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**‘HAPPINESS AS AN OBJECTIVE  
OF LABOUR LAW’**

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**HAPPINESS AS AN OBJECTIVE OF LABOUR LAW**  
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**CONTENTS**

|   |    |
|---|----|
| INTRODUCTION .....  | 2  |
| Part One: Objectives of Labour Law .....  | 3  |
| Comparing the Objectives of Labour Law.....   | 4  |
| Defining Happiness at Work.....   | 5  |
| Happiness at Work: The Factors Approach .....   | 6  |
| Law's Role in Facilitating Happiness at Work and its Limits.....                                  | 8  |
| Part Two: Employee Representation and Happiness at Work: Influencing the Work<br>Environment..... | 9  |
| Case Study of German Work Councils.....   | 10 |
| Part Three: Implications for Other Jurisdictions.....   | 14 |
| Surveying the Jurisdictions .....   | 14 |
| CONCLUSION.....   | 18 |
| Appendix.....   | 19 |
| Bibliography .....  | 21 |

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## **Introduction**

Since the 1960s there has been a noticeable increase in the study of people's enjoyment at work. Much of this study engages with job characteristics including working hours, job intensification, task discretion, as well as job constraints such as stress, lack of control and work schedules. Additionally, some researchers have investigated the interaction between work and non-work (such as recreational activities and family life), while others have investigated the potential social and economic advantages resulting from happiness at work (World Database of Happiness).

While the idea of happiness at work has been recognised in other fields, there has been relatively little research into the relationship between labour law and happiness in leading law reviews. Perhaps this is because some lawyers tend to concentrate on technical rules and the formal rights and obligations of parties. As well, labour law has traditionally been seen as balancing the protection of employees' rights with efficiency goals. In taking this approach, labour lawyers have tended not to examine the role of the law in enhancing happiness in the workplace.

The purpose of my paper is to explore, in a preliminary way, how happiness at work might be fostered through labour law. My argument is that labour laws can be formulated to help create or enhance workplace conditions that will have the overall effect of increasing employees' enjoyment of their work. The article falls into three parts. In Part One, I examine how happiness might become a distinct objective of labour law, defining the meaning of happiness and reviewing research relevant to employees' enjoyment at work. This inquiry is a timely response to Canadian Professors' Langille and Macklem's observation that labour lawyers have often not articulated the basic account of their discipline, and to the renewed interest by scholars in the purposes of labour law (see, for example, Collins 2000, Mitchell and Murray 2002, Langille and Macklem 2007).

While articulating a possible objective of labour law is one thing, it is quite another to show how the happiness objective may be realised in the real world. Accordingly, in Part Two, I explore how German Works Councils provide one concrete method to implement this happiness objective. In Part Three, some of the implications of my argument will be considered for schemes of employee representation in Canada, the United States and Australia.

The value, then, of this paper's contribution to the discipline is to offer a new focus for labour law. My study of happiness at work also provides an alternative perspective on the debate about legal aspects of employee representation. Some might scoff at happiness as an objective of labour law. Yet happiness is now a well-established area of study in the social sciences. Drawing upon this research allows a reconsideration of labour law in more human terms and provides an opportunity to think again about how we might shape our workplace institutions into the future. The goal of happiness at work is also an important objective in its own right, not simply because it might further other objectives such as harmonious work relations, efficiency and protection of employee rights.

## Part One: Objectives of Labour Law

### Traditional Objectives of Labour Law<sup>1</sup>

We can learn much about labour law by considering its purposes (Mitchell and Murray 2002). The two dominant objectives of labour law are protection and economic regulation. In most Western countries, the traditional objective of labour law is to reduce the imbalance of power inherent in the employment relationship. Since the 1950s, this philosophy has been encapsulated in the well-known words of Kahn-Freund: 'The main object of labour law [is] to be a countervailing force to counteract the inequality of bargaining power which is inherent and must be inherent in the employment relationship' (Davies and Freedland 1983, p.18).

The legislative means chosen to pursue this objective are 'fair' employment contracts, minimum labour standards to guarantee acceptable limits of social welfare, and the permissibility of trade unions to counteract the greater power of employers. The extent of these measures has varied over time and in different countries (Creighton and Stewart 2006, p. 6; Creighton et al 1993, p.1).

The other main objective of labour law is economic regulation. This purpose sees labour law as a means to ensure economic growth and prosperity. Today, a dominant approach favours labour market regulation to enhance efficient market outcomes. The purpose is to promote flexible and productive work practices at the enterprise level (Creighton and Stewart 2000, p.7).

In this context, trade unions and industrial tribunals may play a role which either curtails or enhances efficiency in the workplace. Efficiency-based arguments can be used both to justify and criticise state intervention into labour markets, but historically this analysis has been used primarily to criticise state intervention that maintains employment conditions which have preserved the power balancing function (Collins 2000, p.3). The increasing dominance of the efficiency function challenges and often undermines the traditional, protective purpose of labour law. This is because the market analysis does not necessarily take into account the inequality of bargaining power between parties to the employment relationship. Rather, it uses the quite different criterion of economic efficiency. In this sense, power balancing and efficiency goals come into conflict.<sup>2</sup>

The efficiency approach has gained significant support in Anglo-Saxon countries over the past 30 years.<sup>3</sup> Conservative governments have advocated for individual employment arrangements over collective agreements or state imposed conditions and have sought to limit the power of trade

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<sup>1</sup> Some Parts of the paper draw on my earlier work, G Patmore, 'How Can We Be Happy at Work? Rethinking the Role of Law in the 21st Century' in Gollan, P. J. and Patmore, G. (2003) *Partnership at Work: The Challenge of Employee Democracy* (Labor Essays 2003) p 54.

<sup>2</sup> The nature of the conflict is further illustrated by some proponents of the extreme libertarian view, which Creighton and Stewart explain, hold a belief that the law should merely facilitate the individual transaction between the seller and purchaser of labour, without seeking to regulate the outcomes of that transaction. If individual workers are prepared to agree to being hired on apparently harsh or unfavourable conditions, this is not only unobjectionable, but indeed an indication of both their 'freedom of choice' and the operation of the 'forces of supply and demand' (Creighton and Stewart 2006, p.7). Libertarians have also criticised the actions of trade unions which play a vital role with regard to the power-balancing objective of labour law (Hayek 1960, pp.267 – 284, especially p.272). According to this view, the actions of trade unions are perceived to 'have a distorting effect on the operation of the market,' and their capacity 'to exert collective power through coordinated industrial action must be curtailed, if not entirely eliminated' (Creighton and Stewart 2006, p.8).

<sup>3</sup> This trend has been particularly evident in Australia, Britain and New Zealand.

unions and industrial tribunals (Creighton and Stewart 2006, p.10). The effect of some of their policies has been to remove the conditions necessary for the continued operation of the protective function of labour law. Conservative policies have heightened the tension between the protective and efficiency objectives of labour law.

### Comparing the Objectives of Labour Law

Apart from the two dominant goals, there are other important values to be taken into account in labour law. Our working lives are not just a calculus to minimize fear and to get the most out of our time and effort - there are other important aspects to our experience of work, such as contentment and enjoyment. Consideration should be given to how people can be happy with their work, through labour law.

