EMPLOYEE VOICE IN CORPORATE GOVERNANCE: A DEFENSE OF STRONG PARTICIPATION RIGHTS

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Abstract: This article surveys arguments for the claim that employees have a right to strong forms of decision-making participation. It considers objections to employee participation based on shareholders' property rights and it claims that those objections are flawed. In particular, it argues the employee participation rights are grounded on the same values as are property rights. The article suggests that the conflict between these two competing rights claims is best resolved by limiting the scope of corporate property rights and by recognizing a strong employee right to co-determine corporate decisions.

1. Introduction

Participative Management.” “Employee Involvement.” “Flattened Hierarchies.” “Employee Voice.” As these current buzzwords of management literature indicate, the topic of employee participation decision making has arrived in the U.S. Once a mantra of left-wingers that was inaudible in mainstream discussions of corporate governance, concern with employee participation promises to spread in the current economic and political climate. It is urged by former Clinton administration players (Labor Secretary Robert Reich and chief economist Laura D’Andrae Tyson), promoted as an essential element of the future American workplace by the blue ribbon “Dunlop Commission on the Future of Labor-Management Relations” and embraced by some labor leaders. However, aside from a continuing few in academic circles (e.g., Marxist social scientists, philosophers and some devotees of the Critical Legal Studies movement), praise of employee participation is purely instrumental. Its entry into the mainstream is as a device for increasing labor productivity and/or for improving the competitiveness of U.S. industry. In contrast to such views, this article argues that strong forms of employee participation should be recognized as a matter of right, as they have been for decades in Western Europe.

A few distinctions concerning rights will be helpful in understanding the thesis I wish to urge. First, a right, as understood here, involves a valid claim that some interest of an individual deserves protection. Such claims can be moral or legal. A legal right is one that is, explicitly or implicitly, contained in a given system of positive laws and the principles reflected by those laws. A moral right,
on the other hand, is a protection for an individual's interest that is dictated by
the principles and values of a moral system. Secondly, rights can be basic or
derivative. They are basic when they are essential for treating individuals with
dignity and respect. They are derivative when their validity rests on values that
are more fundamental, values that the right is instrumental in achieving. For
instance, some argue that a right to free speech is basic in that prohibiting free-
dom of speech cuts at the very heart of what it means to be an autonomous,
reasoning person. A right to property, on the other hand, is usually understood as
derivative, gaining its importance because it is instrumental in protecting other
more fundamental goods such as autonomy or democracy. Thirdly, rights can
either be already recognized within a society or they can be, to borrow Joel
Feinberg's phrase, manifesto rights. It should be uncontroversial to note that a
manifesto right could be a valid right, one that a particular society, even on its
own professed values, ought to, but does not yet, acknowledge (e.g., universal
suffrage in America at the turn of the century).

I want to argue that a strong form of employee participation is at least a de-
ervative moral right. It is also obviously a manifesto right in the United States
since that society does not as yet recognize workers as having a valid claim to a
substantial share in workplace governance and decision-making authority.

In order to understand what I intend to argue, it will also be helpful to catalog
some of the forms of employee participation that are possible. Participation can vary
in scope and cover issues from the most mundane, shop-floor questions (e.g., coffee
break scheduling) through mid-level decisions (hiring and firing) to the most far-
reaching upper-level issues (plant closures or relocations). It can be implemented
through purely advisory mechanisms such as quality circles or through stronger
mechanisms that confer actual control over decision making. Among the latter are
works councils with powers to make and implement policy, Employee Stock Own-
ership Plans (ESOPS) where employees obtain voice as voting shareholders, and
worker representation on corporate boards. Finally, participation in decision making
by employees can be either direct, where the employees themselves make decisions
about, for example, the distribution of work assignments within their own group, or
it can be representative, for example, where the employees elect one or more of their
number to serve on a works council.

I will argue that workers have a right to co-determine policy at all levels of the
corporation. Hence, the argument will support at least employee-employer work-
place committees and equal employee representation on corporate boards. In essence,
I will be arguing for the adoption in the U.S. of a model of employee participation in
corporate governance along the lines of that found in some European nations.

