

## SESSION TWO: COMPOSITION OF THE BOARD

Session Two of the Colloquium addressed the composition of the board of directors in European business organizations and the procedures by which members of the board are chosen. Three of the presentations are published in these proceedings.

Professor Klaus J. Hopt, a member of the International Faculty, outlined the evolution of labor co-determination in Europe, highlighting the recent efforts of the European Parliament to incorporate co-determination in European law. Most co-determination models in force focus on the statutory composition of the board. Professor Hopt identified possible alternatives to this approach. The critical issue facing a country considering various co-determination models, Professor Hopt emphasized, is the proper formulation of a model that is both workable and politically responsive to the particular institutional systems of the country.

Professor Hopt elaborated upon three primary means of achieving co-determination on the board of directors, the focus of European co-determination discussion and legislation. He also enumerated various policy problems associated with labor co-determination on the board.

Professor Hopt concluded that labor co-determination is a reality despite some difficulties and uncertainties. Labor co-determination can help promote the development of a single enterprise as well as the economy at large, provided that the country adopts a co-determination model best suited to its needs.

Mr. Jacques Dumont followed Professor Hopt with a brief comment on France's Nationalization Law of February 11, 1982 [1], establishing joint management on the board of directors of nationalized companies. Reactions to this law have been mixed, he noted. Some have been discouraged by the majority approval requirement, while others have been optimistic that this co-determination model could prove as advantageous to France as it has to other countries.

Professor Michel Bauer discussed his theory that power in the major French industrial groups is not held by the board of directors. This theory is rooted in three propositions. First, small groups of corporate managers, referred to as "private governments", hold the strategic power in the industrial group, exercising actual control over internal and external development. Mr. Bauer explained that there is no relationship between the legal structure and actual power structure in industrial groups, citing the example of Saint-Gobain.

Second, members of the private government are able to conduct their business independently of capital, labor, and the state. Third, private governments co-opt their members. Each chairman chooses his successor, and the successor, even before taking power, recruits members for his future private government. New recruits are selected from among the brightest graduates of elite educational institutions and from the upper echelons of government. Professor Bauer concluded by asking whether a discrepancy might exist between the qualities and skills necessary to gain admittance to private governments and the qualities necessary to exercise power within the private governments.

*Professor Hopt:*

Proposals for labor co-determination have been debated from the time workers within enterprises began to play a significant economic and political role in industrialized societies. In 1835, the famous German economist and public law professor Robert von Mohl called for a new form of enterprise in which the differing interests of the entrepreneur, investors, and workers were balanced by worker participation in the enterprise's earnings and decision-making process. At the turn of the nineteenth century, some far-sighted leaders of industry introduced various models of labor co-determination on a voluntary experimental basis.

The underlying rationales supporting and opposing co-determination are wide ranging and often contradictory. Some supporters rely on Marxist ideas of surplus value created by labor, others proclaim the concept of "industrial democracy", while still others frame their advocacy in terms of labor's long overdue entitlement to economic and political responsibility. Similarly, the opponents represent a broad spectrum. Communists frequently denounce co-determination as a capitalistic strategy of appeasing labor, while industry leaders claim it amounts to expropriation and a change in the very nature of the market economy system.

The introduction of labor co-determination by law, as opposed to voluntary adoption, is a relatively recent phenomenon which developed in Germany. Several European countries, including the Netherlands [2], Denmark, Luxembourg [3], Germany [4], Norway, and Sweden [5], have since enacted statutes on labor co-determination on the company board. Ireland enacted a co-determination statute governing public enterprises in 1977 [6].

Debate has remained heated in various countries that have not yet enacted co-determination statutes. The Bullock Report of 1977 [7] and the White Paper of the Labour Government on Industrial Democracy in 1978 [8] reflect such controversial proposals in the United Kingdom. In Switzerland, the public referendum of March 21, 1976, rejected a proposal to institute co-determination, but Swiss experts indicate that this was not a disavowal of the principle of labor co-determination, but rather a rejection of the specific proposals pre-

sented. Until recently, skepticism – if not outright hostility – toward co-determination prevailed in Italy, Greece, Spain, and other countries marked by significant class conflict between employers and trade unions. Recent political developments in some of these countries, such as the October 18, 1981, socialist government victory in Greece and the realignment of Spain to the EEC, suggest that a change in official positions may be forthcoming.