Prior to elaborating further on the content of the happiness objective, it is useful to briefly compare these various objectives. There are various ways in which labour law's aims of efficiency, protection and - potentially - happiness may interact with each other. It is possible to identify connections between the various objectives. In fact, it is sometimes hard to separate out happiness from the other two purposes. Protection against unfair working conditions may reduce unhappiness in the workplace. Therefore, it could be argued that in order to achieve the objective of happiness, it is necessary to balance out efficiency with protection. Also economic efficiency can contribute to the generation of jobs and the reduction of unemployment. After all, the termination of employment is a recognised cause of distress (Argyle 1996, p.2, 28 – 30). One problem with these kinds of arguments is that happiness is seen as a derivative of the other two functions. There is not necessarily anything wrong with happiness being a byproduct of efficiency or protection. However, this form of analysis means that the objective of happiness is not considered in its own right. Considerations of happiness are often overlooked by proponents of the other two purposes, though sometimes they are dealt with indirectly.

Indeed, the concept of happiness does not figure directly in the protective function of labour law. The notion of job satisfaction is not specifically addressed by the approach of balancing the power of employers and employees. But the protective function to 'relieve employees from some of the consequences of their relative lack of power' (Creighton and Stewart 2000, p.5) certainly may contribute to the removal of conditions of employment which are harsh, cruel or unpleasant. If there is a decline in the influence of the protective function, we can expect to see a corresponding decline in the satisfaction of employees.

The economic efficiency objective of labour law addresses job satisfaction of employees more explicitly. Happiness enters the libertarian picture through the claim that if parties are left alone to pursue their own interests, this can produce satisfying results for everyone. State regulation is commonly regarded by libertarians as paternalistic, unnecessary and a hindrance to the promotion of happiness.

This argument is open to objection. Some proponents of the market mechanism openly acknowledge that employees may accept apparently harsh or unfavorable conditions (Creighton and Stewart 2006, p.7). Market transactions thus do not necessarily result in happiness.

The point of this comparison has been to highlight why happiness at work should be seen as a distinct objective of labour law. This is because the other two objectives do not adequately address the attainment of job satisfaction. By including the concept of happiness at work in our analysis, the potentially conflicting purposes of labour law can be made, in a sense,

commensurable. Happiness can be seen as a common standard which allows an assessment of the other objectives in terms of human experiences such as pleasure, suffering and gratification. In this way, the happiness objective challenges the view of efficiency and protection as the dominant objectives of labour law.

Nonetheless, the power balancing and efficiency objectives will remain important objectives of labour law. Both purposes have played a vital role in shaping and developing labour law. They will no doubt continue to be of enduring importance.

### Defining Happiness at Work

Turning to a consideration of the happiness objective of labour law, it is necessary to explain the meaning of happiness in more depth. Up until this point, the term has been used in a general way. Debates about the meaning of 'happiness' have been occurring for millennia. For much of this time happiness has largely been the province of philosophers and novelists (Veenhoven 1997, p.1). Only since the 1960s has happiness been studied by social scientists, and there has also been renewed interest in the topic by economists (Veenhoven 1997, pp.1–2; Layard 2005, p.ix; see also Bender and Heywood 2006, p.253).

Contemporary psychologists and utilitarian moral philosophers offer a definition of happiness that may be defined in two limited senses, to distinguish it from other denotations of the term<sup>4</sup>. First it has been used to denote life satisfaction, which is a subjective assessment of one's overall enjoyment of life. Bentham, a utilitarian philosopher, propounded this definition. Both Bentham and Mill equate happiness with 'pleasure, and the absence of pain' (Mill 1863, pp.54–5). This is not a purely selfish, hedonistic conception of happiness. Rather, modern sociological research shows that the opposite of the selfish hedonistic conception is true. For instance, happier people tend to be in close personal relationships, have satisfying jobs, and engage in community and volunteer groups (see Bagaric and McConvill 2005, pp.4, 16–17).

Second, happiness is used to denote domain satisfaction. Life may be divided into various domains, such as work, family and community. Each domain comes with its own form of satisfaction (Veenhoven 2000a, pp.14, 21–2). Happiness at work has an important impact on one's overall enjoyment of life. But other aspects of life (such as a person's family life) may also impact on one's enjoyment at work.

Although the utilitarian philosophy of happiness is concerned with the pleasurable life, there are other definitions in moral philosophy of happiness focusing on engagement and meaning (Page and Vella-Brodrick 2008b, p.7). Although the paper examines the subjective enjoyment of work, this does not mean that the paper will ignore engagement and meaning. Rather these will be assessed in terms of their contribution to one's sense of overall enjoyment of work. The paper will focus on job satisfaction, which usefully measures 'the extent of pleasure one gains from one's job' (Wood 2008, p.155). Like others I use job satisfaction as an equivalent term for happiness at work (see, for example, Argyle 1989).

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<sup>4</sup> It is important to recognise that happiness is a contested concept, with different meanings preferred by different theorists; and with such views shaped by the theorist's individual discipline. For example, there may be a contest over whether happiness is best viewed as meaning 'wellbeing', 'utility' or 'enjoyment of life'. Confusion may arise when these terms are used as synonyms, despite subtle differences of meaning. Hence the definition of these terms is important in defining the field of study examined in this paper. For a discussion of the meaning of wellbeing, see Wood 2008, p.155; see also Warr 1990; 1992; 2002; 2007, pp.57–60; Page and Vella-Broderick 2008a, pp.1– 8 and Veenhoven 2000a, p.6). For a discussion of the meaning of utility see McLean and McMillan 2003, Calhoun 2002, Veenhoven 2000a, p.7, pp.12–13.

Thus an examination of the subjective enjoyment of work has much to commend it, since it not only refers to a popular meaning of happiness but is also one which corresponds to an area of social science research. While wellbeing might be a more traditional way of conceiving happiness at work, this concept encompasses a broader field of study than that covered in this paper. It is the focus on subjective enjoyment which distinguishes this paper from other important analyses of work in terms of advancing employee welfare in a legal context.

### Happiness at Work: The Factors Approach

Turning to a consideration of happiness at work, it is necessary to explain this term in more depth. Consideration will be given to its meaning by examining research on job satisfaction, since it is of obvious relevance to the employment relationship – which is the subject of regulation of labour law.

An important consideration is to ask whether the formal legal system can advance such a subjective state as happiness. Can the law ensure an improvement in job satisfaction? As satisfaction is inherently subjective, it is possible to argue that any improvement in job satisfaction would be impossible to rigorously measure.

However contrary to this argument, it is now possible to gauge people's subjective sense of satisfaction through contemporary survey techniques. Since the 1960s there has been a considerable body of social science research into what makes people happy in different contexts, including employment.<sup>5</sup> What the data shows is that happiness is not simply a matter of personal taste or arbitrary choice. Rather, it is possible to identify salient factors that are conducive to happiness. The happiness of a group can thus be measured and assessed against these factors.

