Perspectives on current developments

One Share, One Vote, Forever?

A Securities and Exchange Commission study released in October suggests that when corporate managements adopt "takeover defenses" to ward off potential raiders they often are harming the stockholders they are paid to represent. The study found that when companies changed their charters to stagger the expiration of directors' terms or to require that any sale of the firm to outsiders be approved by two-thirds of the stockholders, their stock values dropped by 2 to 3 percent on average. Overall, the SEC staff found that the adoption of such "shark repellents" was linked to an average 1.31 percent drop in stock prices.

If the SEC figures hold up, they would seem to indicate that the effect of many takeover defenses is to entrench current management at the expense of shareholders. As it happens, a number of other researchers have found that such defenses have no effect on stock prices one way or the other. (No one has found that takeover defenses actually enhance stock prices, as one might expect them to do if they succeeded in their apparent purpose of protecting stockholders from impulsive actions they might later regret.)

There is what might be called an if-you-can't-beat-it-join-it solution to the problem of management's yen for independence from stockholders. It is for a firm to separate its stockholders into first-class and second-class compartments, by issuing "Class A" shares that carry a full right to vote at annual meetings and "Class B" shares that either lack a vote or hold only diluted voting rights—say, one-fifth of a vote per share. This is far from a new idea. A number of prominent companies, including those that publish the *Washington Post* and *New York Times,* have long maintained split voting arrangements of this sort. But they have also been the rare exception, with the rule among large corporations being the familiar arrangement of one stockholder, one vote.

A major reason for this uniformity is that for the past sixty years the New York Stock Exchange has required all companies to adopt a "one-share, one-vote" rule as a condition for being listed on the exchange. Companies with differential voting rules have had to settle for listings on the American Stock Exchange, as have the *Times* and the *Post,* or the over-the-counter market, as have shoemaker Nike, Inc., and the Coors brewing company. Now, in part because deregulation has spurred new competition between stock exchanges, the situation is changing, with the most likely result being that NYSE will admit companies with split stock unless Congress decides to ban the practice.

In recent years there has been a strong trend for managements to create innovative stock categories. A notable example is General Motors, which, as part of its acquisitions of Electronic Data Systems and Hughes Aircraft, created "E" and "H" shares each of which entitles its owners to half a vote. The more common motive for creating split stock classes is to ward off potential takeovers or loss of control by a leading family. Among well-known firms that have proposed creating new categories of stock for this reason are Dow Jones and Hershey Foods. In the past, the disadvantages of losing the prized NYSE listing would have discouraged most companies from trying such maneuvers. That has changed as more effective competition from other exchanges and from the over-the-counter markets has made it easier for companies to establish a market in their stock off the Big Board. None of its competitors among securities markets maintains as strict a prohibition on unequal voting rights as the NYSE does. The American Stock Exchange allows split voting rights so long as companies meet certain requirements, such as a voting differential between shares that does not exceed ten to one. More than fifty firms with dual classes of stock are currently listed on the Amex. More than a hundred other dual-stock companies trade on the National Association of Securities Dealers' over-the-counter system, NASDAQ.

The NYSE always failed to recruit certain listings because of its strict standards. In the early 1980s, however, there suddenly arose the prospect of significant defections from its own ranks of listed firms. The first few NYSE companies that issued second voting classes of stock were promptly delisted, but the exchange soon realized it had a trend on its hands, and it decided to suspend a number of ongoing delisting proceedings and form a subcommittee to review the rule. (In the meantime, GM's E stock and some others are being traded.) In early January of this year, the exchange's review panel issued a report citing the growth of competition in the market for the listing of securities and recommending that the exchange liberalize its standards. The liberalization would involve allowing firms to issue a second class of common stock so long as they met certain conditions, including approval by at least a two-thirds majority of original stockholders and by a majority of outside directors, and a voting differential not exceeding ten to one.

