

PERSPECTIVES

On the Professions

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"Workplace Democracy and Employee Rights"

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Should democracy, in the sense of the right to participate in decision making, extend to the workplace? How would an economy with worker controlled enterprises differ from our own? What protections should employees have against unjust dismissal? These are some of the major questions discussed in the following pages. In the first part of this issue of PERSPECTIVES David Schweikart, Professor of Philosophy at Loyola University, Chicago, and author of *Capitalism or Worker Control?* (New York: Praeger, 1980), discusses worker participation in the management of business enterprises. Two commentaries follow his paper, one by Warren Clayton Hall Jr., Professor of Economics in the Stuart School of Management and Finance at the Illinois Institute of Technology, and the other by Thomas M. Calera, Professor of Management, also at the Stuart School.

The decade of the nineteen seventies saw the emergence of legislation, administrative orders, and court decisions that substantially enhanced protection of public employees from unjust

dismissal. In recent years the subject of such protection for employees in the private sector has received increasing attention. The second part of PERSPECTIVES surveys the topic of employee rights, summarizing current law, recent developments, and proposals for further change.

"Worker Participation: A Dialectical Analysis"

David Schweikart

Tito paced up and down, as though completely wrapped up in his own thoughts. Suddenly he stopped and exclaimed: 'Factories belonging to the workers—something that has never yet been achieved!' With these words, the theories worked out by Kardelj and myself seemed to shed their complications and seemed too, to find better prospects of being workable. A few months later, Tito explained the workers' self-management bill to the National Assembly¹."

That was 1950. Today Yugoslavia has had thirty-one years experience with workers' self-management. Today there are one thousand or so worker-owned firms in the United States. Today

the demand for worker participation is being raised by labor unions throughout Western Europe. But what exactly is this worker-participation phenomenon? What are we to make of it?

An historian might respond by tracing the genesis of worker participation; a sociologist might detail case studies; but as a philosopher, I'm inclined to take a different tack. Let us try an experiment in dialectics. Let us take the basic concept worker participation—and allow it to unfold. Let us see what contradictions develop, and what transformations are called for to overcome these contradictions.

A dialectical argument such as this is of a different form than the more familiar inductive and deductive arguments, so let me be clear about the point. The point is not to prove that a certain sequence of events will necessarily transpire, but rather to provide a framework within which to situate various manifestations of the worker-participation phenomenon and to gain insight into the tensions and tendencies of these manifestations. Worker participation is very much on the world stage right now. To understand what it is all about, we need a sense of its direction and dynamic.

Let's begin with what we know: worker participation works. This is no longer a matter of conjecture. More than two hundred case studies of worker participation have been done². Experiments have ranged from small coops to large factories to, in the case of Yugoslavia, an entire country. A survey of the literature published in 1969 concluded: "There is hardly a study in the entire literature which fails to demonstrate that satisfaction in work is enhanced or other generally acknowledged beneficial consequences accrue from a genuine increase in workers' decision-making power. Such consistency of findings, I submit, is rare in social research³."

Few who have looked at the evidence would dispute this conclusion. To be sure, worker participation does not miraculously cure all worker alienation, to say nothing of our other social ills, but worker participation generally increases morale and quite often productivity. It almost never makes things worse. That this should be so is not so surprising. In a traditional enterprise management and labor are locked head-to-head in an adversarial relationship. The immediate interest of the worker is to do as little as possible for as much money, and the immediate interest of management is the reverse: to pay as little as possible for as much work as can be extracted. A participatory scheme, especially one that gives workers direct monetary benefits far increased productivity, alters the nature of this relationship. Individually and collectively workers have a direct stake inefficiency, an immediate disincentive to absenteeism and malingering, and the opportunity to apply their (often considerable)

concrete knowledge of the production process more effectively. Moreover, workers have a great interest in the long-range future of their enterprise, certainly more than stockholders, who can liquidate their holdings at will, perhaps even more than management, who are commonly charged these days with maximizing short-term gains at the expense of long-range ones as they company-jump up the corporate ladder. This makes worker decision-making highly responsible.

Worker participation works because the interests of workers and management (answerable ultimately to stockholders) coincide relative to a broad range of issues. There is one area, however, in which these interests are opposed. Certain work-technologies and work-techniques increase productivity by deskilling and dehumanizing work. The owners of an enterprise have an unambiguous interest in increasing productivity, period. So they have an unambiguous interest in implementing such technology. Workers do not. Workers might agree to the change, provided they are sufficiently compensated by wage increases, or if competitive pressure has put the enterprise's survival on the line. But not otherwise.