This paper focuses on some factors which research has found to have a significant effect upon job satisfaction. Job satisfaction has been found to vary according to objective job characteristics or features (Green and Tsitsianis 2004, p.1). Some of the factors conducive to satisfaction seem obvious. Jobs that are by their nature, challenging, meaningful, varied and/or complex, are intrinsically rewarding.<sup>6</sup> Factors contributing to a decline in job satisfaction can also be identified. The following features are determinants of or correlate with job dissatisfaction:

- Family conflict over working hours;<sup>7</sup>
- Working too few or too many hours;<sup>8</sup>
- An intensification of work effort during actual work time;<sup>9</sup>
- Job insecurity experienced as 'the perceived risk of losing one's job coupled with fears of its financial and physiological consequences';<sup>10</sup>

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<sup>5</sup> See discussion below pp.10–13.

<sup>6</sup> Loscocco and Roschelle 1991, p.192; Barling et al 2003, pp.276, 281.

<sup>7</sup> Spector 1997, p. 40; Hymen et al 2003, pp. 222, 237; Cousins and Tang 2004, p. 533; Greenhaus and Powell 2006, pp.72-73; Ford et al 2007, pp.58-59, 60, 67; Warr 1987, pp.74-75, Nolan 2002, pp. 123, 136.

<sup>8</sup> Green and Tsitsianis 2004, pp.2, 3, 14–16; Warr 1987, p.139; Boheim and Taylor 2003, pp.124-125; Green 2006, pp.46-47.

<sup>9</sup> Green 2006, pp.164-165, 18, 174; Warr 1987, pp.139, 143-144; Green 2004, pp.616, 622; Wichert 2002, p.97.

<sup>10</sup> Green and Tsitsianis 2004, p.18; Green 2006, pp.18, 125-127; Green 2007, p.544; Wichert 2002, pp.93-4, 97; Roberts 2007, p.340; Nolen et al 2000, p.203, Burchell 2002, pp.61-62, Layard 2005, p.68.



- Declining discretion over the performance of work tasks in relation to ‘what tasks are done, how they are done, how hard to work at those tasks, and the quality standards to which they are performed’.<sup>11</sup>

A correlative link exists between job satisfaction and physical and mental health at work (Spector 1997, p.66; Pressman and Cohen 2005, pp.925, 963; Green 2006, p.153; Wichert 2002, p.97; Warr 1987, p.143). Being unhappy at work can lead to emotional states of anxiety and depression as well as physical symptoms (Spector 1997, p.66; Warr 1987, p.143; Wischert 2002, pp.97, 99; Johnson et al 1998, pp.404–5).

Contrary to economic wisdom, research shows that money can’t always buy happiness. There does not appear to be a simple, consistently increasing or decreasing relationship between pay and job satisfaction (Green 2006, pp.111, 165; Clark and Oswald 1996, pp.360, 366 and 368; Hamermesh 2001, p.3; Heywood and Wei 2006; Layard 2005, pp.41-42, 230). Once a person attains a certain level of income, additional money in their pay packet will not always make them happier (Veenhoven 1997, pp.12, 15; Hamermesh 2001, p.3; Green 2006, pp.111, 165; Layard 2005, p.230). Rather, what becomes more important are the characteristics of the work they are performing. Thus the satisfaction attained through work can be more important than its financial remuneration (Layard 2005, pp.67-68).<sup>12</sup>

In Western societies, it seems that the ability to control one’s environment is a common unifying factor across many different determinants of happiness (Veenhoven 1997, p.16). More specifically, participation in workplace decision-making, as a means of promoting employee involvement, may have a positive effect on job satisfaction (Green and Tsitsianis 2004 p.17; World Data Base of Happiness).

Some studies have focused on the relationship between job satisfaction and unionism, but a positive correlation has not yet been found (Wood 2008, p.154; Bender, Donohue and Heywood 2005, p.481; Bryson et al 2004, p.452). People may become dissatisfied if they can articulate the causes of their tensions, and suggest solutions, which are nonetheless resisted by management.

Non–union voice mechanisms, such as joint employee-management committees, may contribute to enhancing job satisfaction (Wood 2008, p.154). Thus the research provides useful measures of job satisfaction and shows that these measures go beyond narrow conceptions of job quality. Happiness at work must be assessed in a broad way, taking into account a wide range of factors affecting one’s working life.

While the research has generated a variety of findings and a large literature, many studies are reasonably consistent irrespective of discipline (Wood 2008, p.154; Gazioglu and Tansel 2006; O’Brien and Dowling 1981; Bender, Donohue and Heywood 2005, p.481).

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<sup>11</sup> Green and Tsitsianis 2004, pp.2, 18; Green 2006, pp.164-165, 174, 94, 97; Green 2008, pp.2, 9; Harley 2001, p.733; Gallie et al 2004, p.244, Layard 2005, p.68.

<sup>12</sup> In addition, job satisfaction, pay and working conditions typically appear to be substantively affected by the norms or expectations operating in the job market. Studies differ on precisely how these norms are generated (Green and Tsitsianis 2004, p.5). One view is that ‘workers express satisfaction to the extent that their current income, job prospects, and working conditions are at least as good as expected’ (Green and Tsitsianis 2004, p.5). Job satisfaction among groups of workers also varies because there may be different standards within groups. For instance, some studies show that men and women undertaking the same kinds of jobs may have differing levels of satisfaction (Green and Tsitsianis 2003, p.5; Clark 1997). One argument for explaining this discrepancy is that these standards are gendered (Clerk 1997; Green and Tsitsianis 2004, p.7).

Job satisfaction is studied by economists, industrial relations scholars and psychologists. However there are some important differences in approach between the disciplines, which will be briefly commented upon to explain the philosophy adopted by this paper.

Some economists see job satisfaction as a more ‘comprehensive measure of workers’ utility’ than merely using earnings (Bender, Donohue and Heywood 2005, p.479) Job dissatisfaction is seen as a means to an end: as a predictor of important economic behaviour, such as quitting (Wood 2008, p.153).<sup>13</sup>

Industrial relations scholars take a similar approach to economists, but differ in their focus on how job satisfaction bears upon relations between employees, unions and management. For instance job dissatisfaction may be a predictor of unionising (see Gollan 2006, p.283; Timur 2005; Taras and Copping 1998, p.35), or conversely job satisfaction may be a predictor of good work relations (Morehead et al 1997).

Psychologists who study organisational behaviour adopt a similar approach to economists, with job satisfaction viewed as a means to achieving economic ends (Wood 2008, pp.153–4). Other psychologists, however, believe ‘that the content of work is crucial... [t]hus, they focus on the degree of discretion employees have and the demands placed upon them’ (Wood 2008, p.154). By contrast economists commonly don’t include questions about job characteristics in their studies but instead focus on questions about overall job satisfaction. This aims to produce a single measure of overall enjoyment (Wood 2008, p.154; Hamermesh 2001, p.2 cited in Bender, Donohue and Heywood 2005, p.481). Other psychologists who focus on the content of work see wellbeing, happiness and job satisfaction as ends in themselves (Wood 2008, p.154). This approach mirrors utilitarian philosophers who argue that happiness is the most important goal in life and therefore the standard by which to judge the rightness or wrongness of actions (Norman 2008). Such psychologists are interested in the workplace factors that create a happy worker.

