

SOME PROBLEMS IN THE LEGAL REGULATION OF THE ACTIVITIES OF ECONOMIC INSTITUTIONS

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Some aspects of the effects of the legal regulation in the socialist economy are discussed on the basis of interviews with two samples of managers of state enterprises in Poland. Emphasis is on the mode of adaptation by the managers to what they perceive as conflicting economic, legal, and administrative demands—especially in interactions between the enterprises. An attempt is made to specify the role played by the norm and mechanism of reciprocity, as well as by the other mutual sanctions that order economic cooperation, beyond the official legal regulations.

EDITOR'S NOTE

This article originally appeared in Polish (1974). A few things should be clarified for most American readers.

Poland, like most Eastern European nations, runs its economy through central planning, somewhat on the pattern of the Soviet Union. These nations have turned to contract to overcome some of the problems found in attempting to plan every detail in an entire economy. State enterprises come under the control of particular ministries, and it would be possible, in theory, for planners in these ministries to make all decisions concerning horizontal relations between economic units. The steel plant could be ordered, for example, to deliver a specified amount of a type of steel to the state works producing tractors on or before a certain date. However, most socialist nations have found it useful to delegate many of the decisions involved in such transactions downward to those who manage the steel and tractor works. These managers often have information unavailable to the planners about aspects of the transaction; delegation downward keeps the planners from being swamped by too many details and too many decisions; and forcing the managers involved to handle a transaction by contract may help to fix responsibility and provide incentives for performance.

Contracts can be breached in both capitalist and socialist economies: the steel, for example, may fail to arrive at the tractor works on time or it may be defective. However, the remedial system under socialism necessarily differs from that found in, say, the United States. The primary remedy in the United States is a recovery of damages that reflect the increased costs of buying replace-

ment goods on the market or the decreased sales price obtained on resale. However, in a socialist system there is no market; goods not already allocated under the plan should not be available except under unusual circumstances. The primary remedy for breach of contract in a socialist society should be, in theory, specific performance. However, for many reasons this is not always used. The common remedy is rather a contract penalty—a kind of standardized form of presumed damages. These penalties are incorporated into all contracts between state enterprises by operation of statutes and regulations, and disclaimers of liability, so frequently found in American contracts, usually are not allowed.

In many instances, the law in socialist countries requires the director of an aggrieved state enterprise to claim a contract penalty from an industry that has defaulted. Performance of contracts in a socialist economy affects the integrity of the plan; it is not just a matter between the enterprises directly involved. If penalties are imposed, they should deter breaches of contract in the future and should educate all involved about the importance of full performance. Moreover, penalties serve as a tool of accountability. If the penalties are demanded, this will signal to the planners that something has gone wrong. Further, penalties will be charged against the accounts of the offending enterprise, and this will affect such things as the funds available to pay bonuses to workers and the reputation of the managers who are judged by the degree to which their enterprise fulfills its quotas and the costs of doing this. If a default is not punished, there will be no signal to the planners that there may be trouble. Moreover, many tactics that might permit avoidance of the formal system run counter to the theories of central planning. For example, a manager may build large unauthorized inventories of scarce supplies to avoid any possible loss if a supplier fails to deliver. Yet this may be a very poor use of these materials from the point of view of the society.

Socialist contracts are governed by the arbitrazh—the state economic court which has jurisdiction to resolve disputes between socialist enterprises. These agencies have much broader powers than western courts; the arbitrazh has sweeping investigatory powers and is not dependent on the evidence offered by the parties. In most socialist countries, a breach must be caused by fault in order to warrant the imposition of contract penalties. A decision by the arbitrazh to impose penalties thus has a great potential to injure the career of a manager of a state agency found in default. It may hurt the manager's reputation, and it will affect the enterprise's balance sheet.

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In every social system there are institutions authorized or required to perform economic activities. Some, such as households, may be free to act or refrain from acting. Others are required by the legal system to carry out specified duties because of the necessity of organizing the production and distribution of goods and services.

