

Property and Authority in Business Enterprise

La propriété et le fondement de l'autorité dans l'entreprise

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Article abstract

In the following essay, the Author analyses the nature of property in the modern business enterprise and the nature of authority. He concludes that, although property may be considered as a legitimate mode of designation of those in authority, it is not the sole foundation. Management's right are not permanently established; they can change and effectively do change with the times and circumstances.

Property and Authority in Business Enterprise

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In the following essay, the Author analyses the nature of property in the modern business enterprise and the nature of authority. He concludes that, although property may be considered as a legitimate mode of designation of those in authority, it is not the sole foundation. Management's right are not permanently established; they can change and effectively do change with the times and circumstances.

What is the basis for management's right to manage? « Ownership »: this is the answer which immediately comes to mind and which is shared by many of us in our customary outlook on things. Does not owner of the means of production, he who has invested capital into a business, have the right to make all decisions by himself? A whole tradition based on an individualistic conception of property rights taken in a liberal sense — although fast becoming outmoded today in light of new conditions — gives perfect legitimacy to this conception. Serious reflection, however, leads us to the conclusion that while the right of property may be a legal basis for authority in an enterprise, we must look elsewhere for the foundation of this authority, whose exercise must be conditioned by many other rights.

Before studying the relationships that exist between authority and ownership, we must know what type of ownership we are dealing with in an enterprise.

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Property and Enterprise

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PROPERTY

It would be useless, in this study, to give a complete account of the traditional teaching of the moralists on property, its natural basis, its legitimacy and its role, or to rewrite the history of the evolution of systems of ownership through the ages. Suffice it to mention certain fundamentals and point out the notions which are relevant to the subject at hand.

First, it must never be forgotten that the goods of creation have as their destination and end to serve the full development of the human being. Man needs property, and the goods of creation are made for man.

Secondly, the private appropriation of goods is a natural, legitimate, and (in certain cases) necessary means to attain this end. Pope Pius XII affirmed this quite categorically in September 1944; « The Christian conscience cannot recognize the justice of a social order which denies in theory or which renders practically impossible or vain the natural right of property, as much for the goods of consumption as for the means of production. »¹

The word « property » can be considered either objectively or subjectively. Objectively, it signifies *goods*, a material or a spiritual thing, an object for rights. Subjectively, property is the *right* to utilize and to decide the manner of usage of *goods*.

Father Desqueyrat defines it in this way: « Property is the permanent *assignment* of the total or partial utility of some *economic good* for the exclusive profit of one person or community. »²

Since property is a certain power over things and thus a human act, this right cannot be exercised in an irrational manner. *Goods* can never be utilized in an arbitrary way. The utilisation of property must always be in conformity with reason, that is to say, the nature of the goods and their destination or end must be taken into account. The

(1) UTZ, GRONER, SAVIGNAT — *Relations humaines et société contemporaine*, No. 803. — It must be remembered however that the Pope immediately added: « But She (The Church) cannot favor any the more those systems, which, recognizing the right of private property by basing it on an absolutely false concept, act in contradiction to a true and a healthy social order ».

(2) *La propriété*, Editions Spes, Paris.

notion of property rights is not a univocal notion, but an analogical one. While it keeps some essential characteristics, it varies according to the *goods* with which it is concerned and with the persons who own them.

Therefore, a distinction must be made between *goods for consumption* and *goods for production*. The first serve to satisfy the needs of an individual and his family, while the second are used to produce other goods. Productive goods are also called capital goods. All property is not capital and all capital is not necessarily an object of private ownership. One need not go to Russia to find that out!

The bonds that exist between the owner and the *goods* for consumption are much closer than those that exist between the owner and capital *goods*. It is worthwhile to remember the following fact: « It is the existence and the activities of a person which justify in the end his claims to property. It must never be forgotten, however, that the more the field of property of a man enlarges as he becomes richer, and the farther one is from the center of one's personal life, the greater is the social mission of that property, so that respect for the common good in its usage must be so much the more evident. »³

In using the *goods* which are necessary for living according to his position and status, man is already satisfying their common human destination because each individual participates in « human nature ». As for the other capital *goods*, even if one keeps on owning them, their use must be oriented toward the advantage of all. This is carried out in diverse ways, such as works of charity, taxes imposed by the State, but especially in the production of useful *goods*.

There are some capital *goods* which have a certain productivity by themselves, such as the land. Fecundity in the nature makes them productive, But there are other *goods* which, if left to themselves, would be sterile; they absolutely need the application of human activity. It is because of such activity that money and machines can produce and accomplish their useful role in society.

If someone earmarks his *goods* for the production of other *goods*, that property becomes conditioned in a particular manner; either by the nature or by the specific end of the enterprise.

(3) R.P. BOYER, « Redécouvertes du droit naturel », dans *Documents et commentaires*, no 19, sept. 1957, p. 21.

Therefore, a pack of cigarettes, a car, a farm, a factory, or shares in an enterprise are not owned in exactly the same way. The right of property over these different things, even though there remains the right of private property, does not give the owner the same privileges and responsibilities. This is the reason why it is indispensable to go beyond the world of generalities and abstraction and to see concretely where the right of property applies, if we wish to know exactly what it consists in. Much of the confusion in this domain springs from the fact that we use notions which are valid in certain cases only, and which do not apply in others.

THE ENTERPRISE

Let us examine, therefore, the image of property in the business enterprise.

An enterprise has been defined as follows: « It is the combination of financial, technical, and human resources under one management towards a certain economic production ⁴ for markets. »

There are many varieties of enterprises in which property does not play the same role. The legal structure, the size of the enterprise and the economic system under which it operates must be taken into consideration. However, certain essential characteristics are found in every type: the enterprise is an entity distinct from the persons who are in it; it always has as its aim the production of some type of goods or a service for the public and not for the agents of production alone; it is a joint undertaking in the sense that a greater or lesser number of individuals are necessary for production.