Thus these different approaches demonstrate how the study of job satisfaction is undertaken for different purposes, and often not for the purpose of promoting employee enjoyment for its own sake. Yet research into job satisfaction is important to employees themselves as well as for understanding their enjoyment of work. Feeling happy at work is inherently important since work occupies a large part of one’s life. Most of us know how being happy or unhappy at work can affect our overall enjoyment of our time there. Job satisfaction has demonstrable benefits for employers too: happier employees tend to take less sick leave; have lower turnover rates; are less often absent and are more committed to their firm (Sonhee 2002; Argyle 1989). The approach adopted by this paper focuses on happiness at work because of the importance of happiness to employees themselves, drawing on the approach of modern psychology and utilitarian philosophy. Thus this paper explores how happiness might be made a distinct purpose of labour law. What then is the scope for enhancing people’s enjoyment at work through labour law? Does the law have a role to play in realising potential benefits of happiness to employees?

### Law’s Role in Facilitating Happiness at Work and its Limits

In considering how labour law could promote and enhance happiness in the employment relationship, it is necessary to examine labour law’s limitations and capabilities.

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<sup>13</sup> While it might have been thought that increased job satisfaction increases work performance, studies have found that the correlation between these variables is rather modest (Spector 1997, pp.55–6; Wood 2008, p.153 citing Clark and Oswald 1996; Gazioglu and Tansel 2006, p.1163; Green 2006 p.152).

Labour law is limited in its practical application. For instance, it would be impractical to have an individual right to absolute personal happiness enshrined in such laws, with a right to legal recourse if such an impossibly-broad condition was not met.

As well, labour laws cannot mandate all necessary or possible conditions for happiness, as in a market economy such conditions will either partly or wholly depend on prevailing economic forces. For instance, not all workers can be employed as professionals or managers, groups which have been found empirically to be the most satisfied groups of employees (Veenhoven 1997, p.15). It is a given that not all jobs are, or can be, satisfying, exciting to perform and highly paid.

Yet even while acknowledging such limitations it is conceivable that labour laws can be formulated to help create or enhance workplace conditions (factors) that will have the overall effect of increasing job and life satisfaction. The key here is to recognise the existence of some workplace conditions that can result in an increase in happiness for the overwhelming majority of workers in that workplace. Given this, it is feasible to promote such happiness through legal means, via a concentration on formulating general rules which address key determinants of increased employee happiness.

Some of these key determinants which could be usefully subject to broad legal regulation would include minimum agreed working conditions and an employee right of participation in workplace decisions. Such participatory involvement ensures a workplace structure that is responsive to employees' subjective needs. While such regulation cannot guarantee the utmost personal happiness of each individual employee (because expectations and outcomes vary with individual circumstances), such general laws could establish conditions that lead to a general increase in workplace happiness.

Having explored how happiness can become an objective of labour law, it is now useful to examine methods by which this purpose objective could be practically attained.

## **Part Two: Employee Representation and Happiness at Work: Influencing the Work Environment**

An emphasis on happiness, in concrete terms, would justify schemes of employee participation. One particularly promising form of employee participation is the Works Council. Works Councils are prevalent in Europe and function to give employees general rights of representation and consultation. Such bodies have been established through legislation. A study of this legislation therefore provides an opportunity to examine how this legal framework may or may not enhance job satisfaction. In addition there is a useful large scale empirical study, providing data about the operation of Works Councils in Germany. This empirical data allows an assessment of the practical day-to-day operation of Works Councils in addressing issues of job satisfaction.

Works Councils have been the subject of much research, which, among other things, has highlighted both the achievements and limitations of such Councils in promoting productivity and flexibility. But the topic considered here is more narrowly focused on examining whether the legal regulation of Works Councils could promote employee enjoyment at work. As Wood comments, '[s]ignificantly, research on job satisfaction has not expanded to include the increasingly salient non-union voice mechanisms in the way that research on the issue of voice and its link to performance has' (Wood 2008, p.154; see also Bryson et al., 2004; Green 2006,

pp.98–9; Warr 2007, p.113). Nonetheless, the case study of Works Councils provides evidence of the promotion of job satisfaction through non-union voice.<sup>14</sup>

### Case Study of German Works Councils

Works Councils have operated in Germany for over 86 years (Mueller-Jentsch 2003, p.44) and provide employees with processes of information sharing, consultation and discussion (Dribbusch 2003). Employees may be entitled both to vote in direct elections to determine membership of Works Councils<sup>15</sup> and to stand for election.<sup>16</sup> Once elected, Works Councils must liaise on a regular basis with management.<sup>17</sup> They must be consulted by management over important workplace decisions, such as the introduction of new technology, privacy issues, mergers and redundancies.

Works Councils are now well-established workplace institutions and are widely accepted in principle by employees, employers and government (Mueller-Jentsch 2003, p.44; Dribbusch 2003). In 2002 it was estimated that Works Councils in the private sector covered 48 per cent of all German employees, and their equivalent in the public sector, Staff Councils,<sup>18</sup> covered 93 per cent of all employees in that sector.<sup>19</sup>

For the purposes of this paper the critical question is whether the German Works Council system is capable of promoting happiness at work. In answering this question, my research reveals there are numerous ways in which the German Works Council laws promote job satisfaction.

Firstly, Works Councils give employees a legal means of influencing their environment (which is a key determinant of employee happiness). For instance, German Works Councils have significant rights prescribed by law. There are four underlying rights or entitlements. These include entitlements to:

1. Information (such as on the topic of the future development of the firm);<sup>20</sup>
2. Consultation prior to important managerial decisions (such as on redundancies);<sup>21</sup>
3. Co-determination (consent) on significant changes to employment conditions (such as hours of work, payment methods, and safety and health issues);<sup>22</sup>

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<sup>14</sup> Unlike the topic examined in the text, the study of the economic effectiveness of Works Councils has been given appreciable attention in the literature. See, for instance, Kirsten Wever who neatly considers the potential economic ramifications of unilateral managerial decision making in the United States compared with negotiated decision making with Works Councils in Germany. Turning from Wever's potentialities to the actualities, the theoretical research and empirical studies in Germany indicate that the effects of Works Councils on productivity are generally positive even though some commentators are skeptical about the extent of their effectiveness. For theoretical studies see Freeman and Lazear 1994, Rogers and Streeck 1994; for empirical research in respect of productivity see Addison et al 2001; Hübler and Jirjahn 2001 and Frisk 2004; for profitability see Hübler and Jirjahn 2001; Dilger 2002 and contrast Addison et al 2001.

<sup>15</sup> Betriebsverfassungsgesetz 1972, Works Constitution Act, Germany, 'WCAG', sections 7 and 14.

<sup>16</sup> WCAG, sections 1, 8.

<sup>17</sup> WCAG, section 74(1).