Here we are at a dialectical impasse, one that threatens the structure of worker participation. And there is only one real solution. A participatory environment, which stresses the common interests of labor, management and stockholders, cannot disregard the costs to the workers of alienating technology. The only solution compatible with the participatory ethos is to allow

those who bear the costs, i.e., the workers, to decide. That is, worker participation in decision making must pass to worker control.

In fact, the question of technology is but one manifestation of the dialectical tendency for worker participation to develop into worker control. As a high-level General Motors official has observed, once workers begin participating

"the subjects of participation . . . are not necessarily restricted to those few matters that management considers to be of direct, personal interest to employees . . . [A plan cannot be maintained for long without (a) being recognized by employees as manipulative, or (b) leading to expectations for wider and more significant involvement-"Why do they only ask us about plans far painting the office and not about replacing this old equipment and rearranging the layout?" Once competence is shown for believed to have been shown) in, say, rearranging the work area, and after participation has become a conscious, officially-sponsored activity, participators may very well want to go on to topics of job assignment, the allocation of rewards, or even the selection of leadership. In other words, management's present monopoly [of control] can itself easily become a source of contention⁴."

So the dialectic of participation pushes toward worker control, the accountability of management to workers rather than to stockholders or to themselves alone, much as the dialectic of democracy pushes power-sharing with a feudal nobility toward popular sovereignty. Insofar as stockholders have interests

consonant with those of the workforce, they will be recognized, but when interests collide, the latter's must prevail. (Must prevail if the participatory framework is to be maintained. A dialectical impasse can be resolved only by moving forward or back-but back means abandoning participation and returning to the milieu that generated the demand for participation in the first place. This, of course, can happen. Dialectical development is not historical necessity.)

Simultaneous with the movement from worker participation to worker control is the movement to extend worker participation (and worker control) throughout the economy. If worker participation works (and it does), it will be increasingly demanded by workers in non-participatory enterprises. These demands will be seconded by participatory workers, out of solidarity and self interest. For as noted above, competitive pressure can compel worker-controlled firms to adopt technology when they would rather not do so. Such pressure originates from firms that do not hesitate to deskill and dehumanize their workers in order to squeeze "productivity" from them. It is difficult to see how such demands can be resisted in a culture in which democratic values are deeply rooted. Indeed, the worker-participation legislation now on the books or being contemplated in many Western European countries exemplifies this moment of the dialectic.

But if worker control spreads to society at large, other contradictions will develop, contradictions rooted in a structural feature of worker control too seldom noted in the

literature: a worker-controlled firm is far less expansionary than its traditional counterpart. Under conditions of increasing returns to scale both kinds of firms will expand, but when returns to scale are constant (the assumptions of most managers) or decreasing (the favorite assumption of neoclassical economists), the two behave quite differently⁵. A simple example will illustrate. Suppose a traditionally-owned hamburger stand employs twenty people at the going rate and nets its owner \$20,000 for the year. If this is a reasonable return on his investment, the owner has a strong incentive to open a second stand, for he can anticipate doubling his profit by doing so. Compare this case to a twenty-person worker-controlled hamburger stand that also nets \$20,000. This profit would be most welcome, a \$1000 bonus for each worker. But even if setting up a second stand would double profits, it would also double the workforce to share in those profits. The per-worker profit would not increase. So the latter firm, unlike the former, has no incentive to expand.

Both theoretical analysis and empirical evidence supports the contention that worker-controlled firms are less expansionary, that they are less likely to pursue growth as an end in itself⁶. Now this feature might seem desirable in an age of resource shortages and environmental strains, and in important ways it is, but it also poses serious stability problems for the economy. For example, worker-controlled firms in a given industry will raise prices if demand for their product goes up, but they are less likely than their traditional counterparts to expand production, not if this requires bringing in more workers. Nor

will competitive pressure insure expansion, for no firm is structurally inclined to greatly enlarge its share of the market, this being the equivalent of setting up the second hamburger stand. (The case should not be put too strongly. To the extent that size increases flexibility and security or enhances prestige and influence, there will be a tendency to expand. But missing is the key incentive of the traditional firm: expansion means greater profit for the owners, even under conditions of constant returns to scale.)

We have here a serious problem. If an economy of worker-controlled firms does not tend to shift labor from where it is less productive to where it is more productive in response to market forces, then that economy will not tend toward an efficient allocation of its resources. Moreover, sectoral inequalities will tend to compound rather than diminish. Nor will the economy exhibit any tendency toward full employment, not even with Keynesian monetary and fiscal policies in effect. In short, the economy will find itself in deep trouble.

