



MOST AMERICANS are aware that labor unions are enjoying legal privileges and immunities, that their members and officials are free to commit wrongs to person and property, to deprive individuals of the right to earn a livelihood, to break contracts and trespass upon other people's property, to restrain industry, trade and commerce. All these immunities and privileges were granted by law, embellished by courts and agencies, under the political pressure and power which labor unions possess in contemporary society.

Many unions and their numerous spokesmen in education and the news media are clamoring for more legislation. They are demanding a "democratization of the economy,"

"equal rights" for employees, a genuine "social partnership" for employers and workers, "equal power for capital and labor." Many point at West Germany where labor unions are enjoying unprecedented power through equal representation on corporate boards of directors.

In no other country of the West do union officials exert as much influence on economic decision-making as in West Germany. Their influence rests on legislation that goes back to 1947 when the Allied occupation powers introduced equal representation in the steel industry. In 1951 the German Bundestag yielding to union pressure made it applicable also to coal mining. In 1956 it applied and expanded the concept to holding companies in the coal and steel industries. In 1952 and 1972 it incorporated co-determination in the Enterprise Organization Acts, and in 1976 it passed the Co-Determi-

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nation Act. Depending on the nature of the industry, its structure and size, and the legal organization of the enterprise, the laws are applicable to most privately owned businesses.¹

The Coal and Steel Co-Determination Act of 1951 provides for equal representation on the boards of directors. That is, the number of union officials or shop stewards elected to the board of directors by employees must equal the number of board members elected by stockholders. Moreover, both groups of directors must agree on and elect a "neutral member" who is expected to break any potential deadlock in decision-making. The law also created the position of a full-time "labor director" serving on the executive committee who cannot be removed except by majority decision of the labor directors.

The Enterprise Organization Acts of 1952 and 1972 stipulated that the board of directors of all corporations consist of one-third employee-directors. The same was ordered for all other business organizations with limited liability and to cooperatives with more than 500 employees. The law also directed the creation of workers' councils or committees in all such enterprises with five or more

employees. The committees were endowed with far-reaching co-determination rights in social, personal and economic matters. But the law was not to apply to so-called "purpose enterprises" pursuing objectives in politics, labor unions, religion, education, science, art, and similar pursuits. Moreover, the law does not cover enterprises of the federal, state and local governments and other public corporations.

Contractual Co-Determination through Collective Bargaining

The Co-Determination Act of 1976 is applicable only to corporations with more than 2000 employees. The boards of directors of such enterprises must consist of an equal number of directors elected by stockholders and by employees. The stockholders may elect the chairman of the board who in case of deadlock may cast the decisive vote.

In addition to these legal provisions imposing co-determination on German commerce and industry there is contractual co-determination resulting from collective bargaining. As a condition for cooperation with management on such issues as reorganization or production adjustments, or to settle a costly strike, many companies not covered by law were forced to introduce the kind of co-determination imposed on the coal and steel industries, that is, parity representation by labor. To the

¹Cf. Walter Hamm, *Erfahrungen mit der Mitbestimmung in der Bundesrepublik Deutschland*, Schweizerischer Handels- und Industrie-Verein, #25, Sept. 1981.

unions this is the only co-determination worthy of the name. The Co-Determination Act of 1976 is rejected as unsatisfactory because it grants the decisive vote to the chairman of the board who is elected by the owners.

Altogether, 600,000 employees of the coal and steel industries have parity co-determination rights. One million workers possess the rights granted by the Enterprise Organization Acts, and more than four million employees in some 500 large corporations are covered by the Co-Determination Act. All in all, one-fourth of all West German employees are grantees of co-determination rights. But this does not mean that these millions of workers actually view their rights as urgent or important, or that they are co-determination conscious. Every public opinion poll seems to confirm that the masses of workers are unconcerned and uninterested, which leads many labor leaders to voice their disappointment. It seems that the interest in labor co-determination is limited primarily to union officials.

