

THE ELEMENTS OF INDUSTRIAL DEMOCRACY

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ABSTRACT

This article examines the concept of industrial democracy as it applies to individual rights in the workplace. Although emphasis is placed on the development of rights, it is necessary to develop also the notion of job duties and obligations. Just as a citizen under a politically democratic system is expected to fulfill certain duties, so is an employee expected to perform at a reasonable level of competence. The difficulty of reconciling fairness with efficiency is recognized in the article. Participative management, a modern example of industrial democracy, is discussed as having potential for creating a more egalitarian workplace while at the same time increasing work output and quality.

Beginning a new journal is an exciting venture, especially when its area of coverage is so important to working people. The editors should be applauded for their conception of the *Journal of Individual Employment Rights* and for carefully planning this inaugural issue. It will be interesting to see the *Journal* evolve. My sense is that it will become an increasingly valuable resource to both scholars and practitioners. It seems likely that in the years ahead new topics will be explored which we have little if any notion of today. Such is the dynamic nature of laws and institutional arrangements affecting the employment field.

In considering topics that might be addressed in this and future issues of the *Journal*, I tried to envision the ballpark of individual employment rights. What are the areas about which authors might be concerned? How can contrasting views of appropriate policies be reconciled? Who stands to gain and lose as a result of the application of rights? The following remarks are brief but hopefully stimulative of thought about the philosophical and research directions that authors might pursue.

Addressed here is the emergence of fundamental rights for individuals in their capacities as citizens and employees. The dominant theme of the essay is industrial democracy: its evolution, nature, and prospects.

ORIGINS OF POLITICAL AND EMPLOYMENT RIGHTS

Modern notions of political rights can be traced to the writings of British philosophers Thomas Hobbes and John Locke in the 17th century, and to French philosophers Jean Jacques Rousseau and Charles Louis Montesquieu in the 18th century. Hobbes, in the *Leviathan*, presented the philosophical notion that ethics exhort justice and social virtues, even though these virtues stem from purely selfish instincts in man [1]. The foundation of his political system is the teaching that men are by nature equal. Government is formed by mutual contract of individuals who seek their own preservation, happiness, and security. Locke, in his *Two Treatises of Government*, conceived government authority as something delegated by the subjects for the creation of the state, through a compact which included the principle of obligation [2]. Laws established by the state were viewed by Locke as impelling man to sociability and to voluntary respect for certain primary rights of others.

The idea of the “social contract,” with rights and obligations, reached its fullest development in the work of Rousseau [3]. His ideal government was one which least inhibits the impulse and desire of the individual and provides him with maximum control of government affairs. Man, according to Rousseau, is inherently good and this goodness can be fulfilled only through institutions that give the freest possible expression to natural human desires. But he viewed citizens as being obliged to fulfill their duties as subjects to the laws of justice. Montesquieu, in his book *The Spirit of the Laws* [4], explains the relations between social, economic and religious customs, on the one hand, and political and civil liberty on the other. He argued in favor of checks and balances in government, and that political institutions be framed in close relation to the physical and social environment as well as the distinctive “national character” of a people.

It was the writings of these Western Europeans that influenced the political philosophy of the American Revolution and which formed the bedrock of ideas contained in the Declaration of Independence and U.S. Constitution. These ideas are elaborated on in *The Federalist*, a collection of essays written by Alexander Hamilton and James Madison, and in *The Rights of Man*, a treatise by Thomas Paine. Especially pertinent to American political thought was the Western European view of rights as the essence of freedom, stemming from man’s instincts of survival. There was general agreement that enlightened self-interest demands respect for and protection of life, liberty, and property. Rights were seen as providing an order and structure to society. As a result, Americans have

traditionally respected the political rights of their fellow citizens not so much because of their personal magnanimity but because of the quid pro quo of self-preservation and the notion of improving the quality of man's existence.

In recent years, however, it is increasingly being contended that the concept of reciprocal obligation, recognized by European philosophers and America's founding fathers, has lost its vitality. For instance, University of Chicago scholar Alan Bloom argues that duties toward society, family, religion, environment, and work are in a state of decline [5]. This perceived decline calls into question the propriety of overemphasizing political rights in light of the self-centered individualism and materialism that characterizes our age. Bloom sees selfishness as overshadowing the enlightened self-interest that has traditionally provided a healthy balance between rights and duties.