Is there a way out of this impasse? As always one can regress, abandon the structure of worker control. This, however, will not be easily done if worker control has taken hold, for people rarely relinquish power without a struggle. Moreover, the historical record amply testifies that a traditional capitalist economy also experiences serious difficulties with inefficiencies of resource allocation, sectoral inequalities and unemployment. It can be argued that these problems will be less severe than under worker control-but it can also be argued that a remedy exists that does not abrogate worker control, and that

promises as well an effective resolution of many of the economic ills plaguing contemporary capitalism. The remedy: public control of investment. Investment decisions cannot be left to individual worker-controlled enterprises, for the incentive structure is lacking to insure a macroscopically-optimal investment strategy. Nor can they be returned to traditionally-run firms, for they don't invest optimally either. (Cambridge economist Maurice Dobb has written, "Only myopic concentration upon stationary equilibrium could breed the supposition that there is even a prima facie case for regarding long-term investment under free-market constraints as optimal⁷.)

Public control of investment, coupled with community monitoring of profits and prices, can counteract the "anti-social" dynamic of laissez-faire worker control. Firms that experience a surge in demand can be encouraged to take on additional workers and provided with investment capital. If they resist, public authority can encourage the setting up of competing enterprises. In general, public control of investment planned investment-injects a note of rationality into the most sensitive element of the economy.

In the intervening years, governments have experimented with various "Keynesian" techniques for indirectly manipulating investment, most notably monetary and fiscal policies to stimulate or retard effective demand. But as everyone now knows, these policies do not always work. They aren't working now. In response, some economists call for a return to laissez-faire, conveniently

forgetting why laissez-faire was abandoned in the first place (an example of a dialectical regression), but the more thoughtful see the need for a greater governmental role in investment planning. MIT's Lester Thurow puts the case bluntly:

"For most of our industrial competitors the central bank plays an important role in allocating investment funds . . . The system is probably most heavily developed in Japan but exists to some extent in Italy, France and West Germany ... A national investment bank ... certainly represents more government in a mixed economy, but the time has come to recognize that if we are going to compete with some of our more successful industrial neighbors, we are going to have to change the way we have been doing things in the past . . . Major investment decisions have become too important to be left to the private market alone¹⁰."

So we see, the move from worker participation to worker control, while desirable on many counts, exacerbates certain dysfunctions already present and getting worse in contemporary capitalism. The resolution of this contradiction requires greater public control of investment. But how is the government to exercise this control? The Keynesian policies have proven ineffective, so more direct means will be (and are being) tried. The major candidates are regulation and tax incentives but these are also problematic. Private individuals and private businesses (even worker-controlled ones) resent being told what they may or may not do with their money: they bristle at and resist the "red tape" of regulation. Tax incentives are more palatable to investors, but it becomes ever

more apparent that it is inefficient, inequitable and irrational to give more money to the wealthy (i.e. tax breaks) to entice them into doing with their wealth what society needs to have done. Sooner or later the demand will arise for the government to cut through the thicket of ever more complex regulations and tax laws, to bypass the "middleman" and generate the investment fund directly. That is, to tax stockholder dividends or corporate assets for the specific purpose of acquiring the funds needed for investment. These can then be dispensed according to plan. It will no longer be necessary to threaten, cajole or bribe private investors, for it is no longer their money that is being invested.

But if this demand does arise and is implemented, it will signal a profound societal transformation. If the government replaces the private sector as the generator and dispenser of investment capital, the "capitalists" become functionally obsolete. Already removed from any direct role, qua capitalists, in the management of enterprises, they now find themselves unnecessary even as a source of investment funds. They remain a major source of economic inequality in society, since they still "own" the productive resources, and are rewarded accordingly (paid interest, dividends, rent). But they no longer have an economic role to play.

The next dialectical move is predictable. After all, the feudal nobility disappeared when they became anachronistic. The culmination of the participatory dialectic is a worker controlled economy with public control of investment, a democratic, socialist

society. We should not be horrified. Such a society, while neither perfect nor immutable, is more desirable on both economic and ethical grounds than capitalism. I have argued this elsewhere, that such a society will be more efficient, more rational in its growth, more democratic, more egalitarian than any society in existence today¹¹. It may not come to pass. But as I have tried to show, worker-controlled socialism is the logical outcome of the participatory dialectic.

