

REFRAMING THE REPRESENTATION DEBATE: GOING BEYOND UNION AND NON-UNION OPTIONS

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The author argues for replacing the traditional union/non-union dichotomy with a more dynamic, nuanced typology of employment relationships and for viewing the contemporary workplace as an organization with multiple distinct but interacting employment models. Such a framework has clear potential advantages for the public policy debate as well as for those making a strategic choice of employment relations models. Moreover, the framework benefits researchers who may use it to refine their empirical studies of the diverse forms and combinations of representation and voice in contemporary workplaces in order to determine which perform best in different settings for different work groups. The real alternative to union organization, the author suggests, is not “no unions” or lack of representation, but some innovative form of representation and voice. Whether these alternatives are sustainable and powerful enough to do the job remains an empirical question that the field should be tackling with greater clarity and vigor.

The study of employment relations in unorganized or non-unionized enterprises compared to unionized enterprises has received a great deal of scholarly attention, and much of the field of industrial relations has been implicitly or explicitly influenced by it, whether in terms of the relevant conceptualization (Wheeler and McClendon 1998; Hyman 2001), empirical research (Freeman and Medoff 1984; Hirsch and Macpherson 2003; Booth and Byron 2004; Mishel and Walters 2003; Doucouliagos and Laroche 2003; Iverson and Currrivan 2003; Kaufman and Bennett 2006), or public policy debate (Budd 2004; Howell 2005). This is particularly true in the United States, where unionism and labor-management policies tend to be especially polarized and dominated by rigid

ideological positions. This may be one of the reasons why substantial changes in U.S. labor law are so infrequent and difficult to achieve. Yet this simple union/non-union dichotomy¹ (Wheeler and McClender 1998) captures neither the diversity of the models of voice and representation observed around the world nor recent innovations in voice and representation in the United States itself. What is needed, therefore, is a richer, more nuanced approach for conceptualizing, evaluating, and choosing forms of voice and

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¹ Labor law jurisprudence has also suffered from being premised on this dichotomous framework. American labor law is a case in point. Two examples illustrating the drawbacks that follow from this simplistic framework are the difficulty in applying the available protection for concerted activities to employees who press their own or their colleagues' grievances in a non-unionized employment relations model (Gerson and Brightbritt 1983; Ciarrocca 1987) and the difficulty in reconciling cooperative programs with the prohibition against employer domination of labor organizations (Kochan, Katz, and McKersie 1986:234–35).

representation that are suited to the modern work force and to contemporary employment relations. Such an approach may enable both sides of the divide to break out of the ideological constraints that are holding back labor policy reforms.

My purpose in this paper is to review the range of forms of voice and representation that exist in various settings in the United States, as well as in other parts of the world, and to propose a new, more nuanced typology for structuring theory, research, and policy debates.

The need for a fresh approach is obvious. Policies to support or promote unionization are failing to realize their intended objectives, to use Budd's (2004) framework, of providing a voice at work that improves the economic conditions of employees and enhancing efficiency and equity in economies and societies. Worldwide decline in unionization and increasing workplace diversity have led to the decline of industrial relations as a field of study, in part because scholars of traditional industrial relations have been reluctant to broaden their analysis to consider alternative forms of voice, representation, and governance in employment relations. Moreover, many in the U.S. labor movement view collective bargaining as the only legitimate form of worker representation, and they chastise scholars and policy-makers who advocate considering alternative forms. As a result, current policy debates end up focusing exclusively on reforms that remain within the ambit of the National Labor Relations Act, and they inevitably get mired in an instinctive business-versus-labor ideological battle—one that for at least a quarter-century has failed to produce results. On both research and policy grounds, therefore, we need to rethink the simple dichotomy that has historically been used to study and discuss policies relating to worker representation.

In order to open up the normative public policy debate and to enrich our conceptualization of both that and the strategic choice of employment relations models, I propose in this article to embark on two different routes. First, I suggest abandoning the historically used dichotomous union/non-union

paradigm, and adopting instead a multidimensional and continuum-based typology of employment relations models that is more varied, nuanced, and dynamic. Second, I offer a sharper and more sensitive resolution of the unit of investigation, one that views the modern workplace not as a monolithic organization but as one that contains within itself multiple types of employment relations models.

The Terminological Problem

The terms traditionally used in the literature—"non-unionized" and "unionized"—are inadequate to describe a model of employment relations of a particular work force or an enterprise. In the U.S. literature, "unionized" usually refers to situations in which a majority or threshold percentage² of the workers concerned are members of a trade union, thus enabling the latter to become a collective bargaining representative or agent of that work force. Sometimes the term refers to an enterprise in which the employer and its work force are bound by a collective agreement. Both references are inadequate and can be misleading when used to characterize the collective union representation employment model.