As it would be too long to undertake at this time the analysis of every form of enterprise in its relationship to private property, we will limit ourselves to three types.

It will suffice to mention the socialized enterprise, in which there is capital but no private property.

In the small or medium sized enterprise, owned by an individual or a family, the capital or financial resources are supplied by persons who invest in it not only their wealth, but also the greater part of their

(4) ANDRÉ PIETRE, « L'entreprise et son évolution », dans *Transformations sociales et libérations de la personne*, Semaine sociale de Toulouse, 1945, p. 87.

energies. The property is identified in one or more persons; the relationship between individual and property is manifest. It must be noted that today, when almost all enterprises are of limited responsibility, the assets of the enterprise are distinct from the particular assets of the investor of capital.

At the other extreme, there is what the French call « la société anonyme » and which is called here a corporation. All big enterprises are of this type. This is understandable, given the need for gathering enormous sums of money which it would be impossible or risky for the same person to supply. The legal structure of the corporation is determined by law. To obtain the necessary capital, the business places shares or debentures on the market. In exchange for their money, the shareholders are granted certain rights.

The remarkable thing today is that in most of the large enterprise, there is a wide diffusion of shares into the hands of a considerable number of shareholders. Some American enterprises boast of having over a million of them. But this is not all. Not only individuals own shares: institutions such as trust companies, investment companies, insurance companies, retirement funds, etc., administer fabulous sums of money that they do not own,⁵ and buy shares in enterprises.

Finally, it must not be forgotten that a good proportion of the capital utilized in prosperous enterprises, which have already paid out a reasonable dividend to the shareholders, comes from the consumers through the process of self-financing, or « ploughing-back ».

In these corporations with the shares so widely dispersed, the relationship between individual and property is evidently very weak, if not inexistent.

It is commonly held that the shareholders are the owners of the enterprise. But this is far from being self evident. « To speak of property concerning an enterprise is to commit one of those abuses of

(5) On April 21, 1960, the president of The Trust Association Companies of Canada declared that Trust Companies in Canada administered \$7,974,000,000.00 worth of property (Le Devoir, 22 avril 1960).

vocabulary which are too frequent in our language, » as A. Murat expressed it. ⁶

Many studies have been made on this question. From them it follows, first, that the shareholders cannot be said to be the owners of the enterprise or of its collective assets. Even more, some wonder whether the enterprise as such can be an object of ownership.

When a corporation is formed, a contract exists between the investors and the corporation. This contract binds the two parties with the reciprocal obligations. In exchange for their capital, the investors acquire certain rights.

For the debenture holder, these are, in general, the right to receive a fixed interest on the capital loaned and that of being reimbursed upon the expiration of the debentures. It has always been evident that this type of investor does not truly own part of the enterprise.

The shareholder's rights are, in general, the following: the right to dividends when the administrators decide to declare some; the right to attend the general meetings of the corporation, to designate the directors, administrators, auditors, and to receive reports from management; the right, in case of a liquidation, to share the remaining assets after creditors have been paid; finally, the right to sell his shares if he is not satisfied or if he can make a profit. The shareholder does not own the enterprise any more than the debenture-holder does. He owns titles or certificates which give him certain rights determined by law or by the rules of the corporation. He can dispose of these titles, either by selling, giving, or exchanging them. He is the true owner of the titles. Here is how Georges Ripert expresses himself on this question:

« It is precisely because there is a true ownership of the shares that there cannot be co-ownership of the enterprise. The shareholder has a claim *against* the corporation and not a right *in* it... During all of its active life, the shareholder appears as a creditor of the corporation... He gave part of his wealth and is a creditor to the extent of his contribution. If legally the shareholder must be distinguished from the debenture-holder economics-wise there are strong resemblances rather than opposing traits between them. Both have contributed money. They do not have the same rights, but the initial act is the same... The corporation, a legal entity, is not an agglomeration of shareholders who have a sort of common ownership over the assets. The shareholders have given of their blood to

(6) A. MURAT, « Les formes modernes de la propriété dans et depuis le code civil », dans *Propriété et Communauté*. Ed. Economie et Humanisme, Paris 1947, p. 174.

create the new being; this being does not belong to them any more than the child belongs to his father. The contribution of capital is definitive; it is followed by a right against the corporation. (no. 44)

« The truth is that one can no longer speak of the ownership of the corporation in the same sense as in the past. Those who contribute the necessary capital for the enterprise are in the hundreds or thousands. Each one cedes his right of individual ownership over his contribution and acquires in exchange certain rights in the corporation. The wealth thus contributed forms the capital of the enterprise. It is said to be the property of the corporation as a legal entity; this property is not the same as it was before...

« The balance-sheet shows this characteristic of capital admirably well. The enterprise is personified; capital is entered as a liability, it is a debt of the corporation. It has its counterpart in the various assets. These do not belong to the shareholders and have never done so. The net profits are represented by the profit and loss written in the liabilities to balance the statement. It is not the product of the capital; it does not come from the use of the property listed under *assets*. It is the result of the enterprise. » (no. 128)⁷

It is wrong therefore that we continue to believe in the shareholders' right of ownership over the corporation. Neither from the legal point of view, nor from the point of view of the accounting, nor from the moral point of view does this right of ownership exist. In reality, the corporation is an entity in which certain powers meet. « It is a neutral form for which the term « ownership » should be replaced by that of « power ». »⁸

Some even go much farther. They claim that the enterprise, as defined above, cannot even be the object of appropriation. This is the way a group of business heads in France expressed themselves on this question. This group, the UCE-ACT (Union des chefs d'entreprise — action pour des structures humaines), has existed for fifteen years.

« Actually, the accepted idea is that the enterprise is the property of the owner, the capitalists, or the State. This idea is so well

(7) GEORGES RIPERT, *Aspects juridiques du capitalisme moderne*, Librairie générale de droit et de jurisprudence, Paris, 1946. In his book: *L'occupation des usines par le capital*. Ed. du Seuil, p. 27, ROBERT MULTZER says: « The shareholder is a creditor as long as the corporation operates; he becomes an owner from the moment of liquidation. « It is therefore impossible to attribute to the personal property, which by custom has served to define shares in a corporation, the value of true and full ownership of the asset of an enterprise.