Footnotes

1. Milovan Djilas, *The Unperfect Society: Beyond the New Class* (New York: Harcourt, Brace and World, 1969), pp. 222-3.
2. Hem Jain, *Worker Participation: Success and Problems* (New York: Praeger, 1980), p. 179.
3. Paul Blumberg, *Industrial Democracy: The Sociology of Participation* (New York: Schocken, 1969), p. 123.
4. Thames Fitzgerald, "Why Motivation, Theory Doesn't Work," *Harvard Business Review* 49 (July-August 1971): 92.
5. Increasing, constant and decreasing returns to scale are conditions under which increasing labor and capital inputs by X% results in an output greater than, equal to or less than X%. Economies of scale account for the first. diminishing returns for the second.
6. See for example, Benjamin Ward, *The Socialist Economy: A Study in Organization Alternatives* (New York: Random House, 1967), p. 190 ff. Also, Jaroslav Vanek, "The Yugoslav Economy Viewed Through the Theory of Labor Management." in *The Labor Managed Economy: Essays by Jaroslav Vanek* (Ithaca Cornell University Press, 1977), pp. 48-92.

7. Maurice Dobb, *Welfare Economics and the Economics of Socialism* (Cambridge: Cambridge University Press, 1969), p. 199.
8. Cf. Vanek. "Yugoslav Economy."
9. John Maynard Keynes, *The End of Laissez-Faire* (London: Hogarth, 1927), pp. 48-9.
10. Lester Thurow, *The Zero-Sum Society* (New York: Basic Books, 1980), pp. 96, 192.
11. David Schweikart. *Capitalism or Worker Control: An Ethical and Economic Appraisal* [New York: Praeger, 1980].

"Capitalism or Worker Control? How Much Does it Matter?"

W. Clayton Hall

In his dialectical analysis of worker participation, Professor Schweikart makes two important claims about the economic behavior of worker-managed firms. First, he contends that worker participation will impede the introduction of dehumanizing but cost saving technology. Second he suggests that, given constant returns to scale, worker-controlled enterprises will be less inclined to invest and expand output than traditional firms.

Both of these allegations are plausible and may very well be correct particularly in the short run. The economic theory of worker-managed firms is relatively new and many issues remain unresolved. Nevertheless, the existing body of literature provides a basis for challenging both contentions. In addition, even if the hypothesized events do

transpire, it is not clear that the long run impact on either working conditions or resource allocation will be significant.

Most contributors to the economic analysis of the subject have argued that long run competitive equilibrium in industries populated by labor managed firms is economically efficient just as is the case with traditional firms and industries¹. This conclusion is not universally accepted² but, if correct, it has relevance for the issues under consideration here. It implies that resource allocation and, hence, investment and technology will be the same in both worker-managed and traditional firms. Further, the methods of analysis used to obtain the efficiency result can be applied to an examination of the Schweikart propositions.

With respect to the first contention, there is a strong reason to suppose that the long run tendency for worker-controlled and traditional firms to implement new technology is identical. Under either organizational structure, it is worker preferences for higher incomes via a vis pleasant work which determines whether more productive but disagreeable technology is employed. Such innovations will be accepted if and only if workers are adequately compensated for the disutilities incurred. If workers prefer the higher pay and poorer working conditions accompanying new technology to the lower wages and more desirable work associated with traditional methods of production, the new technology will be adopted. By contrast, if workers would rather have the more enjoyable but less productive work along with lower pay, the new technology will be

eschewed.

Competition and market entry generate the forces which compel firms to honor worker preferences. Any worker-managed enterprise, which refrains from introducing new technology because of associated hardships to employees, will become vulnerable to price competition from rival concerns-whether they be worker-managed or traditional-who are willing to adopt the cost-reducing innovation. Worker managers would then be forced to accept either lower wages or the disutilities of the new production methods. Even if all existing firms forego cost-saving opportunities, competition from new market entrants, which employ workers who are willing to accept the undesirable working conditions in exchange for more pay, will eventually force all established firms to make the same choice. Innovations will be rejected permanently only if the cost savings are insufficient to induce workers to accept the associated disutilities.

Similarly, traditional firms will need tacit worker approval before they can install new work procedures. Firms which attempt to impose dehumanizing innovations on their employees without adequate compensation will eventually lose workers to competitors who are willing to offer better working conditions. Should all existing firms insist on adopting unacceptable production methods, an opportunity is created for new firms to enter the industry and compete effectively by offering better working conditions. The established firms will then be forced either to raise wages or improve their work environment.