There are two contexts in which reference to membership in a trade union as a distinguishing aspect of the collective union representation employment model is inaccurate. First, in industrial relations systems,

² Different legal regimes require different degrees of support in order for the union to be recognized as a collective bargaining agent or as a party to a collective agreement. The required level of support may also vary between sole enterprise and industry-wide collective agreements. For example, in the United States and Canada the union is required to achieve majority support in order to be recognized as a bargaining agent (Getman, Pogrebinand, and Gregory 1999). In contrast, the Collective Agreements Law (1957) that regulates collective bargaining in Israel defines the "representative union" for an enterprise collective agreement as the union that has the largest number of members and no fewer than 1/3 of the workers in the bargaining unit. There is no minimum level of support that is required under Israeli law for an industry-wide or nationwide collective agreement.

unions have traditionally provided a broad range of social services, such as medical care, mutual aid, loans, and pensions for their members. Second, it is inapplicable to industrial relation systems, such as those in England, the United States, continental Europe, and Israel, where formal or informal craft unionism, professional association membership, or closed shop arrangements give certain membership organizations some degree of control over job opportunities, licensing, grading, certification, professional ethics, or malpractice insurance.³

In both instances one may find a significant number of people who carry union or membership cards, but who neither seek nor benefit from collective bargaining representation.⁴ Among them are employees who work under what is commonly referred to as a non-union employment relations model, as well as government officials and self-employed persons. Note that the opposite situation exists in industrial relations systems that espouse an exclusive representation model in collective labor relations, particularly in “right-to-work” states. There, a substantial proportion of the workers in a bargaining unit may not be members of the union although they are covered by a collective bargaining agreement.

The fact that a collective agreement applies to the enterprise and its work force cannot be used to differentiate between what we usually refer to as unionized and non-unionized models of employment. This is especially true in Europe, where employers’ associations play an important role in establishing working conditions (Jacobi, Keller, and Müller-Jentsch 1998; Katz and Darbishire 2000; Budd 2004). These employers’ associations sign nationwide or industry-wide collective agreements

that apply directly⁵ and indirectly,⁶ through various legal instruments and doctrines, to all enterprises, including those operating according to a non-unionized employment relations model, and to their workers, whether or not there is union representation in the particular enterprise.

In the case of direct applicability, the existence of collectively negotiated terms and conditions of employment in the enterprise stems solely from the employer’s membership in the employers’ association that is party to the agreement. Therefore, in industrial relation systems characterized by sectoral bargaining, collective agreement coverage may be divorced both from union membership and from the existence of collective labor relations.

In the case of indirect applicability, the terms and conditions of employment of collectively negotiated industry-wide or nationwide agreements may apply to the enterprise and its work force even though neither side is organized: the employer may not necessarily be a member of an employers’ association, and few if any of the employees covered may be unionized—or, indeed, have the least desire for any collective representation. Thus, from a workplace governance perspective,

⁵Direct applicability refers to a situation in which the terms of an industry-wide or nationwide agreement that has been negotiated by an employers’ association applies by law to all the relevant workers who are employed by all the employers who are members of the employers’ association. In such cases it is necessary to prove neither that the particular enterprise joined the employers’ association in order to be represented by it in collective bargaining, nor that the particular enterprise or a requisite percentage of its employees wishes to operate pursuant to the unionized employment relation model.

⁶Indirect applicability is based on the practice of government-issued extension orders. In European-style industrial relation systems, such as those existing in Belgium, Germany, Portugal, France, and Israel, the industry-wide or nationwide collective agreements may be made applicable by the national government in whole or in part to the entire industry or to a geographic region of the country. The effect of such extension orders is to apply the terms of the relevant collective agreement to enterprises that are not members of the employers’ association and to their employees (who themselves are not necessarily union members). (Jacobi, Keller, and Müller-Jentsch 1998; Barreto and Nauman 1998; Katz and Darbishire 2000.)

³The building trades in the United States and the doctors’ unions in Europe are good examples of such situations.

⁴One can envision a hospital employing a few hundred doctors, under individual employment contracts, all clinging to their union membership and paying their union dues. Ostensibly, the hospital should be considered highly unionized, but from a workplace governance standpoint, the hospital is a typical non-unionized enterprise.

the result is an enterprise that, on the one hand, is legally bound by certain terms and conditions of employment that are derived from a collective agreement negotiated by an employers' association and a union, and, on the other hand, operates on a daily basis under a typical non-unionized employment relations model without the presence of an active union or any other form of collective representation.

In sectoral systems of industrial relations, as many as 80–95% of the workers in the industry may be covered by the collective agreement, even though only a small minority of them—29% in Germany, for instance, and 9% in France—are union members (OECD 1997; Budd 2004:121). Thus, the applicability of the industry-wide or nationwide collective agreement or parts thereof is dependent neither on membership in a collectivity (a union or an employers' association) nor on the employment relations regime in the enterprise. The norms stemming from an industry-wide collective agreement or an extension order will apply to the enterprise and affect the individual worker's employment conditions much like protective labor legislation, for which extension orders serve as a substitute mode of regulation.⁷ Nonetheless, since the enterprise may function with no collective representation and possess all the characteristics of what has commonly been referred to as a non-unionized employment relations model, being subject to such industry-wide norms does not change the nature or dynamics of the employment relationship.

