

## **SAMOUPRAVLJANJE U SVETU — COUNTRY SURVEYS**

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### **CO-DETERMINATION AND THE HUMANIZATION OF WORKING LIFE: RECENT TRENDS IN THE FEDERAL REPUBLIC OF GERMANY**

*Hans G. NUTZINGER\**

#### **1. HISTORICAL ROOTS OF THE CO-DETERMINATION MOVEMENT**

The idea and practice of legal participation in the form of co-determination (*Mitbestimmung*) is based on different historical sources. A major reason for the development and the subsequent implementation of co-determination has to be seen undoubtedly in the relative weakness of the German bourgeoisie in the nineteenth and at the beginning of the twentieth century, caused by the delayed industrialization process, the long-lasting territorial fragmentation, the continuance of the old feudal powers in the Bismarck Empire and — especially after the fall of the *Sozialistengesetz* (anti-socialist law) in 1890 — the increasing strength of the German labour movement in the realm of politics and economics (the Social Democratic Party and the affiliated "red unions").<sup>1)</sup> For these and related reasons, the German bourgeoisie could never develop to the dominant position in society which, for instance, the contemporary British and French bourgeoisie had attained. Due to this weakness, the German employers had been forced to compromise with the growing workers' movement, especially after the defeat in World War I which finally led to the displacement of the old feudal powers. Therefore, co-determination has to be viewed as an expression of the need for compromise between a rather weak bourgeoisie and a growing-stronger labour movement.<sup>2)</sup>

The most striking example of this is, perhaps, the introduction of the first co-determination law in the midst of World War I through the so-called Law on Patriotic Service (*Gesetz über den Vaterländischen Hilfsdienst*) in the German arms industry, initiated by the military in

\* Professor of Economics, Gesamthochschule Kassel. Earlier versions have been presented at the University of Vienna in January 1979 and at the *IPSA World Congress, Moscow, in August 1979*. I wish to thank the participants of both these lectures for the fruitful discussions. This paper is to be presented at the Siena Seminar, 22nd — 30th September 1979.

<sup>1)</sup> For the historical development, see Teuteberg (1961), Grebing (1974) and Schneider/Kuda (1969).

<sup>2)</sup> Some Marxist-oriented historians see similar reasons for the rise of fascism in Germany; see, for instance, Kühnl (1970).

order to quiet the workers and to assure an uninterrupted supply of arms and ammunition for the army by avoiding strikes. Also, the ambivalence of the idea of co-determination is very well illustrated by looking at the Works Council Law (*Betriebsrätegesetz*) of 1920: on the one hand, the law gave the workers some limited rights, some modest representation in the Board of Supervision, and, above all, their own representative body, the Works Council (*Betriebsrat*); but at the same time, it brought to an end the general councils movement (*Rätebewegung*) after World War I with its further-reaching political and economic aims of »industrial democracy« or »democratic socialism« in 1918/19 by channelling the broad movement into narrow and institutionalized tracks. Not surprisingly, this law was introduced against the resistance of a large part of the German workers.

As a result of the peculiar historical constellation sketched above, co-determination evolved as a rather ambiguous concept, aiming on the one hand to give workers some participation in business decisions by means of a legally determined structure of workers' representation in enterprise committees, but on the other hand, attempting to stabilize the existing social order through this legal limitation of workers' participation. Nevertheless, there was also a dynamic element inherent in both the theory and practice of co-determination. The National Socialists knew quite well what they did in one of their first measures when they did not only ban the free unions but also abolished the Works Council Law and replaced it by the fascist principle of »leader and led« on the factory level too: they did it not only for ideological reasons, because the idea of participation inherent in the notion of co-determination was opposed to the fascist Führer ideology, but also on practical grounds, as the institutions of the Works Council Law, and especially the Works Councils themselves, offered the opportunity for the non-fascist and even anti-fascist organization of the workers. Perhaps even more important was the potential danger inherent in any idea of participation as they could and did lead to further reaching claims for industrial democracy (*Wirtschaftsdemokratie*) which not incidentally was the title of a monograph by Fritz Naphtali (1928): this study, initiated by the theoretical discussions among the German unions, tried to develop a strategy of combining everyday union activity with the long-run goal of a democratic socialism, starting with the existing institutions, such as co-determination.