Analogous arguments can be made in response to the second contention. If existing firms, in an economy of worker-managed enterprises, are unwilling to expand output in response to rising demand the resulting profit-making opportunity will provide an incentive for other groups of workers to form new firms, hire capital, and enter the industry. Total industry output will increase even if individual firm size remains the same. Firm size is inconsequential, given the assumed constant returns to scale, and the new outcome for overall resource allocation will be much the same as if the existing firms had elected to expand.

The validity of these arguments depends on competitive labor and product markets as well as an absence of effective barriers to entry by new firms. These conditions may not prevail in the short run, but should reasonably approximate economic reality over longer periods of time. If so, the events which act to propel Schweikart's dialectic may not occur, and the relevance of his scenario is questionable.

Footnotes

1. This point of view is developed with care in J. E. Meade, "The Theory of Labour-Managed Firms and Profit Sharing," *Economic Journal* 82 (March, 1972) pp. 402-28.
2. A particularly articulate dissent can be found in M. C. Jensen and W. H. Meckling, "Rights and Production Functions: An Application to Labor Managed Firms and Co determination," *The Journal of Business* 52 (October, 1979) pp. 469-606.

"Worker Participation or Worker Control?"

Thomas M. Calero

Business Week of June 29, 1981 carried two accounts of "worker participation" which illustrate quite well the divergent forms worker involvement can take. The first had to do with federal government approval of a plan whereby employees will purchase 51% of Continental Airlines stock and thus "participate" in ownership control. The second described developments in the U.S. steel industry and the initiation of experiments to form worker participation teams on the mill floors of several major producers. In these cases groups of rank-and-file workers and their supervisors will address workflow problems, safety and health issues, absenteeism, product quality, incentive pay and other everyday concerns.

These two accounts both appear to satisfy Schweikart's meaning of the term "worker participation" and therein lies the first difficulty with his thesis. Ownership leverage at the corporate summit is a far different order of influence than that applied to shop-level events. Significant distinctions also apply at intermediate levels, such as at individual plant sites, office locations or functionally specific departments. Homogenizing these various possibilities makes for a shaky starting point.

Even greater difficulty attends Schweikart's two-tier argument that worker participation leads inexorably both to worker control and to worker participation in all parts of the economy. Even if we accept as accurate his statement that there are about 1,000 worker-

owned companies in the U.S. today, this number is a tiny fraction of the approximately three million firms. Further, it is very unusual for worker-owners to actually manage these enterprises. Typically, employee-owners retain professional managers to look after their affairs. Turning to instances in the U.S. of "participation" where ownership is in no sense an issue (variously estimated as from 200 to 500 cases) employee involvement in work-level problem-solving and decision-making appears uniformly to follow from management initiatives. Now generally labeled as "Quality of Work Life" projects or programs (QWL), these activities are taken to task by critics precisely on the grounds that worker control is illusory ("what management giveth, it can take away"). Actions taken to improve QWL may well allow exercising in the work place the individualism and freedom so highly valued away from it, but the intent of worker-participants seems clearly reformist, not radical. Accordingly, one can question whether worker participation naturally tends to develop into worker control.

As to the inevitable spread of participation throughout the economy, this argument lacks a structural vehicle capable of getting the job done. To date the logical contender, organized labor, has been notably suspicious of QWL and downright hostile to "becoming part of management." Government as the vehicle, so Omnipresent in European-style "industrial democracy," would be rejected here by managers, owners and workers alike. To date all public accounts of QWL activities have been voluntary. Finally, the

movement of the U.S. economy away from one centered on manufacturing to one heavily white-collar staffed and service-oriented, has severely shrunk the natural habitat for worker attitudes which incline to take-over end control.

"An Overview of Rights in the Workplace: Case Law"

For the most part, the common law doctrine of "employment at will" governs employer-employee relations in the private sector. 'this doctrine looks upon employee and employer as equal partners to an employment contract. Just as employees may resign whenever it pleases them, so also employers may dismiss their employees whenever they desire. This latter aspect of the doctrine has been stated forcefully time and time again in various court cases. For example, in *Payne v. Western and Atlantic Railroad* the court declared that "employers may dismiss their employees at will . . . for good cause, for no cause, or even far cause morally wrong, without thereby being guilty of legal wrong¹." Similarly, in *Union Labor Hospital Association v. Vance Redwood Lumber Co.* the court said that the "arbitrary right of the employer to employ or discharge labor is settled beyond peradventure²." The doctrine of employment at will was recently invoked by the Supreme Court of Pennsylvania to dispose of *Geary v. United States Steel Corporation*³. In this case Geary, an employee, charged that he was unjustly dismissed by United States Steel after he went outside

normal organizational channels to warn a vice president of the corporation (it turned out correctly) about defects in steel tubing that was about to be marketed.

