Time to **bury** *the* **Wiehahn model ?**

In the second of two articles, JEREMY BASKIN* argues that the existing framework of industrial relations is at odds with the direction in which the system is moving.

Is it not strange how the old Wiehahn labour dispensation trundles on – at a time when the policies and underlying assumptions of every institution in our society are being questioned?

Current debate revolves mainly around amending the existing Labour Relations Act; extending the system's coverage to farmworkers and others; the extent to which international conventions need inclusion; and the need to consolidate the Act. While these are valid concerns, they fail to tackle the root problem – the disjuncture between the (voluntarist) industrial relations system and the (corporatist) direction which society and labour relations is trying to take. The time has come to rethink the Wiehahn model.

In Part One of this article I argued that the growth of tripartism and the moves away from simple adversarialism indicated a growing trend towards "bargained corporatism" in South Africa. Although the corporatist route is the only realistic one for the union movement to take, a range of obstacles stand in the way of it being 'successful'. Not least of these obstacles is the existing system of industrial relations.

This article will put three elements of that system under the spotlight. These are: the voluntarist legal framework; collective bargaining; and the weaknesses of the central organisations of both unions and employers.

Key features of labour law

The Labour Relations Act (LRA) is the major law regulating industrial relations. Enacted as the Industrial Conciliation Act in 1924, the law had these features:

- It excluded African workers ('pass-bearing natives') from its scope.
- It provided for voluntary bargaining but made industrial action illegal unless specified procedures were followed.
- It was aimed only at 'organised industries'.

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Unorganised (white) workers in 'sweated industries' were covered by the Wage Act. This established Wage Boards whose compulsory awards set minimum wages and other conditions, thereby preventing undercutting of the unionised sector.

The 1924 Act remains the core of today's LRA, but over the years there have been changes. Most important were those in 1980, associated with the Wiehahn commission, which extended union rights to African workers. A further key change, in the late 1980s and early 1990s, extended some coverage to workers outside manufacturing – such as certain state employees, as well as farm and domestic workers.

The de-racialisation recommended by Wiehahn was a significant change. But it tended to conceal two things. Firstly, that the original intention of the 1920s legislation – to provide a *comprehensive* framework for the manufacturing sector, organised and unorganised – would continue to be undermined. The Wage Board is a key example of this. For some years before, and certainly after Wiehahn, the Wage Board failed to provide any meaningful protection to black workers in unorganised industries, in contrast to its behaviour towards white workers in earlier years.

The supplementary Wage Act fell into disuse. The bureaucrats responsible for its implementation were lax in calling Wage Board hearings and, when these did sit, set wages for African workers so low as to be meaningless. Even the chair of the National Manpower Commission, Frans Barker, has commented that "the Wage Board is normally very conservative in its approach", noting that "in most cases" actual wages were higher than the Wage Board's recommendations.

A voluntarist framework

Secondly, the post-1980 dispensation remained basically voluntarist. Look at today's LRA, for example:

- It provides **mechanisms for resolving disputes** – procedures which must be followed if any party wants to take a case to court, or embark on legal industrial action. In practice these mechanisms rarely help solve disputes. They are either a technical hurdle to be overcome by those wanting to embark on industrial action, or a passive venue for a further meeting of the disputing parties. So unhelpful are the official mechanisms that, in practice, parties trying to resolve a dispute often employ private mediators and arbitrators (such as IMSSA).
- It gives the **freedom, but not the right, to strike**. If workers strike after completing the prescribed dispute resolution procedures, their action is legal. But a legal strike confers few rights – it does not, for example, ensure protection from dismissal, as thousands of workers have discovered. While legal strikers, in practice, do have some protection, this derives essentially from case law.
- It allows bargaining but **does not compel the parties to bargain**. While the formation of Industrial Councils as bargaining forums is recognised, there is no compulsion on the parties to join or establish these. Where and when (and even whether) parties in a particular industry should meet is entirely voluntary. In practice, a determined employer can avoid bargaining with a union for years, or being bound by centralised agreements (where these exist).
- It envisages **a relatively non-interventionist role for the state**. Although an industrial registrar is provided for, unions and employer organisations are essentially self-governing. Even the union registration procedures, designed to encourage one union per industry and majoritarianism, are effectively a dead letter: in practice we now have a system of 'certification' rather than 'registration'. The Act also gives the Minister power to gazette and extend agreements. But although this power has been abused over the years, the law envisages it as essentially an administrative and technical function. In practice there has been massive state

intervention in industrial relations; but its instrument has generally been the security apparatus, not the LRA.