But there was a big *if*: the liberalization should proceed only if the Securities and Exchange Commission did not decide to impose uniform listing standards on all securities markets. What the NYSE panel really had in mind was for the other securities markets to tighten their own standards, either voluntarily or by regulation, so as to end competition between the exchanges along this dimension. The Amex has also gone on record in favor of such a settlement, but the NASD and especially its member firms have been more skeptical.

The securities markets are currently soliciting comments from their participants in order to decide how to proceed. The SEC, for its part, has been dragging its feet on the issue, one reason being that it is not sure it has jurisdiction to order any action in this area. The academic and business communities appear to be split on the issue. But many members of Congress seem to be enamored of the one-share, one-vote system and are expressing impatience with the SEC's inaction and the securities industry's failure to reach an agreement. In late May the House Subcommittee on Telecommunications, Consumer Protection, and Finance held hearings, and on June 18 twin bills were introduced in the House and Senate that would amend the Securities and Exchange Act of 1934 to make it illegal for companies to offer common stock with differential voting rights. The sponsors are Representative Dingell (Democrat, Michigan) and Senators D'Amato (Republican, New York), Metzenbaum (Democrat, Ohio), and Cranston (Democrat, California). This congressional pressure may herd the industry into a "voluntary" agreement to require all listed firms to adopt a one-share, one-vote structure.

The fundamental problem with most "shark repellents" is that they take away sovereignty rights that stockholders have been promised and indeed have bought and paid for. True, the shareholders usually cast a one-time vote to approve the shark repellent itself, but in a single quick balloting it is all too possible that inattentive investors will be bulldozed by management and the proxies it holds. That might be how the stockholders of firms studied in the SEC report came to approve measures that made their holdings less valuable.

When a company issues a new line of nonvoting stock, on the other hand, the buyers know what they are getting into, and expect to pick up the stock at a discount that reflects their shares' lack of an equal voice in corporate affairs. That this discount exists is very likely, although its size is a matter of controversy. In a 1982 *Journal of Finance* article, Haim Levy found that in Israel, where split voting rights are common, investors paid an average 45 percent premium for voting stock. Ronald Lease and others, in a 1983 *Journal of Financial Economics* article, found a much smaller average premium among U.S. companies—only 5.4 percent.

What the purchasers of nonvoting stock are doing is "unbundling" the right to participate in the firm's expected prosperity from the right to control its course. This combination of features may actually be highly attractive to some investors: if they lack the means to follow the affairs of the companies they invest in, they may be happy to trade their voice in management for a slightly higher return. The original group of shareholders, those who retain full voting rights, get a different bargain: though it costs them slightly more to raise equity capital for their firm, they can better retain control of it.

Nonvoting stock thus occupies a niche in a continuum of securities between bonds and ordinary preferred stock, on one hand, whose owners have no voice in management decisions and can look forward to no increases in their interest or dividend income if the company prospers, and common stock, on the other, which has both voting rights and participation in growth prospects. In the middle ground, along with nonvoting stock, are warrants and "convertible" varieties of bonds and preferred stock, whose market value fluctuates in sympathy with that of the common shares into which they can be converted, but which have no vote unless they are so converted. These other securities formats, like Class B stock, make it possible for investors to speculate on the future prospects of the firm without buying immediate voting rights. But no one objects to them on that account. For that matter, ordinary minority investors in companies controlled by a single stockholder or family find themselves in much the same position as owners of nonvoting stock.

There is, however, one case in which split stock issuance can endanger stockholder rights. That is when the newly issued shares are "superior" rather than "inferior," having voting rights that are greater than, rather than less than, those of existing common stock holders. If current stockholders are not paying attention, they may "approve" a plan under which superior stock is awarded preferentially to management or other insiders for inadequate consideration. Some companies have avoided this danger by issuing superior stock equally to all holders, as a stock dividend, with the twist that the superior stock can be converted to ordinary stock, but pays no dividend until it is converted. This strategem gives ordinary holders a big incentive to convert their shares voluntarily to get the extra dividends, while insiders can choose to forgo dividends in exchange for more voting rights. The strategem in effect pays minority stockholders to accept dilution of their votes, rather than forcing them—which seems fair enough.