The general trend toward acceptance of co-determination is also reflected by the actions of the European Economic Community (EEC). The 1972 Commission proposal of a fifth directive for harmonization of company law, the so-called “Company Structure Directive” [9], provided for an obligatory dual board system consisting of a management and supervisory board with labor co-determination in the latter. Companies could choose either the representation or the co-optation model, based respectively on the German and Dutch examples. Furthermore, the modified proposal of a Statute for European Companies of 1975 [10], contains a mixed system adopted pursuant to the recommendation of the European Parliament. One-third of the board members are elected by the shareholders, one-third by labor, and one-third by both, with a two-thirds majority of the members from capital and labor required to elect the final third of the body. In the same year, the Commission of the European Community also presented a Green Paper entitled “Employee Participation and Company Structure in the European Community” [11], containing a well-documented basis for further discussion of co-determination.

Today, the European Parliament is the major force behind the movement toward co-determination in European law. The history of the debates is complicated and marked by indecision as to the proper resolution of this issue. In the 1972 deliberations on the fifth draft directive, the European Parliament was not inclined to follow the lead of the Commission. Two years later, the Economic and Social Council indicated that, despite its efforts, it was not able to reach a consensus on co-determination [12]. Finally, the Parliament’s Committee for Legal Affairs investigated the problem, and after years of argument with the Commission, adopted the Schmidt Report in 1979 [13]. This report notably established a full partnership between capital and labor on the board (with a third of the board members to be chosen by capital and labor jointly), election of a director of labor relations as member of the management board with a right of veto for the labor representatives, and co-determination in all enterprises with more than 250 workers or a turnover of 1.5 million European units of account.

Under the newly elected Parliament, the Schmidt Report was withdrawn and replaced by the Geurtsen Report [14], proposing co-determination in enterprises of more than 2000 employees. Four models based on the German, Dutch, British, and Swedish systems were also offered. This report reflected a growing conviction that while a full-fledged European harmonization of co-determination on company boards was not yet feasible, some steps in this

direction were necessary and could be beneficial to all interested parties. The more conservative approach to co-determination was emphasized in the von Bismarck opinion of the Committee on Economic and Monetary Affairs [15], which argued for an obligatory one-third solution while leaving member states the option of allowing a maximum of one-half of the board members to be chosen by labor. The report further provided for the election of the labor representatives on the board by the workers of the enterprise (rather than by the unions), and required that the final decision-making power be left with shareholders. This plan could be employed as a European weapon against the movement by the German trade unions and the socialist party for full parity co-determination on the board of all corporations with more than 2000 employees.

As a result of this debate in the European Parliament, the EEC Commission on August 12, 1983, modified once again its proposal of the "Company Structure Directive" taking up the Geurtsen Report's four models, but lowering the triggering number of employees from 2000 to 1000 [16].

The trend toward labor co-determination has gained acceptance in many European countries as well as in the European Community. The critical problem is to find a model likely to succeed on a practical level and to be politically responsive to the specific institutional systems of the particular countries. While most co-determination models currently in force focus on the statutory composition of the board, other approaches exist.

The first is voluntary co-determination. This alternative has been applied in German communal enterprises since 1970. In Belgium, some public enterprises, such as the national railways, include employees on the board. The same is true in some public enterprises in Italy. In Greece, even in the pre-socialist era, there was a willingness to accept voluntary co-determination in large state enterprises (*i.e.* energy, traffic, or banking). The idea of voluntary co-determination is also being debated in Great Britain. According to the Bullock Report of 1977, with its widely discussed co-determination formula  $2x + y$  (*i.e.* parity of capital and labor plus neutral members co-opted by both), co-determination in the single enterprise would be based on a poll of all of the enterprise's workers and, once accepted, would be subject to the workers' approval after an experimental period of five or more years. Such a poll of labor, however, could produce the negative result reflected by the comment of the secretary-treasurer of the American trade union AFL-CIO: "The American worker is smart enough to know, in his bones, that salvation lies – not in reshuffling the chairs in the board room or in the executive suite – but in the growing strength and bargaining power of his own autonomous organization" [17].