- It provides **little guidance as to what basic rights** workers have. The industrial court's duties include deciding what constitutes an "unfair labour practice". But without schedules or codes, interpretation is left to the court. It is widely accepted that while the court has some sympathy for individuals (often executives getting a raw deal), it is generally very hostile when collective issues are raised by workers or unions.

In short, the LRA establishes a largely passive framework, rooted in voluntarism. Combination is recognised, not facilitated. Collective bargaining possibilities are mentioned, but no comprehensive bargaining system is laid down. Unfair labour practices are contemplated, but barely defined. The system provides immunities from prosecution – a legal striker, for example, is immune from civil damages claims. But it provides very few positive rights.

British law has similar features. Crouch has noted that "as it became clear during the latter nineteenth century that the collectivism of labor could not be prevented, though it was clearly illegal under common law principles, governments made space for the legal development of unions by conceding to them immunities from prosecution for what would otherwise have been actionable behaviour. Union and strike law thus developed negatively; there was virtually no attempt at constructing a comprehensive body of law that would allocate organized labor a set place in law and society."

Of course no IR system is purely voluntarist; the mere fact of having an IR 'system' implies that the state has established some framework. The point being made here is that South Africa falls on the voluntarist end of the spectrum.

The dangers of dualism

Voluntarism tends to allow only the most strongly organised – in practice workers in a few manufacturing sectors and in larger, more

'Did you here that? Now he is saying, "We should have a practical common-sense approach..." I bet he is swinging to the right!'

capital-intensive companies – to win real gains over an extended period. This can only enhance the existing dualism within the union movement. Already the differences in conditions between NUMSA members in auto plants and those in garages, is startling. PPWAWU members in sawmills and paper mills experience the same divergence.

And this is quite apart from the wider dualism whereby certain sectors (such as farmworkers and domestics) are largely absent from the ranks of organised labour – and have correspondingly miserable conditions of employment. The lack of a comprehensive framework means vast differences between wage levels in different sectors. Extending labour rights to such workers only scratches the surface of the problem.

For the union movement the obvious solution is to develop some sort of solidaristic wage policy: setting a basic floor of conditions nationally, reducing the current divergence between sectors, and cross-subsidising where appropriate. But as things stand, solidaristic wage policies cannot emerge; indeed a voluntarist system actively undermines them. And workers in higher-paying sectors may even resist the limitations which a solidaristic wage policy may place on them.

Voluntarism also encourages the most narrow forms of self-interest and adversarialism. It does little to encourage the key players to think of longer-term, structural

Revolutionary defence of the status quo?

A solidaristic approach to wages would narrow the wage band within and between industries. Bargained corporatism would make such a solidaristic wage policy possible. It could be argued that workers in larger, better-organised, more capital-intensive plants would win more if they were to negotiate and struggle separately. If this argument is correct then there are material reasons why relatively 'privileged' sections of organised labour should be sceptical of corporatist trends.

In other countries such opposition is often phrased in conservative terms – opposing excessive central control and regulation – and such workers form the 'right' of the union movement. In the South African context a conservative ideological paradigm is not available to workers. And even if it were, it would have no legitimacy or currency within the union movement; the language of conservatism simply does not make sense.

One should, therefore, not be surprised if self-interested opposition begins to be phrased in extremely revolutionary terms – as a rejection of 'corporatist sell-outs', 'elite bargains', 'a betrayal of class struggle', and the work of 'leadership bureaucrats'. Yet this revolutionary terminology would objectively be in defence of the 'status quo'; namely adversarialism and voluntarism – a free market approach to industrial relations where only the strongest win out. This, ironically, is an approach which most favours that (relatively 'privileged') section of the organised workforce.

Is there a correlation between such sections of the workforce and 'left' opposition to corporatist trends? In theory it is quite possible for revolutionary rhetoric to service objectively conservative interests. It would be interesting to explore empirically whether this is in fact happening.

solutions to the problems of the economy as a whole or different sectors of it.