By dissociation, possession, use, and the title of owner which has customarily devolved upon the shareholder, the notion of property rights is completely diverted from its traditional sense. This ownership of the share does not correspond to the nature of things. It is but the result of an arbitrary intervention of man, concerning which positive law has not even taken a clear stand. Consequently, it can confer rights only in as much as other rights, either in equity or in the interest of the common good, are not set forth against it. »

(8) MURAT, *op. cit.*, p. 180.

established that those who wish to overthrow the existing structure imagine no other mean but the transfer of the property to the State for instance.

« For us, the enterprise is not an object of property. It is a clearing house for the exchange of services. Man can appropriate things for himself. But the enterprise is not a thing, it is an act.

« Capital is a thing: thing does not undertake, it has no rights. This is not the case of the capitalist as such. The capitalist is a person who contributes something; this contribution gives him the right to some counterpart which is akin to restitution; this is the case for one who holds debentures. If, on top of the contribution of capital, the capitalist as an individual participates in the enterprise, pledges the wealth that he contributes, accepts the risks and cedes his rights to restitution, and more especially associates himself with the work, it is legitimate that his rights should increase in the measure that the part he plays is greater. But never, as long as the contribution is limited to the investing of wealth (this is the case of shareholders), could this justify a right of ownership in the enterprise, since the enterprise is more than these contributions. »⁹

As soon as we are outside the individual enterprise and into a joint enterprise of whatever type, the capital in it cannot be utilized without the collaboration of other persons, and is therefore burdened with servitudes no matter who is the owner, if there be any owner. And the connection between the person and capital goods takes on great importance when one comes to studying the relationship between ownership and authority in an enterprise.

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Authority in an Enterprise

No intelligent person has ever questioned the need for authority in an enterprise. Authority is absolutely indispensable, whatever the legal forms of the enterprise, and whatever the economic system of which it be a part.

However, discussion is open regarding who is going to exercise this authority under what form, and with what span of power.

Before examining whether ownership as such is the basis for authority, it will be useful to clarify certain notions which will help us in our search.

NOTIONS OF AUTHORITY

a) *Its nature*: Authority is the moral power to coordinate the activities of the members of a group towards the common good. It is not

(9) *Structures humaines dans l'entreprise et dans l'économie*, UCE-ACT. Secrétariat: 14, Boul. Jean Mermoz, Neuilly-sur-Seine, pp. 9-10.

a privilege, but essentially a function linked to a common good. It is exercised over «subjects», and not over «objects». Things are administered, men are governed. It is not the power to dominate, but to direct. Authority assures an order of relationships, and a convergence of wills towards the common good.

b) *Its foundation*: The common good is the foundation for authority, which gives it its powers, determines its nature, extension, limits, and jurisdiction.

In fact, the common good is not some abstract notion. It is necessary to interpret it in a certain situation, as it is necessary to choose the means to reach it, if one wishes to assure a real convergence of activities and wills towards the same end. These are some of the characteristics of authority.

This is why authority is essentially a *subordinated power* and why it takes the form of a service and not of a privilege. Authority cannot change its function. It must take into consideration at the same time the common end and the nature of the elements to be coordinated. It must respect each part. This effective mediation between subordinates and the end sought is absolutely essential.

c) *The Persons in Authority*: This function of authority must be exercised by individuals. The power of authority must dwell in someone. Sometimes this can be a single individual, sometimes it can be a group. The persons in authority are the agents of that authority.

d) *The Manner of Designation*: Who shall hold this power of authority? How shall he be appointed? This varies with each society and with each group.

There are *natural* modes which are seen in some societies. The nature of these groups is such that it calls for a given manner of designation which man cannot change. Thus, in the family, it is the fact of generation that gives authority to parents.

Other modes are *variable*. In general, they are the result of history, tradition, customs, and laws. What is important is that the most apt individuals be chosen. Thus, heredity, election, chance, usurpation, violence, and ownership are the means by which individuals have gained access to authority.

In short, the manner in which one individual gains authority over others can take many forms which are evaluated as they are used more or less in accordance with the rights of others. But, in the long run, these forms must always be evaluated according to the possibility of obtaining through them effective mediation between the subordinates and the common good, this being the formal element in the exercise of authority. This *effective mediation* between the end and the subordinates is of such decisive and preponderant importance that it can normalize the exercise of authority, in spite of the possibly illegal character of the initial mode of gaining it. This case is found in the political field when there is usurpation of power.

In short, outside cases of usurpation and violence, it can be said that there is no mode of designation of authority which is good or bad in itself. They are indifferent; the criterion which determines the choice of one mode rather than another is its aptitude to designate the most competent person, taking into consideration the nature of the group and the state of civilization in which it is found.

Let us apply these notions to the enterprise and see what role ownership can play.

OWNERSHIP AND AUTHORITY

From all that has been said, it seems clear that ownership is not and cannot be the foundation of authority. « If ownership gives rights over things, » wrote Father Philippe Laurent, « it does not give, by itself, any power over men. The head of the enterprise might be the legal owner of the lands, buildings, and equipment, but he does not, therefore, have any rights over the persons who come to work in his enterprise. *The power to control men cannot come from the ownership of things.* There would be, in fact, abuse and scandal, and a return to an ancient form of slavery or serfdom. By selling a domain, a certain power over the peasants attached to the land was transferred to the new owner. Unquestionably, we are no longer at that level. However, if the enterprise is envisaged as a simple regrouping of material means (raw materials, equipment, capital, and labour) and if the workers are considered as « factors » in production, there is a tendency to adopt an outlook closer to the above than is believed: the power over material things is extended over men ». ¹⁰

(10) PHILIPPE LAURENT, s.j., « Le pouvoir dans l'entreprise », dans *Revue de l'Action Populaire*, Paris, no 134, janvier 1960, pp. 16-17.

