

CODETERMINATION IN WEST GERMANY: INSTITUTIONS AND EXPERIENCES

by

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1. Origins and Notions of Codetermination

1.1 Introductory Remarks

The system of employee codetermination at both the plant and the enterprise level in West Germany is now older than thirty years; if one includes earlier regulations before World War II, it comprises nowadays almost one century. The idea of codetermination whose ambiguity and vagueness will be discussed in one of the following subsections is, broadly speaking, more or less accepted in the Federal Republic of Germany; the existing legal regulations are generally accepted and, perhaps to a lesser extent, implemented in practice. After the legal disputes during the seventies, centering around the constitutionality of the 1976 Codetermination Law (cf. subsection I.3 below), a routine practice of codetermination can be observed in the eighties. To be sure, conflicts and disputes in certain areas continue to exist, but practically no major political force argues for the removal of this system of interest articulation.

On the other hand, codetermination has not been a major focus of interest or political action during the last five years, although the unions launched a "codetermination campaign" (*Mitbestimmungsoffensive*) in Spring 1983. In a similar way, the issue of "codetermination at the workplace" for rank and file workers - interestingly raised by both employers and unions - has remained in the field of theoretical discussion among social scientists and the labor market parties; so far, it has not become a center of political or legal action. In spite of these deficits, codetermination has become a normal and central element in the German system of industrial relations. This gives us an opportunity to draw up a provisional balance-sheet of its legal bases, the practical experiences and future steps in both theory and practice. As observed before, there is a rather long history of codetermination regulations in Germany; hence it is useful to start with a short historical overview in order to better comprehend the existing legal system of employee participation in the Federal Republic.

1.2 Historical Overview

The idea of a constitutional limitation of private property rights - and especially the right to direct other people's work derived from this property - has a long tradition in Germany, starting as early as in the National Assembly of Frankfurt in 1848 (*Paulskirche*). The development of an institutionalized employee "codetermination" as a modification (or, as property rights theorists would prefer to call it, "attenuation"¹) of property rights with regard to the use of the means of productions has to be seen on the background of the specific economic and political development of Germany above all in the late 19th and the early 20th century.²

The specific features of the German course of events in the frame of the general process of industrialization in Western Europe and Northern America have to be seen mainly in the following characteristics:

- In contrast to the leading European powers in the middle of the 19th century, especially England and France, Germany had not yet overcome the historical splintering of the territory, and its way to a modern nation state was further complicated by the emerging conflict between Prussia and Austria.
- On the level of politics and society, to this territorial splintering corresponded the lasting dominance of the old feudal powers, especially of the territorial princes and the territorial nobility who were mainly involved in the conflict about the course and the conditions of the nation-building process whereby other social groups were largely excluded.
- In accordance with this delayed formation of a German nation state, also the process of industrialization lagged behind France, Great Britain and the United States, further complicated by various constraints for the mobility of the factors of production (e.g. through domestic tariffs, trade constraints, lack of common currency, etc.).
- Based on the factors mentioned before, a relative weakness of the German bourgeoisie is to be observed which was largely excluded from political power, partly even after the unionization in the Bismarck empire of 1871, and which was largely restricted to the initially less developed economic sphere.

- Correspondingly, there was also a delayed rise of an industrial working class, and in addition to that it is also note worthy that traditional guild-oriented and corporatist ideas were effective not only in the nobility but similarly among large parts of the bourgeoisie and the working class which further favored the tendency for an institutional regulation of social conflicts.

Therefore, in a historical perspective we can perceive the specific form of conflict regulation in the field of industrial relations in Germany (and similarly in Austria), namely in the form of institutionalized codetermination, as an expression of a relatively weak position of the German entrepreneurs between the still dominant feudal powers on the one hand and the growing workers' movement on the other hand; this in turn led to institutionalized and basically integrative forms of conflict resolution. So, institutional compromises were needed which tended to increase the area of cooperation and consensus compared with the area of conflict via partial integration of workers into the vertical structure of the firm and in the long run even via restricted participation. This increased ability to consensus corresponded to an increased need for consensus, however: Open and nation-wide forms of industrial conflict, as they became common to England or France, were much more dangerous in Germany, given the unstable and rapidly changing balance among the different social groups. Hence, the emphasis on institutionalized and integrative forms of conflict regulation in Germany is both an expression of strength and weakness.

This general characterization can be substantiated by various historical events, starting with the National Assembly of Frankfurt in 1848 where different proposals for employee participation were based on earlier notions of the guild system. The then rather progressive social policy of the Bismarck empire (legal social insurance, protective and participative trade regulations since 1850, voluntary workers' committees in some factories, etc.) is another expression of this general tendency. The perhaps most illustrative example of state-sponsored employee participation in favor of political stabilization is the "Law on Patriotic Service" (*Gesetz betreffend die Vaterländischen Hilfsdienste*) in the middle of the First World War: In order to insure a steady supply of arms and ammunition, workers' committees in all important enterprises were established (while, at the same time, lia-

bility for labor service and restrictions to workers' quitting were also introduced).³ This ambiguity of the codetermination idea can be further illustrated in the period of the Weimar Republic after World War I. Compared with far-reaching ideas of a direct political and economic democracy in a comprehensive council system, the Works Council Law (*Betriebsrätegesetz*) of 1920 was rather disappointing as it gave workers' representatives - the works council (*Betriebsrat*) - only modest rights in personnel and social affairs and virtually no influence in economic decisions.⁴ During the Nazi era 1933-1945 even these very restricted forms of worker representation were annihilated and replaced by a compulsory German labor front (*Deutsche Arbeitsfront*) comprising both the workers as "follower" (*Gefolgschaft*) and the entrepreneurs as "enterprise leader" (*Betriebsführer*), corresponding to the Nazi authoritarian principle in politics.