Consequently, after World War II the theory and practice of co-determination was renewed in West Germany.<sup>3)</sup> Although a »full parity« of workers' representatives could only be achieved and legalized in the coal and iron industry by the Co-determination Law of 1951 (*Montan-Mitbestimmungsgesetz*), the weaker Works Constitution Law (*Betriebsverfassungsgesetz*) of 1952 included at least the principle of workers' participation in business decisions, primarily by a one-third workers' representation in the Supervisory Board and the re-established institu-

<sup>3)</sup> For an overview, see e. g. Nutzinger (1977). — In East Germany, the co-determination idea has not been taken up again under the pretext that it had become superfluous and obsolete because of the nationalization of the means of production.

tion of the Works Council. Of course, in all decisive questions a clear dominance of entrepreneurs and management, backed by a newly-introduced obligation of peaceful operation (*Friedenspflicht*) for workers' representatives, has been preserved.

## 2. NEW DIMENSIONS OF CO-DETERMINATION AND PARTICIPATION

The historical developments sketched above, regardless of the respective concrete forms, were more or less based on the implicit, only rarely explicit, notion that the existing structure of the enterprise was largely determined by the organizational and technical requirements of industrial processes. The decision-making process and its underlying structure were hence considered not to be amenable to deeper structural changes. Co-determination was therefore aimed at participating in given decision-making structures and at redistributing a given decision-making power between employers and workers' representatives, but not at changing the content and structure of decisions themselves. A striking expression of this — usually implicit — underlying idea of a 'structural constancy' was the fact that workers' participation and even co-determination mainly took place in a system of indirect articulation of workers' interests via committees and elected representatives.<sup>4)</sup> In addition, the level of the concrete workplace, most important to the single worker, has been by and large omitted in the traditional discussion and implementation of co-determination. Here, the revised Works Constitution Law of January 19, 1972 has indicated a beginning change in perspective and has established a few novel approaches.

At least in principle the concrete conditions of work have been included into the regulations of the revised law although the practical extent of influence given to the single worker (and his representatives) is rather limited. The participatory rights of the individual employee at the workplace level are mainly rights of information and complaint (§§ 81—84), but they include the possibility of using single members of the Works Council and even this institution as a whole (§ 85) in order to advance the individual workers' interests. Moreover, by internal enterprise agreements between the Management and the Works Council, additional opportunities for protecting and extending workers' interests can be established (§§ 86, 88).

Even more important on both the theoretical and the practical level is the idea of the 'quality of the work situation' (Fürstenberg, 1976) as a basis for co-determination rights. The law gives the Works Council effective decision-making rights in social affairs (§ 87), and to a smaller extent in the affairs of personnel (§§ 92—95)<sup>5)</sup>, which is but an extension of rights in principle already included in the old Works Constitution Law of 1952; a basically new approach, however, is to be seen in the idea of using 'safe ergonomic knowledge' (*gesicherte arbeitswissenschaft-*

<sup>4)</sup> As a matter of fact, in many enterprises there is an informal dual system of worker participation by unionized *Vertrauensleute*, similar to the British shop steward system, which partly offsets the lack of direct articulation and involvement in the institutionalized co-determination system.

<sup>5)</sup> There can be some strengthening of these rights by combining them with the individual rights according to §§ 81-85.

*liche Erkenntnisse*) in order to prevent an impairment of working conditions and to stimulate possible improvements. The extent of the Works Council's rights with respect to processes of innovation and technical change is heavily debated in the legal discussion. At least, § 90 states the principle that there must be joint consultation between the Management and the Works Council before those processes can take place and that in these consultations "... the safe ergonomic knowledge on the organization of work adapted to human needs has to be taken into account". In addition, the Works Council is entitled to demand "appropriate measures in order to prevent, to mitigate, or to compensate for workloads due to changes of workplace, of the work process, or of the work environment", but only if these changes "obviously contradict the safe ergonomic knowledge on the organization of work adapted to human needs" and if the employees are "particularly subject to strain" by the intended changes (§ 91).

Whatever the legal limitations of these co-determination rights are, the important theoretical point is that for the first time the concrete situation of work, combined with a legal claim to its "organization adapted to human needs", has become the issue of a co-determination law. On the practical level it remains doubtful whether an adequate consideration of workers' interests in processes of innovation and technical change will take place, even if one looks at the "near parity" of workers' representatives in the Supervisory Board according to the watered-down Co-Determination Law (*Mitbestimmungsgesetz*) of 1976 which theoretically gives an additional opportunity to influence the long-run technological development in the big corporations<sup>6)</sup>.