One of the amusing sidelights of the issue is its possible effect on prominent newspapers. The people who own controlling blocks in large newspaper companies naturally claim that their motive in issuing inferior stock is the high-minded one of guaranteeing the independence of their papers against outside buyers who might have an axe to grind. This prevents the Rupert Murdochs, Mort Zuckermans, and Ted Turners from using "raids" to expand their media empires—which is fine with most media critics, for whom the more newspaper independence from entrepreneurial oversight, the better. But although the Dingell-D'Amato bills might make some well-known newspapers nervous for their future independence, any attempt to give newspapers a special exception would open Congress itself to the charge of unequal treatment.

The final irony is that for Congress to abolish experimentation with this device of corporate governance would probably divert managerial self-preservation efforts back into channels that are likely to be more harmful to shareholders. Much as the Environmental Protection Agency has been blamed for banning the least toxic of alternative pesticides, so Congress may be about to ban the most innocuous "shark repellent" in the seven seas.

Urban Decay, Regulatory Sprawl

Somewhere Friedrich Hayek has written that it is impossible for government to control just one thing. Once the side effects, omissions, and unintended consequences of its first regulation become apparent, the state must resort to another and then another—if, that is, it is still intent on pursuing its original goal.

That regulations, like potato chips, cannot be consumed singly is nowhere illustrated better than in New York City's rental housing laws. By now just about everyone is familiar with the landscape (or moonscape) of New York housing after forty years of rent controls: the chronic shortage of vacant apartments, the halt in new construction of private rental units, the decline in the quality of New York housing to an average far below that of other American cities, and, during the 1970s, the abandonment of nearly 40,000 units a year. What is less widely appreciated is that the law itself is almost constantly changing and expanding, that new statutes have proliferated as fast as new slums, and that Gotham's judicial dockets have gotten as crowded as its apartment waiting lists.

The larger the displacement of permitted rent levels from market rent levels—and differences of $1,000 a month are by no means unheard of—the greater is the sort of hydraulic pressure that the market exerts to redress the balance through competition between tenants, withdrawal of capital by landlords, and so forth. This pressure breaks out in a hundred different leaks or tributaries that must each be dammed with a law if tenants are to receive the boon that was originally contemplated.

For example, the right to live at a below-market rent is on shaky ground if one's landlord can bestow it on someone else at will. Thus—in one of the simplest but most far-reaching results of controls—landlords in New York have lost the age-old right, which is taken for granted most places, to reclaim their property when the lease runs out. City law provides that if a tenant wants to go on living in an apartment, the landlord cannot refuse to renew his lease when it expires. And although there are still a few exceptions to this rule, the list is small and shrinking. Chronic lateness in paying rent, for instance, is not a valid ground for nonrenewal. Nor may a landlord refuse to renew a tenant's lease because he wants to move into the apartment himself, except in some cases where his need is "immediate and compelling," and often not even then. A landlord may ask permission to refuse to renew leases if he wants to tear down the building, but it is seldom granted, even when he wants to put up a replacement that would house many more people.

Or take the fundamental issue of "service." It does not mean much to control rents if landlords are free to reduce the services they provide. In order to define and control reductions in service, however, the city has had to wade into a morass of details on such matters as intercom service, the size of post boxes, the frequency of garbage collection, and so forth. This is distinct from another large set of rules that require landlords to provide various services (smoke detectors, secure common doors) whether or not they may have supplied them in the past.

But rules on service quality are at best partly effectual, because not every aspect of service can be quantified. A landlord may be forbidden to reduce a doorman's hours, but there is nothing to stop him from hiring the surliest and least attentive doorman willing to take the job. He may be forced to paint every three years, but not to use quality paint or appealing colors; to provide lobby furniture, but not to make it attractive or comfortable. Thus a building's gross physical attributes can remain intact while its general atmosphere gradually declines to that of a barracks or reformatory.