II. Defenses

Employee participation rights can be defended on a number of grounds. Since
the primary thrust of this paper is to respond to certain objections to these rights,
I will merely sketch some of the defenses here.
A. Dignity

First, most approaches to morality that emphasize rights do so because their adherents believe that persons somehow have inherent value and should be treated with dignity. A long tradition explains that inherent value as deriving from the ability to deliberate rationally and choose freely how to live, that is, from autonomy. Traditional hierarchical patterns of work organization, of course, treat employees as anonymous and replaceable "human resources" that are to be "managed" for the goal of corporate profit. An authentic social commitment to the dignity and autonomy of individuals would challenge that tradition. Since we spend one-third to one-half of our adult lives at work, since our work experience influences the character of even our non-working hours and since work in our culture plays such a dominant role in defining us as individuals and in establishing our social worth, a commitment to dignity and autonomy should urge that workers have some ability to exercise control over their work lives (Dahl, 1985; Schwartz, 1984; Werhane, 1985). That control can only be more than token when it is possessed in amounts equal to that of management.

B. Fairness

Second, participation rights can be derived from modern Western moral norms that profess a commitment to the equal dignity of each person. While no social system could guarantee that all the interests of its members are accommodated, the commitment to equality requires that decisions affecting those interests, and especially decisions affecting important or basic interests, be made fairly. Clearly, many policy decisions made in corporations are capable of great impact on the most basic interests of workers. What more effective guarantee of fairness and accountability could there be than allowing workers to represent their own interests in the decision-making process (Brenkert, 1992; Gould, 1988; Rogers, 1995; Werhane, 1985)? In order for that guarantee to be effective, however, the mechanism of participation must provide real authority. And, since a balanced and fair consideration of all interests is more likely when opposing parties have roughly equal institutional power, employees deserve an amount of authority that enables them to resist policies that unfairly damage their interests. That, of course, means a right to co-determine policy at all levels.

C. Self-Respect

Third, it is now a psychological commonplace that a person’s sense of self-worth is largely conditioned by the institutional relationships she has and by the responses from others she receives in those relationships. Of course, in contemporary America, the development of both the division of labor and hierarchical authority structures leaves little room for most workers to exercise their autonomy or to feel that their opinions are influential. The frequent consequence of such work structures is worker burnout and alienation. Workers dissociate themselves
from a major portion of their lives, often with the consequence of a sense of impotence and unimportance. However, these results are less likely when workers are given opportunities for autonomous action and for the exercise of judgment. Since participation in decision making can reaffirm the employees’ sense of influence and self worth, there is a presumptive reason for implementing it in the workplace.

It should be noted that this defense of participation rights does not require that those rights be rights to co-determine policy. The concerns expressed by this defense could potentially be satisfied by forms of participation that were merely advisory, if those advisory mechanisms in fact increased employees’ subjective sense of influence and self-worth. It is also worth noting, however, that purely advisory mechanisms of participation carry the danger that workers, after an initial decrease in feelings of alienation, might become cynical about the real impact of the participatory structures. Cases of this abound in corporations that implemented quality circles without a strong commitment to altering traditional hierarchical and autocratic structures. The history of the General Foods Topeka plant’s experiment with participation programs is a classic example (Zwerdling, 1980). These same points apply as well to the defenses of participation that follow immediately below.

D. Health

Fourth, if as was just suggested, contemporary work organization is an important cause of alienation, work may provide the stressors that lead to both physical and mental health problems. Some evidence indicates, however, that stress is inversely related to perceived control over one’s work environment (Fletcher, 1991; Karasek and Theorell, 1990). Thus, if employees were granted some measure of control over workplace decisions, stress and attendant health difficulties might be reduced. In fact, data exist which show increased levels of work satisfaction when workers believe they are able to influence corporate policies. Additionally, there is evidence that employee voice in the workplace through participatory committees makes more effective regulatory initiatives aimed at health and safety. (Rogers, 1995) Since health is a basic interest, there are presumptive reasons for programs, such as employee participation, that might reduce threats to it.

E. Democracy

Finally, some have argued that only by increasing citizens’ sense of power over more local and immediate aspects of their lives will we be able to reverse trends toward voter apathy and disengagement from active participation in the political process, trends that so threaten the vitality of our democracy (Klare, 1989; Pateman, 1970; Rogers, 1995). Of course, the workplace is a prime example of the kind of environment where persons can learn lessons either of
impotence or efficacy. Hence, participation mechanisms can be instrumental in protecting the health of democratic politics by encouraging people toward greater civic involvement.

This brief summary reveals strong presumptive grounds for extending a right to participate in corporate decision making. In terms of the categories identified above, such a right would be a derivative one grounded in moral values of fairness, autonomy democracy and utility (this last since, presumably, an increase in sense of self-worth and a decrease in alienation for large numbers of employees would mean an increase in collective welfare).