Certain institutions may serve a whole range of other functions in addition to their primary role defined by law. In a socialist society, such as that found in Poland, economic institutions can be divided into two categories. First, there are those, such as households, where economic activity takes place spontaneously, even though it may be regulated by the state. Second, there are institutions, such as state enterprises, created by legislation in order to carry out some function. The decisions of the participants are not supposed to change the goals of such institutions. This is particularly true of industrial enterprises because of their dominant role in the nation's economy and because the way in which they function determines the shape of the entire economic system including the operation of other economic bodies.

The concept of legal regulation, used in jurisprudence, is somewhat ambiguous. It seems to refer to two distinct situations. When legislation states, for example, that "this Code regulates civil legal relations among the units of the socialized economy, among physical persons, and between units of the socialized economy and physical persons," it means that some area of social life is covered by legal rules. On the other hand, if a doctrine of the civil law says that "the law of sales regulates the most fundamental institution of civil law which is the law of property," then this is an hypothesis declaring that the law of sales, as interpreted in particular cases, may modify property relations within a society. In this sense, legal regulation is a social process that involves the systematic influence of legal rules on social reality. It is assumed, then, that social relations follow the patterns inherent in legal norms.

Legal regulation of economic institutions works differently depending on whether activity is allowed to take place spontaneously or whether it is designed to achieve some goal set by the state. While the legislator allows households to act without express direction, they are still influenced both by external obstacles and the characteristics of their members. Law here only influences economic activity; all that is important is that such activity does not violate existing laws. However, when a legislator creates a new social body, this action is both constructive and directive. As a new element in the society, a state enterprise must receive a defi-

nite organizational form and the law must create a system of incentives so that those directing the enterprise will act to achieve the goals that the enterprise was created to attain.

The legal system undertakes all of these tasks. The creation of a new institution takes the form of a legal act—a statute, decree, or administrative decision. This provides the institution with a legal status—it allocates rights and duties; it introduces into a structure the sets of stimuli that will motivate the various parts of the institution; it states patterns of permissible actions; it indicates specific activity that is not allowed despite the judgments of those in charge of the organization that the activity might serve to achieve the preestablished goals of the agency.

In modern societies, the goal of the state is more than efficient legal regulation. A legal assessment (that is, an assessment based on legalism as the specific value of the law) is combined with an assessment of utility based on norms external to the legal system. Often the controlling norm will be the socioeconomic utility of the action in question. An application of legalism may produce a result that is inefficient or counterefficient when measured against other values. In a social system that does not stress the division of power among different branches of government, a negative assessment of economic utility may lead directly to a change in legal rules even though the existing norms well serve legalistic ends. The development of a socialist economy in Poland seems to proceed in this manner. Sometimes, however, it is difficult to change normative patterns because of the ideal of stability of the law. Sometimes change must be delayed to avoid abruptness. Then spontaneous and uncontrolled adjustments take place as economic institutions adapt to the environment. These adjustments are a defensive reaction to conflict between a legal and a utilitarian assessment of economic activity.

The existence of such conflicts in various areas of Poland's planned economy is shown by the authors' study of managers of Polish industrial enterprises in 1971-72. We conducted 60 interviews in depth with managers of state companies operating in various sectors of the economy throughout the entire country and 200 interviews with a random sample from one of the main industrial centers of the nation. Here we interviewed 86 directors, 62 deputy economic directors, 33 other deputy directors, and 19 legal advisers from 100 industrial companies. The interview schedule contained questions about the way managers understand their professional role, their attitudes toward the national economic system, and the actual system of securing horizontal linkages among the units of a socialized economy.

Once economic units are created by legislation, they begin to function relatively autonomously. This autonomy is limited by orders from the central economic planning agencies. However, as principles of economic accountability are introduced into the system, concepts may develop about what the institutions are to do which differ from the ideas held at the level of the national decision-making center. These differences may concern details such as the volume of planned output or the level of manpower to be employed, or they may concern general issues about the best methods for satisfying the needs of the society. From our findings, we would hypothesize that the managers of the companies in our sample do not define the goals of their enterprises in terms of either legal norms or the economic plan. Orders, indicators of required tasks, and other legal rules do not efficiently influence the course of economic processes. When 46 managers selected from the whole country were asked what determined their economic choices, 74 percent answered that they first consider the rationality of their actions, and 60 percent said that the basic criterion should be the social utility of the consequences of what they do.