Three Types of Co-Determination

It cannot be surprising that the laws created voting blocs consisting of owner-directors and labor-directors. Each bloc meets well in advance of a board meeting in order to arrive at a consensus that will be presented and defended in unison at

the meeting. Nevertheless, in the coal and steel industries subject to full parity legislation there is no serious confrontation. Both blocs are fully aware that they may be outvoted by the "neutral director." It leads them to make every effort through lengthy and painstaking consultations and negotiations to arrive at some compromise. Many decisions are finally made by unanimous vote.

The situation is quite different in the corporations subject to the Co-Determination Act. There is little bargaining and maneuvering for compromises as the chairman of the board can be expected to cast his decisive vote with his colleagues, the stockholder-directors, in opposition to the bloc of labor-directors. Moreover, some corporations managed to reduce the tasks and functions of their boards to the legally permissible minimum, which has led to significant changes in the corporate structure. Union officials obviously are distressed and perturbed by the power of the chairman and the reduction in board functions, which they interpret as flagrant examples of anti-labor and anti-union behavior. Of course, the boards organized under the Enterprise Organization Acts of 1952 and 1972, on which the owner-directors outvote the one-third labor-directors without much ado, are the favorite objects of union scorn and contempt.

A New Breed of Directors

Co-determination in the true party sense exists only in the coal and steel industries. The law imposing the co-determination effected far-reaching changes in the composition of the boards of directors, in the behavior of board members, and in company policies, which in turn affect not only the employees but also the public at large.

To the labor union agents on a board, the election of new stockholder-members is of utmost importance. As it is most difficult to be elected without the consenting votes of the labor-directors, only candidates with proven willingness to "cooperate" can be expected to be elected to the board. Surely, the chairman of the board usually selects and recommends the candidates. But he must be ever mindful that they must be acceptable to the labor-directors. The selection therefore concentrates on "friendly" candidates whose board behavior can be surmised in advance.

In every board meeting and with every vote the owner-director may jeopardize his professional future. If he aspires to be elected to the boards of other companies he faces the risk that the union agents on the board may be in contact with other agents on other boards and bar his election. The union may even black-list him, which would signal the end of his career.

Surely, the capabilities and talents on the boards of directors in the coal and steel industries have changed materially. Young owner-directors work diligently to curry the favors of labor-directors in order to enhance their professional careers. The labor-directors are expected to be uncompromisingly loyal to their unions, and owner-directors are expected to be cooperative with the labor-directors. At any rate, the former must at least be depended upon to be very silent and sympathetic to the actions of labor-directors. It cannot be surprising, therefore, that any and all insider criticism of parity co-determination has been muzzled and the freedom of speech, at least for owner-directors, abridged. A new breed of directors is crowding the boards jealously guarding the interests of employees as interpreted by the labor-directors. Employee benefits are always paramount—even if they should be very costly, inflict losses, or even jeopardize the future of the company. In final analysis, massive government subsidies can be expected to cover the losses of an ailing coal and steel industry.

The law sought to avoid paralyzing situations in which both blocs are deadlocked and are unable to make management decisions by creating the position of a "neutral member." As such situations occur rather frequently, excessive de-

mands are made on one person who usually has little or no professional knowledge. He is expected to resolve difficult issues on which the two director blocs cannot agree, which leads him to make very few resolute decisions. He may simply abstain from voting or alternate his vote between the owner-directors and the labor-directors in order to retain the good will of both sides. After all, he, too, would like to be re-elected.

Co-determination has seriously impeded the decision-making ability of the board. There is little demand for expert knowledge of the enterprise or even the industry. A member must be loyal to the labor team and, as owner-director, be sympathetic to the other team. The boards which in bygone days used to guide the affairs of their enterprises now are spending considerable time and energy on the discussion and solution of labor union problems. If enterprise questions are to be resolved, their solution invariably is made dependent upon the satisfaction of employee demands. Transaction costs are greatly increased, investment returns are reduced, and the profitability of the enterprise is sacrificed anew to union objectives. And all such effects are the bitter fruit of many months or even years of feverish deliberations and negotiations.