Labor co-determination by collective agreement, the second method, is similar to voluntary co-determination. The best example of this approach is found in the 1976 Swedish Act on the Joint Regulation of Working Life [18].

This law provides parties with the broadest possible discretion, placing no limits on the collective agreement. But the major drawback is the lack of nonunionized worker representation. This situation is acceptable in Sweden only because more than 90% of Swedish workers, and more than 70% of all employees, are union members. A second problem with this alternative is the possibility of labor gaining disproportionate influence in certain enterprise matters [19]. While the legislation expressly allows for this possibility, it also provides for union liability in the case of gross negligence of union's representatives on the board or another enterprise body with equivalent influence [20].

A third viable model is co-determination at the plant level rather than at the enterprise level or on the board. Under the German Labor Management Relations Act of 1952 [21], as amended in 1972 [22], plant employees elect a works council [23]. This council has the right to be heard and to participate in social, personnel and economic matters [24]. Social matters within the purview of the council include order in the plant, working time allocation, and the compensation structure (collective labor regulation would, of course, take precedence) [25]. Furthermore, the works council must be notified in good time regarding individual dismissal [26] and planned operational changes, especially in the case of plant closings or the introduction of new production methods [27]. The 1952 Act [28] also allotted one-third of the places on the board to labor in addition to providing for co-determination at the plant level. In other countries, such as Switzerland, job-related participation at the plant level and business policy co-determination at the enterprise level are conceived of as separate and distinct alternatives, with a clear preference for the former.

The mainstream of European co-determination discussion and legislation centers on the board of the corporation. There are three primary means of achieving co-determination on the board. The first and best known is the representation model, adopted in Germany, Denmark, Luxemburg, Austria and other countries. Under this system the workers, the unions, or both, fill vacant board seats with their own representatives. The actual influence of workers varies depending on the following factors: (1) the kind of enterprise organ or board involved (compare, for example, the nondivided English board, the German supervisory board, and the French *comité d'entreprise*); (2) the number of seats allotted to labor (which, in most countries, is one-third of the total number available); and (3) the amount of responsibility given to the organ or board. The degree of responsibility differs among systems in various countries depending on the specific legal and institutional constraints. The co-determined body has only advisory functions in the French *comité d'entreprise*, supervisory and other co-decision tasks in the German supervisory board, and full participation in the enterprise's decision-making in the nondivided English or American board.

The second means of instituting co-determination on the board is the

co-optation model, introduced by law in the Netherlands in 1971, but only in force since 1973 [29]. Under this Dutch model, which is relatively uncommon, the management board, the central works council, and the general assembly of the shareholders propose their respective candidates for a free seat on the supervisory board. The supervisory board members then co-opt one of these candidates at their own discretion [30]. The central works council and the general assembly have a right of appeal to the national Social and Economic Council, which is divided equally among representatives of the employers, the trade unions, and the crown. The Social and Economic Council then determines whether the candidate chosen is sufficiently qualified, and whether the composition of the supervisory board is duly composed. The Council interprets the latter compositional requirement in an economic rather than a legal sense. The determining test is whether the board consists of members representing a broad range of expertise.

Accordingly, in one case the Council dismissed an appeal based primarily on the fact that the candidate chosen belonged to the Christian trade unions [31]. In another, an appeal was upheld where an American parent corporation co-opted three American candidates for the supervisory board of its Dutch subsidiary. The Council stated that at least one Dutch member with specific experience in the Netherlands should have been co-opted [32]. In the context of this second example, the Dutch Co-determination Act notably provides exceptions from this model for transnational corporations in order to avoid possible negative impacts on foreign investment in the Netherlands [33]. Recently, this co-optation model has been attacked by Dutch trade unions which would prefer the introduction of an obligatory representation of labor on the board, according to the Bullock Report formula.