The doctrine of employment at will is sometimes referred to as "Wood's Rule" because it received its classic formulation in H. G. Wood's treatise on the law of master and servant in 1877. Under its application, unless duration of employment was specified precisely, courts simply held that no express provision of the contract dealt with this matter. They then summarily upheld the discharge at issue with no consideration whatsoever of the equities in the case.

The doctrine of employment at will remains the dominant approach today of most American courts in employee discharge cases. Courts occasionally have upheld suits by discharged employees on grounds of public policy such as when the discharge was for refusal to give perjured testimony⁴, for filing a workman's compensation claim⁵, and for serving on a jury⁶. For the most part, however, courts do not acknowledge even these narrow limitations on the employer's absolute right of discharge. In this regard, an employee who convinced a jury that he was discharged because he would not vote for certain candidates in a city election was nonetheless barred from recovering damages by the appellate court. Along the same line, a secretary who refused to comply with the order of her superior to indicate falsely that she was not available for jury duty found she had no grounds for recovery when she lost her job. In considering her case the court

declared that while the reason for her discharge was "quite reprehensible," "selfish," and "short sighted," nonetheless "her employer could discharge her with or without cause . . . It makes no difference if the employer has a bad motive in so doing⁸.

Public employees, in contrast to workers in the private sector, enjoy a substantial right of free expression under the decision of the United States Supreme Court in *Picketing v. Board of Education* 39 U.S. 563 (1968). This case involved the dismissal of a high school teacher, Picketing, for writing letters to a local newspaper that criticized the board of his school in Illinois. Picketing alleged that the board had built an athletic field out of unauthorized bond funds. He charged the board with creating a "totalitarian atmosphere" and of lying to the public to gain support for high school athletics.

Picketing was fired. In his bid for reinstatement he lost in the Illinois courts but ultimately won in the United States Supreme Court. In reviewing his case the Supreme Court first stated that the First Amendment unequivocally applies to public employment. Citing a prior decision pertaining to this matter, *Keyishian v. Board of Regents* 385 U.S. 589, 605-606 (1967), the Court noted that "the theory that public employment may be subjected to any conditions, regardless of how unreasonable, has been uniformly rejected." Hence, teachers may not be forced to give up the rights under the First Amendment they would otherwise have as citizens to comment on matters of public interest in connection with the schools. The Court did recognize, however, that schools have

legitimate interests in regulating employee speech. "The problem . . . is to arrive at a balance between the interests of the teacher as a citizen in commenting upon matters of public concern and the interest of the State, as an employer, in promoting the efficiency of the public services it performs through its employees."

In this regard the Court pointed out that Pickering's letter, although sarcastic in tone and occasionally inaccurate nonetheless only attacked the school board. It did not personally criticize any of the individuals with whom he worked on a day-to-day basis. Thus, it could not be said that to retain Pickering would inevitably lower morale or upset the normal operations of the school where he worked.

The Court held that under these circumstances a teacher or, for that matter, any public employee should not be subject to dismissal unless his or her statements were made with knowing or reckless disregard of the truth. As a practical matter, the burden of proof imposed by this standard is so great that it provides nearly absolute protection to public employees in situations similar to Pickering's. Under the rule in *Pickering v. Board of Education* then, courts should focus upon whether the employee's words so undermined working relationships on the job as to justify upholding the discharge. Applying this test, certain remarks might constitute grounds for discharge in some cases but not in others. Courts should look to the specifics of the employment situation rather than concentrating upon the employee's words in and of themselves.

New Development:

The ruling in *Palmateer v. International Harvester Corp.*, which was decided by The Illinois Supreme Court on March 9, 1981, also has potential for greatly enhancing legal protection of employees against unjust dismissal. *Palmateer*, an employee of International Harvester, was fired for supplying information to local law enforcement authorities that another employee might be stealing from the company and for agreeing to assist in the investigation and trial of the employee if requested.