Another critic, Milan Kundera, laments that the quest for increased rights has progressed to the point where it is contemplated that virtually all human desires should be translated into rights [6]. For example, the desire for rest becomes the right to rest, the desire to exceed the speed limit becomes the right to speed, and the desire to shout in the middle of the street at night becomes the right to do so.

As a central idea in the workplace, industrial democracy began with the seminal work of British authors Sydney and Beatrice Webb in the late 19th century [7]. The Webbs emphasized the importance of political democracy, which was well-established in Britain for people in their capacity as citizens. Fundamental to the concept of political democracy is individual rights: speech, assembly in groups for legitimate purposes, due process, equal protection, and to vote for and recall elected representatives. The Webbs believed that the concept of democracy would be brought to the workplace, so that people would have rights not only as citizens but as workers. This industrial democracy would be achieved through the instrumentality of unions. Union representatives, elected by the workers, would provide a voice for labor, control over employment conditions, and prevent disparate treatment.

Unlike Karl Marx, who viewed unions as an ineffective appendage of a hopelessly doomed capitalistic system, the Webbs saw them as making a permanent difference. Not only would unions foster industrial democracy, but they would significantly raise the standard of living of workers and help spawn a relatively affluent middle class that would not perceive the need for a Marxian revolution. As history has shown in Western Europe and North America, it was the Webbs, not Marx, who were right on this point.

As capitalistic societies advanced, industrial democracy broadened to include not only concepts but rules. Sumner Slichter, Clark Kerr, John Dunlop, Jack Barbash and others have explained how unions developed a web of work rules and customs, creating a system of industrial jurisprudence [8-10]. These rules protect employees at work in the same way that public law protects citizens.

Management's right to make unilateral business decisions was traditionally based on its property rights. As the owner or designated representative of the owners, managers were thought to have the sole right to direct the activities by which property is utilized to produce a product or perform a service. However, as noted by Neil Chamberlain and James Kuhn, the property right basis of management carries no corresponding duty on the part of employees to be managed [11]. In a free society people can be managed and directed only if they provide consent. Because property rights do not confer complete authority over employees, management may find it necessary to relinquish a share of its authority in order to induce the cooperation of employees.

Industrial democracy today continues to be based firmly on notions of workplace freedom, protection, and economic security, as well as on rules to instill fairness. The attendant employment rights have blossomed. They provide greater access to work opportunities; prohibitions against discrimination; participation in decision making; and elaborate protections for workers from the effects of unemployment, job hazards, work injuries, unfair treatment, and retirement. In the contemporary work environment there are three principal sources from which these rights flow.

Law

As perhaps the most significant single source of rights, the law provides a well-developed system of rules and benefits on worker protection and security. The genesis of these laws was in the late 19th century in the united Germany led by Chancellor Otto Von Bismarck. Laws were initiated on a widespread basis in the United States during the 1930s New Deal era under the leadership of President Franklin Delano Roosevelt. The New Deal opened a running river of social legislation that provided a variety of new rights to workers. The following concise review of these laws indicates the expansion of the ideals of industrial democracy.

In 1935 the National Labor Relations Act gave employees the right to join unions, bargain collectively, and use pressure tactics to achieve their objectives. The same year the Social Security Act established a system of old age pensions and aid to the permanently and totally disabled, later extended to provide medical insurance for the elderly. A system of unemployment insurance, operated chiefly through the states, was also established by the Social Security Act to assist workers who lose their jobs due to economic exigency. In 1938 the Fair Labor Standards Act established a minimum wage, time and one-half for work in excess of 40 hours per week, and regulations on child labor. The focus of the New Deal legislation was on rights promoting economic security.

During the 1960s another burst of legislation occurred, this time aimed at civil rights and equal employment opportunity. In 1962 the Equal Pay Act required like

pay for like work. Two years later the Civil Rights Act, Title VII, prohibited discrimination in employment on the basis of race, color, sex, religion, and national origin. President Lyndon Johnson signed executive orders in 1965 and 1967 on affirmative action, requiring covered employers to establish goals and timetables for the hiring, promotion, and training of racial minorities and women. Amendments to these laws and new laws pertaining to age, handicap, and other forms of discrimination created equal employment protections not exceeded anywhere in the world.