The third option is the so-called "three benches model". Besides the two "benches" of capital and labor, a third "bench" for representatives of the public interest would be created. The latter "bench" can be representative of the state, of regions, of local government, or of certain interest groups such as consumers. Traces of this model can be found in large French state enterprises such as banking, insurance, transport, or energy. In Sweden, the state has power by law to send representatives of the public interest onto the boards of sixty major corporations and ten foundations, but the Swedish government has been reluctant to fully wield this power.

This model must be distinguished from the German coal and steel co-determination system where capital and labor elect a neutral eleventh man. This neutral party is not a true representative of the public interest, but rather functions solely to prevent a possible stalemate in the decision-making process.

There are a number of policy problems associated with labor co-determination on the board of companies. Unfortunately, economists and social scientists have only a limited knowledge of the consequences of co-determination on the enterprise and the economy at large.

The key question is whether labor co-determination can ameliorate conflicts between capital and labor. Under the long-term German experience with co-determination in general and co-determination on the enterprise board in particular, one is inclined to answer in the affirmative. Upon closer analysis, however, it is very difficult to determine whether co-determination itself or some other factor or combination of factors has contributed to the consistently good relationship between employers and employees, to the infrequency of strikes and, indirectly, to the success of German enterprises and the economy in the period following the Second World War. While recent research shows that the productivity of labor and the capital earnings of the enterprise tend to be higher if the workforce has a voice in determining employment conditions [34], this is not necessarily applicable when co-determination is characterized by a single worker representative in the board room. Furthermore, a more difficult question is what practical consequences the German or any national co-determination model will have if exported into another legal framework and another institutional, social, and economic structure. One possible result is that trade unions in countries characterized by class struggle might use co-determination rights as an additional weapon to create conflicts, rather than as a means of conflict resolution.

Another relevant question concerns the practical effects co-determination might have on the corporation's decision-making process and on the content and quality of results. The Biedenkopf Report of 1970 [35] did not find any major changes resulting from co-determination in the coal and steel industry [36]. Labor representatives at both the plant and the enterprise level seemed to cooperate closely with management, rarely blocking management decisions on major business issues. This was true even with respect to far-reaching changes in enterprise policies and for developments on the national level, as in the case of energy production. Even layoffs and plant closings have been accepted by labor representatives. On the other hand, the Biedenkopf Report noted a conflict between labor and management interest when Volkswagen decided to open a U.S. branch. Unions felt this decision would result in layoffs, or at least foreclose the creation of new jobs in Germany. The Biedenkopf Report also found that boards with labor representatives may not be responsive to questions of the public interest, such as resisting the dangerous trend towards greater economic concentration. Indeed, given the interests of both the particular enterprise's shareholders and its employees, co-determination may actually foster such a trend.

The observations of the Biedenkopf Report pertain exclusively to co-determination in the German coal and steel industries. It is unclear whether they would apply to a full parity model for all industry or to a similar model in another country. It is also questionable whether co-determination would work during a period of long-term overall economic recession (not merely during isolated difficulties in specific industries, such as the coal and steel industry, or

with specific enterprises, such as Volkswagen). Perhaps in an atmosphere characterized by additional tension between unions and capital in general, labor would be less willing to use its co-determination rights cooperatively towards a common goal. On the other hand, both sides could conceivably work together in such emergency situations to improve economic conditions.

Finally, co-determination raises many potential conflicts of interest for the labor representatives on the board. In a strike by labor against the enterprise, for example, the labor representatives, while actively participating in the strike, may at the same time have to decide to what extent the company should acquiesce to labor's demands. Another sharply disputed conflict of interest concerns board secrecy. Labor is interested in obtaining a detailed picture of the company's situation in order to evaluate possible employment risks and to influence the company's general course of development. Labor representatives are elected to promote this interest and recognize that their re-election is dependent upon achieving this objective and accounting to their fellow employees. This function conflicts with the labor representative's membership on the board and the traditional concept of board secrecy, which is in the interest of the corporation as an entity.

One inference to be drawn from the European experience with worker participation is that there is a good chance labor co-determination will come, perhaps not in the United States, but in Europe. If it is not introduced in individual European states, it will probably be imposed by European directive. While the European solution will be a compromise of several models, it will probably fix a minimum allotment of one-third of the board seats to labor.

