BOOK REVIEW

A NEW SOCIAL CONTRACT, MARTIN CARNOY, DEREK SHEARER & RUSSELL RUMBERGER, Harper and Row, New York, New York, 1983, pp. 243.

INDUSTRIAL POLICY WITH A DEMOCRATIC FLAVOR

Legal regulation of the economy is a multifaceted system that evokes natural ambivalence from those subject to its strictures. For instance, government allocation and distribution efforts are typically seen as infringing upon pristine, impersonal market decisions.[1] Yet, government help in altering property rights, prices, costs of doing business, and access to financial capital continues to be sought by those pursuing profits.[2]

Debate over the direction that legal regulation of the economy will take is currently cast in the imperatives dictated by "industrial policy." The ambiguity of the term is evinced in its use by advocates of diverse and often competing views. Despite the fact that even modest forms of industrial policy presume the necessity of active fiscal management to regulate levels of consumption and investment, ordinarily conservative constituencies are now discussing the value of industrial policy. For instance, *Business Week* recently reported "a profound change" in top business executives' willingness to consider a major role for governmental planning and direction of industrial policy.[3] Although it can be argued that these executives simply recognize that any legislation would be guided by the threat of an implicit veto by dominant corporate interests,[4] the broad support for industrial policy from groups that are generally outspoken in their contempt for governmental "meddling" suggests that a serious reappraisal of our economic policies is underway.

The heightened interest in regulating the economy must certainly derive from something more substantial than the amorphous nature of the term "industrial policy." What many analysts are in fact attempting is to articulate a means of revitalizing a sluggish economy. Economic growth in Japan and in much of Western Europe has outpaced that in the United States, frequently resulting in a higher per capita income than that

1 M. FRIEDMAN, FREE TO CHOOSE (1980); R. SOLO, THE POSITIVE STATE (1982).
2 M. HOROWITZ, THE TRANSFORMATION OF AMERICAN LAW (1977).
3 *A Cautious Nod to 'Industrial Policy,'* BUS. WK., Mar. 19, 1984, at 15.
4 C. LINDBLOM, POLITICS AND MARKETS (1977).

achieved here.[5] Those Americans, whether economists, businessmen, or politicians, who use national wealth to measure national worth are understandably perplexed and eager to discover a cure.

What is meant by "industrial policy," and how successful might it prove to be? Answering these questions is more difficult than one might anticipate. There has always been an industrial policy in the United States, inasmuch as the legal authority of government has been sought persistently by competing interests, struggling for distributional predominance.[6] Public policy has always allocated incentives, penalties, contracts, and rights among social and economic groups. Hence, there can be no serious debate over whether to have an industrial policy. Governmental policies are now aiding particular farmers, business people, and workers, while restricting the opportunities of others. Such policies help not only to select the output and its means of production, but also to determine who will receive the benefits of that production. Those regulations and determinations represent, as a whole, current industrial policy.

Consequently, any serious discussion of industrial policy requires careful attention to the *form* of industrial policy that is being proposed. Since the American economy is in part structured by governmental regulation and distributional preferences, those who champion the need for industrial policy are implicitly proposing an alternative to current policies. Proposing legal reform itself enjoys a rich and ancient tradition. However, the marketing of a suggested reform may be enhanced by packaging it in a new box labelled "industrial policy."

Those who propose adoption of an industrial policy typically refer to a specific set of legal policies that will shift the economy toward a preferred distribution of resources. Several such briefs for industrial policy will be cited in this review. Those seeking a succinct identification and evaluation of policy options should examine the Congressional Budget Office report entitled *The Industrial Policy Debate*.[7]

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5 R. REICH, THE NEXT AMERICAN FRONTIER 16 (1983).

6 M. HOROWITZ, *supra* note 2, at 253-54.

7 CONGRESSIONAL BUDGET OFFICE, THE INDUSTRIAL POLICY DEBATE (1983).

I.

A New Social Contract,[8] by Martin Carnoy, Derek Shearer, and Russell Rumberger, presents an especially cogent model of a proposed industrial policy. Moreover, it candidly offers a set of legislative proposals for future Democratic administrations.[9] Though its proposals are similar to those presented in Robert Reich's *The Next American Frontier*,[10] *A New Social Contract* rejects Reich's self-conscious avoidance of partisanship. Instead, the authors explicitly recognized that only those who share their desire for increased protection of the rights of the weaker members of society will be attracted to the book's proposals. The central concept in their version of industrial policy is democracy. The authors support only those governmental actions that enlarge the participation of minorities, students, the elderly, women, and the poor. Governmental regulation of the economy in disregard of such participation is blamed for the economic crisis that spawned debates over industrial policy.[11]