Furthermore, the European model of statutory works councils, especially those with decision-making powers (Frege 2002; Müller-Jentsch 1995; Weiler 2004; Goldman 2005), as well as recent developments in the United States where NGOs have negotiated and advocated for improved working conditions (Kochan 2005; Erickson et al. 2002), demonstrate that some form of collective

representation may be in effect even where none of the commonly used indicators is present. First, the employees are not unionized; second, the employer is not a member of an employers' association; third, there is no collective agreement that applies to the enterprise and its work force; fourth, there is no union presence. The opposite may also hold. As will be shown in the following pages, in today's array of employment relations models one may encounter collective employment relations that do not provide for representation, and individual non-unionized employment relations or workplace governance models that are characterized by active employee representation.

In sum, both a new terminology and a new conceptual framework are urgently needed.

The Proposed New Terminology and Conceptual Framework

The preceding discussion suggests that the search for a better conceptual framework may not be limited to inventing a new terminology. Only a multidimensional framework will capture the richness and uniqueness of many developments and innovations in employment relations models and forms of representation. Therefore, I propose a framework that characterizes employment relations along two dimensions: individual versus collective, and direct versus represented. Combined, the two dimensions can accurately portray not only the two prototypes of employment relations models but also the different options that exist between and alongside them.

The Individual-Collective Dimension

Using terms such as "individual" and "collective" overcomes part of the terminological problem. These terms are both conceptually clearer and richer than "union" and "non-union" and carry no negative connotations. For instance, the term "individual employment relations model" is clearer than Budd's "human resource management," which he uses to describe a particular model of workplace governance (Budd 2004). And it is more accurate, since, at least in Britain, advanced human resource management policies and

⁷ Extension orders have the same normative effect as the collective agreement. The provisions of both types of instruments automatically affect individual employment contracts and may not be waived by the individual employee.

union sector than in the non-union sector (Sisson 1993; Beaumont and Hunter 2003). Using the term “individual employment relations model” avoids the negative connotation associated with terms such as “non-organized,” “management control” (Weiler 1990), and “managerialism” (Clegg 1979).⁸

As to the definitional aspect, the new terms offer narrower and more process-oriented definitions and differentiating criteria. What we commonly refer to as “non-unionized” and “unionized” enterprises are in fact workplaces where employer–employee relations are, respectively, primarily individual and primarily collective in nature. The main differences between the two are in the processes by which employment rights and duties are established, modified, administered, and enforced.

Under the collective employment relations model, working conditions tend to be uniform either across the board or for a particular group of employees, and they are established (and when necessary modified) with some form of participation by employees acting as a collective entity. In the extreme form of the model, the majority of and most important working conditions are spelled out in a detailed collective agreement, which is the outcome of bilateral negotiations between management and representatives of the employees. These workers’ representatives are also usually involved in the day-to-day adjustment, administration, and enforcement of these negotiated working conditions. Finally, the collectivity acts as a constraining factor on many management decisions that may affect the workers concerned. What is being measured here is the scope of issues and the form and intensity of the collectivity’s participation in, for example, negotiation and day-to-day administration, as against information and consultation. Therefore, at the high collective end of the continuum, there is little room for unilateral decision-making and differential treatment by management. The result is a significant encroachment on

management discretion, as well as on the autonomy of individual employees.

By contrast, under the individual employment relations model, terms and conditions of employment are determined on an individual basis. In the extreme form of this model, these terms and conditions of employment are established unilaterally, changed and administered by management alone, at its discretion. Save for outside legal constraints and the ever-present fear of unionization, these management decisions are business-driven. They are motivated by internally held beliefs regarding good human resource management, and they are intended primarily to attract, maintain, and motivate the work force. In the weaker form of the model, some of the terms and conditions of employment are established through negotiation, taking into account the individual employee’s bargaining power.

The role of unilateral decisions driven by internally held considerations of employment relations rather than by grudging compliance with union pressure (Hall 2006) needs to be further emphasized as a distinguishing element in the typology of enterprises. This is so since quite often an enterprise that operates under the “individual employment relations model” is more reluctant than its “collective employment relations model” counterpart to take actions that worsen employees’ working conditions. Equally, it may be more committed to job security (Osterman 1987; Foulkes 1980) and to the welfare of its employees. Yet the two types of enterprise differ completely in the reasons and motives underlying their adoption of such policies.

The same idea holds for employer-promulgated voice mechanisms, non-union employee representation programs, and dispute resolution procedures that provide due process. As Budd (2004) and others have noted, the employees’ voice and other non-union employee representation programs are intended to directly and indirectly improve productivity by harnessing and sharing the knowledge and experience of the workers, by improving coordination (thus enhancing individual and organizational performance), and by ensuring that the interests of the employees in equitable terms and conditions

⁸It can be argued that the decision to use the broader and conceptually richer term “individual employment relations” rather than “management control” or “managerialism” may conceal the underlying power realities that are conveyed by these terms.

of employment are factored into management decisions (Freeman and Lazear 1995; Kaufman and Levine 2000; Kaufman and Gottlieb-Taras 2000; Budd 2004). Dispute resolution procedures that are established by employers are aimed at improving performance by fostering a sense of fairness on the part of the employees. In addition, they have the potential to save the enterprise lawyers' fees, management time, and other monetary and non-monetary costs associated with agency or court litigation (CPR 2002; Wheeler, Klaas, and Mahony 2004). Finally, employee voice and non-union employee representation programs, as well as dispute resolution procedures, also act as union substitutes (Kaufman and Gottlieb-Taras 2000; Budd 2004; Wheeler, Klaas, and Mahony 2004).