Although passage of legislation diminished in the 1970s, 1980s, and thus far in the 1990s, a few new laws were enacted at the federal level, such as the Occupational Safety and Health Act of 1970, the Pension Reform Act of 1974, and the Worker Adjustment and Retraining Notification Act of 1988 (requiring advance notice of plant closure and mass layoffs). Meanwhile, numerous court decisions have interpreted and enforced these laws. Administrative agencies, such as the National Labor Relations Board, the Equal Employment Opportunity Commission, and the Occupational Safety and Health Administration, pursue busy caseloads of activity to apply the law on a day-to-day basis. These agencies seek to preserve and protect individual rights, particularly in terms of ensuring compliance by employers.

The passage of laws has slowed in recent years because nearly all of the most important aspects of social protection and worker security have been covered. New needs will doubtless emerge, although it is unlikely that the pace of legislation will quicken. But there is still a full plate of issues to consider: national health insurance, unpaid family leave for employees, job security for strikers, and child care are among the items on the legislative agenda. Debate over these issues as well as over amendments to existing laws and decisions by the courts and administrative agencies should provide ample material for potential *Journal* authors.

Unions

Unions are another primary source of employment rights. They negotiate employment terms such as wages, hours, and working conditions, including procedures for resolving employee complaints. Under the NLRA and most of the public employment bargaining laws enacted during the past twenty years, certified unions have the exclusive right to represent employees in negotiations. In exchange for this right, unions have an obligation to act on behalf of all employees in the unit, including those who are not union members, and must represent all employees fairly. Rights negotiated by unions are enforced by the grievance procedure specified in the collective bargaining agreement, a built-in mechanism for contractual dispute settlement.

As a counterpart to union rights, the NLRA implies that certain areas are outside the scope of bargaining. Items that do not involve wages, hours, or working conditions are considered within the sole discretion of management to determine. These management rights or prerogatives are often specified in collective bargaining agreements and typically include determining the methods, means, and personnel through which work is conducted. For instance, management reserves the right to make decisions on the type of product or service, equipment utilized, pricing, sales, marketing, plant location, financial decisions, hiring, layoffs, and the structure of management organization.

Union membership as a proportion of the total U.S. labor force has been declining since the late 1950s, and by 1991 had dropped from about 37 percent to 17 percent. Despite this shrinking perimeter and decreased control over wages as a result of international market forces, unions remain a vital source of employment rights. Their accomplishments often spill over to impact on the policies applicable to nonunion workers.

Most authorities predict that the decline of unions will continue, although the falloff may not be as great as in the recent past. To some extent unions have outlived their usefulness and are victims of their own success. As the Webbs predicted, unions brought industrial democracy to the workplace. But much of the unions' role has been taken over by legislation. Work rules are under attack. Concessionary bargaining has restricted wage growth. Also, in this era of more enlightened human resource management, employers have voluntarily established many of the rights that unions traditionally fought for and won. Unions will keep pushing for the enhancement of economic welfare of their members as well as for all working people, but gains will be difficult to achieve.

Nonunion Employers

A third major source of employment rights is nonunion organizations that establish rights voluntarily. Such employers are, of course, required to comply with employees rights established by law. But they may choose to provide additional rights in areas such as premium pay, extra holidays, parental leave, or protections against unreasonable discipline.

Why would nonunion employers adopt such policies? One reason is to provide a more equitable workplace, to "do right voluntarily." Another is to gain an edge in competing for quality talent in the labor market. Management in many organizations has strong beliefs in and commitment to the ideals of industrial democracy.¹ They believe in improving the overall quality of work life and in creating opportunities for employment development and advancement.

¹ For corporate examples, see [12].

Alternative work schedules, such as flextime and job sharing, are found in an increasing number of organizations to allow employees greater freedom on the job. This is evidence of the deepening penetration of industrial democracy, even in an era that is no longer dominated by unions.

Nonunion employers also want to remain union-free. Providing ample employment rights helps prevent unions from successful organizing, because unions are perceived as less necessary by employees. Critics contend that the rights of employees in nonunion establishments are tenuous, because the final decisions on disputes over application of policies are made by management. Yet, while some managers are less assiduous in enforcement than a union or government regulatory agency might be, other managers bend over backward in an effort to be fair.