The managers find the social goals underlying the plans and the orders of the Central Planners obscure or impossible to interpret. As a result, these goals cannot serve as the basis of the managers' activity even if the plans and orders were followed literally because of both the official and the practical system of rewards and punishments. This invisibility of the general aims of the Central Planners seems to lead to plural "interpretations" by the managers of the enterprises of what the social interest requires, to the development of particularistic economic motivations, and to a strengthening of trends toward autonomy.

The requirements of the economic plan are fulfilled because of the system of rewards and punishments supported by state coercion. However, it is easy to observe that the disparity between what motivates the managers and the goals set by the legal system calls for the development of a control apparatus and the intensification of positive and negative sanctions. The goals become so numerous and inconsistent that the achievement of each is, at the same time, both punishment and reward: a manager in trying to achieve goal A must necessarily fail in achieving goal B, and thereby expose himself to punishment.

The directors of the enterprises say that it is impossible to carry out the demand for economic efficiency (which is monitored by the organs of control), follow the decisions of the Central Planners, and comply with the general laws governing the operation of the economic system, all at the same time. Our findings show that

this is a major conflict faced by the directors. One must be impartial in evaluating the resolution of this conflict. One cannot say, a priori, whether the managers of the enterprises in the sample or their superiors are better able to define the tasks of the enterprises. It is possible that the directors select economic goals according to their interpretation of the law and the decisions of their superiors, but that these goals are particularistic and narrow; they may not see the demands of the national economy as a whole. On the other hand, we must note that the directors told us that the first level supervisory agencies often enforce rules that these agencies themselves see as irrational. This increases the conflict in the directors' professional role. It is a thousand times worse to be hampered by a rule that the supervisors do not believe in than by one they will defend. If the opinions of the directors are correct, then the first level supervisory agencies exercise control, impose sanctions, and make rules primarily in order to avoid criticism from the Central Planning Agencies and, even, criminal prosecution.

This process is inevitable whenever an intermediate chain exists between the decision-making center and the productive enterprises. A full picture of the disturbances in the legal regulation of the national economy also would require an analysis in depth of relations between the Central Planners and the economic administration, particularly the first level supervisory agencies and the ministries.

The managers we interviewed said that the official legal system that regulates the national economy is deficient both in the content of its rules and in its procedures and actual operations. When the directors assess the functioning of the law it is not entirely clear what they are talking about: they may be thinking of the rules and doctrines of official law or they may be considering the law as it is applied in practice—that is, the rules and orders applied to the industries in our sample after they have been filtered through the intermediate administrative agencies and law enforcement bodies. It seems likely that the legal advisers of the industrial enterprises were thinking of the official rules and doctrines while it is more probable that the directors were answering in terms of the law as they see it applied.

The directors severely criticized the legal rules in force when the research was done. They said that the law should not attempt to control all possible aspects of economic activity either by rigid limitations or through planned tasks (the plan is part of the law). The managers view legal regulations as a far-reaching limitation on their autonomy and as an expression of a lack of confidence in

their skill and good faith. They often expressed the opinion that precise regulation might have been needed in an earlier period but that it was unnecessary now that Poland has well-trained and experienced cadres of managers. Moreover, the directors criticize the law governing the economy because of the sheer number of decrees and rules, the frequent changes that are made, and the gaps and ambiguities in the norms. From an instrumental standpoint, these are cardinal flaws in a legal system.

In this context, we should recall the opinion of one legal theorist who said: "The law may perform its functions of organizing, ordering and stabilizing relationships only if the law is a coherent, logical system of norms. Here there is no room left for voluntarism—which, unfortunately, was once widespread in the system of economic administration—that sees lawmaking as no more than a conglomerate of norms that freely may be changed at any time and in any form" (Buczowski, 1967:167).