As already stated, the important thing is the inclusion of elements of "quality of working life" in the sense of Fürstenberg's (1976) "quality of the work situation". Quite obviously, these regulations can only be implemented if there is an operational meaning of an "organization of work adapted to human needs" supported by ergonomic research and knowledge. This in turn does not only presuppose a strictly scientific investigation of concrete work situations — and hence the further development and application of ergonomics — but also, as a practical prerequisite, the transmission of ergonomic knowledge to workers' representatives. And given the broad range of short term and, even more difficult to find out, of long run consequences of specific working conditions, in many cases no "safe ergonomic knowledge" will be established. Certainly, on the practical level the whole issue cannot be resolved by simply referring to "science", and the consideration of these issues will depend much more on the relative importance workers give the "quality of working life" than on the further development of ergonomics.

That there is indeed an increasing esteem for the qualitative aspects of work compared with traditional objectives, such as money wages and working time, can be seen even outside the institutional scope of co-determination and works constitution, above all in recent changes in the system and content of collective bargaining and in collective actions by the workers themselves. A remarkable sign of these recent trends is

<sup>6)</sup> For a short review of this law, see Nutzinger (1977).

the well-known wildcat strike at Ford in Cologne (Summer 1973) — a spontaneous strike mainly by unskilled and semi-skilled workers, many of them foreign workers, who were underrepresented in the traditional institutions of co-determination. Interestingly enough, they did not so much strike for higher wages but for speed reduction at the assembly line. Even more apparent became this tendency in the labour conflict in the metal industry in the northern part of Baden-Württemberg in Fall 1973 where, for the first time, qualitative demands such as improvement and co-determination of the working conditions became the main objectives of a strike and of the subsequent collective agreement: in the so-called *Manteltarifvertrag* and the *Lohnrahmentarifvertrag II* (some form of skeleton agreements) for the employees of this region, the unions succeeded in establishing some influence on the concrete conditions of work, such as the speed of the assembly line. This tendency has continued even in the recession after 1974, especially within branches subject to rapid technological change, above all in the printing industry in 1976 and 1978. Due to the impaired labour market situation, union and worker influence was more of a defensive type, concentrating on the protection of older employees who were particularly affected by the processes of rationalization and automatization.<sup>7)</sup> Nevertheless, it can be summarized that as a result of the development in the last ten years, both on the level of co-determination and works constitution, and on the level of collective bargaining and agreement the improvement of working conditions, and of the single worker's possibilities to influence them, has emerged as a major issue of increasing importance.

### 3. *The Research Programme for "Humanization of Working Life"*

Apart from these changes in co-determination and collective bargaining, there also occurred internal changes in the organization of work in different countries, of the more traditional type in the United States, and with a further-reaching perspective in the Scandinavian countries. The experiments with new forms of work organization were warmly received and sometimes even initiated by the entrepreneurs, as long as they promised to mitigate the immediate consequences of job dissatisfaction, such as fluctuation, absenteeism, reduced effort and productivity, or even a more drastic expression of discontent, such as deliberate sabotage and boycott. Although the latter extreme cases seldomly happened in Germany, the employers there had enough reasons to look for those new ways, be it only to prevent further rise of the monetary costs of workers' dissatisfaction.<sup>8)</sup> An attempt has been made to counter the monotony of repetitive and fragmented work by means of job rotation, job enrichment and job enlargement. More thoroughgoing approaches, such as the famous Scandinavian experiments with semi-autonomous

<sup>7)</sup> For these developments, see Markovits Allen (1979) and Matthöfer (1978) who considers them as major reasons for the establishment of the government program (cf. section 3 below).

<sup>8)</sup> For this see FitzRoy/Nutzinger (1974) and Vilmar/Sattler (1978).

work groups, however, have been tried only in very few cases in Germany.<sup>9)</sup>

In view of these tendencies — the tasks inherent in the Works Constitution Law, especially in §§ 90, 91, the reorientation of collective bargaining towards qualitative demands, the world-wide interest in new forms of work organization and especially the interests of the German employers themselves — public coordination and support of activities related to these questions became imperative. The Federal Government established in 1974 a programme for action (*Aktionsprogramm*) that has been concretized mainly by the Ministry of Research and Technology in the following years. At the same time, the funds for the programme have been increased very rapidly: they grew from 9 million DM up to about 80 million DM in 1978. Until 1980, the financial resources for the programme are planned to be increased to the amount of 118 million DM.