Under prevailing doctrine of employment at will, *Palmateer* would have had no cause of action against International Harvester. The Illinois Supreme Court, however, upheld his claim. In *Kelsey v. Motorola Inc.* 74 Ill. 2d 172 (1978) the court had allowed recovery by an employee discharged for filing a workman's compensation claim. This case, which was the first in Illinois acknowledging a cause of action for retaliatory discharge, left unclear the criteria for determining when recovery would lie. In *Palmateer* the Illinois Supreme Court addressed this matter by saying that "the foundation of the tort of retaliatory discharge lies in the protection of public policy . . ." As to the definition of "public policy" the court said ". . . in general . . . public policy concerns what is right and just and what affects the citizens of the state collectively . . . Although there is no precise line of demarcation dividing matters that are the subject of public policies from purely personal matters, a survey of cases in other states involving retaliatory discharges shows that a matter must strike at the heart of a

citizen's rights, duties, and responsibilities before the tort will be allowed." By this standard *Palmateer's* claim was upheld because "public policy favors the exposure of crime and the cooperation of citizens possessing knowledge thereof is essential to effective implementation of that policy."

The *Palmateer* case, with its expansive criterion of public policy, contains the potential for substantially extending the legal rights of unjustly discharged employees. In previous cases where courts allowed recovery for retaliatory discharge the rulings were strictly limited to the respective specific circumstances with no attempt to go beyond them. By contrast, *Palmateer* enunciates a general rule that appears on its face to contradict directly the prevailing employment at will doctrine. It remains to be seen what courts will do with *Palmateer*. In this regard it should be noted that the case contained a vigorous dissent by Justice Ryan, the author of the majority opinion in *Kelsoy v. Motorola Inc.*, in which he complained about the court's extremely broad definition of public policy. In any event, it seems unlikely that *Palmateer* will be ignored.

Some Proposals for Change:

J. Peter Shapiro and James F. Tune argue that courts should recognize implied contractual rights to job security⁹. In their view the factors for determination of whether such a right obtains in particular circumstances should be thought of as primarily relating to the employment situation. Some such factors are length of service and stated policies of the employer. Others, however,

should be considered as well, such as the following:

(1) separate consideration—that is, did the employee confer some additional benefit upon the employer in taking the position at issue, such as making financial contributions to the employer's business?; or, did the employer induce special reliance by the employee so that the latter passed up valuable opportunities in choosing to work for the former? In this regard, the mode of recruitment—that is, "hard sell or soft sell" may be crucial.

(2) nature of the job—that is, does the job at issue, by its very nature imply a definite duration? In this regard, some positions involve a clear tacit understanding of terminability at will, e.g. a church congregation's employment of a minister.

(3) common law of the industry—the general practices with regard to employment in a particular line of work may be considered an implied part of the bargain, especially when an employee expects or encourages this very understanding.

Shapiro and Tune conclude that an approach, which takes the above kinds of factors into account, serves to protect the interests of both employee and employer far more effectively than does mechanical application of the employment at will doctrine.

Clyde W. Summers believes an overwhelming case exists for comprehensive state laws to protect employees from unjust dismissal.¹⁰ He maintains that, despite the need for protection against unjust dismissal, courts in

all likelihood will not provide it. He notes that despite the variety of plausible legal theories available for developing such protection, on the whole courts have declined to employ them on the ground that doing so would initiate a perilous journey into "uncharted regions."

Comprehensive statutes thus seem to Summers the most effective and practical means of protecting workers against unjust dismissal. Contrary to prevailing judicial opinion, Summers maintains that enacting such statutes would not involve traveling into uncharted territory. Indeed, a mature set of basic principles for unjust dismissal cases has evolved out of the accumulated experience of labor arbitrators. Summers notes that for at least the past two decades arbitration of grievance under collective bargaining agreements has primarily involved applying these principles to specific cases. Moreover, in drafting comprehensive statutes, states could draw upon the experiences of many countries throughout the world, such as England, Germany, France, and Sweden, which already have laws in place providing for the adjudication of employee grievances.

Summers thus proposes a statute reaching all forms of disciplinary action in the workplace and covering all employees, both public and private, with perhaps an exception for very small enterprises. He believes that such a statute can best be built upon the standards of the existing arbitration system. Thus, the term 'just cause' should not be statutorily defined, for the existing body of precedent has already given it a definite yet flexible

content. Claims under the statute would be submitted to arbitration. One possible procedure would provide that if the parties were unable to agree on an arbitrator, then one would be selected from a panel maintained for that purpose by the State. Arbitrators under the statute should have the same scope and flexibility in determining remedies as do arbitrators under collective bargaining agreements.