At times, heterogeneous composition of the owner-bloc compounds

the co-determination problems. Twenty-five per cent of the stock of the well-known Krupp enterprises in Bochum, for instance, is owned by the government of Iran. In June of 1981 the Iranian representative on the board single-handedly prevented a needed reorganization because "Islamic principles elevate the fate of man above economic issues." Offsetting the vote of the neutral director, the one Iranian vote succeeded in paralyzing the board.

A similar heterogeneity of the owner bloc can be anticipated as a result of certain union demands. In recent rounds of bargaining the unions insisted on profit sharing that would transfer company profits or preferably company shares to an employee fund managed by the labor union. Workers are to become owners of stock that is managed by the union, which in turn entitles its agents to be elected to the board as owner-directors.

Bargains Without Bargaining

Co-determination has changed the nature of collective bargaining. The notion that both sides meet at the bargaining table in order to come to amicable agreements on employment conditions cannot hold true if both sides are represented by or are loyal to a labor union. There are no two sides if the members of the executive board who are to represent the interests of the company can be

appointed only with union support.

When difficult decisions must be made by the board, such as a reduction of output or the closing of a plant, a temporary impasse can be expected which, in the end, will be resolved at the expense of owners. The severance pay to employees, even though they may readily find employment elsewhere or draw generous unemployment compensation, may reach 40,000 DM (some \$17,600) per person. If the company cannot bear such expense, the board is expected to petition and pressure the government for more subsidies, for protection from cheap foreign competition, or for government guarantees of sales at higher prices. During the 1950s and 1960s when coal mining was laboring under the competitive pressures of cheap oil imports, it became the most subsidized West German industry. During the 1970s also the steel industry needed extensive government aid and support.

Public discussion of co-determination in Germany usually is limited to the confrontation between owners and employees, to the pros and cons of parity power between owner-management and labor unions. Little is said about the economic, social and political effects of co-determination, or about its moral and ideological aspects. And little mention is made of countless consumers whose economic well-being

depends on the industries, and millions of taxpayers who are called upon to subsidize the companies.

Parity co-determination has not brought peace to the labor markets. A long and ugly strike shut down the steel industry from November 1978 to January 1979. The key issue was the union demand for a 35-hour work week. The strike was settled with a compromise that retained the 40-hour work week, but granted increased holidays and vacations to employees.

Co-Determination is Expropriation

Co-determination brings into question the very foundation of the private property order. It grants equal rights of property to individuals who did not provide it. If labor unions or their agents have equal rights of management they are equal partners in ownership. No new rights are created; existing property rights are merely redistributed, that is, seized by political force from the owners and given to labor unions.

An inevitable consequence of such a seizure is the immediate closure of all new sources of equity capital. No one can be expected to invest or reinvest his savings in an enterprise in which someone else has parity rights to his investments. No one is likely to risk his capital in economic production if he bears all the risk and someone else has equal rights not only to the returns but to the

capital itself. Any industry with parity co-determination, therefore, loses its access to the equity market and is relegated to the credit market or to the public treasury.

The ever-rising operating costs not only depress the returns on the capital invested, but sooner or later lead to losses which in turn cause the industry to constrict. Despite the militant union opposition to production curtailments, to shut-downs of plants and facilities, the number of jobs tends to shrink continually and output declines. The industry loses its ability to adjust to changing market constellations and to compete effectively with foreign enterprises working without the co-determination handicap. If it were not for new government intervention in order to effect the rescue of co-determination industries, such as government support prices, import restrictions or generous subsidies, the co-determination industries would self-destruct, giving way to foreign competition.

Unseen Consequences

In the short run the employees of a company with parity co-determination may enjoy the benefits they reap from union work rules, from less work and higher pay, from management limitations and costly fringe benefits. They may savor the consumption of investors' capital and the returns that otherwise go to

them. But when the industry begins to stagnate or even constricts, which is unavoidable after a while, the co-determination benefits give way to co-determination losses. As plants and mines shut down permanently, unemployment rises, especially among young workers. Moreover, it becomes increasingly difficult to find and tap new sources of benefits. When, as a last resort, the public treasury becomes the primary source, a national economic "crisis" or "emergency" needs to be declared to come to the rescue of the co-determination industries.

