

WORKING UNDER DIFFERENT RULES. Edited by Richard B. Freeman. Russell Sage Foundation, 1994. Pp. 261. (\$14.95).

The ability of Canadian firms to compete internationally has been a topic of much speculation and concern in the past few years, especially given the North American Free Trade Agreement and the likelihood of further relaxation of international trade barriers. Although many commentators refer to the legal and economic structures in other countries for potential solutions to what ails the Canadian and American economies, to date little research has been undertaken to determine if there are specific lessons from the labour law regimes and economic and industrial policies of other countries for North America. The publication of *Working Under Different Rules* is a response to this need. The book is a collection of papers sponsored by the National Bureau of Economic Research in the United States and edited by Harvard economist Richard Freeman. It compares American work rules with those in Canada, Europe and several Pacific Rim countries, particularly Japan. Although the focus of the research is the difficulties encountered in the United States, Canadians will also find the work of interest both because Canada has suffered many of the same problems as the United States, and because there are numerous direct and indirect comparisons between the two countries which are of benefit. Perhaps the collection's greatest value is the attempt to explicate concepts that have enjoyed a popular and broad usage in North America without a detailed understanding or interrogation: terms such as social protection, economic flexibility, productivity and efficiency.

The research in *Working Under Different Rules* is focussed at the level of the firm. In general, legal regimes at the macro level are eschewed in favour of workplace structures which seek to bring the collective voice of workers into the firm. However, in terms of their audience, the authors operate on several levels. To the extent that readers will be firm owners and managers, the papers represent yet another attempt to persuade capital that worker input is important to productivity. For audience members who are trade unionists or union advocates, the book also attempts to resolve the role of unions within alternative workplace structures, and to address the potential problem of "union substitution", of which many trade unionists have and continue to be justifiably wary.

The comparison of Canadian and American industrial relations is found throughout the work, and specifically in a paper by David Card and Richard Freeman. It may surprise Canadians who believe that they are consistently ignored by their neighbour to the south that comparing Canadian and American industrial relations has been a focus of attention for American scholars for several years. The comparison is often used as part of an attempt to explain the rapid deunionization of the United States because there have been similar developments in both countries, such as structural changes in the composition of the labour force, a decline in the manufacturing sector and a rise in service industries, without such a dramatic effect on union density in Canada.¹

¹ See generally, N.M. Meltz, "Labor Movements in Canada and the United States" in T.A. Kochan, ed., *Challenges and Choices Facing American Labor* (Cambridge, Mass.: MIT Press, 1988) at 315-34.

One explanation for the divergence in the two countries is that there are differences in basic values, with Americans placing more importance on individual freedom and free enterprise and Canadians emphasizing collective organization and the role of the state.² The second leading theory, which forms the basis for much of the analysis in *Working Under Different Rules* is that the differences in labour laws in the two countries and the relatively stronger employer opposition to unions in the United States, which is permitted and fostered by the legal regime, are the main causes of lower union density in the United States.³ The "cultural" theory propounded by Lipset can be criticized because of its heavy reliance on public opinion poll data showing that public support for unions has declined over the past three decades. Data reported since his study contradicts the argument in the case of the United States by showing that public approval for trade unions has in fact improved, while at the same time union density has continued to decrease at an even more accelerated pace.⁴ In addition, Lipset does not take into account Canadian public opinion polls which show a similar decline in public support for unions since the late 1950s, to the point that it is as low as or even somewhat lower than in the United States, but without the rapid deunionization that has characterized American labour relations.⁵

The second view suggests that unionization varies according to factors that may be more subject to change, allowing for the conclusion that Canadian unionism may be more susceptible to erosion depending on the legal regime and business practices, and that American union density could rise if legal rules were changed to facilitate organization and deter strong employer opposition. Based on this framework, Freeman presents several studies that both confirm the theory through research and detail, and suggest changes in the rules which could respond to the critical issues that are identified: wage determination, training, worker representation, and protection through a social safety net. In a somewhat ironic twist, given the preoccupation of many legal academics with economic theorizing, this collection represents primarily a group of economists focusing on rulemaking as a solution to economic ailments.

In comparing wage and employment determination in the United States with other industrialized countries, the United States ranks low in the role played by institutions such as governments, unions and employer federations in determining outcomes, and high in the effect of market forces.⁶ The result has been greater wage inequality in the United States than in the other countries studied, including Canada, Japan and the major European countries. The case against wage inequality is not explicitly set out in the pieces that consider the matter, and it is important to emphasize the profound effect of wage inequality on the American economy. Rising wage inequalities among workers in the United States has been found to contribute to corporate realignments and changes from goods to service producing industries, since the latter sector has a lower level of

² S.M. Lipset, "Labor Unions in the Public Mind" in Lipset, ed., *Unions in Transition* (San Francisco: Institute for Contemporary Studies, 1986) at 287-322.