The directors see the basic causes of the dysfunctions of the legal system as improper decisions by the planning organizations together with difficulties in the market for supplies (which could be viewed as the consequence of wrong planning decisions). In other words, the problems flow from the entire complex of phenomena inherent in the producers' market.

Our data show that directors use various tools for securing effective cooperation with other enterprises. Even where directors do not mention such devices, we cannot conclude that they are not used. The distribution of answers from our representative sample indicates the kinds of practices that are widespread. In three interviews there was no response. Ten directors said that they do not have relationships based on contract or cooperation because of the nature of their enterprise, and four other directors said that they have no problems in horizontal relationships. Among the remaining directors, twenty-eight mentioned the use of personal contacts and continuing relationships to gain cooperation; fifteen organize cooperation through reciprocity of services and the exchange of goods; thirteen say directly that they settle matters over a social drink, through gifts, or by sending the person in their organization responsible for obtaining supplies to make contacts. These techniques are most often cited, and perhaps they are the ones most often used to secure cooperation. Other techniques mentioned by the directors include intervention by the Polish United Workers Party, the threat of demanding contractual penalties—or, less frequently, the actual application of these penalties—covertly helping the supplier perform, tolerating substandard goods, or providing phantom jobs for those who can influence the suppliers'

performance so that they can receive extra income from their customer's payroll without doing any work in exchange.

The technique actually used for securing cooperation depends on the position of the enterprise in relation to its partners. In other words, it turns on the economic power of the enterprise. In a few cases we studied, the enterprise monopolized a given type of production. A monopolist does not need to bother about security for its horizontal relations; it simply dictates the conditions to its dependent units. The following response is an example of such an attitude:

We are the general distributor of a particular product for three provinces. Our situation is different from that of enterprises that are producers. In a way, we have a monopoly in this field. For us, even obtaining supplies is a minor matter, and there are no problems. Therefore, if a supplier or a customer fails to perform, and if the normal dunning letters are insufficient, we freely apply the contractual penalties. . . . If a customer doesn't want to accept all of the goods ordered, then I intervene. Later I send all of the goods to the customer and demand the penalties. This works. . . . I use my right to annul the penalties once a year. I annul penalties and in return I have good relations, and the promise that customers will not cause me any trouble in the future.

As can be seen, a monopolist may efficiently control its economic environment by applying contractual penalties and then granting amnesty as a reward. It does not need additional means of influencing its partners, such as making additional payments to the other enterprise or its officials.

The position of enterprises with weak bargaining power is very different. Their power to apply contractual penalties is clearly limited. Thus, for instance:

We walk on eggshells when we deal with our suppliers. This is because their production capacity is so much smaller than the demand for what they supply. They dictate the conditions that we must accept. We know that they may not perform, but we must agree to that from the beginning. If we invoked contract penalties for nonperformance, they simply would not accept our order for the next year. We may do no more than try to come to an understanding, to make concessions. . . . Always it must be a policy of concession. Generally, it is also fruitless to try to bring pressure from above. Any success will be only in the short run. Apart from approaching the supplier directly, making concessions and reaching understandings, I do not know of any other formal or informal ways of producing cooperation.

Based on all our data, we can say, generally, that contract penalties are very rarely used. Only enterprises that monopolize dealing in a given type of product, or enterprises that are in sporadic contact with a partner, can enjoy the luxury of invoking them. Where there are only sporadic contacts, one can use contract penalties without the risk of reprisal in the future. "The majority of directors try to come to terms. There is a small number who tend to use contract penalties. Most frequently, they come from enter-

prises that are independent of others, and they, therefore, can afford to use them. In general, we try not to make trouble for each other." The directors pointed to the inefficiency of the penalties, the negative consequences of their use, and the benefits to mutual relations of not invoking them. "One must threaten, one must beg, one must pay. . . . One needs to know how to threaten. With so many higher level meetings, plans, and economic task indicators, everyone can excuse himself and not accept orders. Therefore, one needs to threaten intelligently." Perhaps, then, the system of contract penalties has a peculiar characteristic. The system works well so long as the penalties are not actually applied. They work well as a threat, but their application will injure the relationship with the cooperating enterprise so that in the future it will seek contacts with other directors who have a more conciliatory approach.