<sup>18</sup> The WCAG applies to private companies; for the public sector the equivalent of the Works Council is the staff council (Personalrat) found in the Federal Staff Representation Act (Bundespersönalvertretungsgesetz). The following comments in the text concentrate on Works Councils which operate in the private sector because this represents the largest part of the German workforce.

<sup>19</sup> Figures from BA's Institute for Employment Research (Institut für Arbeits und Berufsforschung IAB) quoted in Dribbusch 2003.

<sup>20</sup> WCAG sections 80(2), 89(2),(5), 90(1), 92(1), 99(1), 105, 106(2), 110, 111; cf s 79.

<sup>21</sup> WCAG sections 90(2), 92(1), 97, 102(1), 106(1).

4. Submission of proposals for the consideration of management (especially relating to labour policy).<sup>23</sup>

Through the operation of these rights, Works Councils are endowed with the power to influence decisions made at the work place. One must be mindful of the fact that merely having a legal right is one thing, while how that right is actually exercised is another. Evidence from Germany in the form of 'the WSI Works Council Survey 2005' (WSI Works Council Survey 2005; see also Schaefer 2005), as well as German court processes and decisions, indicates that Works Councils do exercise an appreciable influence over workplace decisions.<sup>24</sup>

However, it is important to note the subject matter over which Works Councils can exert influence is limited by the presence of trade unions and collective bargaining. In Germany, Works Councils do not replace union schemes of collective bargaining at the sectoral level. Rather they operate at the company level in a complementary way with trade unions. Union sector agreements deal with wages and some key working conditions (WCAG sections 77, para 3.87, para 1). Given that control over one's environment correlates with happiness, there is much potential for Works Councils to enhance job satisfaction.

Secondly, the purpose of Works Councils gives us a clue to their happiness function. The purpose of these bodies has commonly been understood as being to promote greater efficiency<sup>25</sup> and to give employees a say in decisions affecting them.<sup>26</sup> The promotion of job satisfaction has not as yet been officially recognised as an aim of Works Councils, and there is no legal right as such under German Works Council legislation. Instead, the legal right to consultation over many important workplace issues, issues which in turn affect happiness, indirectly enhances job satisfaction.

Thirdly, the areas which the legislation identifies as being within the purview of Works Councils suggests a legislative concern with job satisfaction. German Works Councils can therefore address issues which have a direct bearing on the enjoyment of work. But how do German Works Councils deliberations operate in practice? Do the Councils address issues related to job dissatisfaction? Little research has been found on the function of German Works Councils to enhance job satisfaction through discussion, but one important study provides useful evidence about Works Council deliberations.<sup>27</sup>

The issues discussed by such bodies were examined by the WSI survey of Works Councils in Germany, a large-scale survey of employee representatives completed in 2005 (WSI Works

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<sup>22</sup> WCAG sections 87, 91, 95(1), 97 (2), 98, 99, 102, 112.

<sup>23</sup> WCAG sections 80(2), 92(2), 92a, 104.

<sup>24</sup> Importantly Works Councils have the power to enforce their rights. They can informally defer meetings and withhold consent on certain specified issues. In Germany employers can formally refer disputes to an internal plant conciliation committee ('Einigungsstelle') (WCAG Sections 76 I, II, 76) and externally to the federal labour court ('Bundesarbeitsgericht') (WCAG 76(7) see [www.bundesarbeitsgericht.de](http://www.bundesarbeitsgericht.de)). Also Works Councils in Germany do not generally exercise a full veto right. However note the exceptional case where a Works Council may oppose appointment of representatives for industrial training (WCAG section 98(2)).

<sup>25</sup> For instance, see Streeck 1995.

<sup>26</sup> For instance, see Mueller-Jentsch 2003.

<sup>27</sup> The WSI survey is particularly useful because it provides extensive coverage of the operation of Works Councils. In addition it is a large scale survey providing representative views of Works Council elected officials.

Council Survey 2005).<sup>28</sup> The survey showed that Works Councils spent a lot of time talking about issues associated with job dissatisfaction. The survey asked employee representatives to identify the problem areas and developments<sup>29</sup> which most occupied their time (WSI Works Council Survey 2005).<sup>30</sup> These problem areas appear in Table 1 (Appendix) and are analysed in this section.

The most time-consuming issues were: health and safety; dealing with the personal wellbeing of employees; retraining, which is associated with the building of individual's personal capacity; and increases in pressure to perform.

Several significant and time-consuming problem areas mainly focused on job and income insecurity, addressing the need to minimise the vulnerability or dependence of employees. Job insecurity is an important determinant of job dissatisfaction. The problems included such issues as plant based pension plans, protection of employment, restructuring, semi-retirement, staff reductions, protection against dismissal and a redundancy program.

The introduction of new technology was also mentioned by Works Councils as a relatively important problem area. Even though introduction of new technology, restructuring, redundancy and co-ordination of interests may relate to other aspects of employment, they can also have an adverse impact on an individual's experience of their work.

The moderately important, time-consuming problem areas identified by Works Council representatives mainly related to the working days and times of employees. It is noteworthy that working too few or too many hours may adversely affect employees' enjoyment of their work. The problem areas discussed included the 'introduction of new working time models', the 'wishes of employees for flexible working time' and increases in Saturday, Sunday and holiday work.

Corporate governance problems, which dealt with organisational policy areas, occupied less of the Works Councils' time. These governance policy areas dealt with the level of support of personnel for the company and the Works Councils. It may be that Works Councils' powers are limited in respect of these corporate governance issues, even though the overall company atmosphere may have an effect on people's enjoyment of their work.

The survey also asked the representatives about the most important problems for Works Councils. Their answers show that job satisfaction issues were important for employee representatives. The top four issues were the introduction of new working time models, followed by pay policy, staff reduction and the protection of employment (WSI Works Council Survey 2005).

The data in relation to the most important issues and the most time-consuming problem areas indicate that personal and social problems occupy a very significant amount of Works Councils'

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<sup>28</sup> The WSI survey also dealt with Staff Councils which operate in the public sector but again my comments concentrate on Works Councils.

<sup>29</sup> Works Councils identified 60 areas that were relevant to the company and on average they chose 13 problem areas (Schaefer 2005, p.295). These areas were identified based on frequency of mention by respondents to the survey.

<sup>30</sup> Interestingly Claus Schaefer in reviewing the 2005 results noted that the selection of problem areas 'shows a certain hierarchy within these problem fields which, in principle, do not deviate from the results of the earlier [2003] survey.' However he continued that 'due to the fact that the earlier survey was a written survey and the current one was done over the phone, we will not interpret any changes with regard to the given hierarchy' (Schaefer 2005, p.295).

time, providing a vivid illustration of the role Works Councils play in avoiding problems associated with job dissatisfaction.

How influential then were the Works Councils in all of these areas (whether they were regarded as problem areas or not)? The survey asked representatives about all aspects with which the works committee has dealt, whether a lot or a little has been achieved. The study shows that Works Council representatives felt they were least successful in addressing problems relating to commercial decisions and corporate governance, which may have an important bearing on the enjoyment of work. They were modestly successful in addressing issues of job insecurity and job flexibility<sup>31</sup>, and they exerted most influence in relation to personal and social issues such as occupational health and safety and flexible working hours (WSI 2005). Thus, the WSI data shows that Works Councils exerted most influence only in relation to a limited number of problem areas.