³ P.C. Weiler, *Governing the Workplace* (Cambridge, Mass.: Harvard University Press, 1990) and R.B. Freeman, "Contraction and Expansion: The Divergence of Private Sector and Public Sector Unionism in the U.S." (1988) 2 J. Econ. Persp. 63.

⁴ Weiler, *supra* note 3 at 106-07.

⁵ C. Riddell, "Commentary" in K. Newton, T. Schweitzer & J.P. Voyer, eds., *Perspective 2000* (Ottawa: Economic Council of Canada, 1990) at 198-202.

⁶ P. 52.

unionization.⁷ Capital is attracted to lower labour costs, and inequalities can lead to “whipsawing” of workers who wish to participate in the workforce and may be forced to underbid one another in order to secure this participation: this is the underside of the argument in favour of less regulation of the employment relationship. Wage inequality in the United States also affects productivity, since worker productivity cannot simply be technologically mandated but depends on motivation, and fewer than ten percent of American workers currently believe that increasing effort and thereby enhancing productivity would be personally beneficial rather than simply increasing the profits of their employer.⁸ Finally, even neoclassical economic theory recognizes that there is substantial evidence indicating the importance of “interdependent preferences”: workers can become unhappy and less productive if they do not feel fairly paid relative to other workers, let alone managers and owners.⁹

Among less market-oriented American labour researchers and theorists, the European example of greater institutional influence, especially in countries such as Sweden, has often been viewed as a desirable model which would benefit American workers and the economy as a whole. However, events of the past few years in Europe, including high unemployment, have highlighted several difficulties with the European model in a macroeconomic sense. As Freeman and Katz note in their paper on wage inequality:

Policies that limit market wage adjustments without directly addressing changed market conditions can prevent wage inequality from increasing, but they risk stagnant employment growth, persistent unemployment for young workers (as in France), and a shift of resources to an underground economy to avoid wage regulations (as in Italy).¹⁰

Still, the authors for the most part contend that at the level of the firm there is much to be gained from importing European industrial practices. What remains unanswered and largely unprobed in this collection, aside from advocating a balanced approach, is what rules are most beneficial at a macro level: what laws will have the most desirable economic consequences for workers and firms, and what is the best way to balance workers’ interests and market responsiveness in order to remedy inequality.

Of the policy prescriptions considered in the book, the clearest solution put forward in *Working Under Different Rules* is the institution of work councils. In a paper by Joel Rogers and Wolfgang Streck entitled “Workplace Representation Overseas”, the notion of work councils is explained and suggested as a potential model for American firms and workers. Work councils are defined as a “second channel” designed to give workers “a voice in the governance of the shop floor and the firm, and to facilitate communication and cooperation between management and labor on production-related matters, more or less free of direct distributive conflicts over wages.”¹¹ Work councils are described as having a separate status from trade unions, and the representatives are elected by workers at a workplace regardless of union membership and inclusive of supervisory and other

⁷ P.D. Linneman, M.L. Wachter & W.H. Carter, “Evaluating the Evidence on Union Employment and Wages” (1990) 44 Indus. & Lab. Rel. Rev. 34.

⁸ L. Thurow, *Dangerous Currents* (New York: Vintage Books, 1984) at 175 and Weiler, *supra* note 3 at 148-49.

⁹ Thurow, *ibid.* at 201-03.

¹⁰ P. 55.

¹¹ P. 97.

non-union employees. In Europe work councils are generally mandated by statute for a certain class of firms, and are consulted on the organization of production and, in some cases, may have formal co-determination in decision making.¹² The model is similar to the joint health and safety committees found in most provinces in Canada, which are used by the authors to illustrate the potential effectiveness of such a model in the North American labour law regime, and also the fact that Canadian unions do not report any significant union avoidance resulting from the venture.

For the work council model to be effective there obviously must be a level of trust between workers and the firm. Conscious of how scarce trust can be in workplace relationships, the authors argue that work councils must be formally institutionalized. Only by moving worker participation rights outside the discretion of the parties - and particularly the employer - can trust be allowed to grow. Moreover, Rogers and Streck recognize that legislation to prevent the use of self-interested and short-term actions that destroy trust is essential. Despite all the best intentions, employers are often unable to resist taking action which will maximize profits in the short term, even if at the same time they are undermining their relationship with their workforce and the firm's health in the long term. Rogers and Streck deal with this inclination directly, noting that the employers' fear that allowing participation rights will intrude on managerial prerogative and ultimately undermine the functioning of the firm has informed management's resistance to work councils. They make a convincing argument that the establishment of trust will improve information flow, develop and standardize a "best practice", and, as a general matter, improve efficiency.¹³