Something similar happens with intervention by the first level supervisory agencies. While eight directors expressly mentioned such intervention, nevertheless a much larger number pointed to the problems with this formal technique. Sometimes the supervisory units are too weak to secure the needed performance. For example, "I don't write complaints because I don't believe that first level supervisory unit action will be successful. The power of these units is illusory; actually, they are powerless." On the other hand, some directors stress that pressure through the normal hierarchy of economic administration may be dangerous to the interests of their enterprise. Intervention by a ministry or the first level supervisory unit could prompt resentment and make future cooperation impossible.

A specific climate of moral sanctions has evolved in this context. The managers of industrial enterprises govern themselves through these other-than-legal sanctions. The following statements by two of these managers reflect this sanction system:

Ambitious producers are somewhat ashamed of contract penalties and are not inclined to use them. When directors see that there is some justification for the failure to perform, they try not to use penalties and to cooperate with one another. We use penalties only in exceptional situations, although we may threaten to invoke them at any time.

I start with the assumption that one must honor his word and obligations in order not to lose face and to keep his good reputation. Therefore, when we feel something is wrong with our performance, we inform our partner as early as possible to give him time to make moves to protect himself. Then we always have time to negotiate an agreement and avoid trouble in some way. . . . We try to use our unofficial contacts in the supervisory agencies but avoid having them intervene formally. Interventions sometimes lead to unnecessary difficulties. As I've said, I should invoke contract penalties against an enterprise that fails to perform, but I know that if I were to do this, they would not want to accept my orders the next year. We

directors know that honoring one's word, and concern with reputation and respect are very important things. We try to think about these things all the time. We know who is reliable and who is not. The unreliable director will lose in the long run.

This information helps us give a general description of the system of mutual control that exists among managers of industrial enterprises. On the one hand, reliability in fulfilling obligations is stressed. We think the working rule might be restated somewhat as follows: "Try to avoid disadvantageous obligations whenever you can, but you must fulfill those you accept." A second norm might be called the rule of intergroup solidarity. It seems to say that since all directors are in similar situations, one manager should not add to the troubles of another by invoking contract penalties or by reporting information to those outside the group. The important "outsider" is, of course, the supervisory agency and, above all, the ministry.

We can assume that this control system functions well in supporting relations among enterprises of equal economic power. The most frequently mentioned means of securing full and proper performance on time was the use of those mysterious "personal contacts." We asked: "Would you agree that some special knowledge exists concerning how to ensure cooperation by other enterprises?" Very often the managers mentioned the importance of a wide acquaintance with other directors. In this regard, courses and meetings of various kinds are helpful, as is the mobility of directors. Personal acquaintance with other directors is often the product of deliberate effort. Chief directors, for example, often travel to meet the officials of other enterprises with which a cooperative relationship is to be established.

The bond of personal relationships within an industry extends beyond the top officials. Often the personal contacts of employees of specific branches of an enterprise with employees of cooperating companies are important informal techniques of cooperation. Of course, this is most frequently true of supplymen, deputy economic directors, or deputy technological directors. When some directors experience difficulty in making direct contact with their counterparts, they delegate this function downward in their internal hierarchy. Other directors, whose managerial style is more authoritarian, take on their own shoulders the burden of their enterprise's "foreign affairs"; they see this function as too vital to leave to others.

The climate of moral sanctions and personal links among persons who perform key roles in enterprises is important. However, it does not sufficiently explain everything in the Polish industrial order. These factors might have been more significant in the years of postwar reconstruction, a period perhaps paradoxically

recalled with nostalgia by some of the older respondents. In everyday life something else is needed. Apparently, this mechanism is a system of exchanging services among mutually interdependent partners.