It is true that an enterprise is not a society in the strict sense of the word, but that does not change anything. It is an entity *sui generis* where men are working together. It has been seen that an enterprise is the combining of material, human, and technical means towards the production of some goods or services. What characterizes authority in an enterprise is the fact that it is at the same time the power to administer material goods and the power to direct men.

If there were only goods to manipulate, there would be no problem. But the difficulty arises when these goods cannot be administered without having an effect on the men whose collaboration is indispensable to their good administration.

By stating that the decisions affecting the *capital* invested in the enterprise are rightfully made by the owner, just as those decisions affecting labour are the concern of the workers, the whole question is far from being resolved. For in any enterprise, many decisions affecting capital have some effect on labour, just as those which affect labour always have some effect on capital.¹¹

It is, therefore, the very nature of the enterprise which demands an organization of the cooperation of many individuals for the realization of the common end. What forms the basis of authority, then, is the common aim, the end for which the enterprise is constituted. And this is always true, whatever the economic system under which it exists.

The « entrepreneur » who gathers capital, whether it comes from public funds or from individuals, and irrespective of his intentions is free to establish an enterprise or not. But once it is established, it be-

(11) This affirmation is in no way contrary to the definite position taken by Pope Pius XII on the occasion of the famous controversy in Germany on the natural right to economic co-determination. In that case, as you know, the Pope condemned those who upheld that economic-co-management was a natural right for the workers. I have studied this question at length in an article published in *Relations Industrielles*, vol. 6, no. 4 (septembre 1951), « La doctrine sociale de l'Eglise et la gestion économique des entreprises ». I only wish to mention the following in passing. The Pope said: « The owner of the means of production, whoever he be — individual owner, workers' association, or a corporation — must, always within the limits of public law in economic matters retain control over *his* economic decisions. » (Osservatore Romano, May 9, 1949) It is important to note that His Holiness was only speaking of economic decisions. Also, he did not say the economic decisions, but only *his* decisions. Finally, he remained « within the limits of public economic law. » It is evident that an owner cannot be dispossessed of his wealth, nor can the obligation to invest new capital into an enterprise be forced upon him. He always remains the master of his wealth.

comes an entity which has its own personality and which must conform to its inherent laws.

And this is important, for the official organ of authority as well as those personally in authority, cannot legitimately turn the enterprise away from its essential objectives both external and internal, that is to say, the production in the best possible conditions of some object or service useful to the community, which will give a just return to all those participating in it.

But what then is the role of property and its owners in all this? Property would therefore have nothing to do with authority? It would be wrong to draw this conclusion too quickly.

If property is not the foundation of authority, because ownership of a thing never gives power over individuals, it can happen that ownership is one of the means by which those who hold the authority are appointed.

In fact, this is what takes place under a capitalistic system. This means is commonly accepted, not as a formal element, but as a *de facto* element by which authority is constituted.

As we have seen above, outside of certain societies or groups where a certain mode of designation of those in authority is called for by the very nature of the group, it is always best to choose the one who seems the most capable. This is the case of the enterprise.

The legitimacy of this mode is evident. But it is not the only one. This method of designating the authority in an enterprise can be maintained; but it can also be modified or replaced by another. This is a question of *ad hoc judgment* which we are not discussing here.¹²

(12) In a Memorandum presented recently by Father J.-F. Maxwell before The Company Law Committee set up by authority of the British Government to enquire into and report on the working of Company Law in Britain, I find two quotations of great interest. The first is from Lord Eustace Percy: «Here is the most urgent challenge to political invention ever offered to the jurist and the statesman. The human association which, in fact, produces and distributes wealth, the association of workmen, managers, technicians and directors, is not an association recognized by the law. The association which the law recognize, the association of shareholders, creditors, and directors, is incapable of production or distribution, and is not expected by the law to perform these functions. We have to give law the

In our present system, this method is justified in the following way. It is held that the owner of the means of production is the most capable of managing the enterprise to realize the desired end. This springs from the hypothesis that he who has wealth to invest in an enterprise, because he has been able to acquire, keep, and increase it, has already shown proof of his capacity to manage the enterprise. If he does not have this aptitude, he will lose his wealth, and he will not be able to keep his position of authority. Competition automatically eliminates the least fit.

On the other hand, opponents contend that since property is only one of the element of an enterprise, there is danger if the designation of authority is connected with it, that those in authority accord a more favourable treatment to those who named them to the detriment of the other agents of production, particularly the workers. This method of designation is said to be responsible for the permanent conflict that is found in industry.

If this criticism is valid for the small enterprise, it is difficult to apply it to the large enterprise, to the corporation, for there, the contributors of capital do not exercise authority. This is not necessarily better. But with the diffusion of ownership, their voices are not heard to any significant extent.

Moreover, it is necessary to see how authority in a modern enterprise is structured. In any large enterprise, and especially in the corporation, the organ of authority — whether it be called the directors, management, etc. — is not made up of a single individual, but is in itself an entity distinct from the enterprise and those who are part of it.

It is a hierarchy in which particular functions are attributed to individuals or groups of individuals. And it even happens that there are differences of opinion and conflict between the groups in charge

real association and to withdraw meaningless privilege from the imaginary one. » (Riddell Lecture, 1944)

The second is from Lord Denning, Lord of Appeal in Ordinary: « The major part of industry has passed today into the hands of public companies. At present the law says the duty of the directors is to act in the best interest of the company. This has been interpreted as meaning the interests of the shareholders, present and future... This view is completely out of date.

I foresee that one of the great tasks before us in the coming years is to modify the company system. The aim would be to see that directors were no longer regarded by law as managing on behalf of the shareholders only, but were regarded as representative of all vital interests. The method of appointment should be such as to secure this representation. » (Address to the Assembly of College Faculties, University College, London, 26th June 1958)

of production, sales, research, finance, purchasing, etc. And ultimate decisions are taken after joint consultation: they all group decisions.