1.3 The Existing Legal Structure

The existing legal structure of codetermination in Germany today is partly based on its precedents in Imperial Germany and in the Republic of Weimar. Due to the specific situation after World War II, legal development has been far from systematic.⁵ Based on a "voluntary" union participation in the iron and steel producing (not processing) industry which has been offered by the employers themselves after World War II in order to prevent or minimize dismantling and decartelization by the Allies, the first law which was passed by the West German Parliament (*Bundestag*) was the *Montan-Mitbestimmungsgesetz* (Codetermination Law in the mining and steel producing industry) in 1951. Up to now, it contains the farthest-reaching institutional - arrangements with respect to economic codetermination. Whereas the workers do not have direct representation at the annual general meeting of the corporations, an equal number of workers' representatives (mainly proposed by the respective union) is elected to the board of supervision with a neutral member, the so-called "eleventh man", elected by capital owners and workers' representatives jointly in order to avoid impasse situations. According to German company law - and in distinctive contrast to American company law - the supervisory board appoints the board of management and is assumed to advise, to supervise and to control its conduct of business but has no decision-making rights with respect to the management

of the company which is incumbent solely on the board of management (§ 111(4) of the German Joint-Stock Company Law). In case of conflict between the board of management and the supervisory board, the former can appeal to the stockholders' general meeting in order to get a three quarters majority to overcome a veto of the supervisory board. Only one employee or union representative, the labor director (*Arbeitsdirektor*), responsible for personnel affairs, is a member of the board of management. So, even under the farthest-reaching law, there is no direct employee and union influence on the economic decisions and even with respect to the controlling functions of the supervisory board, there is a final majority of the capital owners.⁶

Industrial relations in all enterprises with more than five permanent employees are ruled by the Works Constitution Law of 1972 (*Betriebsverfassungsgesetz*), based on the earlier law of 1952. With respect to economic affairs, its regulations are far weaker than those of the Codetermination Law. There is only a one-third employee and union representation on the supervisory board according to the 1952 law in companies with more than five hundred employees. The basic institution of the Works Constitution Law is the works council (*Betriebsrat*). This law distinguishes between rights to codetermination (*Mitbestimmungsrechte*), consultation and cooperation (*Mitwirkungsrechte*) and rights to information, complaint and hearing. As a rule of thumb, these rights are strongest in social matters and internal work regulations (e.g., working hours); they are mostly of the medium type in personnel matters such as engagement, regrouping, discharges, and transfers. In business questions, the Works Constitution Law mainly gives rights to information, and only with respect to those decisions which directly affect employment or working conditions of employees (e.g., those relating to technical innovation, closing and opening of new plants or major parts of it), more influence is given to the representatives of employees.⁷ The Works Constitution Law of 1972 has also increased the individual employee rights in matters concerning his or her own employment, but these rights are more or less confined to legal claims to information and hearing and the right to complaint as well as to employ the members of the works council in case of conflict at the work place (e.g. with superiors).⁸

For employees in public administration, a similar law was introduced in 1955 (*Personalvertretungsgesetz*). A special group of so-called *Tendenzunternehmen* (enterprises pursuing a "tendency",

i.e. noneconomic aims) is partly or fully excluded from regulations of the Works Constitution Law; these are, above all, organizations in the fields of mass media, charitable and religious institutions, political parties, scientific organizations and the like.

In 1952, the unions heavily opposed to the one-third employee representation in the supervisory board according to the Works Constitution Law and proclaimed the *Montan-Mitbestimmungsgesetz* of 1951 as the model for a general regulation of employee and union participation in the supervisory board. A special committee, chaired by Professor Biedenkopf, was established by the Federal Government in 1967 in order to give an account of the practice of the *Montan-Mitbestimmungsgesetz* as a basis for a possible legal extension. Although the *Biedenkopf Report* (1970) was quite favorable in its assessment of the practice of this law,⁹ it did not recommend its extension to all large companies: The Biedenkopf committee voted for an increased employee participation in the supervisory board, but below full parity, arguing that although it did not find clear proofs for decreased profitability in the mining and steel producing industry, it assumed that profitability was better secured by capital owners and management. And in fact, both the regulations and the practice of the Codetermination Law of 1976 applying to all large corporations with more than 2000 employees (except the *Tendenzunternehmen* and public administration on the one hand, and the mining and steel producing companies on the other hand) are not very far from the ideas of the *Biedenkopf Report*: In all decisive issues, workers influence, even in the supervisory board, remains short of full parity.

