LRA) which, he argues, does not confront hierarchy in a transformative way. By contrast, he redefines co-determination as

part of a struggle to expand worker control with a view to achieving collective worker responsibility for managing the workplace. In practice, he suggests, this could be promoted by means of workplace forums based on collective agreements allowing workers to run public-sector units, such as schools, in the context of: policy agreed at the Public Sector Bargaining Council. In private-sector enterprises, areas of "autonomous self-management" could be defined for workplace forums, and expanded, alongside of co-determined areas.

Co-determination, however, has to be a two-way process. How amenable will management be to alternative, democratised models of decision-making? Macun and Webster contextualise the question by examining the peculiar evolution of workplace representation in South Africa. The fact that it has largely been driven by management initiatives, combined with the difficulties workers have experienced in engaging effectively at this level, has impacted on the extent and quality of co-determinist arrangements.

Godfrey, Hirschsohn and Maree take the inquiry further, focusing on the way in which management at a number of large enterprises are responding to competitive pressures to shift from traditional, top-down styles of management towards more integrative methods and to the institution of workplace forums in particular. While there is general awareness of workplace forums and support in principle for their establishment, there is also a lack of strategic vision on participation. Management, the study found, tends to be slow and limited in the implementation of new policies. The authors suggest strategic options for labour flowing from management's approaches.

Patel examines the potential for co-determination in the public sector. Due to the structure and nature of decision-making in the public service, he suggests that workplace forums may not be the appropriate institutions for driving a process of democratisation. Centralised bargaining on a broad agenda, in a context of centralised policy-making, is already taking place. With the devolution of administrative functions, however, appropriate structures of worker participation at lower levels will need to be created. But this should not compromise co-determination at the sectoral and national levels; and the agenda for co-determination, Patel argues, should be expanded from labour relations issues to include policy issues.

Gostner and Joffe examine the extent to which this is happening. The National Economic Development and Labour Council (NEDLAC) is an almost unique statutory body enabling labour, business and other constituencies of civil society to participate directly in the formulation of policy and law before it is presented to Parliament. The article offers insight into the practical ramifications of co-determination at this level. The authors draw a balance sheet between the gains achieved by labour, both in terms of outcomes and process, and the constraints which inhibit its optimal engagement. Though capacity problems are experienced not only by labour but also by business and the state, the authors highlight the danger of labour becoming confined to a role of reacting to an agenda set by the state.

Our next issue

The next issue of *LDD* will focus on the effects of the horizontal application of socio-economic rights in terms of section 8(2) of the Constitution. The main articles emanate from a conference jointly organised by the Faculties of Law of the Universities of the Western Cape and Aix-Marseilles in France, held in Cape Town on 5 and 6 November 1997 under the auspices of the French Embassy in South Africa, the French Business Centre and the Association for the Promotion of the Western Cape Economic Growth (WESGRO). Incorporating contributions by French and South African experts, it will place this important and (in South Africa) largely unexplored issue in a comparative perspective.