Despite all the difficulties and uncertainties involved, labor co-determination can help promote the welfare of the single enterprise as well as the economy at large, provided that each country adopts the co-determination model best suited to its tradition, situation and needs. Although foreign co-determination models are certainly not readily exportable items, a careful analysis may help one understand and solve problems of corporate governance in particular countries.

*Mr. Dumont:*

I would like to comment briefly on France's Nationalization Law of February 11, 1982 [37]. It established a new system of joint management replacing the older board structures of nationalized companies. Under the new system, the board draws its membership equally from three different sources: state representatives, union representatives, and skilled individuals.

Reactions to this law have been mixed. Some have been pleased by the fact that at least one-third of the new board membership possess the necessary skills. They have been discouraged, however, by the requirement that any proposal requires majority approval. Others anticipate that the adoption of this

experimental co-determination system will prove as beneficial in France as it has in other countries.

I would like to give the floor to Mr. Michel Bauer.

*Mr. Bauer:*

I will briefly summarize the major conclusions of the book I co-authored with Elie Cohen [38]. These conclusions are based on a seven-year study of French industrial groups. People at all levels, ranging from chairmen of the board, to trade union members, to division managers, were interviewed. Our conclusions are not necessarily valid for small or medium French companies or foreign companies, because our survey was restricted to the major French industrial groups. However, some valid comparisons can be drawn. Furthermore, while these conclusions are based primarily on our analysis of the Pechiney, Rhone-Poulenc, Gervais Danone and Saint-Gobain Pont-à-Mousson groups, they are applicable to all major French industrial groups.

Although the topic under discussion is centered on the composition of the board of directors, I would like to concentrate on the conclusion reached in our study, namely that power in the major industrial groups is not held by the board of directors. This thesis is premised upon three propositions.

First, the strategic power in a group, the power to design organizational industrial strategies, is held by a small number of people whom we refer to as the "private government". This private government makes all the important decisions concerning internal and external development. The degree to which power has been concentrated in this small group can be readily illustrated. When one industrial group considers buying out another company, four or five people assess that possibility, negotiate, and then reach a conclusion. The decision is made without consulting a large number of experts. In Saint-Gobain Pont-à-Mousson, for example, all decisions regarding the purchase of data-processing companies were made by five people.

An examination of these private governments leads to several secondary conclusions. No direct equivalence exists between the power structure and the legal structure of industrial groups. In the case of Saint-Gobain prior to its nationalization, not all members of the board were members of the private government. If members of the board of directors exercised any power, however, they did so only because of their membership in its private government. Conversely, not all members of the private government were members of the board of directors.

This fact is especially true for subsidiaries of industrial groups. Because the legal and power structures of an industrial group are not equivalent, even executives of an industrial group may not know the name of the chairman of their board. Notably, becoming a member of the board of directors, or even the chairman of the board, does not enhance one's power or influence; rather,

it provides a means of receiving greater compensation. This anomaly highlights the gap between the legal organization and the power structure of an industrial group.

Second, managers or members of the private government are able to free themselves from the control of capital, labor, and the state. In effect, they are salaried governors. This is not to say that members of a private group cannot be owners of a group. In fact, several groups have leaders who are both salaried managers and owners. The power these people exercise, however, arises from their membership in the private government, not from their ownership.

Our study also reveals that owner-members of the private government often oppose other owners. This opposition, however, is not one in which a block of managers confronts another block of owners; rather, it is similar to a block of leaders opposing forces external to the industrial group. As a result, owners play a minor role in defining the group's strategy.

This proposition is more clearly illustrated by an example which adopts Marxist theories of capital financiers. Marxist theorists believed that they could demonstrate, from an industrial point of view, that Saint-Gobain Pont-à-Mousson was merely an instrument of the Banc Suez. According to them, Banc Suez was the capital financier which completely controlled Saint-Gobain. We advanced several arguments to refute this proposition.