As the persons who are part of management are not all on the same level within the hierarchy and are themselves distinct from the organ of authority, it also happens that their legitimate interests as individuals or as a group, are not necessarily those of the enterprise. Furthermore, it is this which has brought about the phenomenon of unionization of management people without weakening in any way authority itself.

In many cases, the administrators and management possess only a small part of the invested capital in the enterprise. Ownership is diffused among the thousands of shareholders and is sometimes administered by intermediary institutions which are not owners themselves, such as trust companies, insurance companies, etc. The personnel in charge has simply the right to manage, to administer, and in return is remunerated at a fixed salary or through profit sharing.

The body which is in authority in corporations takes its direct powers from the laws which determine the method by which the directors and administrators are designated. Between the written constitution and what happens in practice, there is quite a margin. Legally, the shareholders have the right to attend the general meeting, to designate the administrators, and to receive an account of the manner in which the business is administered. In practice, they do not use their right. For it is impossible for them to do so, and if one day they decided to, the enterprise could not function. Imagine the assembly formed by the one million and more shareholders of the American Telephone & Telegraph, where each one would exercise his rights! Or even the 62,267 shareholders of Aluminum Ltd!

Again, it is by an abuse of language that we say that the administrators are the agents of the shareholders. According to Georges Ripert, whom we have already quoted, «It cannot be maintained that the shareholders, as the owners of the capital, have the right to direct the enterprise. The enterprise is a hierarchy with one or many heads. The Company law considers them as the agents of the shareholders. This is a fiction.»¹³

(13) *op. cit.* p. 278 — The theological Committee of Lyon expresses itself — « Dans la grande entreprise industrielle de type capitaliste, la notion même de propriété s'évanouit. Théoriquement, la propriété appartient à une multitude de porteurs d'actions; en fait, des actionnaires se désintéressent de leurs droits et le

When one looks at the type of ownership that is found in corporations as well as at that which tends to become preponderant in an economy characterized by the concentration of productive units, there is danger, if we continue to seek the foundation of authority in ownership, that once the public discovers the great amount of fiction in that conception, authority in enterprise, indispensable as it is, be shaken in its very foundations. It is better not to be afraid to go to the true source of authority — the common good, to recognize the limits and especially the grave obligations which devolve upon it as much from its relationship with the general common good as vis-à-vis all the participants in the enterprise.

THE IMMEDIATE SOURCE OF AUTHORITY

Since we are dealing with free men, living in a country where there is no forced labour and whose cooperation is needed, then a meeting of minds, joint discussion and bargaining are necessary, if their consent to the common task is to be gained. Furthermore, this is recognized in theory by the law which obliges the management of enterprises to bargain collectively with certain categories of wage-earners and salaried employees.

The introduction of collective bargaining into our economic system has modified the authority in the enterprise, without it being generally noticed. The locus of authority is not uniquely constituted, as is commonly believed, by the representatives of capital. Which goes to show that common beliefs are always changing more slowly than reality. Just as in large enterprise, management is already diffused among a great number of individuals at different levels in the hierarchy, but who are always considered to be part of management, in the same way, the obligation for the enterprise to recognize labour unions and to negotiate every question that might affect the workers has, in fact, placed these organizations within the arm of authority with a particular role and limited functions.

pouvoir économique revient *de facto* à des individus ou des groupes sans véritable mandat...

Ce pouvoir *de facto* est, d'ailleurs, dans l'état actuel des choses et avant qu'interviennent les rectifications et les clarifications juridiques créateur de responsabilités. Il oblige ses détenteurs à commander et administrer en vue non de leur intérêt propre, mais du bien commun de l'entreprise et du service de la clientèle. Assumer le pouvoir en éludant les responsabilités serait une faute grave contre la justice. Quant aux subordonnés, le bien commun leur crée un devoir d'obéissance à tous les ordres donnés par les chefs. Ils ont, par ailleurs, toute latitude pour réclamer et provoquer la transformation des structures juridiques. » (Note sur la propriété, Comité Théologique de Lyon, 5 octobre 1951.)

This lead Neil Chamberlain to say:

« While property rights carry with them a power of disposition of goods, they do not carry an equal power to use those goods if the cooperation of others is necessary to that use. Cooperation without with the property right is reduced to a power of disposition, cannot be commanded. It can only be won by consent...

« Since property rights do not give command over others, management may find it essential to share its authority as a means of inducing cooperation, in order to maintain the value of a going business...

« Thus the management and direction of others do not flow out of legal rights but must be granted by those very people who are managed and directed...

« What then is the managerial prerogative? The answer may come more easily if management is viewed as a FUNCTION rather than as a group of people — the function of making and effectuate business decision. This function is to be found at all levels of organisation in an enterprise... A good working definition of the management prerogative is, perhaps, that it is the power to make decisions and to see their effectuation within whatever framework of decretion may exist. If the framework changes, so does the prerogative.

« Or to put the case another way, the management prerogative — in the sense of a power to carry out decisions made — may in some instances be preserved only if union joins in making the decision.

« Looked at this fashion, it becomes evident that *collective bargaining is in fact one method of management*. It is a process for making business decisions that can be carried out. It is no guarantee of good decisions or of proper affectuation — any more than any method of management can provide such guarantee. But it may be, in specific instances, a more appropriate method of management than some others...

« The only questions involving any principle of the management prerogative, however, is whether the union's participation in the decision making process is essential or conducive to the effectuation of the decision. »¹⁴

If it is in the common good of the enterprise that the foundation of authority must be sought, its immediate source comes from the consent, the harmony of the agents of production towards the realization of that good. The individual contract establishes the bond between the individual worker and the enterprise, and subjects him to the authority according to the terms of the agreement. The collective contract negotiated by the management of the enterprise with the representatives of the workers determines the general form for the exercise of authority and lays down the common conditions to which all are subject.