Overall the study indicates that Works Councils do exert significant influence over social and personal policies which bear upon employees' enjoyment of work. But it is also important to recognise that Works Councils are limited in the degree of influence they can exert over managerial decision making. In the areas where Works Councils' legal rights are weakest, such as commercial and financial issues, they are less able to address issues of job dissatisfaction. However in these areas it may be that corporate governance issues are considered by the legislature to be the more important considerations.

Fourthly, it ought to be unsurprising that a significant function of representatives is the advancement of job satisfaction, since ultimately this is a key function of the representative's role. Not only are industrial representatives advocates, but as elected officials they must respond to the interests of their constituency and their pursuit of happiness is a vital interest. It is plausible to conclude that the promotion of job satisfaction is an important function of Works Councils in Germany.

Nonetheless, not only must one consider how representatives view Works Councils, but also whether employees are satisfied with Works Councils. Some evidence exists. An Austrian study published in February 2006 found that the degree of satisfaction of employees in plants with Works Councils and employee representatives is higher than in those without (Arbeitsklima-Index 2006). Employees at firms with Works Councils were about five per cent happier in most cases in relation to job security, working hours, working conditions, pay, social status of employees and social benefits. Interestingly the study found that in 'plants with Works Councils the index of workers' satisfaction is 106 and thus one point above the index of the control group (without Works Councils)' (Arbeitsklima-Index 2006). In this study it appears that the job satisfaction of employees in companies with Works Councils is most evident when examining the Councils' effects on working conditions rather than looking at the index of overall satisfaction.

There is more indirect evidence to support the thesis that employees are happier with Works Councils. Studies in Austria (Arbeitsklima-Index 2006) and Germany (Frisk 1996; Dilger 1999;

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<sup>31</sup> While Works Councils highly prioritised hard issues like restructuring in response to organisational change, they only asserted a relatively modest influence over these areas. Although, as Schaefer notes, the Councils 'tried to socially balance these processes through shop agreements or initiatives with regard to health and safety. At least, however, the numbers of shop agreements that have been concluded since 2003 suggest that works and staff councils have a lot of bargaining power and that there is a huge potential to come to agreements with the employer. But the quality of the shop agreements was not addressed in the survey' (Schaefer 2005, p.297). In addition the legal standards in favor of Works Councils and stronger backing through laws and collective agreements might mean that Works Councils could be more effective in such areas (Schaefer 2005, p.299).

Addison et al 2001) indicate that there is a significantly lower employee turnover rate with Works Councils than without. Given the association of happiness at work with lower turnover, this too indicates an association between Works Councils and job satisfaction. Overall it appears there is a positive association between the existence of Works Councils and job satisfaction, but other unrelated factors, like wage levels, may also contribute to employee's enjoyment at work. For instance, in Germany, wage levels are negotiated by trade unions at the sectoral level.

In order to gain a better understanding of the satisfaction-enhancing functions of Works Councils, further research into the views of Council representatives, managers and employees would be beneficial. This would be especially helpful given that such job satisfaction-enhancing functions operate outside the specific parameters of the legislation establishing Works Councils.

### **Part Three: Implications for Other Jurisdictions**

Given that legislatures have a role in developing public policy, what are the implications of this case study of German Works Councils for other jurisdictions? The way in which law regulates schemes of joint consultation in other selected jurisdictions will now be briefly examined and the implications of those laws for the promotion of happiness at work commented upon. Laws in different countries regulate such schemes in very different ways, and it is noted that laws may act to promote or hinder the development of joint consultation.

#### Surveying the Jurisdictions

The European Union has recently given greater priority to employee information and consultation procedures. How then do Works Councils fit into this broader industrial relations context? Works Councils are a feature of workplace regulation in Europe and are likely to become more common as a result of the 2002 European Union<sup>32</sup> Directive<sup>33</sup> requiring the establishment of employee information and consultation procedures in undertakings with more than either 20 or 50 employees as determined by Member States (Council Directive 2002/14/EC, 2002 O J (L 080) arts 3(1)(a) & (b) ('ICED, 2002')). In Germany the current legislative schemes will continue to apply as they fulfill the requirements of the 2002 Directive. It is estimated that the Information and Consultation Directive could cover about 60 per cent of employees within the European Union (Burns 2000). In the UK it is estimated that three quarters of the entire labour force could be covered after full implementation of the Directive in 2007 (Gospel and Willman 2003).

Works Councils must also operate within existing labour law and industrial relations systems. In most countries, like Germany, there will be multi channel representation, where Works Councils represent employees in the firm and collective bargaining takes place through trade unions. Thus Works Councils do not replace trade unions, rather they complement and operate independently of union collective bargaining. For instance, Works Councils and employers are required in Germany to co-operate with trade unions in order to advance the interests of both workers and the company (WCAG section 2(1)). Thus Works Councils can contribute to the development of a more co-operative form of labour relations.

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<sup>32</sup> There are 27 member states in the European Union.

<sup>33</sup> 'European directives are not part of national laws but must be implemented by the national legislatures' (Lingemann et al 2003, p.6).



By contrast joint employee and management consultation procedures are less common and well-developed in Australia, Canada and the United States. I outline below the current legal arrangements in each jurisdiction and their impact on joint consultation.<sup>34</sup>

The United States has never required non-union worker representation (Rogers 1995, p.389). Yet in the first half of the 20th century information and consultation procedures were created as employee representation plans or company unions. As employers used employee unions to avoid independent trade unions, such schemes were prohibited as unfair labour practices under the National Labor Relations Act (1935) ('NLRA') (Taras and Kaufman 2006, p.516; Gorman and Finkin 2004, p.257; Patmore 2003, pp.178–86), which is also known as the 'Wagner Act'.<sup>35</sup> The establishment of Works Councils today in the US would also infringe the legal prohibition on unfair labour practices.<sup>36</sup> Even if a Works Council operated in a complementary way with union activities and collective bargaining, the prohibition is so broad that Works Councils would still be unlawful.<sup>37</sup>

Canada adopted much of the American industrial relations model from the Wagner Act (Taras 2006, p.324), but unlike the United States it did not ban employee representation schemes. One important reason for this policy was that the then Canadian Prime Minister, William Lyon Mackenzie King, had acted as a strong advocate for employee representation plans in both countries in the latter 1910s (Taras and Kaufman 2006, p.516). Thus today employees in Canada are free to join workplace organizations which are run either by employers or by other employees and participate in their lawful activities.<sup>38</sup> However the operation of such a scheme is subject to certain legal limits to protect the lawful interests of trade unions.<sup>39</sup> Contrary to the experience in the United States, one survey found in the 1990s that there was little substitution of non-union for union voice in Canada (Campolieti, Gomez, and Gunderson 2007, pp.68-69). By contrast some studies have shown that dissatisfaction with employees' and employers' response to non-union joint industrial councils has led to unionisation (Taras 1997; Timur 2005).