Only in a few, better-organised industries can the future of the sector be examined. And this is more likely in industries (such as clothing and auto) where agreements between union and management cover all employers and employees – through mechanisms such as the closed-shop, extension of agreements, and the existence of coherent employer organisation. These are sectors, in short, where voluntarism has been overcome.

Such sectors can, and do, develop solidaristic wage policies and explore industrial strategies within their sectors. But, in the absence of similar conditions in other sectors of the economy, there will inevitably be a tendency towards unions agreeing to protectionist policies with 'their' employers. Not to do so would be to fail to advance their members' interests. But the end result is even greater dualism within the union movement.

No bargaining system

Bargaining is central to any industrial relations system. The most noticeable feature in South Africa is that there is no bargaining system. Rather, there are disparate systems which are neither comprehensive nor compulsory.

The Industrial Council system, the only statutory centralised bargaining vehicle, covers little more than 10% of the country's 8 million employees. Even if one adds employees covered by non-statutory centralised forums, such as in the mining, telecommunications and auto industries, only a small fraction of the workforce is covered.

Remaining unionised workers bargain in a variety of agreed negotiating forums. These range from relatively centralised talks between

a union and an industrial conglomerate, to highly decentralised plant-level bargaining.

For non-unionised workers, unilateral wage determination by the employer remains the most common system. The worker is given a wage increase and, unless highly skilled, is forced to "take it or leave it".

The call for centralised bargaining

Unions and employers have generally disagreed on the direction the bargaining system should be taking. In the immediate aftermath of Wiehahn, the emerging unions were strongly organised in particular plants, but were weak on the national level. Naturally, they demanded recognition and bargaining rights at plant level. Employers responded by insisting on centralised bargaining, often refusing to negotiate unless the emerging union joined the established industrial council.

As unions grew stronger the trend reversed. Unions now saw the advantage of combining and using their muscle to set conditions for an entire industry. Employers, who had wanted centralised bargaining with weak unions, grew alarmed at the prospect of negotiating centrally with militant, relatively strong ones. Increasingly they insisted on plant bargaining.

In short, the 1980s were characterised by endless disputes over where (and whether) to negotiate. The lack of a clearly defined system increased the levels and costs of conflict; a problem which remains. The call for centralised bargaining now tops the union agenda for the 1990s. But it is hard to see how this can be achieved within the framework of a voluntarist system; or who benefits from having centralised bargaining structures operating in some sectors but not in others.

Corporatism needs centralised bargaining

In one respect the dynamic has changed. No longer is it only the unions who want

Centralised bargaining plus voluntarism = ? ? ?

The National Economic Forum (NEF) has reached an agreement on "the co-ordination of bargaining". This accepts the need for "a new framework of relationships between organised labour and organised business", and records that bargaining currently happens "at a number of different levels". Centralised bargaining is one of these levels, and the parties agree "not to undermine this arrangement", nor "as a matter of policy oppose the establishment of new centralised bargaining arrangements." This, apparently, is the employers' concession to the labour movement, and Minister Keys' amendment to government's Normative Economic Model.

The agreement than states: "The parties record their preference for a voluntarist approach to establishing and shaping bargaining institutions. Voluntarism remains important to the extent that it is able to foster workable and equitable bargaining arrangements."

Unless there are some informal understandings not included in the final draft, it is hard to interpret this agreement as more than a continuation of the status quo – ie centralised bargaining if both parties agree.

The acid test will be practical developments over the next few months. Will employers in the construction and motor industries, for example, continue their efforts to destroy existing centralised arrangements? If not, what will stop them? And will employers in chemical, paper, printing now agree to centralise?

Most importantly, how will a voluntarist approach to centralisation stem the slide towards dualism within the labour movement?

centralised bargaining; the logic of current corporatist trends requires it. At the very least, concertation implies tripartite deals and trade-offs. This must entail, as the NEF is already attempting, the "higher" levels setting a framework within which the "lower" ones operate. In practice, in order to be implemented, multi-tier agreements at national, industrial and plant levels are needed.

For the system to work, it must be effective at both top and bottom. Just as undercutting by employers will be unacceptable to unions, so leapfrogging by unions in industrial bargaining will be rejected by capital. This must result, sooner or later, in the exercise of discipline by the national over the industrial and plant levels – on the side of both employers and unions.