(14) NEIL CHAMBERLAIN, « What is Management's Right to Manage? » article in *Fortune*, July 1949, pp. 68-70.

By a different line of reasoning than ours, Father Laurent, in the study already quoted, arrives at the same conclusions:

« In private enterprise, the power over men, that is, the workers, is not founded on the legitimate ownership of the means of production, but on the wage contract, which is something different. But the latter, although not immoral in itself, can never establish a legitimate power, unless it is agreed upon under just conditions between free individuals. The existence and the value of such a contract establishes new types of relationships, mutually accepted, between employer and employee. It gives to the first a certain power over the second, a power limited, furthermore, by the object of the contract. If the contract is not just or if it is not agreed upon by individuals possessing a certain minimum of liberty (a man, however, is never totally free; each feels the necessity to live and therefore to work), the *de facto* power that results, can become abusive, arbitrary, and without moral justification. In certain cases of « forced labour », there is not even the appearance of a contract. »¹⁵

The enterprise, as we have seen, possesses an essentially social character, even under a capitalistic regime. It produces goods and services, not to stock, but to sell to the public in return for a remuneration which permits the enterprise to exist, progress, and recompense each participant in the production.

The organ of authority (including on different levels all those we have mentioned) which has decisions to make cannot forget the general good of the economy as a whole. It must bring the enterprise within the economy and fashion it to serve the community. It must watch that the initiatives that it takes do not upset the economy and lead to its own ruin. Until such time, as it is realized that a certain coordination, a certain organization of the economy is necessary, on the professional level as well as on the national level, the responsibility of the management of each enterprise is greater and more difficult. The only controls possible are those that come from the State and also, indirectly, from the labour organizations.

Conclusion

The authority in an enterprise does not find its foundation in the ownership of the means of production. It is essentially a function of the common good of the enterprise. Historically, ownership can be considered as a legitimate mode of designation of those in authority. In small and medium-sized enterprises, owned by either an individual

(15) *op. cit.* p. 17

or a family, because of the intimate connection which exists and at times the confusion between the « entrepreneur » and the investor this mode of designation is called for and will continue to be so. But in the large enterprise, the corporation, the law provides for the mode of designation of those in authority and it is known that, in practice, the relationship between property and authority is quite tenuous. Those holding debentures have nothing to do in the business; the shareholders are *sleeping partners*, who can only exercise their rights and control with great difficulty. Moreover, the organ of authority includes a considerable number of persons, who have little or no property in the enterprise.

As for the extension of power which can be attributed to such and such a person within the group in authority itself, as well as the modalities of the exercise of authority, since what counts in the *effective authority* and not an abstract power, and as it is not possible to force the capitalist to invest nor the worker to work, accommodation in practice comes down to a question of negotiation and agreement between the different participants in production. The rights of management, so-called, are not permanently established; they can change and effectively do change with the times and circumstances. It all boils down to a matter of efficiency, of capacity to realize the good of the enterprise while respecting the rights of all those participating in production and of the common good of the economy as a whole.

To conclude, let us leave you with the ending of an article by Cannon L. Janssens, a professor at the Université Catholique of Louvain, entitled « Authority and Enterprise »:

« The human aspects are too numerous in the enormous development of large industries, the aims of the economy are set too high to allow authority in enterprise (the organic structure of human work), to depend solely on the property of things. It is more than certain that history will one day judge the narrow concepts of our age in this domain as a form of refined materialism. »¹⁶

(16) *Les Dossiers de l'Action sociale catholique*, 31ème année, nos 6-7, juin-juillet 1954, p. 417.

LA PROPRIÉTÉ ET LE FONDEMENT DE L'AUTORITÉ DANS L'ENTREPRISE

LA PROPRIÉTÉ

Les biens de la création ont pour destination de servir à l'épanouissement de la personne humaine. Leur appropriation privée est légitime et en certains cas nécessaire, que ce soient les biens d'usage ou les biens de production.

Les liens qui existent entre le propriétaire et les biens d'usage sont beaucoup plus étroits que ceux qui existent entre le propriétaire et les biens de production. Car ce sont l'existence et les activités d'une personne qui justifient finalement ses droits de propriété. Plus la zone de propriété d'un homme s'élargit à mesure qu'il s'enrichit et plus on est loin du centre de sa vie personnelle, plus aussi se renforce la mission sociale dont est assortie la propriété et plus doit s'affirmer le respect du bien commun dans l'usage qui en est fait.

Certains biens de production peuvent devenir productifs par la seule action de leur propriétaire. D'autres ont besoin de la collaboration d'un nombre plus ou moins considérable de personnes. Si quelqu'un affecte ses biens à la production d'autres biens, cette propriété devient nécessairement conditionnée d'une façon particulière: soit la nature de l'entreprise, soit la finalité spécifique de l'entreprise déterminée. On ne possède pas de la même façon un paquet de cigarettes, une automobile, une terre, une usine et des actions dans une entreprise. Le droit de propriété sur ces différentes choses ne donnera pas à celui qui le détient les mêmes privilèges et les mêmes responsabilités. La plupart des confusions viennent du fait que l'on transporte des notions valables dans certains cas alors qu'elles ne le sont plus dans d'autres.

L'ENTREPRISE

Une entreprise, c'est la mise en oeuvre de moyens financiers, techniques et humains sous une même direction, en vue d'une certaine production économique pour le marché. Il existe une variété considérable d'entreprises et la propriété n'y joue pas partout le même rôle. Certains caractères essentiels se rencontrent partout; l'entreprise est une entité distincte des personnes qui s'y trouvent; elle a toujours pour but la production d'un bien ou d'un service pour le public et non pas pour les agents de production; elle est communautaire dans le sens qu'elle nécessite un nombre plus ou moins considérable de personnes pour produire.

Dans l'entreprise socialisée, il y a du capital, mais pas de propriété privée.