This is important because of the peculiar incentives for landlords to be obnoxious under rent control. Not only has a landlord no incentive to provide amenities, since hundreds of applicants are waiting to take the apartment if the tenant leaves; worse, he has an actual incentive to provide disamenities, because he wins the right to a special rent increase when someone leaves, along with other sorts of flexibility as well (the effect is to shift the cost of maintaining buildings to newcomers, who are not well-organized politically). So while in most cities frequent tenant turnover is the gravest threat to a landlord's profits, the New York landlord has an actual interest in driving his tenants out—even if he happens to like them personally. This has led to celebrated instances of harassment of tenants by landlords, which have in turn spawned more city laws and regulations. Landlords have responded by pursuing forms of harassment that are difficult to prove as such, including hiring rock bands to perform at odd hours and—in one memorable case—offering to set up a shelter for the homeless in one part-occupied building. The rigors of the city's housing laws are sometimes thought necessary to cope with the unusual perfidy of its landlords, but in fact the would-be reform program may be responsible for much of the misconduct.

In order to increase turnover, landlords have an incentive to enforce lease terms as strictly as they possibly can, even in cases where the tenant has broken only the letter of the lease and has not really harmed the landlord's interests in any direct way. The state and city have responded to this problem by, in effect, legalizing most lease violations, or at least those that do not harm the interests of other tenants. First, the authorities have banned as unenforceable, or restricted the enforceability of, a long list of lease provisions that prohibit such things as pets, unrelated roommates, and business use of the home. Furthermore, a recently passed law provides that even if a landlord goes to court and proves that the tenant has broken a lease, the tenant can avoid eviction simply by showing that he has corrected the violation. Should the violation mysteriously reappear the next week, the landlord is free to call his lawyers and begin the process again.

One facet of the housing situation that appears to be unique to New York, rather than an inevitable outcropping of the rent-control system, is the unusual difficulty of evicting a New York tenant even for the bedrock offense of refusing to pay his rent at all (as opposed to being late). In 1972 the city established a system of housing courts under which a landlord who seeks to evict a tenant for nonpayment must first correct all ongoing violations of the city's habitability code. The idea was to force landlords to fix up their properties, but it did not work out that way. Buildings in the more dilapidated neighborhoods commonly suffer from plenty of code violations, and many owners would sooner abandon their buildings than inject the subsidies needed to bring them up to code. Moreover, tenants can if necessary create last-minute code violations themselves. In this way whole groups of tenants, especially those with good legal-aid representation, have succeeded in carving out rentless lives for themselves through informal ententes in which they agree not to press code violations and the landlords agree to let them stay without paying rent. By the late 1970s, according to Peter Salins's landmark book *The Ecology of Housing Destruction*, 10 percent of the citywide rent roll was delinquent, even though perhaps half the delinquent tenants were getting rent subsidies from the city that covered the entire amount of their rents.

Let it not be said, however, that New York does nothing to combat the anti-social proclivities of its tenants. It is quite severe on several categories of offenses that tenants commit against each other. Take, for example, a widow who has lived in an eight-room flat on the East Side for forty years and pays $200 a month in rent. She is tempted to move to smaller quarters in Florida, but that would mean abandoning an asset worth, in lump-sum terms, hundreds of thousands of dollars. The logical and lucrative thing for her to do is to find a new tenant willing to pay market rates to live in Manhattan, and then either sublet the apartment to him, pocketing the difference, or simply sell ("assign") him the rights to the existing lease for some fabulous sum. A few years ago a court declared that sublets and assignments of this sort were perfectly legal, but the state legislature overruled the court, and landlords are now allowed to prevent all assignments and many sublets. The new law benefits landlords to some extent, since some existing tenants who are denied the chance to sublet at a profit will simply leave instead, but its major effect is to hold down rents for prospective tenants.

In terms of economic efficiency, sublets and assignments have at least one virtue, which is that they allow the unit to go to the tenant who places the highest value on it. But in terms of city politics, they do two unforgivable things. One is to make explicit the extent to which landlords have been expropriated. It is one thing for the widow to enjoy her hundred-thousand-dollar asset quietly in the form of housing, but quite another to attract critical attention by enjoying it openly as cash income.