The main differences between the 1976 Codetermination Law and the *Montan-Mitbestimmungsgesetz* have to be seen in the composition of the supervisory board. In corporations with more than 2000 and less than 10000 employees, the supervisory board has twelve members, among them 6 employee representatives. Two of them are nominated from the respective unions, and four are representatives of the working collective. These four "internal" members have to represent the respective subgroups (workers, salaried employees, and the *Leitende Angestellte*, i.e., the salaried management). Thereby each group has at least one seat at the board of supervision which in practice favors the representation of management in the respective committees. In fact, as the salaried management has to be considered at least partly as the

representative of capital owners, there is no equal representation of "capital" and "labor" in the supervisory board. But in any case, the breaking vote of the chairman of the supervisory board - in case of conflict elected by the majority of capital owners alone - ensures a majority of "capital" in all voting impasses even if the representative of the salaried management votes together with the other employee representatives. Also, the labor director in the board of management is normally no longer a representative of the employees or the unions as he can be (and frequently is) elected against the majority of employee representatives' votes, in contrast to the older *Montan-Mitbestimmungsgesetz*. Although both the law and the following practice revealed an ultimate power of capital owners even in the board of supervision, the employers brought an action against the new law before the German constitutional court (*Bundesverfassungsgericht*) which was rejected on March 1, 1979, mainly on the ground that the law did not imply full parity (on which assumption the employers' action was based). Still, the legal question is open whether a full parity between "capital" and "labor" would contradict the basic principles of German Civil Law and of the German Constitution, especially with respect to private ownership, liability and the freedom of coalition and profession. Politically, this Codetermination Law has, at least at the moment, brought public discussion and public interest in these questions to an end as there is a broad consensus that there must be a fair time of practice of the new law before any legal changes should be introduced and as questions of unemployment and of the reform of the social insurance systems are much more urgent.

There have been lots of practical disputes and legal actions with respect to the practice of the law since 1978 when the law became practically effective in large corporations.¹⁰ The political positions are quite clear: The unions and the Social Democratic Party consider this law to be only one step in the right direction and demand an extension of the *Montan-Mitbestimmungsgesetz* for all big corporations. The employers, on the other hand, supported by the majority of the Liberal Party and parts of the Christian Democrats, consider the Works Constitution Law (granting only a one-third employee and union representation in corporations with more than 500 and less than 2000 employees) as the model for business-wide economic codetermination. Although in practice employers get by with the Codetermination Laws of 1951 and 1976 (as they confess in private and sometimes even in public

talks) they go on to argue against the principle of full parity allegedly inherent in these laws as, in the long run, it could undermine private property, free enterprise and the social market economy altogether.

The system of legal codetermination as summarized in Table 2 (see below) however does not even include the complete legal basis of codetermination: Works agreements (*Betriebsvereinbarungen*) between the management and the works council, based on the Works Constitution Law, collective agreements between unions and employers at enterprise, sectoral and regional levels (*Lohnrahmen- und Manteltarifvereinbarungen*) as well as different regulations of the general labor law belong likewise to the basis of practical codetermination. The rather complicated system of institutions within legal German codetermination is sketched in Table 3 (see below).

However, even these elements do not exhaust the complete system of German industrial relations which we might term codetermination in the broader sense. The complete network comprehends - similar to the Japanese system - plenty of informal regulations, gentlemen's agreements, logrolling procedures, corporation guidelines in accordance with employee representatives and the like. Also, in the metal and the chemical industry we have the supplementary shop-steward system which serves an important role for the practical implementation of legal codetermination at the shop-floor level and as a "pool" for recruiting future employee representatives in the works council and in the supervisory board. The major system components of German industrial regulations - or of "codetermination in the broader sense" - are summarized in Table 1. Before over-emphasizing the degree of practical codetermination, given the many possibilities of formal and informal employee influence, however, one must keep in mind that we also face a lack of practical codetermination, above all in small and medium-sized firms even in those cases where it is mandated by law.¹¹

Table 1

SYSTEM COMPONENTS OF GERMAN INDUSTRIAL RELATIONS
 (GENERAL EMPLOYEE PARTICIPATION)

- I) LEGAL CODETERMINATION
- II) VOLUNTARY WORKS AGREEMENTS
(MANAGEMENT/WORKS COUNCIL)
- III COLLECTIVE AGREEMENTS
(EMPLOYERS/UNIONS)
- IV) INFORMAL REGULATIONS
 - GENTLEMEN'S AGREEMENTS
 - COMPANY GUIDELINES
(in accordance with Works Councils)
- V) SUPPLEMENTARY SHOP STEWARD SYSTEM
(mainly in the metal and chemical industry)
- VI) GENERAL LABOR LAW
(combined with I) above)

AD I): MAIN CODETERMINATION LAWS

- I.1 MONTAN LAW
(in the mining and the steel producing industry
- about 40 companies 1951)
- I.2 WORKS CONSTITUTION LAW 1952
(now only valid in corporations with 500 to 2000 employees for representation in the supervisory board)
- I.3 WORKS CONSTITUTION LAW 1972
(basic law for most firms with more than 5 employees; employee representation in the supervisory board according to I.1 or I.2 or I.4)
- I.4 CODETERMINATION LAW 1976
(for - about 500 - companies with more than 2000 employees)