We should mention those techniques of self-adjustment to disturbances in economic cooperation that either are of a pure economic character or are passive adaptations. In many instances an enterprise cannot establish long-term cooperation through the use of the techniques we have discussed. It may have an extremely weak bargaining position, its contacts with the other enterprise may be sporadic, or its personnel may lack the necessary ability to gain sufficient cooperation.

As far as purely economic stimuli are concerned—rewards for those who supply what is needed—they may be divided into the legal and the extralegal. Such a classification does not necessarily coincide with one based on those techniques that are approved and those that are forbidden under the legal rules applicable to the national economy. Here the techniques must be evaluated in terms of the exigencies of a socialist economy both on the level of the enterprise and that of the industry as a system.

Techniques that involve manipulating legal rules are: using export premiums, providing part-time jobs to justify payments from an enterprise's budget, and giving extra jobs to those who can be helpful. The directors very rarely mentioned these techniques in our interviews; we can only speculate about how frequently they are used and under what circumstances.

Enterprises sometimes are given extra funds in their budgets if they produce for export. "One enterprise can promise to pay some of the export premium to the other if needed goods and services will be supplied." "I don't use any informal techniques. Our firm is a member of the club of exporting companies, and it has the export premiums at its disposal." Another director said that "these matters are best arranged by direct contact with the one who is to perform." The export premium officially sent to one enterprise frequently "evaporates into the hierarchy" and has no practical effect in promoting exports. We can only speculate, but it is possible that an enterprise cooperating with a member of the exporting club might in turn distribute some of the premium it receives among the firms that cooperate with it in order to secure the goods and services it needs.

In our research, we encountered other examples of the manipulation of legal rules: "A few years ago we took an employee of our supplier on in a part-time job, and he saw to the quality of what we received." Such a part-time job would provide extra income for the employee; it is unclear whether such an employee

would report for work and perform any duties other than expediting orders placed with his full-time employer. Another director said that a good safety measure is "to hire the employees of enterprises with which one deals for part-time jobs in one's own firm." "Occasionally, we must order a more elaborate version of what we want in order to clear the situation. The added charges that result are only small amounts. The new specifications will call for a change that is useless to us but it serves to justify an additional payment to the supplier." This device can be more complicated. One respondent said that "you pay extra for the first items supplied in order to be able to blackmail later. You can do anything with money." These techniques, of course, are hidden as they are contrary to the spirit of the economic law.

In contrast, the directors readily concede that they give relatively small gifts. Here all the statements refer to the expeditor as a person who may save the enterprise in time of crisis. The expeditor travels with small sums of money which are somehow arranged by the director. Obviously, such funds cannot appear openly in the firm's budget. The director may use his emergency fund, the enterprise's council fund, special goods produced as samples for advertising if the firm has some of these, or goods regularly produced by the firm if they are sufficiently attractive. It is common to charge gifts to false travel accounts or to charge one trip twice in order to cover the practice on the enterprise's records. Sums of money created this way can be used to finance a party, pay for necessary but illegal work, or hire a private workshop to produce what is needed.

Politicians, economists, and the press tell us that enterprises keep superabundant reserves, and these belong to the arsenal of techniques that might enable individual enterprises to function adequately. The basic motive is not an irrational desire to pile up hidden reserves but a rational urge to decrease risk. "I collect stocks of raw materials to defend myself against an unrhythmical flow of supplies."

Directors are conditioned to build reserves, and they do this in order to be secure even where difficulties are unlikely. "There are no difficulties with cooperation and supplies," said one director, "but I guard against any risk and keep stocks of raw materials in the warehouses. I always exceed the rules about allowable reserves."

Apart from this "hamstering" of reserve stocks, there is a tendency to convert one's enterprise into a self-contained unit. This is, indeed, the surest way to be independent of disturbances in horizontal relations. "I keep the need for cooperation at a minimum level. I prefer to produce what is needed myself." Other

directors often spoke of starting production lines in their enterprises in order to make new components that had not been foreseen by the Central Planners.