The other vice of sublets and assignments, as they relate to city politics, lies in rewarding people who move out of New York. And the city goes to considerable lengths to make sure that the benefits of its controls do not flow to those who cannot display due gratitude in the form of votes and taxes. Under a recent directive of Mayor Koch, persons who maintain their tax residence outside the city have been stripped of their right to retain rent-controlled apartments in the city.

Our widow, then, like the Mexican peasant on his *ejido*, is permitted to reap the benefits of land expropriation only at the cost of being effectively bound to the land. The only way she can bequeath the value of the tenancy to her children is to invite one of them to move back in with her. It is quite legal for rent-controlled units to be handed down in this way from generation to generation, world without end, so long as the heirs can claim to have been staying with the deceased for six months to a year before their deaths. Of course, since children have learned of the fortunes to be made in this way, one of the traditional ways of finding a vacant New York apartment—perusing the obituaries—is losing some of its efficacy.

Suppose, however, that none of the widow's children is available to move in with her. Then she is faced with losing the entire capital value of the tenancy to some complete stranger (the next tenant to come along) either immediately or at her death. And while she stays, the apartment is of much less value to her than it would be to someone else. With these incentives, she would almost certainly profit by striking some sort of deal with the landlord in which he would pay her to vacate.

The city has made most such deals illegal, which is not surprising, since they reward both landlords and emigrants at the expense of potential rent-controlled constituents. Some landlords ignore the law and offer tenants bribes to move out, but they often find they have no recourse if the tenant pockets the money and then refuses to leave, since illegal contracts are unenforceable.

While it is illegal for a landlord to bribe tenants retail, it is still okay to do so wholesale, a building at a time. This is done not by converting buildings into condominiums—those have a reputation as excessively capitalist, and the city has effectively banned such conversions—but into cooperatives. Progressive New York policymakers have still not gotten over their original idea that cooperative forms of ownership are good, and ought to be encouraged to replace private ownership. This lingering sentimentality has created an invaluable escape hatch for the besieged rights of property: a landlord can extract some money from his building by turning it over to a tenants' cooperative at a concessionary price. In the example above, our tenant might buy the unit from the landlord as a co-op for $70,000 and then resell it the next week for $150,000, pocketing the extra $80,000. (Courts have upheld tenants' right to "flip" their apartments in this way.)

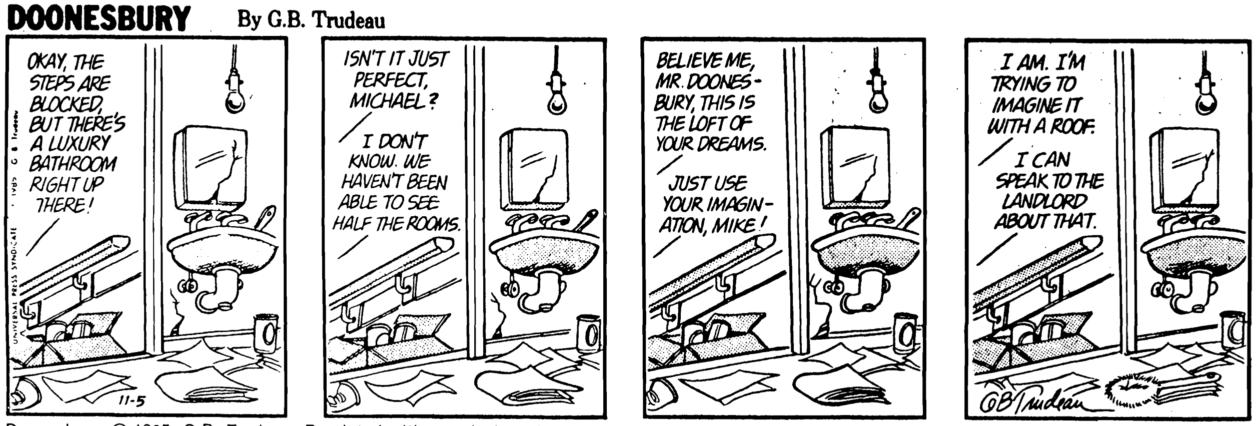
As time goes on, however, and city officials have sensed that co-op conversion is being used for purposes they never intended, they have begun to encrust it in turn with more and more legal barnacles. When a co-op conversion is pending, for instance, landlords have an incentive not to rent out any apartments that open up, so as to keep to a minimum the number of people they will have to pay off later. The city has responded by passing a law that makes this sort of "warehousing" a crime for which landlords can be sent to jail.