The improved working conditions, advanced human resource management practices, commitment to job security, employee voice and non-union employee representation programs, and dispute resolution procedures that may all be found in enterprises adhering to the individual employment relations model share another common characteristic: namely, they are unilaterally⁹ introduced and may be unilaterally dismantled if the employer believes that they are no longer needed or are too costly or risky (Kochan 2005).

The Direct-Represented Dimension

The representation aspect in the collective model is also important, and it is often overlooked. The individual (non-unionized) employment relations model emphasizes direct relations between each individual employee and management. By contrast, the collective (unionized) employment relations model stresses a strong element of institutionalized collective representation.

Since independent and institutionalized collective representation is the *raison d'être* of moving from the individual to the collective employment relations model, its sources of

power and unique role within the enterprise establishment need further elaboration. The representatives in a collective representation setting are usually regular employees of the enterprise, appointed by the group they represent rather than by management, typically assisted by the external professional staff of an outside union.¹⁰ Once in office, the regular employees who are union representatives enjoy special status and privileges vis-à-vis management. This special status derives not from their value to the enterprise as employees, but from their role as representatives of the collectivity. In addition to having a role as regular employees, they have an "institutional personality," which provides them with certain immunities that are backed by law and by the power of the collectivity. They are the only important functionaries acting with formal power and authority inside the enterprise who are independent of its hierarchy.¹¹

The involvement of professional outside union staff emphasizes another distinguishing aspect of the collective representation paradigm. Save for the continual presence of legal constraints, the individual employment relations model involves the autonomous relationship between two parties—management and the employee. In the collective employment relations model there are two additional parties: the in-house employees' representatives and the officers of the outside union. Note that by marshaling professional and other resources, the union strengthens the employees' representation. Finally, the outside union and its officers may have interests and goals that are unrelated to the enterprise and its work force, and it is even more removed, insulated, and immune from management's control.

The Matrix

The discussion of the two dimensions of the employment relations models and their implications can be better appreciated by viewing the 2x2 matrix shown in Figure 1.

⁹ Budd argues that the statement that human resource management is unilateral is definitional (Budd 2004:209).

¹⁰ In unions representing the building trades in the United States, it may be a full-time business agent.

¹¹ Workers view the independence of the representation as a crucial element (Freeman and Rogers 1999:7).

Figure 1. The New Typology of Employment Relations

	Collective	Individual
Represented	4(CR)	1(IR)
Direct	3(CD)	2(ID)

Cell 2, the individual-direct (ID) employment relations model, and Cell 4, the collective-represented (CR) employment relations model, are the two prototypes traditionally used, known respectively as non-unionized and unionized employment relations.

The Two Promising Cells

Cell 1, individual-represented (IR), and Cell 3, collective-direct (CD), are at the center of a number of contemporary public policy debates, and in some ways are at the frontier of employment relations practice. Yet researchers and policy-makers assume that there is an inevitable tendency to gravitate either to Cell 2, individual-direct (ID), or to Cell 4, collective-represented (CR), and they continue to devote most of their attention to these two cells. In fact, as will be demonstrated, not only are there stable alternatives at various points on the ID–CR continuum, there are also interesting and at times complementary alternatives outside it. Looking at the present state of unions and collective bargaining, Cell 1—individual-represented (IR)—and Cell 3—collective-direct (CD)—deserve special attention. These two models are especially important today because of the increasing de-collectivization of negotiations of working conditions (Davies and Freedland 2004) and the increasing resort to non-union work force agreements as a way to deviate

from external norms such as statutory provisions or awards (Katz and Darbishire 2000; Carley and Hall 2000; Collins 2001; Barnard and Deakin 2002; Kilpatrick 2003; Barnard, Deakin, and Hobbs 2003).

Cell 1—Individual-Represented (IR)

The IR¹² individual-represented cell differs from the individual-direct (ID) cell (Cell 2) in that the former entails representation of the employee by an independent expert—a lawyer, an agent, or a professional negotiator. To a large degree, this form of individual representation is likely to correct the information asymmetry between management and the individual employee, and to reduce the gap in bargaining power and expertise in negotiation and advocacy. The IR model has been prevalent for many years in the performing arts (Moskow 1970) and in professional sports (Bower 1977), as well as in the higher echelons of management. Recently, it has spread to highly professional employees and itinerant experts (Barely and Kunda 2004), as well as to regular employees, through worker centers (Fine 2006).