Given the complexity, if not the sponginess, of notions like "quality of work" or "humanization of working life", the activities supported by the research programme for the humanization of working life cover a fairly broad range. Only a small part of the funds is used to promote basic research in order to give an operational meaning to the key conceptions and to develop integrated strategies of implementation. The lion's share of the money is devoted to support concrete action research in single enterprises or the development of machines, processes and materials that are less noxious and stressing for the workers involved. One tries generally to combine concrete research with basic research by promoting mainly those projects which seem to imply a more general perspective (*Modellcharakter*): the results of those projects should be applicable *mutatis mutandis* to other enterprises or other issues. If there were a well-defined meaning of *Modellcharakter* — one always learns something from special experience, one can never mechanically transfer knowledge from one case to the other — and if it were possible to estimate reliably the prospective degree of generality (*Modelcharakter*) before starting the project, then one would have a safe guideline to promote the most relevant research projects and to avoid unnecessary abstract research. But as this is most often not the case, many scientists and institutions consider the *Modellcharakter* as a discretionary means of power by the respective government agency to select projects and to determine their content according to political criteria.

In detail, there are many fields of the research programme. The most expensive investigations and experiments supported by the Government deal with technical and physical stress factors in the work process. They are of undisputed practical value and are therefore much less controversial than other project areas. The most important investigations — especially in the long run — are concerned with toxic effects of chemicals and chemical processes, and with stress caused by noise, offensive odour, vibration and other environmental factors in production. These projects are not only aimed at a more precise identification of potential noxious effects as a basis for legal standards, norms and

<sup>9)</sup> The practical experiments are summarized in Gärtner's contribution to the reader by Huber/Kosta (1978).

inhibitions, they very often also attempt to develop alternative materials, processes and machines that reduce or even prevent the identified noxious effects. Development and testing of those substitutive techniques is very often quite expensive but nevertheless of great importance on the practical level: by offering those alternatives, the fear (or prejudice) can be counteracted that too much emphasis on the quality of work will impede industrial production and growth.

Other action areas of the research project are concerned with physical stress by manual work or ill-balanced workloads; the latter also includes stress caused by *underutilization* of physical work capacity, e. g., in control and coordination tasks. There is also growing concern with mental stress caused by repetitive, fragmented and ill-balanced tasks; but the mental stress factors are much more difficult to identify than the physical damages. The research programme also aims at increasing the safety of the work-place, mainly by struggling against physical and mental stress, both of them major reasons for diminished attention and power of concentration which, in turn, favour work accidents.

#### 4. Areas of Conflict and Further Perspectives

So far, the interests of employers and of employees are basically congruent as reducing physical and mental stress means not only improved conditions of work for the employees but also decreased costs arising from unsatisfactory or even dangerous work situations. This is no longer necessarily true in that important part of the humanization of working life which is related to the effects of the functional and hierarchical organization of the firm on the employees. In this case, not only costs are involved, by the distribution of decision-making power in the firm itself. The internal structure of the enterprise in the form of a hierarchy does not only arise from the technical needs of coordinating decisions and activities but it also serves to maintain monopolies of information and privileges in earnings and decision-making power — reacted to these monopolies — in the interest of management and of capital owners. This becomes clear already in the organization of the work process — the degree of work fragmentation and labour division —<sup>10)</sup> where the employees' interest in integrated, responsible work may be compatible with cost minimization requirements<sup>11)</sup>, but very often not with the relations of subordination in the enterprise hierarchy as the latter is essentially based on the concentration of information and decision-making tasks at the top of the firm, and on the allocation of executive tasks without much discretion to the rank and file workers<sup>12)</sup>. The experiences with semi-autonomous work groups

<sup>10)</sup> More "palliative" measures, such as job rotation, job enrichment and job enlargement mentioned above, are seriously limited by the implicit or even explicit restriction that they must not change the basic distribution of decision-making power.

<sup>11)</sup> See Nutzinger (1978) for the costs inherent in traditional hierarchies.

<sup>12)</sup> For this, see FitzRoy/Nutzinger (1974), sections II and III.

in the Scandinavian countries show very clearly the limits to increased worker autonomy posed not by technical requirements<sup>13)</sup> but by the hierarchical structure of the firm itself. Similar conflicts with the decision-making structure can (and did) arise whenever organizational changes have been attempted in order to increase the effective participatory rights of workers in relevant questions, such as personnel planning, work evaluation and measurement, and wage systems, and not only because of immediate cost effects of these measures but because it endangers the hierarchical distribution of decision-making power and — related to it — the unequal distribution of information and of earnings in the firm. Here, clear limits to any strategy of humanization of the working life are posed by the existing economic and social order. Of course, in the state-socialist countries a similar conflict arises by the monopolization of information and decision-making power in the hands of the director(s) — inherent in the central planning system which is based on personal responsibility — which is opposed to the employees interests in meaningful work and responsible participation in decision-making and earnings; this conflict may be even more serious as countervailing market forces and political freedom are, by and large, missing. Even in Yugoslavia, up to now the only country which has legally introduced workers' management, the practical experience hardly confirms a dissolution but only a mitigation of this conflict; apart from specific factors built into the Yugoslav system, it appears that even under more ideal conditions, the conflict arising from the necessary allocation of functional competence and decision-making power to the management and specialized experts and the rank and file workers' interest in self-determination cannot be completely avoided by democratic legitimation of the management (e. g., by elections) and by democratic decision-making in enterprise committees.<sup>14)</sup>