TABLE 2**MAIN CODETERMINATION RIGHTS**

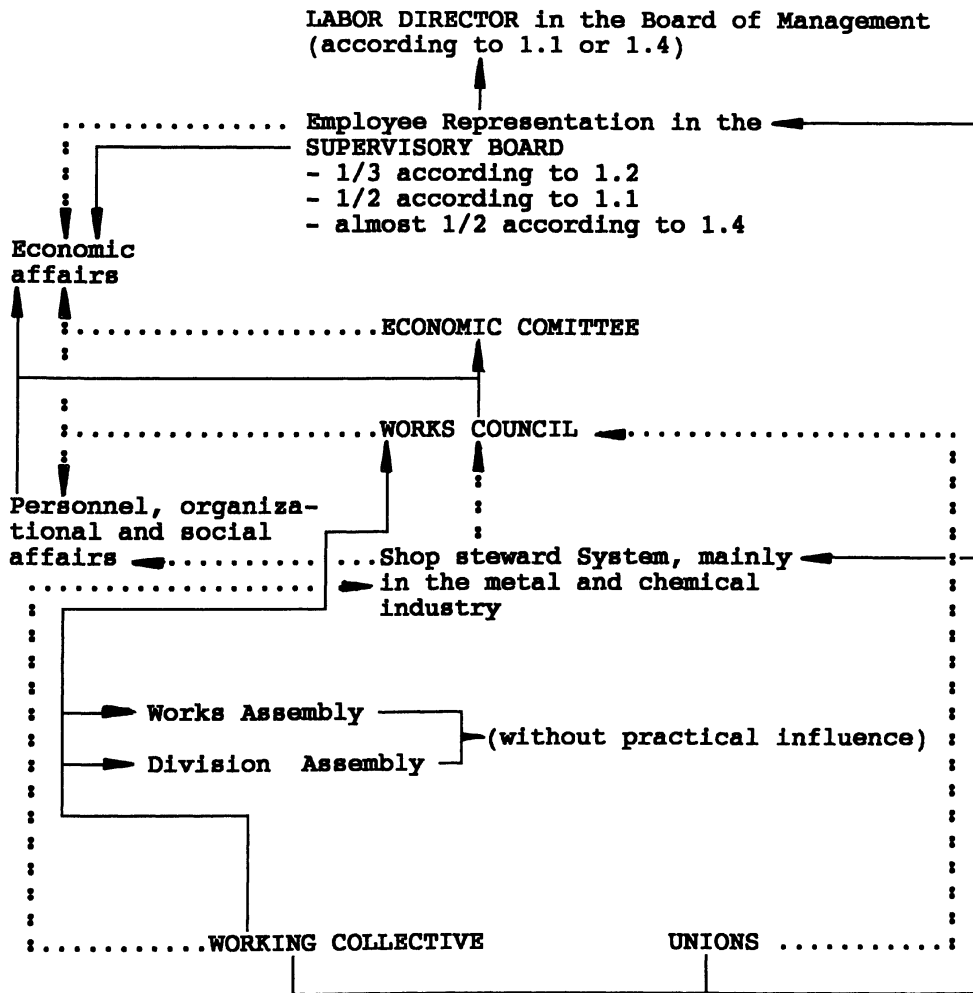
- I) FULL CODETERMINATION RIGHTS
 (= *paritätische Mitbestimmung*)
 i.e. Veto Power by employee representatives in
 the Supervisory Board or by the Works Council
- II) CONSULTATION AND COOPERATION RIGHTS
 (= *Mitwirkungs- und Beratungsrechte*)
 i.e. employer's ultimate decision-making
 rights after formal procedures have been
 observed
- III) RIGHTS TO INFORMATION HEARING AND COMPLAINT
 (= *Informations-, Anhörungs- und Beschwerde-
 rechte*)
 i.e. no direct employee participation in
 decision-making

LEVELS OF CODETERMINATION / DEGREE OF PARTICIPATION

(Head corporation)	- Economic Affairs weak influence by Economic Committee and the Head Corporation's Works Council Control Rights of Supervisory Board
↓	
Enterprise	- Economic Affairs weak influence by Economic Committee and Works Council Control Rights of Supervisory Board
↓	
Plant	- Personnel, organizational, social affairs: medium-type and strong influence by Works Council
↓	
Workplace	- Individual claims relating to concrete conditions of work weak employee participation support by Works Council

Table 3

INSTITUTIONS OF GERMAN CODETERMINATION



————— direct influence, e.g. by elections
 indirect influence, e.g. by proposals

1.4 Different Notions of Codetermination

The notion of "codetermination" in academic literature is used in rather different ways. One group of definitions identifies codetermination more or less with a general notion of *participation* in the sense of employee participation in decision-making and profits of the enterprise without specific regard to the legal or contractual basis.¹² The so-called *Biedenkopf Report* (1970, 1,4) of the codetermination committee (Biedenkopf Committee) defines codetermination as "... the institutional participation of employees or their representatives in shaping and determining the processes of will-formation and decision-making in the enterprise." This broad definition corresponds largely to the definition of general *participation*, for instance by Backhaus (1979, 6) "... as a procedure which enables the gaining of the complete relevant information through participation in decision-making of all people concerned ... by giving all people concerned equal or functionally weighted opportunities of influence and interest articulation, participation furthermore fulfills the function of an information processing procedure."