In the arts and in sports the common pattern is a basic collective agreement (CR),

¹²This concept is different from Troy's individual representation. Troy uses the concept to describe the free-market form of workplace governance (Budd 2004:85).

supplemented by individual negotiations conducted by agents or attorneys who represent these highly paid employees (IR). This is an interesting two-tier structure of workplace governance (CR + IR). The first level follows the CR model, and it establishes minimal standards and work rules for all employees in the particular profession or industry. Layered on top of the CR model is the second model, IR, which is available for those who wish to have (and who can afford) individual representation. According to Moskow, in the performing arts there is typically a third level, which is a CR-type industry-wide agreement. This collective agreement, negotiated by the union and the agents' association, regulates the relationship between individual actors and the agents who represent them in negotiations with individual studios or producers.

Recognizing the existence of IR-type (Cell 1) situations is important. They represent an interesting, sophisticated, and in certain respects promising pattern of workplace governance. The IR-type highlights independent representation of the employee as an important paradigm, one that introduces new representation options for the growing number of contract workers, such as those now staffing much of the information technology industry (Barley and Kunda 2004). Moreover, this model is free of the strong constraints associated with unions and their detailed work rules and contract administration procedures. Furthermore, it also avoids the need to organize workplaces one at a time, with all the attendant risks, conflicts, and legalistic delays that are commonly present in the organizing campaign and election process. Consequently, it may be particularly attractive to professional employees (nurses, doctors, lawyers, IT professionals, and so on) who are not tied to a specific employer for a long period of time and who cherish their individual identities, but who at the same time want to be compensated fairly and to work under standards consistent with accepted professional practice.¹³

¹³ The important issue of individual representation within a collective labor relations regime will not be dealt with in this paper.

The independent representation property of the IR model calls into question the alleged willingness of many non-unionized companies to negotiate a tailor-made individual employment contract for every employee and the resistance voiced against the CR model due to its uniformity and rigidity. One can assume that if a majority of employees engaged by an ID enterprise (Cell 2), not merely senior executives and talented professionals, choose to transfer to an IR model (and consequently each one of them is represented by a shrewd negotiator or lawyer¹⁴ when negotiating the individual employment contract), the strategic choice of employment relations model adopted by the enterprise might change. If the enterprise were able to change, it might refuse to hire those employees who decline to sign the employer-imposed standardized employment contract and insist on being represented while negotiating their own terms and conditions of employment. If not, it is likely that the enterprise would abandon its union avoidance strategy and opt instead for the collective employment relations model (CR-type or Cell 4). So far, however, companies have not had to confront this choice.¹⁵

Cell 3—Collective-Direct (CD)

Cell 3—CD—is probably the territory of most cutting-edge employment relations practices and innovations in workplace governance. In terms of industrial democracy, the CD model brings to mind the ancient form of direct democracy (as opposed to modern representative democracy). One example of the straight CD model, the Australian “Enterprise Flexibility Agreement” (also referred to as the “non-union collective agreement” (Katz and Darbishire 2000)), was

¹⁴ One of the wonders of our time is the fact that the vast majority of employees choose not to be represented by a lawyer or other professional when negotiating the terms of their employment, which is one of the most important transactions of their life, and one with far-reaching consequences.

¹⁵ It has been suggested that had the Internet bubble lasted, probably we would have seen more and more employees engaging professionals to negotiate their individual employment contracts.

agreement" (Katz and Darbishire 2000)), was recently integrated under Australian "work choice" legislation. Management negotiates enterprise flexibility agreements or a non-union collective agreements directly with the affected employees, without the latter being represented by a union. Such agreements are intended to adjust industry-wide or national standards to the particular needs of the enterprise and its work force.¹⁶ Under the Australian regime, the CD model is not merely a collective voice or a collective begging mechanism. For an employer that prefers to distant itself from the unionized CR model, it is the only available avenue for exempting its enterprise (or part of its work force) from to industry-wide or national standards. Since the alternatives, from the employer's point of view—a standard collective agreement or being subject to industry-wide or national standards—are less desirable, the employer has a strong incentive to reach an agreement with its work force.

A similar phenomenon is the "Work Force Agreement" under recently enacted U.K. legislation, which regulates information and consultation procedures, maternity and parental leave, fixed-term employment, and working time (Davies 2004). These statutory provisions establish uniform labor standards. Nonetheless, an enterprise may opt out of the uniform standards by signing a regular collective agreement negotiated with a union—establishing a CR system—or by entering into an enterprise-specific work force agreement, which is an agreement that it negotiates either with ad hoc representatives of its work force or with the majority of the employees in the enterprise—in effect a CD arrangement (Carley and Hall 2000; Collins 2001; Barnard and Deakin 2002; Kilpatrick 2003; Barnard, Deakin, and Hobbs 2003). The approach taken by the U.K. Information and Consultation of Employees (ICE) Regulations of 2005 is an extreme example

of a CD system. Not only may the agreement be negotiated directly with the employees or with their ad hoc representatives rather than with an institutional and independent employees' representation or a union, but it can provide for direct means of information and consultation rather than via employee representatives (Hall 2006). In their co-determination or decision-making capacity, the European works councils are similarly situated. The only difference is that the works council is an institutional rather than an ad hoc form of representation.