Even before Banc Suez became a privileged shareholder of Saint-Gobain, Saint-Gobain had a strong industrial strategy. In several instances, Saint-Gobain profited from problems at Banc Suez because it was not subservient to the bank. One such incident involved the *Crédit Industriel et Commercial* (CIC). Banc Suez and Paribas bank fought a determined battle at the stock exchange for control of CIC. At the climax, Saint-Gobain sold its shares of CIC stock to Banc Suez, taking advantage of the increased price.

The industrial group, therefore, is not necessarily dependent upon the financial center. In cases where the group is dependent, moreover, the private government has a number of ways in which to disentangle itself from owners, even ones that are commercial banks.

The private government can likewise free itself from the powerful control of the state. This concept has remained true during both the liberal and socialist eras. The government has very limited means of influencing industrial group decisions.

In the first place, the time frame used by the state differs markedly from that used by industrial group leaders, and private governments take advantage of this incompatibility. A private government develops strategies which can be implemented over five to ten years. The state, conversely, focuses on very short-range goals or, if far-sighted, very long-range goals. The five to ten year time frame of the private government is not compatible with those of the state or of political leaders.

In the second place, the extremely centralized power characteristic of an industrial group contrasts sharply with the decentralized power of the state. The state's decentralized power is a result of interdepartmental rivalries and political competition. Private governments, on the other hand, tolerate little internal competition in their own organizations, but take advantage of rivalries within the state's organizations. Private governments form alliances with various state departments and ministries, later pitting them against one another. As a result, the industrial group profits from the centralization of power in their companies and the decentralization of power within the state. Renault was the first company to establish such a centralized system. Other companies, both private and nationalized, have imitated this successful model.

Finally, private governments have experience and a monopoly on expertise. Their theoretical knowledge, regardless of its quality, enables them to substitute their own projects for competitive projects proposed by the state.

Private governments have a number of assets which enable them to be free of external forces. Leaders of companies in the private sector, for example, know how to liberate themselves from the domination of capital. Contrary to legal theory, the main function of these leaders is to control capital. A responsible financial director has complete information on the stock exchange; he tries to monitor, and perhaps control, the change of shareholders. In many cases, these salaried leaders negotiate capital transfers in order to shape the structure of the company and are, in fact, primary agents in capital transformation. Certainly, there are some exceptions to this rule. The change of capital in the case of the Hachette publishing company surprised its leaders. In general, however, one of the major functions of private government leaders is to monitor and reinforce their control structure.

Private governments in nationalized companies profit by taking advantage of the French system of corporate governance. These nationalized companies have a tripartite board of directors composed of representatives of the company, the state, and the trade unions. The private government forms alliances with the trade unions and the state, using them to promote the private government's position.

M. Pierre Dreyfus, ex-chairman of Renault and Secretary of Industry during the first government of Prime Minister Mauroy, first introduced this system. He insisted that representatives from both the Ministry of Industry and the Ministry of Finance be included on Renault's board of directors. Dreyfus argued that the representatives from the Ministry of Finance were included not to give them control of Renault, but rather to explain Renault's views to them so that they could, in turn, relate those ideas to the Ministry.

Renault employed the same technique with the trade unions. Confidential information concerning new cars was provided to representatives of the trade unions so that they were then able to defend Renault's policies before their unions.

Trade unions also served the purposes of management in the case of the electrical company, Electricité de France (EDF). The Communist trade union, Confédération Générale du Travail (CGT), has been the leading proponent of EDF's nuclear policy. CGT has advocated the private government's viewpoint before trade unions, environmentalists, and political parties. These examples demonstrate that private governments of nationalized companies are able to use members of their tripartite boards of directors to achieve consensus, avoiding the political conflicts expected from such boards.

The third proposition, and the crux of this discussion, concerns the method of choosing the leaders of private government from the ranks of salaried employees. As a general rule, private governments in the French companies under study co-opt their members. Each chairman chooses his successor, and the successor, even before taking power, recruits members for his future private government. Saint-Gobain provides a working example of this process. Mr. Fouroux recruited his future leaders even before he assumed Mr. Martin's position.