In this view, codetermination differs from general participation only by the following demarcation: "The notion of codetermination is in general use of language insofar more restricted as it refers to institutionalized rights of participation in industry" (Backhaus, 1979, 12).

A few other authors attempt a deliberate demarcation between participation and codetermination. This delineation cannot help but to use personal evaluations of researchers which makes this procedure subject to broad normative dissent. For instance, Teuteberg (1981, 72f.) argues that "... codetermination and participation mark somewhat different basic attitudes of the citizen to entire political, economic and social events." Using the etymological kinship of "participation" and "partnership" he holds that participation would be cooperative whereas codetermination was based on a conflict view of industrial relations. Hence, the latter were based on group interests, the former, however, on the idea of a "common interest." On this linguistic level, one could easily object that participation of different groups in the decisionmaking process should serve the representation of group interests whereas the idea of "codetermination" should be based on the idea of a common responsibility for the enterprise and the economy as a whole. However, those linguistic exercises, even if

they are substantiated by historical examples, lack an appropriate and hence consensual foundation.

If we look at the notion of codetermination among the people concerned - the employees - then we find in the empirical codetermination research during the last thirty years an even broader and more heterogeneous perception of the issues than in the academic literature. Our own empirical field studies in an automobile plant (VW Kassel) and an electrotechnical plant (AEG Kassel) give an impressive illustration of this diversity. As far as concrete answers are given to the notion of codetermination - the percentage of unclear or refused responses varies considerably among the different studies (cf. Niedenhoff, 1979, chapter V) - the employees mention practically everything: The range of answers encompasses general definitions, particular dimensions of codetermination, e.g., codetermination at the work place, different institutions and representatives of codetermination as well as particular tasks where there is or should be codetermination. Very often, the idea of codetermination is not limited to the enterprise or even the economy as a whole, but comprises political, public and even private life as well. That codetermination is rather a middle-class than a working-class notion is further illustrated by the fact mentioned before that considerable percentages of employees do not have a clear or sometimes even no idea at all about it. This result of our own field studies is confirmed by numerous other empirical research projects.¹³ The resulting difficulties in measuring and evaluating the effects of codetermination in the enterprise will be discussed in the following section.

But there seems to be a rather simple way out of all these difficulties, used by various researchers, namely to confine codetermination to its legal regulations in the Federal Republic of Germany. Considering our earlier remarks at the end of section I.2 on "codetermination in the broader sense," it should be obvious that this restriction is quite problematical given the fact that institutionalized employee participation in economic decision-making is not exclusively based on the laws mentioned before, but also on a variety of collective agreements between unions and employers at different levels, on regulations of labor law and social law and on a broad range of informal interest articulation and "harmonized procedure" (i.e., agreed upon between management and employee representatives). In a broader perspective, the representation of employee interests in the political

system can be attributed to codetermination in the sense of an institutionalized employee participation in economic decisions. The perhaps most important fact that the relative strength of "capital" and "labor" depends more frequently on the specific economic conditions than on legal regulations, has not yet been analyzed in a systematic manner. The interesting study by Kottthoff (1981) reveals remarkable differences in the influence of the works councils, largely dependent on the size of the firm: In small and medium-sized enterprises, very often paternalistic management principles continue to prevail whereby the works councils are frequently either ineffective or even nonexistent.

The legal definition of codetermination, however, implies further problems for empirical research as the legal norms sketched before are rather heterogeneous. For different groups, different legal regulations apply as explained above: The Codetermination Law of 1976, the Codetermination Law in the mining and steel producing industry of 1951, the Works Constitution Law of 1972, sometimes combined with the former law of 1952, the special regulations for *Tendenzunternehmen* and the *Personalvertretungsgesetze* (laws on staff representation) in public administration at the federal and state levels. For about 13 percent of West German employees, no legal rules for institutionalized codetermination apply, especially in very small enterprises.¹⁴ Again the fact should be considered that there is a big gap between the legal norms and their practical implementations: The actual level of institutionalized employee participation varies considerably among different enterprises, ranging from far below up to remarkably above the legally prescribed degree.

Our short overview leads to the following preliminary results: Codetermination applies to a central part of human life, namely work for living. In principle, it concerns every employee and hence the big majority of the working population. On the other hand, there is no clear idea - neither among the people concerned, the employers, researchers nor the politicians - what exactly has to be perceived as codetermination.¹⁵ Of course, there is a common-sense notion of codetermination related to the most important actors, such as the works council, employee representatives and the supervisory board and the unions.

But knowing actors and institutions does not clarify the role attributed to codetermination. As Muszynski (1975) has shown¹⁶ history and practice of German codetermination is characterized by an ambivalent if not contradictory argumentative foundation.