The co-op exception is one of two loopholes used aggressively by landlords in recent years. The other is a clause allowing landlords to recover the cost of substantially renovating vacant units. When it became clear that the city could not effectively audit claimed renovation expenses, a great many landlords began using inflated expense claims to achieve effective vacancy decontrol—which, along with waves of co-oping, has led to an actual boom in many once-marginal neighborhoods.

Those buildings that are not headed toward renovation or co-op conversion are very often headed toward a quite different fate, the *in rem* rolls. Many an owner hangs on to a building with negative cash flow because of tax advantages. But at some point the building starts losing so much money that the landlord simply walks away. After a certain interval the city takes over the building for back taxes, tenants and all. (The legal proceeding is styled *in rem*, a Latin phrase meaning that the city proceeds against not the owner but the building itself, but the phrase has acquired a life of its own, so that when a building's back taxes get paid off the locals speak of it as being "out of rem.")

By early 1984 the city had in this way acquired more than 120,000 units, 46,000 of which were occupied, on top of 166,000 units of regu-

DOONESBURY By G.B. Trudeau



lar public housing. Among them are many occupied single-family houses that have been forfeited to the city for back taxes, fixed up, and then rented back to the former owners for sums that, depending on the occupants' income, can be less than the monthly gas bill.

As of 1983, the *in rem* program was costing New York $150 million a year. The city once tried to stem its losses by raising rents to tenants, but a lawsuit by legal-aid lawyers put an end to that. New York's powerful housing activist groups welcome the program as "do-it-yourself" public housing and are demanding that the city speed up its rate of seizures, to which City Hall has responded that it is seizing as fast as it can.

In less progressive localities, properties that are forfeited for back taxes get auctioned off to new owners. New York City occasionally expresses interest in doing this, but the ever-vigilant activist groups have almost always managed to block the sale of occupied buildings. Selling such buildings for immediate renovation is not permitted because that would involve displacing the existing tenants. But anyone who bids for such a building without disclosing plans for renovation is liable to be suspected of the sin of "speculation" (and perhaps rightly, since if he were willing to go on running the building on the old basis he would presumably encounter the same laws that drove the old owners out of business). The other alternative is to hand over the housing to tenant or housing-activist groups for free, a proposition for which there is considerable political support. Incidentally, local activist groups until recently even managed to block proposals to let renovators buy *vacant* properties from the *in rem* rolls, on the theory that to do so would harm local residents by driving up property values in the neighborhood, and that someday the city will have the money and inclination to rehabilitate the vacant units into public housing.

In addition to co-ops and renovations, many other sectors of the New York real estate market have thrived by escaping controls. For many years the shortage of rentable housing in Manhattan drove adventuresome souls to rent factory and warehouse space ("lofts") which they converted to living areas despite laws against residing in industrial structures. Buildings with fewer than six units were also exempted from controls, as were some units owned by nonprofit entities like universities. Office and retail space has long been rented on an open market, and the latest in a series of commercial building booms is under way.

The dynamics of New York housing politics presses ceaselessly for the abolition of all these exemptions. The loft dwellers became powerful enough that the city legalized their dwellings in order to bring them under rent regulation—an action that succeeded in stopping the loft boom. It also extended controls to cover nonprofit landlords, and housing activists are now demanding controls on small buildings and commercial rent controls. For cities like Washington and Los Angeles that are just now starting down the road of rent control, there is a message: the road is long and winding and has no end.