Footnotes

1. 81 Tenn. 507, 519-20 (1889).
2. 158 Cal. 551, 555 (1910).
3. 456 Pa. 171, 319 A. 2d 174 (1974).
4. Petermann v. Teamsters Local 396. 174 Cal. App. 2d 104, 344 P. 2d 25 (Ct. App. 1959).
5. Frempton v. Central Ind. Gas Co., 260 Ind. 249. 297 N.E. 2d 425 (1973).
6. Nees v. Hocks, 272 Ore. 210, 536 P. 2d 512 (1975).
7. Hell v. Faulkner, 75 S.W. 2d 612 (Mo. CL App. 1934).
8. Mallard v. Baring. 182 Cal. App. 2d 390, 394, 6 Cal. Rptr. 171, 174 (Cf. 1962).
9. J. Peter Shapiro and James F. Tune. "Implied Contractual Rights To Job Security," Stanford Law Review Vol, 26, [1974] 335-69,
10. "Individual Protection Against Unjust Dismissal: Time for a Statute," Virgin in Law Review Vol. 62 (1976) 481-532.

"News from the Center"

The Center has been awarded a two-year grant by the Exxon Education Foundation to develop a series of self-contained instructional modules on ethical

dilemmas in engineering for use in engineering education and related fields. Proposals will be solicited nationally at a later date. More details will be forthcoming. Inquiries should be directed to either Mark S. Frankel, project director or Vivian Weil, series editor.

With the support of a grant from the National Science Foundation, the Center for the Study of Ethics in the Professions at Illinois Institute of Technology will host the Second National Conference on Ethics in Engineering to be held at the Palmer House in Chicago on March 5-6, 1982. The theme for the Conference will be "Beyond Whistle-Blowing: Defining Engineers' Responsibilities."

In sessions featuring formal papers and case studies, philosophers, academic engineers, and scholars in other fields will join with practicing engineers from industry and government. The Conference will focus on such topics as Responsibility in Organizations. Regulation of Technology. Designing for Safety, Technological Decision Making. Cost/Benefit Analysis, and the Role of Engineers in the Political Process. An important objective is to advance research which bridges the gap between theory and practice. An additional aim is to encourage collaboration of academics with practicing engineers who can help to identify problems and solutions and to implement changes in organizational structures and practices. We hope to make some headway in formulating approaches which can be applied to individual decision making and policy choices.

Those wishing to participate in the program should submit detailed abstracts by October 15. Papers should be planned for a reading time of twenty minutes, about 10.12 double-spaced typewritten pages. All abstracts, papers, and inquiries regarding the program or registration should be addressed to the Director of the Conference:

Dr. Vivian Weil
Center for the Study of Ethics in the Professions
Illinois Institute of Technology
IIT Center
Chicago, Illinois 60616

The Center recently concluded the initial year of its Professional Ethics Luncheon Seminar Series. The seminar series is a unique forum for discussion of important issues relating to professional education and practice among a group of informed persons who, while sharing a common concern for the role of the professions in contemporary society, tend to view matters from somewhat different perspectives. Seminar participants are drawn from government, academe, consumer groups, professional societies and practicing professionals throughout the Chicago area. Seminar topics cover a wide range of issues, reflecting the diverse group of professionals participating in the seminars and the complexity of the issues associated with their work.

The 1980-81 series included three seminars. The inaugural session in November featured an address by Paul W. Turley, Director of the Federal Trade Commission's Regional Office in Chicago, describing the activities of the FTC relating to the professions. In April, Thomas Z. Hayward, Jr., a member of the American Bar

Association's Standing Committee on Ethics and Professional Responsibility, previewed what the Association's proposed Model Rules of Professional Conduct are likely to include when presented to the ABA for approval. At the final seminar, convened in May, Professor Deena Weinstein, Professor of Sociology at DePaul University, examined the incidence of fraud in science, its causes and effects.

To request a copy of the seminar papers or additional information about the luncheon series, contact the Center's director, Mark S. Frankel.

"Announcements"

CONFERENCES: Lehigh University will host a two-day national Conference on the Fundamentals of Engineering in a Liberal Education on November 12-13, 1981. The Conference will be held at the Hotel Bethlehem. For further information, contact: Conference Secretary, Marine Geotechnical Laboratory, Lehigh University, #17, Bethlehem, Pennsylvania, 18015.

The Council of State Governments and the Clearinghouse on Licensing, Enforcement and Regulation will sponsor the 1981 Clearinghouse National Conference in St. Louis, September 8-11. The Conference will focus on state licensing and regulation of the professions. For more details, contact Doug Roederer, Council of State Governments, Iron Works Pike,

P.O. Box 11910, Lexington, Kentucky 40578.

The Center for the Study of Ethics in the Professions at the Illinois Institute of Technology was established in 1976 for the purpose of promoting education and scholarship relating to ethical and policy issues of the professions.

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