

BOOK REVIEW

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Shelley Marshall, Richard Mitchell and Ian Ramsay (eds), Varieties of Capitalism, Corporate Governance and Employees (Melbourne University Press, 2008) 313 pp

This monograph contains a number of papers from a workshop held at the University of Melbourne in December 2006. The preface by the authors suggests that the volume ‘makes an important contribution to the international debate on varieties of capitalism and national styles of regulation from an Australian perspective’. The approach is multi disciplinary in that it draws on the work of labour law scholars, as well as human resource management academics and comparative employment relations academics. The leading article by the editors explains that the contributions are designed to consider the question as to whether the corporate governance system and the industrial relations system in Australia is moving the economic system closer to that of the United States and the United Kingdom. The initial section of the book is concerned with the place of Australia in the theory generally known as Varieties of Capitalism. That theory seeks to place economic systems within broad groups largely on the basis of the corporate governance systems and the industrial relations approach. Much of the writing in this collection is concerned with the place of Australia in this taxonomy. It seems that most conclude that the Australian position is somewhat ambivalent as to whether it can be fitted within what must be recognised as very broad categories of how the corporate and industrial framework fit together.

The articles are said by the editors to bring together different perspectives but intersect in terms of the impact of corporate governance on employment systems. The editors in their introduction suggest that the study of both corporate law and corporate governance have developed separately to the development of labour law and comparative employment relations. They argue that the analyses presented in the book bring the two broad areas together. Whilst that claim may be correct in one sense, this reviewer is unsure how much it can be said that the contributions bring corporate law and governance perspectives to the matters being discussed. There are important contributions in the area of director perceptions in Chapter 7 and there are other matters covered such as the role of institutional investors in influencing Corporate Social

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Responsibility. However, as a scholar in the area of corporate law and corporate governance, one cannot help but be disappointed with the level of analysis from a corporate law or corporate governance perspective in most of the chapters. For the greater part of the work, these papers represent analyses by academics from the perspective of labour law and employment relations. Certainly the analyses involve considering corporate governance issues in the widest sense but the approach is almost entirely from the labour or employment perspective. This is not to suggest that these are not worthwhile or of use, but rather to point out that a corporate lawyer looking for some broader insight into the corporate law framework is likely to be disappointed. This is not a book about corporate law or for the most part specifically about law at all. It is much more sociological in nature with a broad disciplinary approach.

The book is divided into three distinct parts. The first deals with theoretical approaches to the issue of employment relations and corporate management. These are largely based upon the Varieties of Capitalism framework. The first three articles in the book are described as being theoretical and each looks closely at the varieties of capitalism approach. The first by Wailes, Kitay and Lansbury review the theory and its critics and explores the impact of globalisation on automobile assembly and banking. Their conclusion is that the different institutional arrangements across countries cause differential outcomes in different countries but they are critical of the theory arguing it does not provide a framework for understanding change. The authors introduce a third variety of capitalism being Asian Market Economies. They also focus on variation within the varieties which may suggest some inadequacy in the theory.

In a second paper in this part of the book Gough and Ogden look at the potential for cooperation between management and unions about workplace performance in what are termed liberal market economies in the varieties of capital approach. They also recognise the limits of a theory that there are significant variations across countries placed in this category. The authors speak of contrast between systems that involve boxing between the parties as opposed to those that engage in dancing.

The third article in this section by Jones and Mitchell looks at the proposition that the historical origin of the countries' laws will shape how markets are regulated. In particular here the examination is in terms of the labour market. Their conclusion is that in recent years Australia has moved closer to the market category in the variety of capitalism approach. Second they conclude that Australia has never had the partnership style that is found in some European countries. Specifically in terms of the industrial relations system their conclusion is that it is characterised by adversarialism in Australia. The authors conclude that employment security measures, training, pay systems and wage dispersion all fall more within the market outsider systems than the insider models of industrial relations. In terms of work relations, the authors conclude firmly that Australia is in the market / outsider category. The evidence for this is the loosening of the job classifications that once existed with the more open job descriptions and responsibilities apparent in so many areas of the workforce. The ultimate conclusion of these authors in what is one of the more comprehensive articles in this section of the book is that the legal origin of the labour law in Australia is less influential than social, political and economic factors. The reality of the employees' position is that it is much closer to those of the market and outsider systems found in the United States and the United Kingdom. This is despite the clear differences in legal and institutional factors in

Australia as compared other countries such as the United States and the United Kingdom.

The final article in this section of the book by Mitchell and O'Donnell examines the issue of whether there is a genuine movement towards cooperation in Australian labour law systems. This cooperative approach is often talked about in terms of a partnership and the authors look at this in the context of recent British history. They identify two contextual factors that led to the promotion of partnership there. The first is the rise of human resource management in what they term a 'soft' form which encouraged participation by employees in workplace decision making. The other is the decline in the membership of trade unions and the trade union adoption of more cooperative approaches. On the other hand their analysis of the Australian position concludes that Australian labour law is characterised by the restoration of managerial prerogative and the de-legitimisation of organised labour opposing any objectives that business propounds. The authors argue that the fact that organised labour has been silenced does not amount to cooperation but rather it is acquiescence to management power. As they state that 'in Australia cooperation is secured, if not voluntary, by default'.²

The second part of the book is devoted to empirical studies. In this part there is considerable variety in the issues covered. The first of the articles, by Westcott, studies the issue of corporate control at the company Tooth and Co which was a large New South Wales brewer and retailer of beer. This article sits somewhat awkwardly with the rest of the book in my view in that it is historical in nature as well as being focussed on the structure of the company rather than the labour force as such which is so much the theme of the other work here. However it is able to draw some conclusions for the management labour link. In particular the conclusion drawn is that the study shows that where market conditions are more certain, management can be 'more accommodating'³ to the interests of the workforce. The author suggests that the company was able to prosper at a time when there was resistance by the workforce to managerial prerogative. The author makes the point about the power of management and recognises a degree of autonomy as regards owners. Surprisingly there appears to be no reference to the scholarship of corporate law theorists such as Bainbridge⁴ or Blair and Stout⁵ whose views would seem to fit well with what the author concludes. This type of gap is what suggests that the book will be of less interest to those whose primary focus is corporate law.