As is characteristic of "industrial policy" books,[12] the bulk of *A New Social Contract* is historical. By explaining the historical development of current economic problems, proponents of industrial policy establish the background that supports their call for change. Carnoy, Shearer, and Rumberger point out the individualistic nature of our prevailing social attitudes and its harsh implications for the economically weak. Freedom in the marketplace for the economically disadvantaged translates into abundant opportunities to be unemployed, discriminated against, and ignored.[13] It has been noted elsewhere that the absence of a sense of social solidarity or mutual dependence has caused our legal regulation of economic activity to shy away from cooperative efforts designed to stimulate economic growth, full employment,

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8 M. CARNOY, D. SHEARER & R. RUMBERGER, A NEW SOCIAL CONTRACT (1983) [hereinafter cited as SOCIAL CONTRACT].

9 *Id.* at viii.

10 Browne, Book Review, 59 NOTRE DAME L. REV. 502 (1984).

11 SOCIAL CONTRACT, *supra* note 8, at 151. The case that Carnoy, Shearer, and Rumberger build for an activist legislative and executive branch is identical to the rationale John Hart Ely provides for judicial activism. In the absence of equal access to a decision making process, the governed cannot respect the legitimacy of the rules that emerge from that process. *See* J. ELY, DEMOCRACY AND DISTRUST 175-82 (1980).

12 *See, e.g.*, B. BLUESTONE & B. HARRISON, THE DEINDUSTRALIZATION OF AMERICA (1982); S. BOWLES, D. GORDON & T. WEISSKOPF, BEYOND THE WASTELAND (1983); R. REICH, *supra* note 5.

13 SOCIAL CONTRACT, *supra* note 8, at 11.

price stability, and a fair distribution of wealth.[14]

In order to chart accurately the evolution of our current economic plight, proponents of industrial policy must explain the sharp decline in our economic fortunes after 1972. It is not enough to attribute the decline to broad social themes such as individualism, because such themes are historical constants. Carnoy, Shearer, and Rumberger explain our recent stagnation in terms of a decaying social contract, which lost its viability in the 1970's. That social contract consisted of corporate support for higher real wages in exchange for labor's agreement to permit governmental stimulus of private investment.[15] The Federal government was an insurer of this type of social contract during the period between the New Deal and 1972. The government sustained economic growth by fostering high levels of aggregate demand, thus requiring the participation of business in producing necessary goods and services. At the same time, the government provided workers with increased transfers to the young, old, and unemployed in return for labor's cooperation with a self-conscious push for higher corporate profits.[16]

The demise of this period of managed harmony, according to the authors, was the result of myopic corporate investment policies. In pursuit of short-run profits, American corporations have closed plants, moved from high cost to low cost regions of the United States, and transferred production abroad.[17] All of these actions make perfect sense from the perspective of short-run profit maximization. What *A Social Contract* questions is their eventual impact on our whole nation.[18]

The problems of unemployment, declining real wages, and lagging economic growth are attributed to the disruption caused by corporate investment in labor-saving capital goods, specula-

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[14] H. GINSBURG, FULL EMPLOYMENT AND PUBLIC POLICY: THE U.S. AND SWEDEN 225 (1983); Esping-Andersen, *After the Welfare State*, in WORKING PAPERS FOR A NEW SOCIETY (1982).

[15] SOCIAL CONTRACT, *supra* note 8, at 84.

[16] *Id.* at 47-52.

[17] *Id.* at 61-83.

[18] Several other authors have described the disruptive impact of corporate investment policy in the 1970's. Two books have even used the same social compact metaphor as Carnoy, Shearer, and Rumberger use to describe the "illegitimacy" of private investment. While *A New Social Contract* provides the clearest description of the breach allegedly committed by American corporations in the 1970's, see D. FUSFELD, ECONOMICS: PRINCIPLES OF POLITICAL ECONOMY 248-55 (1982) for a more technical explanation of the recent change in corporate investment policy. Readers interested in the disruptive impacts of these investments should consult B. BLUESTONE & B. HARRISON, *supra* note 12.

tion in realty and profitable mergers, and abandonment of the American labor force. For instance, the failure of American steel firms to create a reinvogorated steel industry in which workers could thrive has resulted in the remarkable fact that McDonald's now employs three times as many people as does the United States Steel Corporation.[19] While the labor force has expanded dramatically, corporate investment per American employee has dropped sharply. In the early 1960's, that ratio increased annually by 5.4%; another 1% annual rise occurred from 1966-1973. Since 1973, however, the increase in investment per employee has averaged only 0.2% per year.[20] Consequently, American productivity and wages have plummeted.