This is not necessarily a question of disciplining members to accept a bad deal; more commonly it will be needed to enforce deals which may be good in general but bad for specific sectors and their employees. Given the economic climate, it may also be the discipline of accepting restraint now in the hope of gains later.

This is why effective corporatist arrangements all contain relatively centralised bargaining systems. Without a comprehensive and solidaristic centralised bargaining system it is hard to conceive how broader macro-economic deals can be implemented. Without a national negotiating framework industrial leapfrogging must take place (with unions competing against each other to win larger increases), and macro-economic agreements are unlikely to hold. Without a national system it is unclear how minima for marginal or unorganised workers could be set, or trade-offs with the state over taxes or social welfare reached.

The problems of centralised bargaining

That said, it must be acknowledged that centralised bargaining has many unattractive features. It often encourages democratic rupture – a widening gap, especially on the union side, between leaders and members. Under centralised bargaining, the commissars of labour meet the captains of industry and negotiate an agreement. Unless the unions are properly organised, this can take place far from the workplace, with little involvement from ordinary union members.

Centralised bargaining also runs counter to some established trends towards the devolution of industrial relations. Technological change allows for more flexible production, shorter runs and varied product ranges. These encourage the decentralisation of management, including the management of people. Today, even within the major conglomerates, local management is generally responsible for most major decisions.

A major employer fear is that centralised bargaining makes unions too powerful and can place undue pressure on wages. There is certainly truth in this, particularly if centralised bargaining is not complemented by tripartite national agreements crossing industrial divides.

Centralised bargaining has frequently been criticised for being inflexible, and treating all companies alike. It can result in small companies having to abide by complex and detailed agreements. It often tends towards over-regulation. It can set conditions some companies are unable to afford, but simultaneously let other, more profitable, firms off the hook. As the Mercedes Benz strike in 1990 showed, sometimes workers oppose centralised bargaining, believing they can win a better deal if they go it alone.

Centralised vs de-centralised: a false dichotomy

The call for a comprehensive system of centralised bargaining must, if it is to gain acceptance, take these problems into account. But to simply devolve industrial relations, without a centralised framework, means little more than fragmentation. The real choice, therefore, is not between centralised or decentralised bargaining; the issue is the appropriate relationship between various levels of bargaining. This implies a new type of centralised bargaining, signs of which are already being seen.

In its simple form, centralised bargaining cannot deal adequately with the complexity of

modern industrial organisation; nor does it build appropriately on the strong grassroots tradition of the South African labour movement. A new type of centralised bargaining might involve at least a three-tier system covering national, sectoral and plant levels. One layer would set the framework for the next – the process of concertation/bargaining occuring at multiple levels.

In a European context Treu has described the emergence of "decentralised forms of bargaining and concertation more or less 'guided' from the centre". In practice this might mean, for example, setting a minimum rate for a sector with parameters for management and labour to negotiate additional pay and productivity deals at plant level.

Centralised bargaining, therefore, need not mean abolishing the plant level, undermining democracy within unions, or ignoring variations between companies. Instead of overloading central bipartism (or tripartism), a web of bargaining could be established. This may be genuinely empowering of both local management and workers without fragmenting the industrial relations system. It is also an arrangement which organised employers might find acceptable.

"Centralisation of bargaining", again quoting Treu, "is commonly considered an essential requisite for any lasting experiment of social concertation". The real question in South Africa is how this can be achieved, and whether it can emerge unaided from the womb of our present industrial relations system.

A centralised union movement?

The international evidence also indicates that corporatism works best in association with strong, national, industrial unions and a strong national union centre. The logic is simple – strong, centralised, unions are able to make agreements which can stick and are not easily undercut by inter-union rivalry.

In this respect the South African union movement seems to be well-placed to take the route of bargained corporatism. Although there are approximately 200 registered unions, a score of large industrial unions dominate. Almost all the major unions are in one federation, COSATU. Relatively centralised in its approach, COSATU is regarded as a "tight" federation, in contrast to the much looser

arrangements found in NACTU and FEDSAL. COSATU has the image of a coherent union movement. It has substantial sympathy and support beyond its affiliated membership. It has frequently been able to mobilise mass support. COSATU structures (such as its regions and locals) bond together worker leaders from different industries and affiliates.