Labor's War on "Double-Breasting"

Much is made in discussions of American labor law of the analogy between regular democracy and worker democracy: just as citizens vote to determine who will represent them in Congress, workers vote to determine which union (if any) will represent them on the job. In practice, this analogy is often misleading. Campaign practices in union representation elections, for example, are regulated more strictly than Common Cause could dare to dream. Judges have even been known to punish one side for making unfair promises by not only nullifying but reversing the results of an election.

One point of similarity between political elections and unionization elections, however, is that whoever gets to draw the election boundaries has a great deal of influence over the outcome. The union presence at a hospital will be very different depending on whether an "appropriate bargaining unit" consists of the entire staff, or just the nurses, or just the nurses on the night shift in the emergency room.

Neither management nor labor in these disputes is consistently in favor of making bargaining units larger or smaller. Where bargaining units are large a union may find it harder to get a foothold, but secure more power once it does. Where workers at a company are split into many small bargaining units organized by different unions, the employer may be able to divide and conquer or contain discontent, or may simply be exposed to "leapfrogging" tactics in negotiation and more frequent crippling strikes. When the boundaries of "appropriate bargaining units" are initially determined, therefore, there is a prime opportunity for gerrymandering to benefit one side or the other. The National Labor Relations Board gets to make the decisions on the scope of bargaining units, which is one of the many reasons why that agency is a much-fought-over political battleground.

The latest controversy over the scope of bargaining units has broken out in the construction industry, which is governed by a distinctive set of federal labor laws even more impenetrable than those that govern the rest of the economy. Under a line of cases dating from 1973, the NLRB allows unionized construction firms to set up non-union subsidiaries as separate bargaining units so long as the two businesses are independently administered and do not share individual managers. This practice of "double-breasting" allows a company to participate in both sectors of the construction industry: the non-union sector, which now dominates private construction in most areas, and the union sector, which still monopolizes government-paid and -inspired construction (because of the Davis-Bacon Act and similar laws) and which has held on to private construction in some cities like New York and San Francisco. The decline in union membership as a share of the work force has been especially pronounced in construction, which was 40 percent unionized in 1973 but only 25 percent unionized last year.

The Construction Industry Labor Law Amendments of 1985 (H.R. 281) is meant to overrule the NLRB and a Supreme Court decision that upheld the board's policy (*South Prairie Construction,* 1976). Under the bill, sponsored by Rep. William L. Clay (Democrat, Missouri), jointly owned subsidiaries within a geographical area would automatically be combined as an appropriate bargaining unit. Moreover, if a union contract had applied to one of the two subsidiaries, it would automatically be extended to both. The bill has passed the House Education and Labor Committee, and had more than 140 cosponsors as of August.

Union and construction industry lobbyists agree that H.R. 281 would effectively abolish double-breasting, forcing employers to choose between being all union and being all non-union. A staff report issued by the House Education and Labor Committee says the bill is meant to stop "corporate shell games, which are easily accomplished given the unique circumstances of the construction industry" and can lead to "the avoidance of collective bargaining agreements."

The building trades department of the AFL-CIO, which represents some fifteen unions, says that the NLRB's rulings have "undermined and subverted [the] Congressional intent" behind the Labor-Management Relations Act of 1959, better known as the Landrum-Griffin Act, which, they say, was meant to codify construction industry practice as it was then—a time when "double-breasting" had not yet been thought of. The legislative history of that law, however, does not provide much support for this claim. In August 1959, when the act was pending before Congress, then-Senator John Kennedy (Democrat, Massachusetts) introduced an amendment that would have protected a construction union's right to seek, among other things, subcontracting restrictions to require joint ventures and employers "under the same ownership and control" to go union. The amendment was not adopted, and the Landrum-Griffin Act passed the Senate without the Kennedy provisions. In early September, after the bill was reported out of conference, Senator Wayne Morse (Democrat, Oregon) introduced an amendment with provisions very similar to those of Senator Kennedy's. This amendment was not adopted either, and the conference bill passed without changes, 95 to 2.