From a workplace governance perspective, the most intriguing aspect of the Australian enterprise flexibility agreement and the U.K. work force agreement is that the enterprise-specific terms and the conditions of employment are determined collectively and uniformly without a union, through a consensus-building process in which management and all affected employees take part directly or through ad hoc representatives; this is a clear-cut example of a CD employment relations model. Note, however, that the concept of representation in the enterprise flexibility agreement or the work force agreement is very different from the collective representation of employees under the CR model. The former is an ad hoc representation, and it is far less independent, powerful, and resourceful than the permanent, institutionalized representation found in the CR model.

The Internal Continuums of the Matrix

Having introduced the four cells of the matrix, I now turn to the last and most important point about the proposed typology of employment relations models—viewing the broad array of employment relations models and workplace governance as a continuum with the two prototypes, the Cell 2 individual-direct (ID) and Cell 4 collective-represented (CR) employment relations models at its two extremes. Industrial relations literature, which often addresses the different degrees of a union's strength or involvement in the employment relations of an enterprise, confirms the view that the continuum approach is conceptually more

¹⁶Since by definition its terms vary from the national arbitration award, an enterprise flexibility or non-union collective agreement has to be approved by the arbitration tribunal. See Pittard (1996:62); Fells and Kelfington (1998:234).

chotomous “union/non-union” framework. In addition, since an employment relations model or model of workplace governance that is located in a particular cell in the matrix might be at any of various points on each of the two dimensions, it is preferable to view each cell as a continuum. The fact that a given mechanism of workplace governance (collective bargaining, for example, or works councils) can easily be located at different points within a cell demonstrates that such a mechanism means different things in different countries. Finally, due to the dynamics and the continuous nature of employment relations, the employment relations of an enterprise can be expected to move at times within a cell and from one cell to another. In other words, one can envision that in addition to the ID–CR continuum there may be additional continuums inside the matrix.

One such continuum exists between the ID and IR cells. The particular location on this continuum may be a function of the intensity of representation insofar as the highest can be observed in the day-to-day representation of performing artists by their agents and lawyers. Much lower intensity may occur in the case of top executives, who are usually represented by lawyers only at the point of entry and exit. The lowest degree of representation is exemplified in the “companion” under recent U.K. legislation. The Employment Relations Act enables an employee to be accompanied by either a trade union member, a lay trade union representative, or a co-employer. Another example is the ad hoc representation in agency or court proceedings by an individual from an NGO or another type of community-based organization (Fine 2006).

Cells 3 (collective-direct (CD)) and 4 (collective-represented (CR)) constitute the collective continuum. The explanatory power of this continuum can be illustrated by comparing two types of enterprises in which employment relations are governed by a collective agreement. The first type is known as a “green site” (Beaumont and Townley 1985b; Bassett 1986), which originally referred to new plants built in rural areas in the United Kingdom by Japanese

multinationals.¹⁷ The second is an old and well established enterprise type characterized by job control unionism¹⁸ (Brody 1993; Kochan, Katz, and McKersie 1986). Both types of enterprise will have an active union and high union membership. In fact, between the two, the green site union that is party to an agreement may have a higher rate of membership, and it may enjoy both exclusivity and institutional security within the enterprise through a closed or union shop arrangement. Nonetheless, from a workplace governance perspective, what really counts is day-to-day employment relations, which is managed to a large extent on a direct individual or team basis. From the management’s viewpoint, the collectivity places very few constraints on management’s initiatives or functional flexibility. It allows management considerable latitude and discretion, and shows a high degree of tolerance for differential treatment of employees. The union usually intervenes only in the most extreme cases of usurpation of power by management. In terms of workplace governance, these peculiarities assign the green site enterprise to a high CD or to a low CR location.

In sharp contrast to the above, there are enterprises or employment relationships located at the far end of the continuum, that is, at the high end of CR. Among them are large proportions of public sector enterprises, as well as the surviving (though now rare) old industrial plants, all of which are tightly governed by an elaborate collective agreement, detailed work rules, and disciplinary codes. They typically have a strong and entrenched union representation and restrictive work

¹⁷These plants signed collective agreements that featured the following properties: a long-term agreement, closed shop, management flexibility, union involvement through consultation over a broad array of operational and work-related issues, no strikes, and final offer arbitration for contract renewal.

¹⁸Job control unionism is associated with a very detailed and legalistic collective agreement, enforced by a formal quasi-judicial grievance and arbitration procedure. The agreement establishes uniform seniority-based terms and conditions of employment that tie employee rights to very narrowly defined jobs with predictable compensation packages (Budd 2004).

union representation and restrictive work practices (Kochan, Katz, and McKersie 1986; Bluestone and Bluestone 1992).

Works councils, aimed at promoting dialogue between management and employees, exist in many European countries, including Germany, the Netherlands, Spain, Italy, and Norway (Kaufman and Gottlieb-Taras 2000). They may serve as another example of how a workplace governance mechanism may be manifested in different locations along the CD–CR continuum. Legislation and social structure vary from country to country, and as a result so does the location of a particular works council on the CD–CR continuum. Assuming there is no union presence in the enterprise, the specific location of the works council is determined by three criteria: (1) the degree of the works council's independence; (2) the amount of power and influence it has over decision-making; and (3) the scope of work- and business-related issues over which it has power and influence. The influence of the works council over decision-making in the enterprise may range from the right to receive information about and explanations for management actions to joint regulation or co-determination. Other options within the range include joint consultation, the right to negotiate (while management retains decision-making powers), and the right to delay or veto management decisions (Clegg 1979; Boxall and Purcell 2003; Goldman 2005).