But, while there is much truth in the image of COSATU as a "tight", centralised federation, this remains a partial vision. COSATU's unity rests heavily on worker loyalty and common experiences of oppression and struggle, rather than structure. When viewed structurally COSATU is not a "tight" federation.

- At the constitutional level, the independence of its affiliates is entrenched. This is reflected in practice, with unions extremely wary of "interference" and jealous of their independence. Attempts by the federation to intervene in, and attempt to resolve, internal union disputes have invariably been rebuffed. In addition, the fate of agreed federation policy is strongly determined by the response of affiliates – the central leadership struggles to implement policies agreed in COSATU decision-making forums which don't have the support of relevant affiliates.
- While COSATU affiliates rely heavily on membership subscriptions, and relatively little on foreign funding, the exact opposite is true for the federation. Only a small portion of its operating expenses come from unionised workers (via their unions) in the form of affiliation fees.

In Scandinavia, the power of the national centres (as opposed to their affiliated unions) derives partly from their privileged access to government and policy determination, but also from their real financial muscle. In Norway, for example, an affiliate would not embark on industrial action without the support of the national centre, LO; this is essential if the union wants access to the national strike fund. South Africa's national union centres have no equivalent muscle.

This is not an argument for simple centralisation. There are certainly merits in not over-centralising either the federation or its industrial affiliates. But without institutional powers at the centre (and at the plant-level too; but that is a separate issue) effective participation in tripartite structures will be difficult to achieve.

A tendency towards loose federation

In the past, union unity in South Africa was largely ideological, despite subterranean political differences. The current climate is different, both politically and economically. Industrial restructuring will affect different industries differently; what is good for one sector may be bad for another. And as overt political involvement declines, different objective interests will place pre-existing traditions under extreme pressure. Without institutionalised "tight" structures, or incentives to accept federation discipline, there will be a tendency towards disintegration in the direction of a "loose" federation. This tendency is already visible.

The voluntarism of labour law is relevant here. The LRA no longer encourages, as it once did, majoritarianism and one union per industry. And it is neutral (and largely silent) on the issue of federations. In practice it does not encourage the formation of one strong, national, centre.

Employers also badly organised

Employer organisations experience similar problems. The large corporations tend to dominate them, providing much of their personnel, and wielding most influence over their policies. In recent years, however, the major employer organisations have made a concerted effort to become more representative. They have actively recruited new members and consciously tried to accommodate smaller businesses, often previously excluded.

But problems remain which will undermine the corporatist trend. Firstly, key sectors lack any employer body; in others, such bodies are too nebulous (in industrial relations terms) to be bargaining partners. In certain industries

there is, therefore, little possibility, without specific intervention to achieve this, that national negotiations at the NEF will be complemented by sectoral equivalents.

Secondly, co-ordinating bodies such as the SA Co-ordinating Committee on Labour Affairs (SACCOLA) have little ability to present a united, disciplined, front. In mid-1992, in talks aimed at limiting the planned mass action campaign, SACCOLA's negotiating team reached an agreement with the unions, only to find it scuttled when their constituent employer organisations withdrew support. In practice, South Africa's employer bodies tend to be lowest common denominator federations. Agreement can be reached on the easy issues, but disintegration threatens whenever difficult trade-offs arise. The same holds true within the constituent bodies such as the SA Chamber of Business (SACOB).

Thirdly, even relatively powerful employer bodies can exert little discipline over their members. For example, the giant Steel and Engineering Industries Federation (SEIFSA) is widely seen as a powerful body. But during the strike which gripped the industry in mid-1992, companies simply did what they wanted: some dismissed workers, others did not – and SEIFSA, the unions' negotiating partner, abdicated responsibility.

Finally, despite their prominent role, the major corporations often do not take the employer bodies seriously. They frequently second fairly junior personnel to them. They rarely feel bound by decisions not to their liking. And when they want something from the state they generally use their own channels and approach government directly.

All this, of course, poses substantial limits to the success of any corporatist project. And employers are unlikely to change in response to persuasion or exhortation. After all, although co-operation, solidarity and mutual support are the bread-and-butter of union work, this is not the case with employers. A feature of employer bodies in a market economy is that their members are largely in competition with each other, and may only have common interests in limited areas.