One likely impetus for the recommendation to consider an alternative workplace structure such as work councils is the fact that private sector and firm-specific restructuring as a result of fiscal pressures has had a significant impact on the structure of collective bargaining and on the role and influence of trade unions in organizational decision making.¹⁴ At the same time, unions will be concerned about whether work councils will replace rather than augment their presence. The concern about union substitution is important from the perspective of workers, because high densities of unionism are associated with higher wages, lower inequality of pay, more vacation time and related social benefits, and lower rates of poverty.¹⁵ As a general observation the authors note that the union substitution effect of work councils "seems small".¹⁶

It also needs to be realized that variants of work councils have been in use for several decades in North America. Known as Labour Management Committees or Quality Circles, the limited scope of many of these arrangements has been critiqued extensively, particularly in the case of workers who are not unionized, but also on the basis that the benefits of participation often do not translate into employment stability or workplace democratization and because of the concern that these schemes are designed to weaken

¹² P. 98.

¹³ Pp. 106-10.

¹⁴ P. Walsh & K. Wetzel, "Preparing for Privatization: Corporate Strategy and Industrial Relations in New Zealand's State-Owned Enterprises" (1993) 31 *Brit. J. Indus. Rel.* 57.

¹⁵ R.B. Freeman, "Canada in the World Labour Market to the Year 2000" in Newton, *supra* note 5, 187 at 191 and Freeman, *supra* note 3 at 85.

¹⁶ P. 148.

workers' attachment to their unions.¹⁷ However, in the context of a unionized workforce, work councils or Labour Management Committees which provide an opportunity for substantial involvement in the design and implementation of firm reforms might lead to gains for the workers and perhaps even for the unions.¹⁸

Concerns may remain that work councils pose a limit or control on the ability of trade unions to oppose managerial activity, often identified as crucial to effective representation of workers' interests. The difficulty with adopting this argument as a basis for refusing to participate in strategic and production-related decisions is that the importance of efficiency and productivity of firms is too important to working people to be left to owners and managers.¹⁹ In a specific way, the concern about the role of unions can be met by ensuring that representation on work councils is assigned to and decided by the unions, as opposed to direct solicitation or selection of employees by management. This is a change to the model described by Rogers and Streck, but it seems crucial to ensure that unions are not circumvented by managers who may seek to marginalize their presence, which in the North American workplace is a real concern for many unions and workers given the lower level of unionization as a starting point.

Finally, for Canadians there is a lesson in the American way of determining labour outcomes, which places even greater reliance on a decentralized labour market, with a correspondingly low social safety net.²⁰ The current examination of unemployment insurance, training, education and social programs in Canada has been focussed primarily on government debt, although the entire policy process is in the long run designed to improve our economy as a whole. However, if workers perceive that the social safety net has deteriorated, and that training and education are more expensive to obtain, then they are likely to respond by making it more difficult for firms to reduce their workforce. A more effective social safety net means less internal rigidity in the firm, which enhances productivity and is especially important given the globalization of capital.

The papers in *Working Under Different Rules* are effective because the authors understand the obvious arguments and objections which would be made to their research by business and labour and their proponents, and address these points in a clear and direct manner. As a guide to improving work organization and labour relations, the book manages to make several limited points which would be effective, and avoids the trap

¹⁷ See Y. Reshef, "Union Decline: A View From Canada" (1990) 11 J. Lab. Res. 25 (surveying 249 collective agreements in Alberta and finding that few Labour Management Committees were established to deal with specific items and none included strategic decisions); J. Rinehart, "Appropriating Workers' Knowledge: Quality Control Circles at a General Motors Plant" (1984) 14 Stud. in Pol. Econ. 75 (arguing that benefits to workers are restricted to psychological satisfaction of those who desire participation); and D. Wells, *Soft Sell: "Quality of Work Life" Programs and the Productivity Race* (Ottawa: The Canadian Centre for Policy Alternatives, 1986) (finding that the programs are primarily used to play workers in different plants off against each other and undermine cohesiveness within the union as a whole).

¹⁸ See generally, T.A. Kochan, H.C. Katz & R.B. McKersie, *The Transformation of American Industrial Relations* (New York: Basic Books, 1986) at 182-87 and W. Simon, "The Politics of 'Cooperation' at the Workplace" (1990) 1 Reconstruction 18.

¹⁹ See generally, K. Klare, "The Labour-Management Cooperation Debate: A Workplace Democracy Perspective" (1988) 23 Harv. C.R. - C.L.L. Rev. 39.

²⁰ P. 227.

of advocating the complete overhaul of the economic and labour relations systems, which would be politically and practically impossible. Importantly, the authors also refuse to simply produce a few nebulous platitudes about cooperation and the like, which could be culled from any newspaper editorial and would be of little value. By recognizing and accounting for the conflicting interests and views of firms and workers, and also their common concerns about competing internationally, *Working Under Different Rules* is able to recommend several thoughtful and practical alternatives which demand our further attention.

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