III. Property Rights Objections

While the foregoing arguments provide some support for a right to participate in corporate decision making, that support is only presumptive. That is, whether we ought to finally recognize such a right will depend on the strength of competing considerations.

Some objections to strong forms of worker participation arise from efficiency concerns. The most serious objections from a moral perspective, however, derive from property rights claims and it is on those that the remainder of this paper focuses.

The property objection presents a serious obstacle (at least rhetorically) to the acceptance of a manifesto right to strong employee participation. That objection asserts that extending to workers partial control over enterprise decisions is a violation of the corporate owners’ property rights. Clearly, if property rights mean anything, they mean that the title holder has more or less exclusive rights to control the use of property. Of course shareholders might allow their agents, management, to introduce participatory schemes if that were a beneficial strategy. That, however, is a far cry from claiming that employees are entitled to participation as a matter of right. Since rights to private property are so central to the ideology of our culture, this objection has a rhetorical seriousness that threatens to undermine the presumptive grounds for participation.

Some reject this corporate property rights argument on the basis of a fact that was forcefully identified by Berle and Means over 50 years ago—in contemporary corporations, ownership is separated from control. Some might suggest that since owners have already ceded control to management, there is no conflict between shareholders’ property rights and an employee share of decision-making control.

We might do well to resist this conclusion as too hasty. While it is true that contemporary corporate forms separate owners from substantial control of their property, there are still a number of reasons why corporate property rights might be seen as in conflict with strong employee participation rights.

First, even if owners have ceded control, they arguably have done so under the assumption that management will act as their fiduciary and will promote the interests of shareholders alone. Some ongoing debates about corporate control
and the agency problems of corporate structures indicate that there is a serious concern that management might not focus sufficiently on shareholder benefit and might instead opportunistically use their powers to promote their own financial gain (Blair, 1995; Sametz, 1991). Thus, the mere separation of ownership and control does not necessarily make it any easier to defend mechanisms of participation, especially if those mechanisms might force corporate decisions to give more consideration to the interests of employees.

Second, one could imagine, as the law sometimes seems to, that the property is the corporation’s and that management has a quasi-ownership right to control the corporate assets (Klare, 1989; Orts, 1998). Under this interpretation, the right to control decisions is still vested in another constituency whose interests are in potential conflict with the interests of employees. A defense of strong employee participation rights must still, then, confront a property rights objection.

However, before we accede to such an objection and allow private property rights to “trump” rights to co-determination, we need to ask about the status of private property rights themselves. While they are undoubtedly a permanent part of our moral landscape, we need to question whether they are basic or derivative and, if derivative, from what values do they acquire their importance?

Interestingly enough, private property has traditionally been justified by appeals to autonomy, democracy, fairness and utility. Private possession of property has been defended as providing the greatest incentive for people to work and invest, thus raising the total amount of economic activity and goods produced and, in turn, increasing the aggregate standard of living (utility). It has been described as the only approach that rewards labor properly because it allows one who “mixes his labor with nature” to enjoy the fruits of that labor (fair return). It has been urged as an external check on government abuse that protects democracy by providing a countervailing locus of power. And it has been presented as maintaining autonomy by allowing property owners to have a stable and secure material base that frees them from over-reliance on the largesse of others.

Whatever one thinks of these traditional defenses of private property, the important thing for our purposes is that they reveal property rights to be derivative rights that have the same moral foundations as do the manifesto right of employee participation. As a consequence, it will not be possible for opponents of participation rights to brush them aside by an appeal to owner’s rights to control property. Before that conclusion can be drawn, further argument is necessary.

IV. Adjudicating the Rights Conflict

What form must such further argument take? When two claimed rights rest on the same moral grounds, a theoretical defense for the priority of one over the other must show that the justifying values are more centrally at stake in the one taking priority (Dworkin, 1977; Klare. 1989; Singer, 1988). We must ask whether the values promoted by the property rights would be compromised seriously by allowing encroachment in order to sustain another person’s competing right claim.
Can it be shown that property will take priority over participation rights, that autonomy, fairness and utility are more jeopardized by granting participation rights than by denying them?

A. Autonomy

Certainly, there seems little threat to owners’ autonomy from the marginal decrease in the owners’ control over their property that would be required to recognize a workers’ right to co-determine corporate policy. For even if workers were given a right to co-determination, owners still would have a large bundle of rights associated with share ownership. In addition to a significant right to control through voting privileges, and a representation of their interests by management, owners retain the ability to sell their shares. Further, the evidence indicates that a well-designed program of participation does no necessary damage to productivity or profitability. There is increasing empirical and theoretical evidence that employee participation either improves productivity and/or profitability or is at least neutral with regard to those. (See citations in the immediately following paragraph). And, so, corporate property owners would still have the financial “cushion” of their investment. Since the autonomy promoting aspect of corporate share ownership is the greater economic independence and greater control over life-choices that such ownership provides, employee participation rights seem to pose no substantial threat to owners’ autonomy.