On the one hand, especially in the legal discussion, codetermination is based on the notion of a trustful collaboration of all members in a *cooperative* enterprise; hence, codetermination is perceived as a legal institutionalization of these opportunities for cooperation within the enterprise. On the other hand, codetermination is also based on the historical experience of a structural conflict between the employer directing other people's work and the employee basically obliged to carry out those directions. In this perspective, codetermination is an attempt to confine the entrepreneurial command by means of institutional regulations aiming at establishing a legal countervailing power in order to limit and control the entrepreneurial command without removing it altogether. The constitution of an enterprise could then be labeled, in terms of political theory, as a "constitutional monarchy."

This normative perception of codetermination (as institutionalized cooperation or as institutionalized conflict) influences the evaluation of the empirical results. Frequently, both ideas are advocated at the same time whereby the mix varies among the different authors. Without claim to a final definition we propose to perceive codetermination as an *attempt to increase the area of purposeful cooperation between employer and employees, based on partly uniform interests, e.g. in the economic success of the enterprise, by means of institutional participation of employees and their representatives within the conflict relationship between "capital" and "labor."* Certain conflicts, such as the implementation of productivity-rising, but labor-saving innovations, will continue to exist in the frame of codetermination, and generally we have to expect that employers' interests are somewhat modified under codetermination, but that they will finally prevail. Within those areas of conflicting interests, both the legal norms and the empirical observations indicate that codetermination has more or less a *defensive* function, namely to mitigate the consequences of entrepreneurial decisions for the employees concerned as far as possible without basically altering the entrepreneurial decision and its implementation, e.g. the technical innovation. Even if in most cases the economic decision is not completely predetermined by outside conditions, international competition with "non-codetermined" countries puts narrow limits to workers' influence. At least in the long run, codetermination cannot (and one may add, should not) save jobs which have become unprofitable. This, however, does not mean that there

is no room for effective codetermination in the short run nor that there might not be considerable differences in the economic conduct of a codetermined enterprise compared with one not subject to codetermination. The market does not dictate everything but it places boundary-stones to the course of action.

2. Problems of Empirical Research

We have already emphasized that there are considerable differences in opinion and a remarkable vagueness not only in the academic literature on codetermination but also in the perception by the people concerned. This state of affairs leads to a lack of sufficiently standardized and, therefore, comparable research methodology in this field. The two major deficits of empirical codetermination research can be summarized as follows:

- (1) There is a remarkable lack of appropriate specification of the topic of research and, related to this, a lack of theoretical foundation (cf. Monissen, 1978, 77-81).
- (2) The focus of most empirical codetermination research has not been on its economic effects, but on sociological and psychological consequences; and the few studies which include these implications - especially Weddigen (1962) and the Biedenkopf Report (1970) - do not apply econometrical techniques;¹⁷ they are more or less based on opinion polls.

If we look at the famous sociological studies on codetermination in the fifties¹⁸ we find lots of interesting details about the perception and subjective evaluation of codetermination and works constitution among the people affected by and involved in codetermination (working collective; management; labor directors; members of the works council; shop stewards; union representatives) but they do not say very much about any economic consequences at the plant and enterprise level and virtually nothing at the sectoral and macroeconomic level. Compared with these sociological studies, the first investigations into the economic consequences of codetermination by Otto Blume (1962), Walter Weddigen (1962) and Fritz Voigt (1962) did not receive much attention. Their work concentrated on the activities of the people involved in codetermination (members of the works council, labor directors etc.) and on the relationship between employee repre-

sentatives and the representatives of management and capital owners. However, they were important as they influenced the techniques of the most famous research study, the Biedenkopf-Report; furthermore, their findings came close to the results of the Biedenkopf committee.

The Biedenkopf committee gathered its information mainly through a written questioning of employers' and employees' representatives in codetermined firms, supplemented by extensive hearings with a small selected number of those officials. Taken altogether, the Biedenkopf committee's assessment of codetermination was quite favorable.¹⁹ It focused mainly on the effects of different compositions of the supervisory board (one-third versus 50 percent representation), on the role of the labor director as an employee representative in the board of management and his cooperation with the works council and on the effects of codetermination on the objectives of enterprises, especially their profitability. Compared with earlier research, two main results are worth mentioning:

- (1) In contrast to the fifties, the labor director seemed no longer to be characterized by a conflict of interests, but had found his role as a member of the board of management, explaining the firm's policy to employee representatives and ensuring a flow of information between management, works council (and sometimes shop stewards), and the employee representatives in the supervisory board.
- (2) The neutral member of the supervisory board normally did not use his vote to overcome impasse situations (as the codetermination law implicitly presupposed) but he either tried to mediate between the representatives of "capital" and "labor" as he frequently did not feel competent enough to take the responsibility for his decisive vote or was "left out" of the decision logrolled solely between the two parties in the supervisory board.