The following article in this part is a report on the detailed study by Jones, Marshall, Mitchell and Ramsay. The article describes a survey undertaken of company directors regarding their attitudes to prioritisation of shareholders' interests. This article will be of most interest to corporate law scholars if they have not already seen it elsewhere. The article commences by noting the alleged rise of shareholder primacy as a guiding principle in corporate governance as well as the recognition of a certain type of

² R Mitchell and A O'Donnell, 'What is Labour Law Doing About "Partnership at Work"? British and Australian Developments Compared' in S Marshall, R Mitchell and I Ramsey (eds), *Varieties of Capitalism, Corporate Governance and Employees* (2008) 95, 121.

³ M Westcott, 'The Market for Corporate Control at Tooth and Co' in S Marshall, R Mitchell and I Ramsey (eds), *Varieties of Capitalism, Corporate Governance and Employees* (2008) 133, 153.

⁴ S Bainbridge, 'Director Primacy: The Means and Ends of Corporate Governance' (2002-3) *Northwestern University Law Review* 547.

⁵ M Blair and L Stout, 'A Team Production Theory of Corporate Law' (1999) 85 *Virginia Law Review* 247.

capitalism which promotes a market based production system. The article suggests that the shareholder primacy view seems to have emerged from the idea that directors 'are essentially agents for the shareholders'.⁶ The survey results however lead the authors to conclude that directors do not see short term returns to shareholders as a priority. Shareholders were seen as perhaps the most important stakeholders. The survey did not seem to lead to any firm conclusions about how the importance of shareholders is taken into account in decision making. The authors conclude that the shareholder primacy ideal is a broad outlook but the strategic decision making will often prioritise other matters such as employee morale and job security. The article also contributes to the debate in the book over the position of Australia in the market outsider groups on the scale of varieties of capitalism. The conclusion which one cannot help but agree with is that the findings from the survey 'raise some doubts about the validity of trying to generalise in these sorts of matters on such a broad national basis'.⁷ The final conclusion drawn by the authors is that the directors clearly understand that they are under no direct legal obligation to pursue shareholder primacy. This article is clearly of significance in terms of corporate law in that it takes perhaps the most influential of corporate governance theories and examines it in the light of director attitudes. One disappointing feature of the survey and the analysis is the apparent lack of recognition of the possible gap between how directors explain their behaviour and the actual decisions they make. That is, there may well be an element of social desirability response bias in the way that directors respond to this type of a survey. This factor does not seem to have been addressed by the authors in their article.

In contrast the next article by Jones and Marshall does try to unpack the responses by directors to a survey of their concept of partnership between the corporation and their employees. The authors acknowledge that the sample size was relatively small but they did seek to measure the extent to which the concept of a partnership with employees resonated with directors. The conclusion was that the idea had a great deal of support (77%) and that the directors believed that the employees and the company had similar interests. The support for a partnership though did not correspond with a desire to share benefits with employees thus it may be in the authors' view more a case of cooperation rather than partnership.

The third and final section of the book looks at the regulatory approaches and corporate social responsibility. In this area the focus is on whether the emphasis on corporate social responsibility has led to a change in attitude towards or even a better outcome for employees. The first article by Lewer, Burgess and Waring, examines the question of whether socially responsible investment strategies might influence employment relations. The authors surveyed the funds that use socially responsible investment strategies but the interview data did not reveal any significant influence in relation to managing employment relations. The reasons were put down to its relatively small scale and the broad range of matters that such investments are concerned with. The authors conclude that the funds do still value strong financial returns and that this is sometimes preferred to principle. The survey did reveal some isolated instances of influence in the area of employment relations but the authors urge a more widely based effort by such funds to spread their influence in capital markets. The second paper in this part of the

⁶ M Jones et al, 'Corporate Governance, Shareholder Primacy and the Interests of Employees' in S Marshall, R Mitchell and I Ramsey (eds), *Varieties of Capitalism, Corporate Governance and Employees* (2008) 158, 159.

⁷ Ibid 183.

book by Anderson, Marshall and Ramsay looks at whether institutional investors seek to influence human resource practices in the companies that they invest in. This is another of the chapters that would be of direct interest to a scholar in corporate law as the influence of institutional investors has been the subject of much debate in the area of corporate governance. The conclusion reached is that the efforts in this area have been only of very recent origin. The influence is somewhat indirect with some aspects appearing as part of ranking of companies. The final article in the book looks at the so called 'light touch' approaches to labour regulation. The article by Howe looks at the Victorian government approach in what is known as the Partners at Work program. Not unsurprisingly the author concludes that the light touch requires more weight to be effective against other forces in the economy that are essentially pulling in the other direction.

This book has drawn together a variety of scholars some using different paradigms to look at the issue of employee relations in its broadest sense. Whilst the outcome is a text of interest to those in that area it may be that does not extend more broadly to those with more general interests in corporate law. The result is a book less of general interest but recommended for those who wish to place the approach to employee relations and corporate management in Australia in a broad social, political and economic context.