Still another technique is to establish relations with several enterprises at once so as not to be dependent on any one. "In order to eliminate eventual difficulties, we cooperate with several firms. Then there is a chance if one fails, the second will be able to give us the product we need."

These practices are obviously detrimental to the interests of the economic system as a whole. It might be worthwhile to calculate the losses that result from the following techniques of creating independence from disturbances in cooperation and supplies: "I start from the assumption that one shouldn't rely on only one supplier and I approach two of them. This results, of course, in building up reserves. At the same time, I try to have some things done in my enterprise. Thus, I prepare specifications for tools needed to produce some machinery so that I could produce it myself in an emergency."

At least for some directors, the ideal in the present economic situation would be that of an enterprise that fulfills all of its planned obligations relying on its own material and manpower resources. This would be a kind of a trust that could produce not only goods of a particular type but also all of the necessary elements and subsystems, all the needed tools and, perhaps, even all the necessary raw materials. The directors are hardly responsible for striving for this ideal. They simply try to decrease insecurity to the maximum extent possible, to decrease the risks of economic activity.

It would be impossible to eliminate these phenomena in isolation. The use of all these techniques does not follow from some irrational propensity of the directors. On the contrary, from the point of view of particular enterprises the adjustment techniques are quite functional. On the other hand, these techniques are not only contrary to the letter and spirit of the law but, more importantly, they inflict large financial losses upon the economy as a whole (as measured against a possible optimum state of the economy at a given moment), and they are a system of institutionalized illegal action within the economy. In such a climate, egotistic individuals oriented toward fulfilling their private interests may easily arrange criminal economic action by the employees of a firm. This climate of relations among managers may also undercut respect for the law by the employees and may legitimate criminal conduct in their eyes.

The character of horizontal relationships among particular institutions seems to depend primarily on two factors: mutual

bargaining power and stability of contacts. Symmetric and asymmetric relations among enterprises can be discerned. An asymmetric relation occurs when one of the partners dominates the other. Dominance, in our system, comes from economic power that is the result of the scope of control a particular enterprise has over the production of goods of a given type. Thus, even small enterprises that can be viewed as "weak" when judged by some criteria, may dominate others if they have, at a particular time, a monopoly over the supplies of particular raw materials, products, or services.

The stability of contacts or their sporadic character is the strategic variable in horizontal relationships. If two enterprises cooperate for some time and know that this cooperation will continue indefinitely in the future, then a system of mutual expectations will develop between them. The needs of one's partner will be taken into consideration: some failures to carry out obligations completely (for example, late deliveries of supplies) will be tolerated because the partner knows the possible causes of the default and whether it signals a chronic problem in the future; reliability is tested over years as information is exchanged; and personal contacts are developed among the managers, as well as between the officers of particular branches, which may facilitate cooperation and increase mutual tolerance.

If two enterprises have only sporadic contact then personal relationships among officials are unlikely to exist, a fact stressed by the directors we interviewed. Furthermore, information exchanged could be completely false. For example, one director might deliberately misrepresent his firm's productive potential. Finally, a loss of advantageous relations if one enterprise should fail to meet its obligations poses little threat; if contact is sporadic, there is not much to lose.

Thus, an analysis of horizontal relations among enterprises must take into account four possible situations that may result from crosscutting of these dimensions:

	Stable	Sporadic
Symmetrical	the principle of reciprocity in action	egoistic action oriented toward immediate individual gain
Asymmetrical	the stronger applies all the rules in case of resistance; the weaker tends to avoid or limit the relationship as far as possible, e.g., weaker buyers seek self-contained production so that they will limit their dependence on stronger suppliers	the stronger applies all the rules without considering the interests of the weaker