Although the Biedenkopf Report marks some advance compared with earlier studies, especially of the functionalist sociological variety, it is still characterized by the lack of a clear theoretical framework and a shortage of systematic factual evidence. So, important questions, especially about macroeconomic implications of codetermination, remained not sufficiently answered. The Biedenkopf committee itself acknowledged those

deficits implicitly when it stated that its recommendation for nation-wide codetermination was ultimately based on a *Wertentscheidung* (normative decision).²⁰

Even less satisfactory than the numerous research projects in the field of codetermination and works constitution²¹ is the arbitrary use of research results in public discussion. Employers, unions and politicians alike tend to quote only those studies - or, moreover, those parts of studies - which they deem useful for their own interests. As Hartmann (1977) in his final evaluation of the practical use of codetermination research has convincingly demonstrated, lack of interest, one-sidedness, fragmentary and biased quotations, and the more or less complete neglect of the narrow limits to the meaning of these studies are predominant. Of course, it is highly unsatisfactory that all parties involved - unions, employers, and even politicians - use empirical codetermination research as some sort of a quarry where one extracts what one wants and leaves behind what one dislikes. This "quarry attitude" towards empirical social research in general and codetermination studies in particular also explains the popularity of the Biedenkopf Report: Its empirical findings pleased the unions to a considerable degree, its political recommendations for the further institutionalization comforted the employers.²²

This quarry attitude, in particular toward the Biedenkopf Report, culminates in its representation by the employer's institute (Niederhoff, 1971) where major results were simply misrepresented by misquoting, omitting important parts of quotes, biased or even wrong indirect quotations and so on. This extreme case is illustrative for the public use of codetermination research insofar as more subtle forms of arbitrary application and misrepresentation are, unfortunately, more or less common in this field.

During the five last years interesting research based on a broader sample of both codetermined and non-codetermined firms has been undertaken mainly by two research teams, the one led by Witte (1980, 1981, 1982), the second led by Kirsch (see Kirsch et al. 1980, 1984). The main findings of the Witte group centering around the influence system within the firm are shortly reviewed in Kraft's contribution to this volume. The interesting results of the Witte group suffer, however, from their specific investigation period which was mainly during winter 1978/79; at this time the Codetermination Law just started to become effec-

tive, and no routine practice and experience of this new law was available. In addition, the at this point undecided legal dispute before the Constitutional Court concerning the constitutionality of the Codetermination Law led to a wait-and-see attitude from the employers' side. The investigations by Kirsch et al. (1984) centered around the interrelationship between codetermination and the firm's full authority for market-related action. Interesting enough they found a positive correlation between both elements, mainly due to the fact that codetermination increases workers' needs satisfaction and hence increases the room for effective cooperative behavior.

Among the numerous case studies during the last five years I would like to mention the - probably first - comparative evaluation of codetermination at two different time points (before and after the Codetermination Law of 1976) carried out by Diefenbacher et al. (1984) in a big automobile plant and a corresponding research study in a big electrotechnical plant, based on the same research design (Nutzinger et al. 1987). These studies reveal an increased interest in codetermination at the workplace and the importance of work conditions for employee involvement in codetermination: For a variety of reasons, unqualified workers tend to be excluded from direct interest articulation via codetermination and to be shifted to the traditional labor market exit option.

3. Outlook

Our findings about the state of codetermination research and, even more so, its use in political discussion are rather disappointing. Nevertheless, compared with the long time prevailing purely normative and legal discussion of the topic, it marks a modest advance as one at least attempts to gather empirical data about the practical performance and ceases to infer everything from "the nature of property" or the "nature of man" on the one hand or from the legal regulations on the other hand. One important result from the most recent German studies, especially by Kotthoff (1981), Kirsch et al. (1980), Knuth and Schank (1981, 1982) and Witte (1980, 1981), is a remarkable gap between legal norms and practical implementations in the field of the Codetermination and Works Constitution Laws. Remarkable differences

among firms and branches have been found which cast additional doubts about easy generalizations of field studies.

Given the importance of the issue both in terms of people involved and in terms of the possible positive or negative effects for economic performance, further progress is called for at least in three respects:

- (1) There is plenty of data and information about various aspects of codetermination and works constitution gathered by the social science research of the last thirty years mentioned before. A systematic representation of the findings of these studies - especially of the primary data which are only partly published so far - is needed in order to get additional information about changes over time and characteristic differences between sectors, firms and workplaces. So, a much clearer picture of the dynamics of codetermination (if there is any) could be gained. This would pave the way for the second step:
- (2) The modern econometrical attempts at evaluating participation and codetermination, started by Cable and FitzRoy (1980), Svejnar (1981, 1982) and Benelli, Loderer and Lys (1987) should be further pursued and elaborated. These econometric studies do not replace the older type of research based on interviews, questionnaires and investigations at the enterprise level. Due to differences in the underlying approach, there are also differences in the preliminary results derived from this type of work: Whereas Cable and FitzRoy reveal a positive influence of participation (broader defined than codetermination) on firm productivity, Svejnar finds that the 1951 Codetermination and the 1952 Works Constitution Law had no influence on productivity, in contrast to Blumenthal's (1956) assertion. Finally, Benelli et al. tried to uncover evidence for a reduction in firm values, presumably caused by employees' risk aversion, but did not find. Of course, conclusive results about the economic consequences of codetermination need further theoretical and empirical work.