However, even if, hypothetically, participation would cause decreases in share value, opposition to it based on owners’ autonomy would have to argue that the lost autonomy due to decreases in share value exceeds the autonomy gained by giving workers a say in their workplace. Available evidence (Adams, 1995; Gerhart et al, 1992; Freeman and Lazear, 1995; Freeman and Medoff, 1984: Levine and Tyson, 1990; Regalia, 1995; Rogers, 1995) suggests that any negative impact is likely to be small and unlikely, therefore, to outweigh the substantial increase in employees’ control over crucial parts of their lives. The change in property rights created by recognizing an employee right to co-determination, then, is an improbable source for an autonomy-based objection.

Note, however, that these last points admit the relevance of questions concerning the economic impact of participation in deciding on its status as a derivative right. If the economic consequences of participation were to be disastrous, the impact would befall owners and workers alike. Both depend on the viability of business enterprises for economic security and the control over one’s life that such security provides. If firms were not productive and profitable, neither owners nor workers would gain in autonomy. In such a case, no autonomy argument for derivative participation rights would be convincing. The same analysis, of course, holds for any other derivative right defended on autonomy grounds, including the right to privately own productive enterprises. Happily, the evidence seems to indicate that neither the right to private property, properly constrained, nor a right to employee participation, properly designed, has these
negative economic results. Nonetheless, close attention must be paid to how both rights are implemented in practice.

In spite of the preceding analysis, some would argue that even this marginal change in owners’ property rights is not necessary for protecting employees. They would claim that neither autonomy nor fairness would be denied employees if we failed to grant a right to participate in corporate decision-making (Carney, 1993; Epstein, 1984; McKenzie, 1987; Narveson, 1992; Posner, 1986). According to some proponents of this perspective, corporations exist as a “nexus of contracts” where the parties to the contracts can freely negotiate whatever terms they are willing and able to pay for. Workers could, on this view, bargain for participation rights in the same way that they bargain for health benefits or paid vacation days. Thus, according to the argument, the competitive marketplace itself guarantees fair treatment and autonomy for workers. The fact that workers do not possess participation rights shows not that their autonomy is jeopardized but only that they are not sufficiently interested in co-determination to be willing to pay for the privilege.

A response to this argument requires that we investigate both the meaning of autonomy and the degree to which the actual labor market possesses the characteristics of the economists’ ideal market, especially full knowledge of alternatives, mobility between alternatives and, of course, the existence of such alternatives.

It should be clear that the actual market either does or does not possess these ideal characteristics. If it does, we would expect to see a wage premium for workers who choose not to pay for co-determination rights. There seems no reason to suppose that such a wage premium exists, however. This is true whether one compares American workers without participation rights to either their European counterparts or their American counterparts with participation rights. Part of the problem, of course, will be the impossibility of isolating the effect of the innumerable variables that influence wages. One could argue, however, that there is reason to suspect that employees with participation rights have even better compensation packages than those without. Evidence shows that strong participation programs are often found among high wage workers (Buechtemann, 1993).

Some might suggest that the absence of a discoverable wage premium merely shows how little workers value participation. That flies in the face of numerous survey data (Adams, 1990; Freeman and Rogers, 1994; Witte, 1980) that show very significant interest in institutional representation for workers within the corporation (82 percent even of those workers who are opposed to unions in the Freeman and Rogers survey).

If, on the other hand, as the previous passage suggests, the labor market does not possess the characteristics of the economists’ ideal market, the argument that competitive markets assure autonomy and fairness is seriously undermined. Under this assumption, the fact that the market does not force management to share control may suggest not that workers do not want participation but rather that employers possess more power at the bargaining table. There are reasons to
believe that this inequality of bargaining does obtain. Usually, corporations can forego the employment of an individual worker more easily than that individual can forego his/her particular job. That should be a surprise to no one except those captured by the ideology of free markets.