There is little empirical data about the spread and significance of joint consultation procedures in both Canada and the United States. One study in 1996 found that coverage of such schemes in each country amounted to 20 per cent for firms without unions, and for firms with trade unions 15

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<sup>34</sup> Legislative fit of bodies like Works Councils or Joint Consultation Committees into the workplace landscape in North America and Australia is an issue that has already been considered in the literature and hence will not be dealt with in this part of the paper. Attention in the literature has been given to issues associated with the adoption of Works Councils in each industrial relations system. For three important contributions in North America see Rogers 1995; Weiler 1993 and Summers 1987. For Australia, see McCallum and Patmore 2002 and Gollan and Patmore 2006.

<sup>35</sup> This legislation is named after its initiator Senator Robert Wagner. See Gorman and Finkin 2004, p.6. In the Wagner Act Congress protected trade union activities and organising, guaranteed collective bargaining between unions and employers and prohibited unfair labour practices through quasi-judicial proceedings administered by a National Labour Relations Board (Gorman and Finkin 2004, p.6).

<sup>36</sup> These proscribe employer support or domination of an 'employee representation committee or plan' (NLRA, 1935 sections 2, 2(5), 8(a)). It could also be contrary to the principle of exclusive union bargaining rights over rates of pay, wages, hours of employment, and other working conditions required by the NLRA (1935) (section 9(a)).

<sup>37</sup> For a review of the relevant case law see Gorman and Finkin 2004, pp.257–76.

<sup>38</sup> See for example, Labour Relations Act, S O 1995, c 1, s 6.

<sup>39</sup> An employer could not use such an organisation or their personnel to participate in or interfere with the formation and administration of a trade union, hinder trade union representation or the contribution of financial or other support to a trade union. See, for example, Canadian Labour Code, RSC 1985, c L-2 s 94; Taras 2006. Occasionally a non-union representation plan may interfere with union activities and infringe these legal requirements (see Taras 2006; Campolieti, Gomez, and Gunderson 2007, p.51 fn 2).

per cent in the United States and 14 per cent in Canada (Lipset and Meltz 2000 cited in Taras and Kaufmann 2006, p.516).<sup>40</sup>

According to empirical studies in the United States, there is widespread support for Works Councils by employees and managers (What Workers Want, 1999, pp.5, 18, 144, 152; What Workers Say 2006). Professors Freeman and Rogers have commented that such bodies ‘would certainly make workers happier, and would probably make firms more productive’ (What Workers Want, 1999, p.18).

There is evidence from Canada that employees would be happier with Works Councils.<sup>41</sup> Professors Campolieti, Gomez, and Gunderson found that Canadian workers were much more likely to want collective voice for companies over 100 workers (Campolieti, Gomez, and Gunderson 2007, p.59) and for negotiation over wages and conditions (Campolieti, Gomez, and Gunderson 2007, p.61).<sup>42</sup> In addition they noted that when employees have a variety of voice mechanisms (union and non-union), they are, in statistical terms, significantly more likely to rank their job satisfaction as high than are those without such voice mechanisms.<sup>43</sup>

In Australia information and consultation procedures were given legal support in the late 20th century. Legal support was provided for information-sharing and consultation over proposed redundancies and other workplace changes in the mid 1980s,<sup>44</sup> and over efficiency and productivity issues in the early 1990s.<sup>45</sup> However these initiatives were removed by the conservative federal government when it won office in 1996.<sup>46</sup> It adopted a voluntarist approach, leaving it to employees and employers to work out their own arrangements. The Rudd Labor government, elected in 2007, has re-introduced a limited right to representative consultation as a

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<sup>40</sup> Intriguingly Professors Taras and Kaufmann note the study found that ‘[m]ore than half the American respondents who reported that their companies have [non-union employee representation] plans also claim that these plans allow discussion of compensation and benefit issues — a surprising result because this type of interaction is prohibited under American labour law’ (Taras and Kaufmann 2006, p.516).

<sup>41</sup> Freeman and Rogers also conducted the Canadian WRPS in 1995, simply noting ‘that Canadian private-sector workers express much the same attitudes as American private-sector workers’ (Freeman and Rogers 1999, p.36).

<sup>42</sup> Professors Campolieti, Gomez, and Gunderson in 2007 analysed in more detail Lipset and Meltz’s Canada-U.S. Labor Attitudes Survey of 1996 (Campolieti, Gomez, and Gunderson 2007, p.52).

<sup>43</sup> Campolieti, Gomez, and Gunderson also note ‘[r]elative to having no voice, workers with union-only or dual voice are only slightly more likely to be highly satisfied with their job, while those with non-union only voice are 6.8 per cent more likely to be satisfied. These effects, however, are not statistically significant.’ The authors offer no further statistical explanation (Campolieti, Gomez, and Gunderson 2007, p.57).

<sup>44</sup> See the Australian Industrial Relations Commission (AIRC) decisions: Termination, Change and Redundancy Case (‘TCR Case’) (1984) 8 IR 34; Termination, Change and Redundancy Case (Supplementary Decision) (1984) 9 IR 115.

<sup>45</sup> See the National Wage Case April 1991 (1991) 36 IR 120, 121. See also the Keating Labor Government’s Industrial Relations Reform Act 1993 (Cth) sections 170MC(1)(d) and 170NC(1)(f). These information-sharing procedures became conditions of employment for employees initially through decisions of the Australian Industrial Relations Commission and later through legislative provisions providing for joint consultative committees in enterprise bargaining agreements. The spread of joint consultative committees in Australia followed on from the Australian Industrial Relations Commission Wage Fixing Principles decision in 1991 (National Wage Case 1991; Combet 2003).

<sup>46</sup> In addition, the Howard Government introduced legislative changes to limit or remove consultation mechanisms introduced by the operation of the TCR case and the National Wage Case. See the Re Award Simplification Decision (1997) 75 IR 272 and s 89A of the Workplace Relations Act 1996 (Cth) (as amended in 2006).

condition of employment in the settlement of industrial disputes<sup>47</sup> as well as added a requirement for consultation of representatives about major workplace change in enterprise agreements.<sup>48</sup>

There are only a small number of large-scale studies into the operation of joint consultative committees in Australia. The large-scale Australian Workplace Industrial Relations Survey 1995 (AWIRS) (Morehead et al 1997) found that joint consultative committees existed in 30 per cent of Australian workplaces in 1997.<sup>49</sup> The ADAM database maintained by the Workplace Research Centre at the University of Sydney<sup>50</sup> indicates that from 1991 to 2003 there was ‘a steady rise in the number of consultative committees provided for in (registered) Federal agreements ... reaching a height of close to 58 per cent in 1999 and declining thereafter’ to 33.3 per cent in 2003 (Forsyth, Korman and Marshall 2006, p.12).<sup>51</sup> Like similar survey data in Canada, the Australian Worker Representation and Participation Survey (AWRPS) (2004) indicates that non-union arrangements complement rather than compete with union voice (Teicher et al 2007, p.138). The AWRPS findings also demonstrate that employees desire ‘union-management co-operation and often prefer complementary voice regimes, as opposed to a single channel of voice’ (Teicher et al 2007, p.144).