The double-breasting provisions of the current bill are almost identical in intent to those of the Kennedy and Morse amendments. H.R. 281 would tend to use Davis-Bacon work as a lever to facilitate unionization of private construction jobs. But it would be a double-edged lever (if there is such a thing). Davis-Bacon work is important enough that some double-breasted contractors would undoubtedly choose to sell, close down, or accept unionization of their open-shop subsidiaries, so that some private construction assignments would move into the union camp. But other firms would choose to drop their union subsidiaries and give up Davis-Bacon work, which, after all, is still not a majority of construction work most

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Losses to consumers—as distinct from those to the economy as a whole—are much larger than this, because one of the major effects of quotas and tariffs is to transfer wealth from a country's consumers to its producers and the government. The sugar quota is the best example of this phenomenon: U.S. consumer losses would amount to $2.7 billion over four years, nearly three times more than the losses to the general economy listed above.

In addition, all four quota schemes bestow windfall benefits on the foreign producers that are awarded quotas, by assuring them a higher price for the products they are allowed to sell on the U.S. market. This transfer—a loss to the U.S. economy, but a gain to other countries—amounts to $238 million a year for sugar, $264 million for Hong Kong apparel, and $557 million for steel.

As they did in an earlier study published in 1980 (see Readings, *Regulation*, January/February 1981), Tarr and Morkre proceed to compare these losses with the possible gains afforded by trade protection, namely, the unemployment and transition costs that are averted if American industries do not close down plants under pressure from imported goods. In the case of steel, "for every dollar of earnings losses saved by otherwise displaced workers, consumers lose $34.60 and the United States economy loses $24.57." The average cost for each job saved by this restriction is $114,000 to consumers and $81,000 in efficiency losses to the economy. In the case of apparel, the authors estimated the employment *benefits* of the quotas on not only Hong Kong but also Taiwanese and South Korean apparel, though the *costs* of protection were calculated for Hong Kong alone. Even under that conservative assumption the cost per job saved amounted to at least $41,800; and since the cost of adjustment for 8,900 unemployed apparel workers is an estimated $20 million, the ratio of benefits from removing quotas to adjustment costs is at least eighteen to one. In the case of the sugar program the authors assumed that the federal government's price support system would absorb the output of sugar producers, at some expense to the Treasury; even so, the price U.S. citizens would pay as taxpayers would be considerably less than they are now paying as consumers under the quota system.

"Double-Breasting"

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places. After an unsettled period, the line-up of contractors would likely emerge much as it is now, except that the roster of owners would have changed, and the firms in each area would be divided into separate union and non-union castes. If so, H.R. 281 might even accelerate the trend toward non-union construction. A spokesman for the building trades unions says that this risk is one his group is prepared to take.

The Clay bill also would enact a number of other union-sought changes in the labor laws governing construction. For example, it is currently possible for an employer who has been operating under an umbrella agreement between contractors and unions in an area to slip out from under the umbrella and operate independently on a non-union basis. Under the Clay bill, such employers would continue to be covered by the umbrella contract unless their workers specifically voted to reject it.

Several attempts to amend H.R. 281 in subcommittee were rejected in votes along party lines. Rep. Steve Bartlett (Republican, Texas) offered an amendment that would have required the holding of a secret ballot, rather than the submission of authorization cards, to secure union representation. Another losing Bartlett amendment would have required secret-ballot votes on whether to go out on strike, whether to continue a strike (with votes taken every thirty days during its duration), and whether to accept an employer's contract proposals.

A third amendment, offered by Rep. Richard Armey (Republican, Texas), would have ended the double-breasting controversy by defining each job site as a separate bargaining unit. For the unions, that would have been the worst possible outcome: it would have forced them to organize from the "bottom up" rather than from the "top down." But—to the extent that "worker democracy" makes any sense as a guiding principle—smaller bargaining units possess at least one advantage, in that they provide a closer fit between worker sentiment and representational results than larger ones. As public choice theory tells us, the larger the bounds of the electoral unit, the more people wind up being represented by a candidate they have voted against.