Dans la petite ou moyenne entreprise, personnelle ou familiale, le capital ou les moyens financiers sont apportés par des personnes qui n'engagent pas seulement leurs biens, mais aussi leur activité. La propriété est identifiée; le lien entre personne et propriété est manifeste. Cependant, dans les entreprises à responsabilité limitée, le patrimoine de l'entreprise est distinct du patrimoine particulier des apporteurs de capitaux.

Dans la corporation, qui nécessite des moyens financiers très considérables, on met sur le marché des actions ou des obligations. Ce qui frappe aujourd'hui, c'est la diffusion des actions entre les mains d'un nombre immense d'actionnaires. Certaines entreprises américaines se vantent d'avoir dépassé le million. Et ce n'est pas tout, il n'y a pas seulement des personnes physiques qui détiennent des actions. Des institutions comme les sociétés de fiducie, les fonds de placement, les fonds de pension, les mutuelles d'assurance, etc., administrent des montants fabuleux dont ils ne sont pas du tout propriétaires et les placent dans l'achat d'actions. Dans ces entreprises dont les actions sont diffusées de cette manière, on cherche en vain l'engagement personnel chez les détenteurs d'actions. Le lien homme-propriété est très faible.

D'ailleurs les actionnaires, s'ils sont propriétaires de leurs actions, ne sont pas pour cela propriétaires de l'entreprise. L'entreprise, la corporation, à strictement parler, n'est pas objet de propriété, même, si comme personne morale, elle peut posséder des biens. Les actionnaires possèdent des titres dont ils peuvent disposer et qui cependant leur donnent des droits dans l'entreprise, droits autres que celui de propriété. C'est à cause de leur droit de propriété sur ces titres qu'ils peuvent avoir le droit de se mêler des affaires de l'entreprise, comme prendre part à l'assemblée générale, désigner les administrateurs, etc.

Dès que l'on sort du cadre de l'exploitation individuelle pour entrer dans celui de l'exploitation en commun, quelque soit le genre d'entreprise, les biens qui s'y trouvent ne peuvent être mis en valeur sans la collaboration acceptée d'autres personnes et, de ce fait, sont grevés de servitudes indépendamment de qui en est le propriétaire, si propriétaire il y a. Et le lien entre personne humaine et biens de production revêt une importance capitale lorsqu'il s'agit d'étudier le rapport entre propriété et autorité dans l'entreprise.

AUTORITÉ ET PROPRIÉTÉ

L'autorité dans l'entreprise est indispensable quelles que soient les formes juridiques ou les régimes économiques. Ce qui peut prêter à discussion, c'est seulement de savoir qui va exercer cette autorité, quelle forme elle peut prendre et quelles sont les limites de ses pouvoirs.

L'autorité est le pouvoir moral de coordonner les activités des membres d'un groupe vers le bien commun. Elle n'est pas un privilège, mais essentiellement une fonction relative à un bien commun. Elle s'exerce sur des « sujets » et non pas sur des « objets ». On administre des choses, on gouverne des hommes. Il faut distinguer entre le fondement de l'autorité, les titulaires de l'autorité, le mode de désignation des titulaires et l'exercice de l'autorité.

C'est toujours le bien commun qui fonde l'autorité. C'est lui qui lui donne ses pouvoirs, qui détermine la nature, l'étendue et les limites de sa compétence. Cette fonction du bien commun doit être exercée par des personnes. Cela peut être le fait d'un individu ou d'un groupe. Les titulaires sont l'organe de l'autorité. Dans certaines sociétés, il existe un mode naturel de désignation des titulaires de l'autorité. Dans d'autres groupements, elle est laissée à la volonté des hommes.

En général, ces modes relèvent de l'histoire, de la tradition, des coutumes et des lois. Ce qui importe, c'est que soient choisis ceux qui sont les plus aptes à exercer l'autorité. Ainsi, on a vu l'hérédité, le suffrage, l'usurpation, la violence, le hasard, la propriété, etc., être des moyens par lesquels des individus ou des groupes ont eu accès à l'autorité. La médiation effective entre la fin communément poursuivie et les subordonnés est d'une importance si décisive et si prépondérante qu'elle peut normaliser l'exercice de l'autorité, malgré le caractère immoral de l'élément de ce fait initial. En général on peut choisir indifféremment l'un des modes de désignation des titulaires de l'autorité pourvu que l'on en prenne un bon. Ce qui fera leur valeur pour en choisir un plutôt qu'un autre, c'est leur aptitude à désigner les détenteurs les plus compétents, tenant compte de la nature du groupement et de l'état de civilisation dans lequel on se trouve.

Dans la petite entreprise personnelle, l'organe d'autorité est constitué d'un nombre très restreint de personnes qui cumulent les fonctions. Mais dans toute entreprise qui revêt une certaine dimension, dans la corporation, l'organe d'autorité — que l'on appelle la direction, la gérance, le « management » — n'est pas constitué d'une seule personne. Il est lui-même une entité distincte de l'entreprise et des personnes qui en font partie. C'est un corps hiérarchisé dans lequel des fonctions particulières sont attribuées à des individus ou à des groupes d'individus. Et il arrive même que surgissent des divergences d'opinion et des conflits au sein de la gérance entre les diverses fonctions: vente, production, recherche, administration financière, approvisionnement, etc. Les décisions ultimes sont prises collégialement. Comme les personnes qui font partie de la direction ne sont pas toutes sur le même palier de la hiérarchie au sein du corps qu'est la gérance, leurs intérêts légitimes, soit comme individus ou comme groupe, ne sont pas nécessairement ceux de l'entreprise. C'est d'ailleurs ce qui a amené le phénomène du syndicalisme des cadres, sans pour cela que soit mis en cause l'autorité.

Il est évident que la propriété n'est pas et ne peut pas être le fondement de l'autorité. Si la propriété donne un droit sur les choses, par elle-même, elle ne donne aucun pouvoir sur les hommes. Il y aurait abus, scandale, retour à une forme antique d'esclavage et de servage.

