

# Employee Directors

Exploring their role in bridging a divided society

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# Topics

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- UK regime
- The Bullock Report
- The German two-tier board structure
- Mondragon workers' cooperatives
- EOTs and the new generation
- The future of employee directors

# UK legal context and governance

- Responsibilities and fiduciary duties
- Rights
- Appointment
- Compensation

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# The Bullock Report



- Presented January 1977 to “to advise on questions relating to representation at board level in the private sector”
- Committee unable to reach consensus - main report, notes of dissent, minority report
- Main report concluded:
  - Unitary board system should be adapted to include employee representatives
  - Trade union machinery should be used for elections
  - Board composition formula  $2X + Y$
  - To apply to private companies of more than 2,000 employees

# The Bullock Report - the minority report



- Advocates a supervisory board system but argues focus should be on “effective substructures”
- Pre-requisite - an Employee or Company Council in operation for 3 years
- Limits remit to companies with 2,000 employees
- Supervisory board to be split equally three ways - shareholder & employee representatives, and independents
- All employees should take part in a ballot for elections
- Supervisory board “should not be a watchdog without teeth”

# The Bullock report - the role of employee directors



- Change to the duty of directors was needed to include both shareholder and employee interests
- New concept: partnership between capital and labour
- Training needed for employee representatives

# The Bullock report - the role of employee directors

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- “During our inquiry we found a widespread conviction [...] that the problem of Britain as an industrialised nation is not a lack of native capacity in its working population so much as a failure to draw out their energies and skill to anything like their full potential. It is our belief that the way to release those energies [...] is not by recrimination or exhortation but by putting the relationship between capital and labour on to a new basis which will involve not just management but the whole workforce in sharing responsibility for the success and profitability of the enterprise.”

# The German two-tier board structure

- Powers and responsibilities of corporate bodies delineated in the legislation:
  1. Shareholders' meeting (*Hauptversammlung*)
  2. Management or executive board (*Vorstand*), left to manage the day-to-day
  3. Supervisory board (*Aufsichtsrat*), to oversee as a “*Kontrollgremium*”
- Mandatory for “stock corporations” (*Aktiengesellschaft* or AG)
- A European company (*Societas Europaea* or SE) can have a unitary or a two-tier board system and most opt for the latter
- A private company (*Gesellschaft mit beschränkter Haftung* or GmbH) can have a voluntary supervisory board



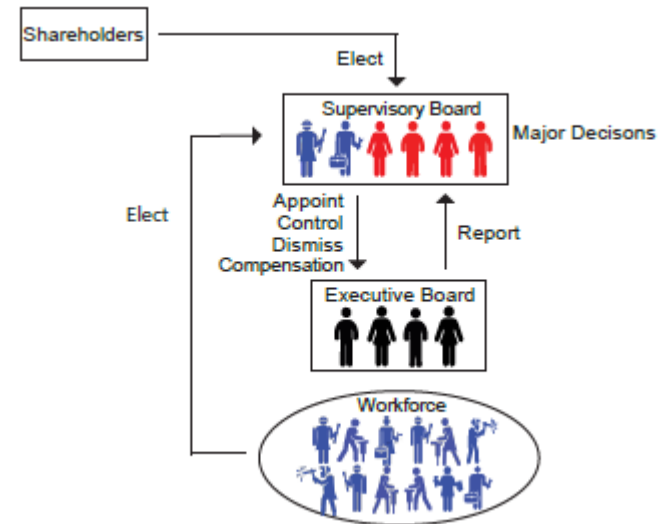
# The German two-tier board structure



- The Supervisory board's role
  - To appoint, supervise and advise the management board
  - Powers include: inspecting financial statements, calling a shareholders' meeting, approval for material acquisitions/divestments, engaging an auditor
  - Cannot make any executive decisions or give formal orders to the management board
- Shareholder representatives elected by shareholders' meeting
- Number of members must generally be divisible by three, capped at 21

# The German two-tier board structure

- Employee representation on the Supervisory Board:
  - 500+ employees: one third employee representatives (*One-third Participation Act, Drittelbeteiligungsgesetz*)
  - 2,000+ employees: half employee representatives (*Co-determination Act, Mitbestimmungsgesetz*)
- Employee representatives elected by the workforce in secret, equal & direct elections organised by Works Councils



# The German two-tier board structure



- Initially designed to allow shareholders to supervise companies more closely
- Supervisory board was the “obvious place” for employee representation, introduced in the aftermath of WWII
- 1994 Abolition of Shared Governance in new corporations
- No evidence that shared governance companies are less successful or that shareholder profits are lower, yet criticisms remain
- Shared governance linked to cooperative labour relations in Germany

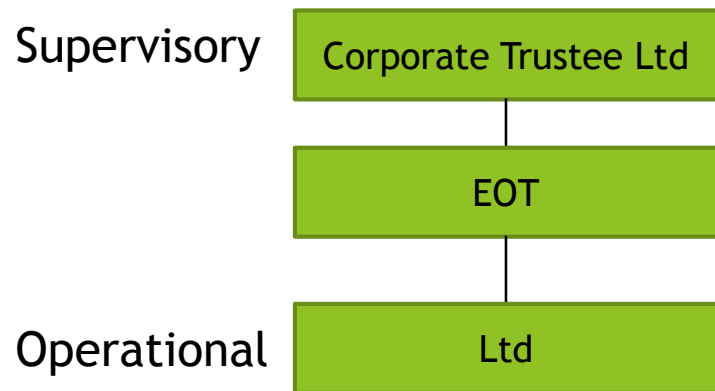
# Mondragon Workers' Cooperatives

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- Founded by José María “Arizmendi” Arizmendiarieta
- Euros 15,000
- General Assembly
- Supervisory Boards
- Operational Board

# EOTs and the new generation

- EOT legislation introduced in 2014
- Supervisory board structures



# The future of employee directors

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- Theresa May's election promises of worker representation
- Capita appointment of 2 employee directors in May 2019
- Unitary or supervisory
- Appointment
- Roles
- Rights and responsibilities

Questions?

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