This real imbalance of bargaining power in the labor market weakens the claim that strong participation rights are not needed to protect autonomy and fairness. However, even if the demand for labor exceeded the supply and even if the transaction costs for workers moving between jobs was low, the labor market would still not satisfy the criteria for an ideal market unless those other jobs presented real alternatives to the non-participatory job options. The current labor market in the United States, of course, does not provide many alternatives where employees have the right to co-determine policy. (Despite the fact that the recent Dunlop Commission Fact Finding Report notes that "employee involvement" is expanding at a rapid rate, the very large majority of these programs are advisory only and fall far short of the co-determination rights I have in mind.) The issue is not whether employees have the freedom to change jobs but the degree of control they have over their lives on the job.

This last point forces us to consider more carefully what we mean by autonomy and why we attach moral value to it. Autonomy is the ability to make reasoned choices about how to live one's life. It has as a necessary component some measure of control over important aspects of one's life (Dworkin, 1988). Real autonomy must involve more than merely the ability to accept or reject whatever offers are made by the marketplace or government or other persons. If autonomy meant only that, if it placed no constraints on the kinds of choices that a person might be forced to choose between, it would be difficult to account for its moral significance. For consider that if autonomy meant merely having choices, we would be forced to admit that an oppressive totalitarian regime respected autonomy if it permitted free emigration. Or for that matter, we would be forced to admit the same of the gunman who offers me the choice of "your money or your life." If autonomy is only the formal ability to make reasoned choices, then autonomy is a morally empty ideal.

Rather, for autonomy to be worthy of its moral import, it must require that the offers we can choose from do not place important human interests in jeopardy. It must, therefore, allow individuals some core level of control over their lives without having to pay for that control by sacrificing the conditions that constitute a decent human existence. In practice, then, an adequate analysis of autonomy cannot be separated from ideas about the elements that are constitutive of human good. This picture of autonomy presumptively suggests that, given the centrality of work in our lives, employees deserve to be able to jointly control those corporate policies that crucially affect them.

The alternative market picture of autonomy seems too weak by comparison. It believes that autonomy is sufficiently respected when formal freedom of contract is present in the marketplace (Epstein, 1984; Narveson, 1992). However,
freedom of contract is valuable merely as one mechanism for helping to assure autonomy in its more full-bodied sense—the ability to exercise control over important aspects of life. To presume that freedom of contract takes precedence over a right to participate, also a mechanism aimed at assuring autonomy is to beg the question of this debate (Klare, 1989; Kymlicka, 1990).

We can locate the circularity in the freedom of contract argument more precisely if we recognize that what is at issue here is not freedom of contract itself but the presupposed background conditions of the bargaining. The free contract argument implicitly accepts property rights as granting owners a sole right to direct corporate property. It then suggests that workers who wish some control in the corporation must purchase participation rights from employers, if the employers are willing to sell them. But, of course, this presupposed understanding of property is just what is in dispute between those who defend and those who reject employee participation rights. The debate is precisely over whether an analysis of autonomy will allow property rights to trump rights to participation.

Once this presupposition of the free contract argument is understood, we have to see that the argument provides no independent reasons for claiming that autonomy is sufficiently respected in the market. While it is true that such market freedom allows workers to purchase a right to participate, that is not the question. The question, rather, is whether the right to participate is one that should be guaranteed or merely one available for purchase in the marketplace. The real question, then, is what background entitlements we ought to establish as setting the context for freely negotiated contracts. The answer to that question turns on the relative impacts on autonomy of a guaranteed right to co-determination, on the one hand, and a right of owners to sole control of corporate property, on the other. Some of the preceding citations on the efficiency of employee participation hint at the presumptive outcome of that relative impact assessment.

The alternative market account of autonomy is also plagued by other problems that arise from its implicit assumptions. If it believes that market freedom of contract alone is sufficient for respecting autonomy, then it must believe that all other goods are market commodities whose distribution can legitimately be determined by bargaining. For, if it were allowed that there were other conditions that were necessary for respecting autonomy, then it would be possible to suggest that the ability to bargain must be supplemented by other guaranteed entitlements. That, of course, would force debate on the substantive contribution toward autonomy of the respective entitlements, of which free contract was only one. And it would open the possibility that some contract freedoms would have to be limited in order to assure the adequate possession of other autonomy enhancing entitlements. Hence the strong appeal to freedom of contract as sufficient to respect autonomy would appear to imply that all other items are merely tradable commodities, entitlement to which is acquired through the market.

It also must assume that one’s willingness (and ability) to pay for a commodity are adequate measures of value. For the free contract argument, as used against
employee participation, amounts to the claim that employees were free to buy the right if they want it. Employees simply have chosen not to. If they were not willing to pay for it, it must not be of great importance to them. Hence, employees' actual unwillingness-to-pay means that mandating participation rights ex post bargaining would be an interference with what the bargaining parties wanted. Both of these additional assumptions will strike many as morally inappropriate.