The "emergency" proves to be severe and tenacious. It just won't go away; but it can be alleviated temporarily through bigger and bigger subsidies. To listen to the moaning of the co-determination directors is most interesting and amusing: "The Arabs are causing the energy crisis." "The U.S. dollar is too weak." "It is too strong." "We are running out of cheap energy"—and so on. The blame invariably is laid on some extraneous factor, preferably abroad.

The public is paying a co-determination price in the form of higher goods prices, which signal lower levels of living. When the public treasury must finally be tapped to sustain the industry and pay the benefits, the public pays again through higher taxes or, in the case of debt monetization, through more inflation. And finally, the people in

neighboring countries trading with the co-determination country are adversely affected as trade and commerce are shrinking and trade barriers are rising. Everyone loses because the co-determination industry no longer functions efficiently and is consuming or misusing economic resources.

Eroding the Market Order

The private-property competitive order depends on the unhampered choices and decisions of countless individuals seeking to satisfy their wants and desires. Entrepreneurs as managers or investors guide the production process which is a continuous process of adjustment of economic resources to the whims and wishes of consumers. Successful adjustment generates profits, inefficient operation inflicts losses.

Labor-directors who are not guided by profit and loss and are unaffected by the consequences of their actions, are hampering or thwarting the adjustment process. Intentionally or instinctively they are sabotaging the market process in order to preserve or expand their own economic power and ultimately to replace the market order with a political command system, that is, with socialism.

It is a fact verifiable in words and deeds that many labor-directors favor a command system in which they themselves would man the central controls. Their ideological bent raises

the question whether their board decisions, aiming to thwart market adjustments and to turn profits to losses, may not be designed to prove the "failure" of the market order and to promote the command order.

West German labor unions are playing an ominous game. They are ruthlessly employing political power to gain economic power, which in turn is paving the way for a political command order. It must not be forgotten that parity co-determination came into existence by sheer labor union intimidation. On April 10, 1951, the *Bundestag* cast its final vote against it. But Carlo Schmid, the speaker of the House, refusing to announce the outcome of the vote, called the leadership into special session in order to inform it anew of the seriousness of the situation. With the union posted for a general strike he made the *Bundestag* vote again until it agreed to co-determination. The "democratization" of industry thus was born by antidemocratic means.

The German miracle of economic recovery after World War II never touched the coal and steel industries. On the contrary, they militated against it and vitiated it until the miracle gave way to stagnation and decline. The ideology and policy that gave rise to co-determination, and other government intervention in the private-property competitive order, must answer for the decline.Ⓜ



The Humanity of Trade

WHEREVER two boys swap tops for marbles, that is the market place. The simple barter is in terms of human happiness no different from a trade transaction involving banking operations, insurance, ships, railroads, wholesale and retail establishments; for in any case the effect and purpose of trade is to make up a lack of satisfactions. The boy with a pocketful of marbles is handicapped in the enjoyment of life by his lack of tops, while the other is similarly discomfited by his need for marbles; both have a better time of it after the swap, while their respective surpluses before the swap are nuisances. In like manner, the Detroit worker who has helped to pile up a heap of automobiles in the warehouse is none the better off for his efforts until the product has been shipped to Brazil in exchange for his morning cup of coffee. Trade is nothing

but the release of what one has in abundance in order to obtain some other thing he wants. It is as pertinent for the buyer to say "thank you" as for the seller.

The market place is not necessarily a specific site, although every trade must take place somewhere. It is more exactly a system of channeling goods or services from one worker to another, from fabricator to consumer, from where a superfluity exists to where there is a need. It is a method devised by man in his pursuit of happiness to diffuse satisfactions, and operating only by the human instinct of value. Its function is not only to transfer ownership from one person to another, but also to direct the current of human exertion; for the price-indicator on the chart of the market place registers the desires of people, and the intensity of these desires, so that other