According to our interviews, whenever there are asymmetrical relations between enterprises, the national or regional monopolist in the given field of production adopts a policy of demanding precise compliance with all obligations and it uses the contract penalties authorized by law when there is a failure to perform. If the relationship is stable, the monopolist will use all incentives that can motivate prompt delivery of the product. The chief incentive will be the possibility that the stronger party will annul any contract penalties that have been, or might be, applied. The weaker partner will try to develop the production of the needed products in its own enterprise or in another one. It will attempt to avoid the stronger if it can. If such a substitution of source is impossible, the directors said that the weaker enterprise would be likely to appeal for intervention through what they viewed as the inefficient economic administration or the much more efficient political channels. In situations involving sporadic contacts, both sides as a rule tend to extract as much as possible from the partner and to give as little as possible in exchange. It is likely, therefore, that the majority of conflicts that come to the higher level supervisory organizations or to the relevant legal agencies (*arbitrazh*) are conflicts developed out of sporadic contacts between the enterprises involved. It would be risky to apply such means of conflict resolution against units with which an enterprise deals repeatedly. There would be great opportunities for retaliation.

An expression often found in the responses is, "you roll my log, and I'll roll yours." When this idea is applied to cooperation between enterprises of more or less equal strength, it reflects the frequency with which the principle of reciprocity controls in industry. Enterprises tolerate faults in quality or other terms of the contract, they do not appeal to higher levels of the economic administration, and they pay each other for services not called for by the contract or the plan. A special system of social control is linked with reciprocity. A director may easily lose his reputation if he does not conform to norms of conduct such as the prohibition against disclosing the internal affairs of the world of managers to first level supervisory units or to a ministry, or the obligation to fulfill commitments one has accepted.

The words of Bronisław Malinowski seem applicable here:

The narrow and arbitrary treatment of the problem—the definition of "law" as the mechanism of administering justice in criminal cases—would leave out all those phenomena we have mentioned. In all of these situations, the element of the law—i.e., of efficient social coercion—consists of complicated mechanisms causing people to fulfill their obligations. The most important of these is the manner in which various transactions link themselves into a chain of mutual services, for which each needs to be rewarded at a later time. [1958: 327-28]

The positive law . . . consists, therefore, of a system of mutual obligations felt as a privilege by one side and as a duty by the other and kept in force by the specific mechanism of reciprocity. [*Ibid.*, 342]

From the viewpoint of legal doctrine, we must search for tools that will increase the efficiency of legal regulation while at the same time inhibiting the economic and social techniques of the directors. We should carefully try to establish a relative equilibrium—a *modus vivendi* between the exigencies of central management of the economy and those of rationality at the level of the enterprise.

The socialized economy, like any field of public life, is subject to detailed legal regulation, either in the form of administrative action or the mechanism of civil or criminal law. The ideal situation from the position of legal doctrine would be one where all economic action coincided perfectly with legal norms. The other ideal of the law is a situation where it encouraged all agreements to be made in the most precise fashion in order to promote dispute avoidance and rational planning. Efforts at realizing these ideals result in the creation of an immobile body of norms conflicting with the inherent demands of quick and efficient economic action. In a developing economy, a disparity between the demands of law and the economy is inevitable. There are three ways to ease this disparity. First, the different agencies of control develop flexibility in evaluating managerial conduct. Second, new mechanisms of control and self-control develop. Often these are unforeseen by the lawmaker. For example, the acceptance by directors of the principle of reciprocity in mutual relations among enterprises favors the achievement of the social goals of the economy. Third, legal mechanisms develop that lower the coercive pressure of the law by easing rigid requirements. Examples of this are the lawmaking activity of the *arbitrazh* or the use of the concept of the “good manager” by the Supreme Court.

We should note that since our research was completed, there have been several new legal acts and measures aimed at the reorganization of the management of the national economy.¹ We would expect that an investigation into the attitudes of the managers of economic institutions towards these new laws would enable us to see how quickly the dysfunctional anomalies pointed out in this report are being eliminated. We cannot overlook the impact of the principle of reciprocity as it applies to situations of relative equal-

1. *Editor's Note: In a letter from the authors to the editor written in 1975, they note recent changes for the better in Poland.*

ity among the parties to a contract, although this principle is neglected in classical legal analysis. The goal should be the elimination of the disparity between the impact of this principle and the effects of a legalistic conformity to the rules of law.

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