The primary alternative responses to our economic problems consist of Reagan's individualistic form of capitalism, the neoliberal state capitalism of Felix Rohatyn and Lester Thurow, and economic democracy.[21] President Reagan's policies are characterized by the authors as a continuation of the individualistic, profit oriented system that has caused our plight.[22] Neoliberalism is treated much more fully because its proponents share the authors' view that economic legislation should openly attempt to improve the condition of the weaker members of society.[23] Neoliberals support an industrial policy that would use tax monies to finance the growth of particular American industries. The authors do not favor this approach, however, because it would require reliance upon experts to choose winning and losing industries. It would also overlook the employment mix of favored, high-tech industries, because those industries create a small tier of well paid jobs and a huge group of low paid positions, the latter held typically by women and minorities.

A New Social Contract proposes a participatory, democratic set of social investments as a solution to current economic stagnation.[24] The authors suggest the following:

(1) Increased government investment in labor-intensive goods and services, such as roads, bridges, uban water systems, and mass transit;

(2) Democratization of private investment through the nationalization of banks and insurance companies;

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19 SOCIAL CONTACT, *supra* note 8, at 71.
20 *Id.* at 80.
21 *Id.* at 40.
22 *Id.* at 120.
23 *Id.* at 150-55.
24 *Id.* at 160-77.

(3) Expanding worker participation in plants;
(4) Plant closing legislation and publicly financed worker retraining; and
(5) Cooperative agreements among labor, management, and government that would guarantee full employment and expanded rights for unions.

As these proposals are set out and defended, the authors repeatedly point out that no policy change is desirable unless it is implemented through democratic procedures.[25]

II.

Those who are dissatisfied with President Reagan's conservative economic policies are understandably anxious to delineate a new strategy that reflects their view of the appropriate role of the political process in answering economic questions. The authors' model shows their concern over the power of large corporations and the role that such corporations assume as American planning units. They base their solution to the problem of how to curtail corporate power on one central concept: democracy.

The authors' emphasis on democracy, defined as citizen participation in decision making, is initially appealing because they describe democracy as part of the American heritage, rooted in the basic ideals of participation, fairness, and efficiency.[26] Through greater democratic participation, the authors want Americans to find new ways to reach an exhaustive list of goals: full employment, more effective and equitable investment policies, higher productivity, lower inflation, a better environment, and income security.

The initial appeal of democratic planning fades, however, because the authors either ignore or are vague about crucial elements of a democratic planning model. Because the authors ignore certain fundamental issues that are inherent in a democratic industrial policy, their strategy is deceptively simple. For instance, they assume that in an economic democracy citizens can make decisions in such a manner that the interests of each citizen are harmonized with the interests of all. The authors envision a national coalition for economic democracy consisting of individuals working together toward the goal of having the government broaden their economic and social rights. Groups such as liberal

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25 *Id.* at 195.
26 *Id.* at 4.

trade unions, women's organizations, nuclear freeze groups, tenants' organizations, and minority organizations are supposed to reach collective decisions which advance the goals the authors describe.

The authors' assumption that such disparate groups of citizens would be able to reach harmonious, collective decisions is questionable. Moreover, other commentators seem to feel that achievement of such collective decision making would be difficult. Robert Dahl points out that one problem with democratic pluralism is that organizations reinforce both social solidarity among members *and* conflicts with nonmembers.[27] Lester Thurow explains that, to be workable, a democracy must contain a substantial majority of concerned citizens, who will prevent policies from being shaped by those with direct economic self-interests. Society now faces paralysis on issues such as energy independence and the Federal deficit partly because of a political process that cannot make decisions when every decision results in substantial income loss to someone.[28] Furthermore, Charles Lindblom notes the fear that in a democracy people will fight rather than agree on collective goals.[29] Carnoy and his coauthors wave the magic wand of democracy over such problems, but they ignore the substantive difficulties inherent in resolving a zero-sum game in a democratic context.

A second fundamental issue, which the authors ignore, arises out of their desire to place greater investment decision making in the hands of citizens, workers, and consumers. Yet, they never explain how such individuals will obtain adequate information on which to base their decisions. Michael Harrington points out that one of the central problems faced by those desirous of influencing governmental decisions is access to pertinent data.[30] This problem is especially acute in *A New Social Contract* because the authors seek broader participation for precisely those citizens who traditionally lack technical information. Carnoy, Shearer, and Rumberger fail to note the distinct advantage that specific citizens have in obtaining information from government sources and the additional advantage such access provides in policy negotiations.