S'il n'y avait que des biens à gérer dans l'entreprise, cela ne causerait pas de problèmes. Mais la difficulté survient quand ces biens ne peuvent être administrés sans avoir un effet sur des hommes dont la collaboration est indispensable à leur bonne administration.

En disant que les décisions affectant les biens investis dans l'entreprise reviennent de droit à leurs propriétaires, comme celles qui affectent le travail reviennent aux travailleurs, on n'a rien réglé. Car dans l'entreprise, les décisions affectant les biens ont des effets sur le travail, tout comme celles qui affectent le travail ont des effets sur les biens. C'est donc la nature même de l'entreprise qui exige une organisation de la coopération de plusieurs à la réalisation de la fin commune. Ce qui fondera l'autorité, quels qu'en soient les détenteurs, c'est la fin de l'entreprise. Et ceci, dans quelque régime économique que l'on se trouve.

LA CONVENTION COLLECTIVE

Comme ce sont des hommes libres, vivant dans un pays où l'on n'a pas la conscription du travail, dont on doit obtenir la collaboration, la rencontre, le dialogue, la négociation s'imposent si l'on veut vraiment gagner leur assentiment à l'oeuvre commune. D'ailleurs ceci est reconnu en principe par la loi qui oblige la direction des entreprises à négocier des conventions collectives de travail pour certaines catégories de salariés.

L'introduction du système de la convention collective dans notre régime du travail a, sans que l'on s'en aperçoive, modifié le régime d'autorité dans l'entreprise. L'organe d'autorité n'est plus constitué uniquement de ce que l'on croit encore, mais à tort, des « représentants du capital ». Ce qui démontre que les conceptions courantes sont toujours en retard sur la réalité. De même que dans les grandes entreprises, la gérance est déjà diffusée entre un grand nombre de personnes à des niveaux divers dans la hiérarchie, mais que l'on identifie toujours comme étant de la gérance, ainsi, l'obligation pour les entreprises de reconnaître le syndicalisme ouvrier et de négocier tout ce qui peut affecter les travailleurs a, en fait, inséré partiellement le syndicalisme dans l'organe d'autorité avec un rôle particulier et des fonctions limitées.

Si c'est dans le bien commun de l'entreprise qu'il faut aller chercher le fondement de l'autorité, sa *source immédiate* vient du consentement, de l'accord entre les agents de production pour travailler ensemble à le réaliser. Le contrat individuel de travail établit le lien entre le travailleur individuel et l'entreprise et l'assujettit à l'autorité selon les termes de l'accord; la convention collective négociée entre la direction de l'entreprise et les représentants de l'ensemble des travailleurs vient déterminer le cadre général de l'exercice de l'autorité et fixer les conditions communes auxquelles tout sont soumis.

L'organe d'autorité (comprenant à des degrés divers tous ceux que nous venons d'inclure) qui a des décisions à prendre ne peut mettre de côté le bien général de l'ensemble de l'économie. Il doit insérer l'entreprise à l'intérieur de l'économie et l'ajuster pour servir toute la communauté. Il doit veiller à ce que les initiatives qu'il prend ne bouleversent pas l'économie ni ne la conduise à la ruine. Jusqu'à ce que l'on ait enfin compris qu'une certaine ordination, une certaine organisation de l'économie s'impose tant sur le plan professionnel que sur le plan national, la responsabilité de la direction de chacune des entreprises est encore plus grande et plus difficile. Les seuls contrôles possibles sont ceux qui viennent de la part de l'Etat et aussi, indirectement, de la part du syndicalisme ouvrier.

CONCLUSION

On a vu le genre de propriété qui existe dans l'entreprise personnelle ou familiale et dans la grande entreprise ou la corporation. Historiquement, la propriété peut être considérée comme un mode légitime de désignation des titulaires de l'autorité. Dans la petite et moyenne entreprise, individuelle ou familiale, à cause des liens intimes qui existent et parfois la confusion entre l'entreprise et l'apporteur de capital, ce mode s'impose et s'imposera. Mais, dans la grande entreprise, la corporation, la loi pourvoit au mode de désignation des titulaires de l'autorité et l'on sait que, dans la pratique, le rapport entre la propriété et l'autorité est assez tenu. Les obligataires n'ont rien à voir: les actionnaires sont des *sleeping partners* qui peuvent difficilement exercer leurs droits. De plus, l'organe d'autorité comprend un nombre considérable de personnes, lesquelles ont peu ou pas du tout de propriété dans l'entreprise.

Quant à l'extension des pouvoirs qui peuvent être attribués à telle ou telle personne ou groupe à l'intérieur de l'organe d'autorité, de même qu'aux modalités de l'exercice de la fonction d'autorité, puisque ce qui compte, c'est l'autorité effective et non pas un pouvoir abstrait, et que d'autre part, on ne peut pas plus forcer les épargnants à investir que de forcer les travailleurs à travailler, leur aménagement concret revient à une question d'accord, de négociation entre les différents participants à la production. Ce que l'on appelle les droits de la gérance n'a rien d'immuable, peut changer et change avec le temps et les circonstances. Tout se ramène à une affaire d'efficacité, d'aptitude à réaliser le bien de l'entreprise *dans le respect des droits de tous les participants à la production et du bien commun de l'ensemble de l'économie.*

NE PAS OUBLIER

XVI^e Congrès des Relations industrielles de Laval

« TRIBUNAUX DU TRAVAIL »

Le prochain Congrès des relations industrielles organisé par le Département des relations industrielles de Laval aura lieu au Château Frontenac à Québec les 10 et 11 avril 1961.

Les participants étudieront la question si importante des tribunaux du travail.

Tous sont cordialement invités à s'inscrire.

BULLETIN DU C. E. R. P.

Bulletin d'Etudes et Recherches Psychologiques (trimestriel) publie des articles originaux sur la psychologie et la psycho-physiologie du travail, la psychométrie, la psychologie sociale; les problèmes de main-d'oeuvre et toutes les questions d'orientation, de sélection, de réadaptation et de formation professionnelle des adultes.

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