The first assumption, that all things are tradable market commodities, finds opposition from those who support bans on the sale of certain drugs (even if the purchaser were fully informed of risk). It also runs counter to widespread beliefs about the meaning and value of rights to free religious expression, to non-discrimination, to freedom from sexual harassment. The natural view of these rights is that they express beliefs about the dignity of persons by marking off certain protections as inalienable. The very point of these protections is that respect for them is a necessary condition of treating an individual as an autonomous person possessed of inherent worth. They are decidedly not, on this view, to be regarded as tradable commodities.

Thus, not only must we address the previously noted problem of specifying background entitlements before we begin the process of contracting, we must also, if we are to capture adequately the core moral commitments of a large majority, distinguish between those entitlements that are tradable and those that are inalienable. The market conception of autonomy, by making freedom of contract paramount, provides few conceptual resources for that crucial task.

The second assumption, that willingness-to-pay is an adequate measure of how a person values something, is also open to objection. Clearly, given current distributions of income and wealth, parties' relative willingness-to-pay provides no ability to assess the parties' relative depth or strength of desire for an item. Some persons are without sufficient resources to purchase all the conditions necessary for an adequate human existence; others have such a severe lack of resources that they are unable to enter the bidding for such goods at all. Hence, actual market data about willingness-to-pay allows us to draw no conclusions about persons' relative valuations or needs.

The argument that individual autonomy is adequately respected by the actual labor market is unconvincing. Rather, I would argue that autonomy is better promoted by extending participation rights to workers and marginally reducing current conceptions of corporate property owners' rights to control. With such an extension of participation rights, employees gain the ability to exert strong influence over decisions that can potentially have major impacts on their lives. Individual owners lose some theoretical amounts of control but do not have the value of their investment placed at seriously greater risk than would exist without participation (especially given the data on participation and productivity). Thus the individual owners may still retain the autonomy provided by the secure possession of a base of material wealth.
B. Fairness

A similar analysis may hold for the relative impact of participation and property rights on the shared foundational value of fairness. One could imagine an argument that with strong participation rights workers gain greater guarantees that their interests will be considered fairly, and individual owners retain rights over their corporate assets substantial enough to provide for a fair return on investment. At the very most, owners might suffer some loss of profits returned as dividends if workers were better able to protect their interests (e.g., by gaining more safety equipment). But in assessing the fairness of this, one could argue that workers with co-determination rights assure a fairer distribution of surplus revenue than would be the case under traditional arrangements where management alone determines the distribution.

The typical replies to this suggestion are that investors deserve the return either because they took the risk or because their investment created the enterprise. This, however, ignores the facts that employees face substantial risks at work and are also essential contributors to the enterprise. Neither risk exposure nor contribution, as we will see presently, will provide grounds sufficient for the claim that investors deserve sole rights to control.

Clearly, shareholders and employees are both necessary contributors to the enterprise; the absence of either would mean the corporation would cease to exist. Some might suggest, though, that, since they initiated the process that created the organization, shareholders deserve control over the enterprise. For most contemporary corporations, however, stockholders are not temporally prior participants in the organization. I would hazard that most stock now owned was obtained after the firm was actively involved in production. In any case, it is not clear that being temporally first in involvement with the organization would carry sufficient moral weight to justify exclusion of other contributors from a say in the operation of the firm. What seems more relevant is that the contributions of both constituencies are logically necessary for any production to occur.

As for risk, it is often suggested that shareholders, as the residual risk bearers, deserve greater control. Employees, it is claimed, have already been compensated for their risks by the wage they negotiated. This position, however, fails on a number of grounds. Employees face risks to life and health at work. These risks are differentially distributed across and within occupational categories. No evidence suggests, though, that there is a risk premium given to all whose work is more risky, as this position would imply (MacCarthy, 1981).

Employees also face risks that the firm will lose money and that they will then be out of a job. While shareholders can diversify against such risk by owning a broad portfolio of stock, employees generally cannot have simultaneous careers in multiple corporations (Klare, 1989; O’Connor, 1991). Hence, there is reason for finding that employees, too, face significant economic risk in choosing to work for a given corporation.
More importantly, it is problematic to claim that employees have been compensated for their risk and efforts by their past wages. This claim ignores the importance of internal labor markets for understanding the economics of employment. Typically, workers, after some job-hopping while young, develop long-term relationships with firms (Wieler, 1990). As workers stay in a firm's employment for longer periods, they gradually and increasingly make "investments" in the firm. Clearly, workers develop social attachments in their workplaces that are not easily replaced. They acquire firm specific skills that are not easily transferable nor as valuable in the external labor market as they are within the firm. They also typically gain seniority benefits (increased wages, first preference for new positions, greater opportunities for promotion, less exposure to layoffs when there are cyclic downturns in demand) and pension vesting. Given these firm-specific investments, it is not surprising that evidence indicates that the costs of being laid-off rise with the length of a worker's job tenure (Blair, 1995). Workers with all these investments are likely to have a difficult time matching their old income and benefits in a new job, especially since new jobs will often begin at the lowest seniority levels.