EMPLOYMENT OBLIGATIONS

An important idea that is associated with industrial democracy is that employment establishes not only rights but obligations. When considering the significance of rights there may be a tendency to lose sight of the need for individuals to be committed to their jobs, to cooperate with fellow members of the work team, and to follow rules of appropriate behavior. Politically, good citizens are expected to be loyal to their country, to obey the laws, to participate in elections, and to otherwise support the institutions of a democratic society. Similarly, employment rights should be initiated, applied, and enforced in an environment that emphasizes doing a job well. There needs to be a balance between rights and obligations, because fulfillment of obligations is crucial to carrying out an enterprise's mission and sustaining the nation's economic prosperity.

It thus seems that implicit in the notion of industrial democracy should be a regard for dedication to work at a reasonable level of motivation and competence. We need to promote the development of rights in an egalitarian workplace, but we also need to constantly explore ways to encourage employees to perform more efficiently. Due process, seniority, tenure and like protections are wonderful examples of industrial democracy. But sometimes employees use these defenses as a shield to remain on a job that they are unable or unwilling to perform competently. The costs of fairness are high in the United States and may hinder competitiveness in world markets unless offset by improved efficiency. We should not jettison rights in order to be competitive but we may need to pay somewhat more attention to job duties and obligations as a *quid pro quo* for these rights.

How can fairness be maintained without sacrificing increases in efficiency? There is no necessary tradeoff between the two. Ideally, each would be positively directed, although this is not always the case. Some important employment rights issues affect both fairness and efficiency. Three examples are given below.

Consider first the idea of employment at will. Until recently, people not represented by unions and not protected by civil service laws held their jobs largely at the whim of the employer. Their employment could be terminated for any reason except, say, unlawful discrimination. In the 1980s the doctrine of employment at will began to erode. Some nonunion employees who were unfairly terminated discovered that they could not only sue for back pay but get punitive damages against their employer as well. Subsequently, however, the high costs to employers, especially from jury awards, caused a rethinking of the application of fairness. Several state laws and court decisions have therefore limited employees who have been terminated to recovering only lost wages and benefits. This evolution is still being worked out, offering an interesting topic for research.

Another example of seeking to balance fairness with efficiency is workers' compensation. Costs of this government-mandated program, which pays medical expenses and lost wages due to occupational injuries and diseases, are skyrocketing in many states. More businesses, especially small ones, are expressing concerns about the drain on their resources from the need to provide insurance coverage. Particularly controversial are stress claims. As jobs become less physical and more mental, so are the injuries sustained on the job. These "psyche claims" have mushroomed and often result in workers' compensation awards that are three or four times more than the cost of a typical physical work injury. This may result in the imposition of limits on eligibility to stem rising costs.

A third example is affirmative action. As a result of several U.S. Supreme Court decisions in the 1980s, obstacles were raised for women and minorities pursuing lawsuits against employers. In the 1991 Congress, legislation was passed to make it easier for women and minorities to prove discrimination. The law is controversial because critics contend it will encourage hiring quotas. It is argued that quotas may become necessary because without quotas employers would have the difficult burden of proving that their employment practice bears a significant relationship to job performance. Yet, with quotas, employers may be forced to hire lesser qualified individuals from under-represented groups. This example illustrates that fairness and efficiency are partially subjective rather than wholly quantifiable factors, and it is this subjectivity that sparks debate.

There are no easy answers to problems like employment at will, workers' compensation, and affirmative action. Nor are there clearly "right" or "wrong" solutions. Objective research and normative debate help to reach informed conclusions on how the problems might appropriately be treated. It is doubtful that a nation can achieve perfect egalitarianism and efficiency at the same time, as Sweden has learned in recent years [13]. Striving for a sensible balance is laudatory, however, and this *Journal* can make significant contributions to the search for answers.

PARTICIPATIVE MANAGEMENT

A concept that may have a positive effect on both fairness and efficiency is participative management. This idea is worthy of attention because it offers potential for increasing industrial democracy while at the same time improving the quantity and quality of worker output. Participation means granting a voice to rank-and-file employees in decisions that affect their work, and sometimes also in steering the overall operation of the enterprise. It can be initiated through legislation, collective bargaining, or unilateral action by management.

Participation is required by law in Western Europe, Yugoslavia, and Israel. In these countries it takes various forms, most commonly that of co-determination. This gives employees an opportunity, usually through their union, to be consulted on matters such as employment level, job security, operational decisions, and even corporate policy issues such as mergers and market strategy. Co-determination provides these workers with an effective influence over what are often considered management prerogatives in the United States.