Examples of mechanisms that will probably be located at the low end of the CD collective-direct cell (cell 3) are collective voice and other non-union employee representation programs that are initiated by management. These employment practices usually belong to the lower part of the CD cell for three reasons. First, they are wholly dependent on management for their existence. They are established and structured to operate as part of the firm's larger system of H.R.M., and they may be terminated at management's discretion (Kaufman and Gottlieb-Taras 2000). Whenever a collective voice mechanism is mandated by law (Boxall and Purcell 2003), its ranking within the CD cell will be higher. Second, those who participate in such programs lack the independent

status, immunities, and resources of the collective representation or the works councils typical of Cell 4 (CR) systems (Kaufman and Gottlieb-Taras 2000; Budd 2004). Third, these mechanisms do not provide the employees with any appreciable decision-making power in establishing, changing, interpreting, or applying the terms and conditions of their employment, or enable them to challenge management decisions that affect them. True, these mechanisms enable employees to voice their concerns and to have an input with respect to some narrowly defined issues, such as job design, cost containment policies, and quality control (Kaufman and Gottlieb-Taras 2000; Verma 2000); but the final say rests with management (Purcell and Sisson 1983; Boxall and Purcell 2003; Dundon, Wilkinson, Marchington, and Ackers 2004). These properties place management-initiated voice mechanisms in the lower part of the CD cell, as they are unable to provide a meaningful collective voice. Finally, as traditional unions have declined, a wide variety of groups and organizational forms have emerged to fill the void. These include NGOs advocating for improved labor standards, as well as demographic- and social-based organizations or informal ethnic, racial, or gender groups, particularly in the United States (Scully and Segal 2002; Kochan 2005). These groups and organizations often represent workers' causes on a collective or group basis, without having formal status or authorization from the workers themselves. In the suggested matrix, these forms of representation are found on the line separating CD and CR, depending on the causes they espouse and the functions they perform.

Figure 2 provides the approximate location in the matrix of different models of employment relations and workplace governance. As I explain below, the exact location will always be context-specific.

The proposed matrix and the various continuums may be used for analyzing a certain mode of workplace governance in the abstract or for examining the employment relations of a particular enterprise. In both cases, the application is both context-specific and dynamic, that is, the observer's conclusion as to where the workplace fits in the matrix may

Figure 2

	Collective	Individual
Represented	Collective Labor Relations Works Councils Green Sites / No Strike Agreements CR	Performing Arts (Talents) Professional Sports Executives Worker Centers Companion (U.K.) IR
Direct	Workforce Agreement Flexibility Agreement (Australia) Employee Voice System CD	Individual Employment Contracts ID

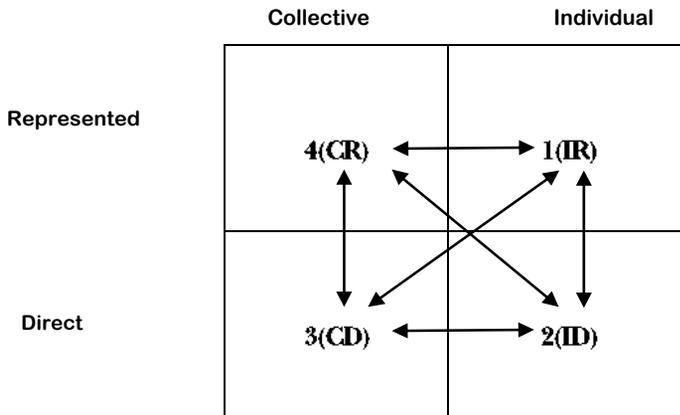
change over time. As shown in Figure 3, a movement from each point within the matrix is possible along three continuums. For instance, at the industrial relations system level, a change in legislation that bestows new and substantive decision-making powers on works councils (supplanting joint or collective consultation rights, say, with joint regulation powers (Boxall and Purcell 2003)) may cause works councils to move higher within the CR cell. Similarly, an enterprise that is successful in ousting its union and replacing the collective agreement with a management-promulgated employee manual may move from CR to ID. Finally, when management introduces an employees' voice or any other non-union representation program, the enterprise may move from ID to CD or to the bottom of

the CR cell, depending on the program's features. The reason for the new location within the matrix is that these types of programs provide workers with some measure of indirect bargaining power, as well as benefits that exceed those available in individual-based employment relations (Kaufman and Gottlieb-Taras 2000).