Recent economic and industrial relations analyses explain the presence of some of these internal job characteristics by pointing out the benefits firms achieve by structuring their internal labor market in these ways (Cappelli and Singh, 1992; Gerhart, et al., 1992; Osterman, 1992; Buechtemann. 1993; Lazear, 1993: Blair, 1995). Many of these practices serve to bond the worker to the firm by making quitting more expensive. Firms thus reduce the possible loss of hiring and training costs when a worker leaves voluntarily. Firms that increase wages or that increase the value of pension benefits over a worker's job tenure also solve problems associated with monitoring a worker's performance. If future earnings are likely to rise, firms create an incentive mechanism that decreases a worker's probability of slacking on the job while simultaneously decreasing the need for constant and costly performance monitoring. Since workers have more to lose if they are fired for insufficient performance, the frequency of monitoring may be reduced. Essentially, firms promise delayed, future compensation as a vehicle for achieving high productivity at reduced management costs. Thus, the longer workers remain with a firm, the more they have invested in their jobs.

These employee investments, however, are subject to predatory and opportunistic abuse by employers. The implicit bargain of higher future wages and/or benefits for current effort and loyalty to the firm is not an enforceable one. For instance, in recent cases, moneys invested in corporate pension funds on the basis of actuarial projections of future earnings of workers (so as to assure that pension benefits were based on wage levels just before retirement) were raided during hostile takeovers because of a technicality in pension law. After the takeover, employees lost substantial value in the expected pension (Weiler, 1990). Similarly, in plant closings and layoffs, discharged workers are denied the implicitly promised future benefits. If we recognize, as economists and industrial
relations specialists increasingly do, that the promise of higher wages and benefits in the future is part of an economic bargain that employers strike for their own benefit, it is very clear that employees have quite a bit at risk in the corporation. It is also clear that past wages and benefits cannot be seen as sufficient compensation for employees’ effort and risk. The claim that they are sufficient treats labor markets as ordinary commodity markets. The above characteristics of internal labor markets, however, cannot be explained if the markets are viewed as simple commodity markets.

Thus, it does not seem that the value of fairness, whether it is understood as grounded in contribution or in risk, can provide easy theoretical grounds for a claim that property rights “trump” the manifesto right of employees to co-determination. Rather, it seems that since risk and contribution are shared between owners and employees, then both ought to be able to exercise control over corporate decisions. That, of course, is tantamount to recognition of co-determination rights for employees.

Some, of course, will attempt to take a tack similar to that taken above with respect to autonomy. They argue that the interests of workers can be protected from unfair treatment by other mechanisms such as union negotiation or government regulation. If that is true, a concern for fairness does not demand that we recognize an employee right to co-determine corporate policy.

The proposed protective mechanisms, however, provide insufficient guarantees of fair treatment. Union power to bargain effectively has been seriously jeopardized by the increasing willingness of employers to follow President Reagan’s example and hire permanent replacements. Thus the most effective weapon in the union arsenal has been rendered largely impotent. Employers are also increasingly resisting union organizing attempts with aggressive (and sometimes illegal) tactics (Weiler, 1990). Further, the ability of unions to protect employees would apply only to a small fraction of the U.S. workforce. Union membership is now in the low to mid-teens as a percentage of the total workforce.

Government regulatory protections appear somewhat more promising as a mechanism for guaranteeing worker interests are treated fairly. But even this is insufficient. Consider two government regulatory actions, OSHA rules and the Worker Adjustment and Retraining Notification Act (WARN).

According to one analysis, only “20 percent of all workplace accidents are covered by OSHA standards, which means . . . that even full compliance by employers . . . would produce only a modest reduction in employee injuries” (Weiler, 1990). Another recent report found that 75 percent of workplaces experiencing serious accidents in 1994 and the first four months of 1995 had not been inspected in the prior five years (Port and Solomon, 1995).