For example, Sweden enacted legislation in 1976 providing for consultation on virtually all crucial areas of corporate operation. The Swedish law requires employers and unions to negotiate co-determination rules stipulating that employers must consult with union officials before ordering production changes, investing in new facilities, buying another company, or adopting any measures that could affect employment. In Germany, the co-determination system takes two forms. One is on the shop floor, where labor and management have roughly equal power on decisions such as hiring, firing, and working conditions. The second form is labor representation on the boards of directors of major companies, giving labor influence over major policy decisions affecting the firm.

While there is no law requiring participative management in the United States, it has occasionally been initiated through collective bargaining. However, American managers, especially in private industry, have not accepted unions as partners in the same way as their European counterparts. Therefore, union participation in decision making in the United States has traditionally been viewed as an interference with management rights and a challenge to ownership control of the enterprise.

Although involvement by unions has been mostly limited to areas outside the scope of management rights, the relative decline of U.S. unions has emboldened management and tilted power heavily in its favor. Ironically, this turn of events has in some cases encouraged negotiations on greater employee participation. Some unions have become more cooperative, shedding the adversarial stance of the past. More unionized companies have embraced participation as a way of recognizing work more efficiently.

A good example of joint labor-management participation is at New United Motor Manufacturing, Inc. (NUMMI) in Fremont, California. NUMMI, a joint

venture between General Motors and Toyota, has a partnership with the United Automobile Workers that has produced successful results [14]. Labor and management at NUMMI work together to achieve high production and quality. Employees are organized into teams with broad decision-making powers and responsibilities. They participate in hiring, designing training programs, ordering parts, and other areas normally reserved for management. Employees who learn how to analyze problems themselves not only find their work more challenging but make more positive contributions to efficiency.

Participation arrangements that are unilaterally established by nonunion organizations are based on several premises. One is that conventional top-to-bottom hierarchical forms of decision making are less effective in motivating modern workers. The baby-boom generation now dominates the labor force. As a group it has more education and is more socially activist than previous generations. Baby-boomers are less awed by authority and do not readily submit to it. Some of them do not believe in the industrial system at all. They are as a group more assertive and critical of inequity. To elicit the support of these people often requires giving them a greater share in decision making.

Another reason for voluntary participation schemes is that most people want to work hard but only if they are attracted to their work. People are naturally innovative if given a chance to be so. What appeals to them are not systems in which only a few workers participate but where the entire work force is divided into teams in which everyone is a direct participant. Thus work becomes more stimulating and psychologically rewarding.

Contemporary notions of industrial democracy presuppose that those who are affected by decisions should have a voice in making them. Participative management encourages camaraderie, cooperation, understanding, and innovation. By facilitating free exchange of ideas it inspires improvement in the quality of decisions. People who actually perform work usually have good ideas about how to improve its efficiency. Participation also helps people to accept decisions, because they have a stake in the process, and it inspires a commitment to making decisions work out in practice.

Participation takes time for consensus to emerge, however, and hostility may result among participants whose inputs are overshadowed by those of others. But it is generally held that participation leads to greater efficiency. While participation may not guarantee improved results, it often does so. A recent study, for example, found that absenteeism and quit rates were significantly lower in firms that had participation than in firms that did not [15]. Participation's consistency with the ideals of industrial democracy may alone justify its widespread adoption. Human relations emphasizes that these ideals are "good business." But beyond this, the nature of human interactions in the workplace is an independent consideration, a value to be regarded apart from profitability [16].

Despite its potential, there are barriers to implementing participative management. One is the general resistance to change felt by many workers at all levels of the organization. There is a comfort in the *status quo* that can be difficult to overcome. Managers fear their authority and status will erode. Also, some participation is only manipulative, trying to convey an impression of involvement but where employees have no real stake. For example, "I will listen to your views, but they really don't figure in my decision." Or, "Even if I adopt your suggestions, you won't share in the proceeds of any resulting gains." Manipulation trivializes participation and fails to convey a true sense of industrial democracy.

Unions may oppose participation and try to undermine it. They sometimes reason that participation compromises their role and allows management to co-opt the workers. As noted above, however, other unions have shown a willingness to cooperate at the bargaining table to design and implement participation systems. They realize that their survival may hinge on their willingness to accept new methods of work and become a partner rather than an opponent of participation.

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