These future leaders undergo a period of trial during which time they must pass certain crucial tests. Ordinarily, a candidate is given responsibility for a departmental division which has been experiencing financial difficulties, but which shows evidence of recovery. By his success in leading the division out of the red, the future leader becomes a model of the skilled executive. Generally, under this format the leader spends time in high positions of each of the planning, research, and development departments.

It must be noted that the ideal process of selecting a future member of a private government involves two prior levels of screening. Both of these screening processes are peculiar to French culture.

The first level of screening takes place in the *grandes écoles*. The rule of the French educational system is that the best students enter the *grandes écoles* rather than the universities. A very strict screening process occurs in this academic world. In order to remain in the running, a student must be at the top of the class. This is a prerequisite in order to advance to the *corps* where the second level of screening takes place.

The *corps* are bodies of public administration. As with the institutions of higher education, a hierarchy exists among these *corps*. A student must be among the top ten students in the class at a *grande école* to enter one of the *grands corps*. For example, the best students at the polytechnique enter the *corps du Mines*, while the best students at the Ecole National d'Administration enter the Inspection des Finances or the Conseil d'Etat.

Once these candidates enter the *grands corps*, a second screening takes place at the upper echelons. Some individuals have an average career in the *corps*, while others are quickly recognized as brilliant future leaders. At that point, the private government chooses them, and the last stage of the selection process, within the company, begins. This selection system reinforces the

strength of the private government vis-à-vis the state. Not only do industrial groups choose the best candidates from the *grands corps*, but they also avoid direct confrontation with the state.

This phenomenon of triple selection, however, has its exceptions. It is absent in a number of companies that have long been nationalized. In these companies, leaders are not chosen from the *grands corps* but rather rise through the company, like those who recently acceded to the private government at Renault. These companies do not have to secure candidates from the *grands corps* because other factors give them the strength to deal with the state. This alternative system relies upon cliques. A number of cliques compete for members and power. When one clique wins, another loses. As mentioned previously, this system exists at Renault.

Whether subsumed under the rule or the exception, however, all future leaders are trained within the industrial group. In this way, future leaders are taught the goals and methods of group government.

One last point should be made concerning access to industrial group leadership. It is based upon a text by Schumpeter in which he noted a development which he termed the bureaucratization of the functions of the business elite. Schumpeter argued that this bureaucratization created a risk that threatened large industrial groups which could precipitate the destruction of capitalism. Without accepting Schumpeter's theory in totality, we can agree with his remark if we consider the discrepancy that may exist between the qualities and skills necessary to gain admittance to private governments, and the qualities necessary to exercise power within those private governments.

The leaders of these large industrial groups were selected on the basis of merit. The question remains, however, whether the qualities and skills these leaders demonstrated and developed in their rise to the top of the educational and administrative systems are the same qualities necessary to make great industrial leaders. This difficult problem cannot be ignored. It is the same problem plaguing small businesses, and brings to mind the distinction between the man who inherits the leadership position and the entrepreneur who successfully rises to the top through his skills and determination. Both are leaders by right, but the entrepreneur is more legitimate and will probably do more to develop the enterprise. One wonders whether the hyper-meritocracy which exists in large industrial groups conforms to the functional needs of our economic system.

## Notes

[1] Nationalization Law (Loi de nationalisation) of Feb. 11, 1982, no. 82-155, Journal Officiel de la République Française, Feb. 13, 1982.

[2] Wet op de structuur van naamloze en besloten vennootschappen 1971.

[3] Law Instituting Mixed Committees, May 4, 1976, [1976]. *Pasinomie Luxembourg* 583 (Lux.) (Instituting Mixed Committees in Enterprises in the Private Sector and Organizing Representation for Employees in Joint Stock Companies).

[4] Co-determination Act of 1976, May 4, 1976, [1976] *Bundesgesetzblatt, Teil 1* [BGB1] 1153 (W. Germ).

[5] Act on Co-determination in the Joint Regulation of Working Life, June 10, 1976, [1976] *Svensk Författningssamling* [SFS] No. 580 (Swed.).

[6] Worker Participation (State Enterprises) Act, April 4, 1977, [1977] *The Acts of the Oireachtas*, No. 6, p. 119.