The much debated WARN Act tried to provide protection for employees from the costs of plant closings by requiring advance notice of closings and layoffs. A study by the General Accounting Office in 1993, however, found that businesses were exploiting significant loopholes in the law or merely ignoring its provisions. It also
found that government enforcement was lacking in the extreme. According to the study, fully two-thirds of the employers covered by the Act failed to comply.

Similar stories can be told about much protective government regulation. Its enforcement is contingent on the direction of the political winds. The legislation writing and rule making process is ripe for influence by lobbyists seeking loopholes. Even the substantial fines that are sometimes possible are nearly always reducible on appeal (Curran, 1985). Government regulation is at best an insecure mechanism for protecting workers. It might supplement but cannot replace the greater self-protection powers provided when workers have co-determination rights. In fact, some suggest directly that participation rights are highly effective in improving the quality of regulatory programs (Rogers, 1995).

These difficulties with the usually proposed external protective mechanisms point to an ironic dilemma for those opposed to strong employee participation. If the corporation is understood along the lines of the traditional shareholder model as requiring management to maximize owners' wealth, then the need for mechanisms to protect employee interests becomes all that more important. Since the external mechanisms of union representation and government regulation are often ineffective, there is greater urgency to the moral arguments for strong participation. However, if the corporation is understood along the lines of a stakeholder model (where the corporation must be run in a way that respects the interests of all constituencies), then there is less reason for exclusive representation of owners in corporate governance, less basis for moral resistance to strong forms of employee participation.

C. Utility

The outcome of analysis is substantially the same for the two remaining values that underlie both property and participation: utility and democracy. Whether utility is substantially increased by strong participation rights will depend on data about work satisfaction, health and economic results. There is an emerging literature, both theoretical and empirical, which addresses the consequences of employee involvement for efficiency, profitability and productivity. An adequate assessment of that literature is, however, beyond the scope of this paper and will have to wait for another day.

But even without pursuing that full assessment of consequences, one could argue that the marginal change in current understandings of property rights that would be required to recognize participation rights will not significantly change the incentive to produce or, more to the point for this issue, invest. For, investment in U.S. would be attractive because of the stability and productivity of the economy and because of the sheer size of the American market. Moreover, as the evidence in sources cited above indicates, participatory mechanisms can contribute to a firm’s efficiency. If it would not substantially alter the investment incentive, the traditional utility-based argument for private property would provide no bar to recognizing rights to co-determine corporate policy.
D. Democracy

Perhaps least clear is the relation between the two claimed rights (property and participation) and the vitality of democracy. The benefits of participatory processes at work for the health of democracy are speculative at best. However the contemporary role of private corporate property in promoting true democracy is also open to question. Some will claim that in a culture with strongly embedded constitutional rights against government, the real threat to democracy is in concentrated ownership of corporate wealth and its ability to influence the outcome of public debate. (Recall that the distribution of wealth is even more skewed than is the distribution of income.) Whatever may be the case for the respective impacts on democracy of participation rights or marginally changed property rights, I doubt that those impacts, given all of the preceding, would be sufficient to tip the scales away from extending a right to participate.

IV. Conclusion

The argument of this paper has been that an employee right to co-determine corporate policy has presumptive force. Its force is based on the very same values that have traditionally been used to support a right to private property. While the former right is not currently recognized, the moral commitments of the culture dictate that it ought to be. Such a recognition sets up a potential conflict between participation and property as it is now understood. I have argued that conflict should be resolved by asking which has the greater impact on the underlying values: rejecting the right to co-determination or marginally changing current understandings of corporate property rights. I have also argued both that the marginal change to property rights does least violence to those underlying values and that those who claim that participatory rights are unnecessary for achieving the underlying values are mistaken.

I would preliminarily conclude, then, since the two rights have the same underlying values and since those underlying values have not been shown more crucially at stake in the case of corporate property rights, that we are obliged to extend recognition to the manifesto right of employees to co-determine corporate policy. That would seem the only theoretically legitimate compromise between the competing rights claims.

I offer this conclusion as only preliminary for several reasons. First, as noted above, some of the arguments presented depend on beliefs that strong employee participation will not have seriously harmful economic consequences. There is solid evidence, much of it from the performance of European firms with employee participation, to support that belief. I have not in this limited space, however, done justice to the debates about that evidence. Second, and relatedly, some questions remain about the possibility of transferring labor market institutions from one environment to another. Serious practical questions, then, must be answered before my arguments are more than preliminary. A future article
will address these other questions. For now, however, I hope to have shown that the burden of proof is shifted to those who want to deny an employee right to strong participation in corporate decision making.

References


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