A Note about the Unit of Observation

A unique feature of many modern work organizations is their propensity to put into effect multiple employment relations models simultaneously. The literature tends to differentiate between two groups—core employees and peripheral employees—according to their contractual arrangements and the employment relation models un-

Figure 3

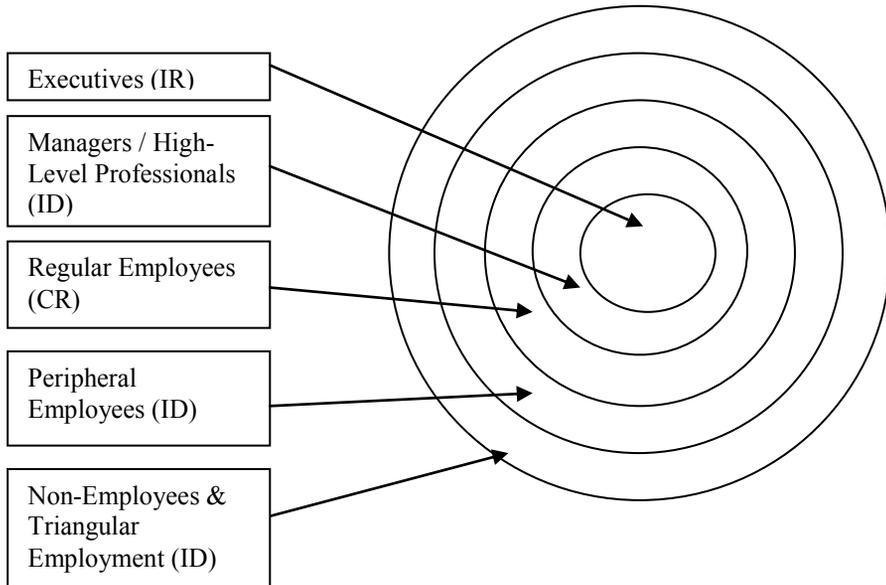


diversity of today's work organizations goes much further than core versus peripheral employees. First, an increasing proportion of those working for the enterprise do not even have a formal employment relationship with the firm or with the firm's outside contractor (triangular employment). They are classified as independent contractors, self-employed, freelancers, and so on. Second, a high degree of diversity exists even among regular employees. Any attempt to characterize an enterprise as either IR, ID, or CR runs the risk of overlooking the complexity of workplace governance systems in today's organizations. A modern work organization may have several interacting employment relations models, as depicted in Figure 4. At the center is a small group of executives, all represented by lawyers (IR). The second layer is ID. It consists of regular managers and high-level professionals. They are represented neither individually nor collectively. The third layer is high CR—the collective union representation model. Sometimes, as is frequently the case in Japan and some European countries (Golan 2000; Morishima and Tsuru 2000), this layer may have a joint consultation committee or works council—low CD—that functions side-by-side with the collective bargaining process—CR. In some instances, especially under conditions of a tight product market and a strong union presence, this layer may be further divided between first- and second-tier collective agreements. Usually the second-tier

agreement applies to new employees, and provides for lower wages, fewer fringe benefits, and less union-supported job security than the first-tier agreement. The two tiers may be classified as high-CR and low-CR. The fourth layer is again ID. It is composed of the peripheral and "non-standard" employees, such as contingent, seasonal, part-time, and temporary employees. They are excluded from the coverage of the collective agreement, and cannot afford professional individual representation. The fifth layer includes those classified as non-employees, as well as those in various forms of triangular employment relationships, including those who perform outsourced functions. It lumps together non-employees and employees who perform work at or for the firm, but who nonetheless are retained by other employers such as temporary work agencies, regular and employee-only subcontractors, and related or double-breasting firms. From the perspective of the enterprise, these workers fall into the ID category.

Another example of a firm with a mixture of employment relation models is the American-based multinational, which, due to legal requirements or social/cultural norms, operates in Europe under the CR model. Since multinationals tend to emphasize the idea of a uniform organizational culture, it would be interesting to compare organizational performance under the two regimes, and to see how the two models of employ-

Figure 4



tional performance under the two regimes, and to see how the two models of employment relations interact. A similar strategic problem may arise when a firm that is primarily ID acquires or merges with one that is primarily a high-CR enterprise. The situation may be particularly complicated in industrial relation systems where, by law, collective agreements and representation survive the transfer of ownership or merger (Braginsky 1995).

Conclusion

This paper illustrates the value of replacing the traditional union/non-union dichotomy with a more dynamic and nuanced typology of employment relationships. It offers researchers and policymakers a richer and more accurate conceptual framework for describing and analyzing the wide variety of individual and collective representation and voice arrangements that may be observed in different employment settings around the

world. The paper further suggests honing the study of employment models and making them more sensitive by looking at the contemporary workplace as an organization with multiple distinct employment models that interact with each other.

The potential advantages to be gained by using this new typology are limited neither to public policy debate nor to those making a strategic choice of employment relations models. In fact, this typology may allow researchers to refine their empirical studies of the diverse forms and combinations of representation and voice found in contemporary workplaces in order to see which perform best in different settings for different work groups. It appears that the real alternative to union organization is not “no unions” or lack of representation, but some innovative form of representation and voice. Whether these alternatives are sustainable and powerful enough to do the job remains an empirical question that our field should be tackling with greater clarity and vigor.

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