As codetermination is an important part of the German economy in general and German industrial relations in particular, more reliable investigations into the practical functioning and consequences of codetermination seem to be urgent. In this respect,

I would like to mention two major topics related to an appropriate theoretical frame for codetermination research in the future:

- As the empirical findings reveal a rather big gap between legal norms and practical implementation in the field of codetermination, other forms and possibilities of interest articulation, especially in the economic process, should be taken into account. In the frame of Hirschman's exit-loyalty approach, the costs of different forms of interest articulation should be assessed with respect to varying economic conditions, degree of factor mobility, relative importance of human capital specific to the job or to the firm etc.
- An evaluation of the economic consequences of codetermination should furthermore consider the following important fact: The alternative to codetermination is not a situation with non-attenuated private property rights in the means of production, but one with other - and partly expensive - forms of interest articulation through collective bargaining, collective actions such as frequent strikes, low productivity based on low motivation etc.²³

At the beginning of this paper I have emphasized the specific historical conditions for the rise of codetermination as a predominant form of industrial relations in Germany. So the other question whether one should support or resist the use of codetermination in other countries is even more difficult to answer, even if we had more reliable data about the effects of codetermination in Germany and even if we were willing to base our normative judgment solely on the economic net value of this specific form of regulating industrial conflicts: "Employee codetermination practices and legislation are deeply rooted in a country's history and institutions and cannot be easily exported from one country to the next" (Thimm, 1980, xiii). If the German economy has not operated too unsuccessfully compared with other major industrialized countries, such as Japan and the U.S., this could perhaps be attributed to a considerable degree to its social stability which is both based on and effected by limited employee participation via codetermination.

Footnotes:

- 1 See section III below for a critical examination of the so-called "attenuation" aspect of codetermination.
- 2 For an overview of the historical development see Nutzinger (1981) with further references.
- 3 For more details see Grebing (1974), Muszynski (1975), Nutzinger (1981), Schneider and Kuda (1969) and above all Teuteberg (1961).
- 4 According to the 1922 amendment, the works council delegated one or two members into the supervisory board of joint-stock companies.
- 5 For a good survey of existing legal regulations in Germany see Monissen (1978) and the shorter overview by Nutzinger (1977).
- 6 For head corporations in these industries, an amending law (Mitbestimmungsergänzungsgesetz) was introduced in 1955.
- 7 The legal basis and practice of "working conditions adapted human need" according to the 1972 law is discussed in Nutzinger (1980).
- 8 Thimm's (1981) assertion that the 1972 law has decreased the individual participatory rights of the single worker is simply at odds with the legal facts (cf. 81-84 of the law) as well as with the empirical evidence.
- 9 More on this is in section II below of this paper.
- 10 For details, see the contributions by Nagel and by Theisen to Diefenbacher/Nutzinger (1981), Nutzinger 1982) and Diefenbacher/Nutzinger (1984)
- 11 See e.g. the empirical study by Kotthoff (1981).
- 12 For an empirical analysis, based on this broader notion of participation, see especially Cable and FitzRoy (1980). One of the rare attempts at an evaluation of the economic consequences of codetermination, the study by Weddigen (1962, 14), defines codetermination "... in the broadest sense as employee participation by means of representatives in cooperation with employers and their delegates with respect to decisions concerning regulations and measures referring to question of social policy, personnel policy or economic affairs."
- 13 For this see Kißler and Scholten (1981, 189 se.) with further references and Kißler (1982) as well as the earlier studies by Pirker et al. (1958) and by Popitz and Bahrtdt (1957).
- 14 Calculation based on Niedenhoff (1979, 201).
- 15 This is not an uncommon situation in economics; let us remember only that there is not even a clear definition of economics apart from the comfortable but tautological statement attributed to Jacob Viner that "economics is what economists do."
- 16 A similar thesis is put forth by Thimm (1981) who, however, uses an alleged break between the 1952 and the 1972 Works Con-

stitution Law to assert a shift from cooperation to conflict. If Thimm were correct, why do German employers favor the Works Constitution Law (of 1972) as a basis of nation-wide codetermination?

17 Only in the last few years, Svejnar (1981, 1982) and Benelli, Loderer and Lys (1987) have attempted an econometric evaluation of codetermination in Germany based on aggregate sectoral data. For a more detailed analysis of these econometric studies and a research design for a future work in the codetermination area see the contribution by Kraft to this volume.

18 Pirker et al. (1955), Neuloh (1956, 1960), Popitz and Bahrtdt (1957) and the Institut für Sozialforschung (Institute of Social Research, 1955).

19 For a good overview on the findings, see Monissen (1978, 78-81).

20 Monissen's (1978, 77) evaluation of the Biedenkopf Report is worth quoting although it seems to us probably too harsh: "A systematic quantitative assessment of the economic consequences of codetermination was not attempted. Subjective criteria, a priori guesses, and idiosyncrasies replace the theoretical analysis and a narrow documentation had to serve as a substitute for an appropriate empirical implementation guided by the methodological standards of a developed social science. Such an approach is symptomatic for the 'empirical' studies in the area of the codetermination problem."

21 For a more or less complete list of all these research projects, see Diefenbacher (1983).

22 In fact, the Biedenkopf Report (1970), together with the empirical study of codetermination in the supervisory board by Brinkmann-Herz (1972), are up to now the only codetermination studies more or less commonly accepted in social science.

23 This aspect is neglected in the discussion of codetermination by Jensen and Meckling (1979, especially section III).

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