[7] Report of the Committee of Inquiry on Industrial Democracy (Chairman: Lord Bullock), Cmnd. No. 6706 (1977).

[8] White Paper, Industrial Democracy, Cmnd. No. 7231 (1978).

[9] The European Commission submitted a "Proposal for a Fifth Directive to the Council" on Oct. 9, 1972: 15 O.J. (C 131) 49 (1972). Adopted by the European Parliament: 25 O.J. (C 149) 17 (1982). Modified Proposal of the Commission submitted to the Council: 26 O.J. (C 240) 2 (1983).

[10] European Companies Statute, 8 Bull. of the Eur. Comm., Supp. No. 4 (1975).

[11] Employee Participation and Company Structure in the European Community, 8 Bull. of the Eur. Comm., Supp. No. 8 (1975).

[12] The Opinion of the Economic and Social Committee on the Proposal for a Fifth Directive, 17 O.J. Eur. Comm. (No. C109) 9 (1974).

[13] Report on behalf of the Legal Affairs Committee on the proposal from the Committee of the European Communities to the Council for a Fifth Directive, May 7, 1979, European Parliament Working Documents, Doc. 136/79.

[14] European Parliament Doc. PE 62042 (5.5.1980).

[15] Opinion of the Committee on Economic and Monetary Affairs (draftsman: Mr. von Bismarck): European Parliament Doc. PE 65 524 (18.7.1980). See in this context also the Second Report of the Judiciary Committee (Guertsen Report) Doc. 75.374 (15.1.1982).

[16] See *supra* note 9.

[17] Ellenberger, *The Realities of Co-determination*, AFL-CIO American Federalist, Oct. 1977, at p. 15.

[18] SFS No. 580 (see *supra* note 5).

[19] See *generally id.* arts. 38-40 ("Unions' Right of Veto in Certain Cases").

[20] *Id.* art. 57.

[21] Works Constitution Act of Oct. 11, 1952, [1952] BGB1 681 (W. Ger.).

[22] Works Constitution Act of Jan. 15, 1972, [1972] BGB1 13 (W. Ger.).

[23] *Id.* art 1. See *also id.* art. 7, which establishes that all employees over the age of 18 shall have the right to vote in council elections.

[24] See *generally id.* arts. 87-89 ("Social Matters"); arts. 90-91 ("Structuring, Organization and Design of Jobs, Operations and Working Environment"); arts. 92-105 ("Staff Matters"); arts. 106-113 ("Financial Matters").

[25] *Id.* Art. 87 outlines in full the scope of the right of co-determination in social matters.

[26] *Id.* art. 102.

[27] *Id.* art. 90.

[28] Works Constitution Act, [1952] BGB1 681, art. 76. para. 1 (W. Ger.).

[29] See *supra* note 2.

[30] *Id.* art. 52h subsection 2.

[31] See generally H.J.M.M.N. Honée and A.L.H. de Groot, The Appointment of Supervisory Directors in Major Companies, Report (in Dutch) (Deventer 1979) and summary (in English), Social and Economic Council (S-Gravenhage 1979).

[32] *Id.*

[33] For details see J.M.M. Maeijer, *Die Arbeitnehmermitbestimmung nach der Neuregelung für die Aufsichtsräte in "grossen" niederländischen Kapitalgesellschaften*, 3 ZGR, 104 (110–112) (1974).

[34] The research of FitzRoy/Cable, Institut für Management und Verwaltung at the Wissenschaftszentrum Berlin, has not yet been published.

[35] Mitbestimmungskommission, *Mitbestimmung im Unternehmen: Bericht der Sachverständigen-Kommission zur Auswertung der bisherigen Erfahrungen bei der Mitbestimmung*, Deutscher Bundestag, Doc. VI/334 (Biedenkopf chmn., 1970).

[36] Miners' and Steelworkers' Co-determination Act of May 21, 1951, [1951] BGBI 347 (W. Ger.).

[37] See *supra* note 1.

[38] M. Bauer and E. Cohen, *Qui gouverne les groupes industriels?* (1981).