Within a *laissez faire* system the union movement can benefit from division among employers. But as soon as labour moves towards greater concertation, the very opposite becomes true. Labour, within the coproratist paradigm, needs a cohesive and relatively united employer counterpart*. It is hard to imagine how this can come about on its own, and within the present system.

The need for a new framework

One could go on listing areas of weakness in the structure of our industrial relations system. The plant-level needs particular attention, but is not covered here.

The challenge is to change the law's fundamentally voluntarist foundations and move towards a strong, well-defined system of industrial relations which comprehensively covers the nation's employees, and builds a clear system of rights and duties (from plant to national level). The present foundations are an unstable basis for moving into the future.

Without a comprehensive system the union movement is continually thrown into a defensive position: it needs the closed shop to deal with 'free riders'; participatory management schemes become a 'threat'; it struggles to devolve power to the shopfloor since this may threaten centralised bargaining; it anxiously keeps its own union structures heavily centralised to avoid disintegration; and it will battle to deal with industrial restructuring in a non-protectionist way.

A role for the state

Unfortunately, far-reaching change is unlikely to come from negotiated amendments to the LRA agreed by employers and unions.

Implicit in the argument of this article is the need for the state to play an active role in establishing a new industrial relations system. The role of "state as midwife" is a difficult

* *The frequent union lament about employer inability to present a united front is proof, if it is still needed, that we are well along the corporatist route.*

one. Neither unions nor employers want the state to interfere in their day-to-day relationships.

But it is hard to imagine a new framework emerging from bilateral efforts alone. Take centralised bargaining. Although union and employer leaders are engaged in talks on the issue, it is unlikely that a centralised framework will emerge without state encouragement. However, an approach in which the state simply centralises (bargaining, unions, federations, employer bodies etc), would also be a disaster.

While it is doubtful that the present voluntaristic system can throw up the conditions, overcome the vested interests, and develop the vision for an alternative paradigm, this need not mean extending coverage and changing the system by decree. Both parties are powerful enough to resist major changes they do not like. And in any event, the support of both labour and capital are required for any new system to work.

Within the corporatist paradigm, the state must play a "neutral" role towards capital and labour – in the limited sense that, according to Slomp, "a lasting state bias in favor of one of these parties reduces the willingness of the other party to participate." But a "neutral" role is not the same as an inactive one: it does not exclude light-handed state intervention which does not compromise its future credibility.

The ANC is, contrary to some conventional wisdoms, well-placed to intervene in this way. Its closeness to the union movement, through its alliance with COSATU, is balanced by its obvious willingness to accommodate the needs of capital. But the ANC has no meaningful industrial relations policy, leaving such matters to its trade union allies.

State-induced restructuring requires careful consideration. There are many ways of promoting a peaceful industrial order without pretending that a conflict-free system can exist. Indeed, the best approach may be to build on existing traditions, recognising that unions and capital are autonomous and independently organised, and that adversarialism is deeply-rooted. This approach also has a better record of achieving inclusive deals and avoiding narrow consensual, protectionist bargains.

Conclusion

The argument presented is, in many ways, pessimistic. It argues that the trend towards corporatism, tripartism and concertation are well-underway, but will be severely handicapped if the present framework is maintained. Grafting a corporatist head onto a passive, voluntarist IR system is unlikely to deliver either socio-economic benefits or industrial peace.

This article suggests that existing interests and practices may be too entrenched to make the shift needed to create a new industrial relations framework.

The costs of failure will be high, especially for the unions. There are already critics on either side. Lurking in the background are those who believe the union movement's power should be curbed, not extended. They have little confidence in the corporatist trend. Also in the wings are unionists who see little point in co-operating with capital, reject the possibility of finding common ground, and who believe an adversarial resistance approach is the best option for unions and workers.

What if the parties are unable to agree on the major trade-offs needed for development? Or if they can agree, what if they cannot deliver their constituencies? Bickering and protectionist approaches must surely follow with outsiders blaming the corporatist institutions and the consultative/tripartite approach for not delivering solutions. Either unions become marginalised and slide gradually into irrelevance, or proponents of authoritarian anti-labour solutions become increasingly vocal. In such a context the union movement can only lose.

Having an appropriate industrial relations framework is no guarantee of success. But without one, failure is almost certain.

References

The references to Slomp and Treu are from a book edited by Tiziano Treu – *Participation in public policy-making* (1992). ☆