Turning back to the areas of the Humanization Programme, there are other areas of conflict even outside the enterprise level. Given the present labour market situation in West Germany<sup>15)</sup> the specific support for the most affected groups of workers is especially important but very restricted in its efficiency by the global economic situation. These groups of workers which make up to the large mass of long-run unemployed comprise mainly the youth, the female employees (especially if they are part-time workers), and older or handicapped people who are very often not only at the margin, but already outside the labour market. Here, humanization of work can interfere in many ways, not only by reducing the work stress for some of these people (e. g., the older and handicapped) through the development of suitable processes and workplaces on the demand side of the labour market, but also by improving the labour supply side through specific qualification programmes for these groups of people. Interestingly enough, the enter-

<sup>13)</sup> Cf. Vilmar/Sattler (1978) and Gärtner (1978).

<sup>14)</sup> For this, see Nutzinger (1978) with further references.

<sup>15)</sup> One must note, however, that this labour market situation, typical and nearly unchanged since Fall 1974, has improved considerably in 1979; one has to be careful, however, whether this improvement will continue to take place.



prises kept concern for these parts of the programme, and some of them undertook practical experiments sponsored by the government programme, although the labour market situation with its large supply of unemployed did not force them to do so; the main reason for that ongoing interest is to be seen in the employers' attempt to increase work satisfaction (or to decrease dissatisfaction) among the people already employed by them.<sup>16)</sup>

From a practical viewpoint it is certainly reasonable to sponsor only those projects which are agreed upon by the people concerned, i.e., with the management and the works council of the enterprise. This principle of the government programme, however, also shows quite clearly the limitations of an isolated strategy of work humanization: under capitalist conditions, humanization ultimately will take place only if and as far as the profitability of the firms involved is not endangered; otherwise, the project will not be started or stopped by the management (or even by the workers themselves if they suspect loss of workplace or of money). In fact, one cannot even reject from the outset the suspicion that the research programme by and large has more benefit for the employers than the employees by saving them the research, development and investment in the improvement of the working conditions which otherwise they would have had to undertake themselves in their own interest in order to avoid sharply-rising labour costs due to worker dissatisfaction. An additional risk, especially in the realm of physical and technical stress factors, may be seen in the possibility of introducing alternative technologies which not only do away with work stress but also with the workplaces themselves; in this case, humanization of work would lead to rationalization and hence infringe workers' interests.

Although these objections are not without some justification, they miss the essential points. First, the argument — put forth frequently by leftist critics — presupposes a perfect functioning of the market mechanism which would automatically produce the "optimal level" of quality of the work situation by means of entry and exit of the labour force. This naive view of a complete self-steering by the market mechanism, usually adopted by rather conservative economists, does not only overlook practical market imperfections, but moreover the fact that without scientific research many stress factors cannot be identified at all; and even in cases where there are obvious causal relationships between work situations and physical or mental harm, the capitalist market economy commonly tends not to react with the change of the situation itself but with monetary compensation (such as extra pay for hard and dangerous manual work). Secondly, the danger of rationalization instead of (or combined with) humanization is mainly present whenever humanization of working life is attempted as an isolated strategy — and it should be clear that it cannot change *per se* the existing social and economic order in the Federal Republic of Germany.

<sup>16)</sup> In the meantime, the humanization programme has got under attack from conservative political groups, especially among the CDU/CSU.

On the other hand, there can be no doubt that any strategy of industrial democracy aiming at increased workers' participation in decision-making and earnings must contain humanization of the work conditions as an essential component.<sup>17</sup> The experiences with traditional co-determination and collective bargaining — and those with a mere transfer of property rights to the state in the countries of the "real existing socialism" — very clearly show the serious limits for a real redistribution of decision-making power as long as the organization of the enterprise, and especially of the conditions of work, are not changed as well. Co-determination and self-determination of the working man is not exhausted by measures of democratic control and legitimation; it has to be experienced personally in everyday work. For this reason, humanization of working life, combined with changes in labour law, co-determination and collective bargaining, is an essential element of any realistic and meaningful strategy of democratic socialism.

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<sup>17</sup> For this, see Vilmar/Sattler (1978).

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