Empirical studies in Australia also provide evidence that joint consultation promotes happiness at work. For instance in the large scale AWIRS 1997 survey managers ranked increased job satisfaction/employee morale as the third most important objective of joint consultation committees.<sup>52</sup> Job satisfaction not only explicitly features in managerial objectives for joint consultation but can be implicitly found in the matters addressed by those committees, such as the

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<sup>47</sup> Section 576J(1)(j) includes ‘procedures for consultation, representation and dispute settlement’ as a term which may be included in a modern award.

<sup>48</sup> The government has provided that a term requiring consultation of representatives about major work place change must be included in an enterprise agreement (Fair Work Act 2009 (Cth) s 205). If an enterprise agreement does not include a consultation term, the model term is to be adopted. The model consultation term for enterprise agreements is to be prescribed in the regulations, which require appointment of an employee representative who is to be consulted about major change to production, program, organisation, structure or technology in relation to the enterprise. Schedule 2.3 Regulation (9) stipulates that: ‘[I]n this term, a major change is likely to have a significant effect on employees if it results in:

- (a) the termination of the employment of employees; or
- (b) major change to the composition, operation or size of the employer’s workforce or to the skills required of employees; or
- (c) the elimination or diminution of job opportunities (including opportunities for promotion or tenure); or
- (d) the alteration of hours of work; or
- (e) the need to retrain employees; or
- (f) the need to relocate employees to another workplace; or
- (g) the restructuring of jobs’.

<sup>49</sup> The Australian Workplace Industrial Relations Surveys 1995 (AWIRS) (Morehead et al 1997) surveyed 37,200 government and private sector employers.

<sup>50</sup> Formerly known as ACIRRT.

<sup>51</sup> The Australian Worker Representation and Participation Survey (AWRPS) (2004) conducted in 2003 – 2004 reported a higher figure of 38.9 per cent of companies with committees of employees (see Teicher et al 2007, p.137). This indicates that legislative support may correlate with an increase in joint consultation. Interestingly, these statistics show that incidence of Joint Consultative Committees continued to increase in number even though legislative support had been removed by the conservative government in 1996. This suggests that the link between laws supporting voluntary Joint Consultative initiatives and their effects are not straightforward (Forsyth, Korman and Marshall 2006, p.29) and their impact may be delayed (Brown and Ainsworth 2000, pp.4–5).

<sup>52</sup> The three important objectives for joint consultative schemes were improved communication (63 per cent), improved productivity (52 per cent) and increased job satisfaction/employee morale (35 per cent). The same ranking occurred in the AWIRS 1991 survey.

organisation of work, occupational health and safety and technological change at the workplace.<sup>53</sup> Overall Australian data indicates that job satisfaction is regarded as important by joint consultative committees and their managers.

## **Conclusion**

The voluntarist approach adopted in Canada has not seen the widespread diffusion of schemes of employee information and consultation. The Wagner Act greatly limits the development of joint employee and employer consultation initiatives in the US. In both the US and Canada survey data indicates that support exists among employees for joint consultation mechanisms. Legal support in Australia has led to an increase in the incidence of joint consultation. However, it is to Europe that we must look to find the most widespread and developed forms of employee representative consultation.

This paper has highlighted that German Works Councils are concerned with employees' enjoyment of their work. Not only in Germany but also in Australia and Canada there exists empirical data that joint consultation schemes do promote job satisfaction. American authors have also argued that if bodies like Works Councils were established in the US, this would contribute to the happiness of employees at work.

Finally, focusing on happiness as an objective of labour law can give a new direction for the development of employment law. It provides a new way of thinking about the law and the employment relationship. Future research will doubtless shed greater light on this emerging area; it would be a lost opportunity not to draw upon this vital and emerging research in the future development of employment law.

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<sup>53</sup> The AWIRS 1991 survey did not ask managers what topics the committee had authority to deal with as was asked in AWIRS 1997. Their 1997 responses indicated that the most common issues were work organisation (81 per cent), occupational health and safety (59 per cent) and introduction of new technology (52 per cent). One of the least common issues was finance or investment (20 per cent). See also Forsyth, Korman and Marshall 2006, who contend that productivity issues were given prominence in the text of these agreements. This may have been due to the legacy of legal requirements in the 1990s which emphasised these issues.

## Appendix

**Table - Issue or problem that occupied the Works Council's time**

WSI Betriebsrätebefragung, April 2005, Tabellenband (gewichtete Ergebnisse) (WSI Works Council Survey. 2005. Weighted results) (Translated from German to English)

| Selected issues/problems that occupied the Works Council's time | Yes | No (%) | Not sure/Not applicable |
|---|-----|--------|-------------------------|
| Health and Safety   | 74  | 26     | 0                       |
| Retraining  | 66  | 33     | 1                       |
| Plant based pension plans                                       | 62  | 37     | 1                       |
| Increase in pressure to perform                                 | 60  | 39     | 1                       |
| Protection of employment  | 59  | 39     | 2                       |
| Restructuring   | 57  | 42     | 1                       |
| Target agreements/conversations with Co-workers                 | 56  | 43     | 1                       |
| semi-retirement   | 53  | 46     | 1                       |
| staff reduction   | 53  | 46     | 1                       |
| deterioration of work climate                                   | 52  | 45     | 3                       |
| Increase in overtime  | 52  | 47     | 1                       |
| Protection Against wrongful dismissal                           | 46  | 53     | 1                       |
| Introduction of new working time models                         | 46  | 52     | 2                       |
| Introduction of new Technology                                  | 44  | 55     | 1                       |
| Wishes for flexible working hours                               | 42  | 56     | 2                       |
| Employer resistance with regard to Works Councils               | 39  | 59     | 2                       |
| Redundancy program: social plan/ Coordination\ of interests     | 37  | 61     | 2                       |
| Mobbing   | 34  | 65     | 0                       |
| Family-friendly working conditions                              | 31  | 69     | 1                       |
| Outsourcing   | 30  | 69     | 1                       |
| Strategies to reduce sick leave                                 | 28  | 70     | 1                       |
| Lack of support of w/c from employees                           | 26  | 72     | 2                       |
| Reduction of industry-wide benefits                             | 26  | 71     | 3                       |

|  |    |    |   |
|--|----|----|---|
| Suspension of increase in tariff                   | 26 | 71 | 3 |
| Increase of work on Saturday                       | 23 | 75 | 2 |
| Shut-down or sale part of a plant                  | 23 | 75 | 2 |
| Reduction of plant-based social benefits           | 22 | 76 | 2 |
| Low wages for new employees                        | 21 | 78 | 2 |
| Limitation of apprenticeships                      | 17 | 79 | 4 |
| Withdrawal from membership in employer association | 17 | 75 | 8 |
| Gender Mainstreaming                               | 17 | 80 | 4 |
| Increase in work on Sundays and on holidays        | 16 | 79 | 5 |
| Merger with other plants or companies              | 13 | 85 | 2 |
| Wages below collective agreements                  | 14 | 84 | 2 |
| Work short-time                                    | 13 | 84 | 2 |

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