A third unresolved problem in implementing democratic

27 R. DAHL, DILEMMAS OF PLURALIST DEMOCRACY (1982).

28 L. THUROW, THE ZERO-SUM SOCIETY (1980).

29 C. LINDBLOM, *supra* note 4.

30 M. HARRINGTON, TOWARD A DEMOCRATIC LEFT (1968).

economic planning is the link between distribution of income and acquisition of political power. The new social contract that Carnoy, Shearer, and Rumberger propose provides governmental guidance and regulation to a much greater degree that we presently experience.[31] Yet, the authors are remarkably reticent about why they think that involving relatively powerless groups in decisions will necessarily result in social expenditure patterns that are helpful to such groups. With the current income inequality that exists in our economy, broader involvement in decision making could well provide a means of legitimizing the same social subsidies that would exist absent such broader participation. Giving disadvantaged groups a voice in decision making is only a first step toward providing them with the power to shape industrial policy decisions.

The authors advocate "greater equity" and they want Americans to be "equal partners" in the economy, but they are vague in articulating these concepts. Steps to accomplish greater equality are the cornerstone of the Scandinavian systems, which the proposed social contract mimics. However, the authors list of proposed reforms does not include tax policies that would create greater equality in the distribution of income. Absent inclusion of such policies, greater participation for the disadvantaged may not promote the radical change promised in *A New Social Contract*.[32]

The problems that plague democratic decision making can be integrated by recognizing that ultimately some small group of people, whether democratic representatives or the minions of plutocrats, will make key economic decisions in the private firm and in the public agency. Democracy is enhanced when the goals that these few people are pursuing have been selected through broad participation by a citizenry composed of well-informed and similarly financed units.[33] Unfortunately, *A New Social Contract* is written as if daily managerial and administrative decisions can be made cooperatively in a participatory framework. The vision is

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31 SOCIAL CONTRACT, *supra* note 8, at 161.

32 In fairness to the authors of *A New Social Contract*, their failure to focus on redistributive policies as a predicate for the type of social change envisioned is not unique. *See, e.g.*, R. REICH, *supra* note 5. So predominate is this failure by proponents of industrial policy that one left wing analyst has suggested dispensing altogether with a search for a new industrial policy. *See* Block, *The Myth of Reindustralization*, 14 SOCIALIST REV. 69-76 (1984).

33 *See* Galbraith, *The Pursuit of Profits*, PROGRESSIVE, Mar. 1984, at 39-41.

attractive, but only if we do not examine the clumsiness of such an approach.

Since corporate and public sector decisions are to be democratic above all else, a major villain in *A New Social Contract* is the expert. Experts are constantly under attack because of their elitism, pretentiousness, and distance from the masses.[34] Neoliberals are criticized harshly for being enamored with financial experts.[35] Enormous errors committed in the guise of expertise are legend. However, even the enlightened planning *A New Social Contract* espouses requires a cadre of technicians, attorneys, and expert social scientists. A hyperbolic attack on experts in general is inconsistent with the extensive regional and national planning that Carnoy, Shearer, and Rumberger propose.

A New Social Contract advocates a populist industrial policy that resembles the legal regulation of economic behavior found in Scandinavia. One of the endearing characteristics of the book is the openness of the authors in telling readers exactly who their particular industrial policy is designed to benefit and, at least implicitly, who it is calculated to harm. Those who benefit from the distributional pattern that results from prevailing market decisions will find little to embrace in the new social contract. Those whose interests have been largely ignored by previous market decisions are the primary intended beneficiaries of the social compact that Carnoy, Shearer, and Rumberger project.

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34 SOCIAL CONTRACT, *supra* note 8, at 1, 155, 157. This attack on expertise is not based on doubt about the ability of the human intellect to solve social dilemmas. *See generally* D. EHRENFELD, THE ARROGANCE OF HUMANISM (1981) (excellent attack on experts from that perspective). Instead, Carnoy and his coauthors are distressed with only those experts who make decisions without initial democratic sanction.

35 Carnoy, Shearer, and Rumberger are not particularly fair to neoliberals. They claim that neoliberals do not specify who will be making public investment decisions. However, that criticism has a hollow ring, since it emanates from authors who themselves identify eventual planners as workers or consumers. Rohatyn, despite claims to the contrary by Carnoy, Shearer, and Rumberger, recognizes the need for industrial policy to be cooperative and democratic. *See* Rohatyn, *American Roulette*, N.Y. REV. OF BOOKS, Mar. 29, 1984, at 11-15.

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