Workers' Participation in Management in West Germany: Impact on the Worker, the Enterprise and the Trade Union.

A RESEARCH REPORT

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WORKERS' PARTICIPATION IN MANAGEMENT IN WEST GERMANY:
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R.J. Adams and C.H. Rummel*

In recent years the issue of workers' participation in management has been subject to an increasing amount of attention. In Europe a proposed Statute for a European Company and recommendations for the harmonizing of EEC company law contain suggestions for a substantial amount of workers' participation. Moreover, several European countries have extended workers' participation procedures during the 1970's.¹

The country which is often looked to as model for developing workers' participation schemes is Germany which has had a highly developed system for several years. During the past two decades German participation has been the subject of numerous articles. For the most part, however, writers have concentrated on the intent, politics and legal prescriptions of German participation. Few systematic attempts have been made to critically review and assess the actual operation of the German system. Moreover, those who had made such efforts have arrived at contradictory conclusions.²

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The objective of this article is to systematically assess the evidence concerning three aspects of German participation which have been subject to considerable debate and controversy:

a. the extent to which worker interests have been protected and forwarded

b. the effects on enterprise performance

c. the impact on the trade union as an institution.

The Early Experience

German schemes for providing workers with some form of representation in economic decisions extend as far back into history as the 17th and 18th century when "factory insurance funds" were administered in some "manufactories" on a worker-management parity basis. In the 19th century when the drive to industrialization began to intensify in Germany, many German writers, reflecting on the experience in England and France, began to suggest various forms of participation as a way to ameliorate the abuses of industrialization. In 1848 proposals for the establishment of workers committees were put before the short-lived National Assembly in Frankfurt. Thirty-five years later the Bismarckian welfare scheme called for the establishment of industrial insurance funds in every factory with more than 50 insured workers and workers were given participation rights in the administration of the funds.

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3 For the origins and the development of co-determination see H.J. Teuteberg, Die Geschichte der industriellen Mitbestimmung in Deutschland (Tuebingen: J.C. Mohr-Paul Siebeck, 1961); O. Neuloh, Die deutsche Betriebsverfassung und ihre Sozialformen bis zur Mitbestimmung (Tuebingen: J.C. Mohr-Paul Siebeck, 1956); H. Vetter, ed., vom Sozialistengesetz zur Mitbestimmung (Cologne: Bund-Verlag, 1975).

4 The first German author who asked for workers' participation in the firm was Immanuel Wohlwill, Beiträge zur Theorie des Armenrechts, (Hamburg, 1834), pp. 39-49.

5 Teuteberg, op. cit., p. 353.
Although the first "factory committee" was created in Germany (Saxony) in 1850 on a voluntary basis, only in 1891 was legislation introduced requiring employers to consult with workers concerning hours of work, time and form of payment, and term of notice to quit. The law also provided for the voluntary creation of workers committees.

While little research was carried out in this period, the general perception was that this law was far from successful. In most firms no committee was established. Where they were set up they were generally judged to be a failure in providing for worker needs due to a combination of excessive worker expectations, distrust of workers for their representatives, misunderstandings about committee functions, worker apathy and the unwillingness of management to share power.

During the following two decades a few German provinces introduced additional participation schemes but the next major event occurred during the First World War when mandatory participation was established throughout Germany via the Auxiliary Service Act. After the establishment of the Weimar Republic a new act in 1920 solidified workers councils as an integral part of German life. In 1922 workers were granted the right to elect one-third of the members of the supervisory boards of the covered firms. These laws substantially increased the potential influence of workers on managerial decision-making. Where management

6 Ibid., p. 213.

7 Ibid., p. 372.

and workers could not reach a mutually acceptable agreement concerning certain wage and working condition issues, the dispute could be submitted to a board of arbitration.

Despite the increase in potential worker influence, the outcome from a workers' perspective was again disappointing. On the supervisory boards worker representatives were often excluded from important committees. Management undercut the effectiveness of the works councils by, in some cases, attempting to corrupt the councillors. In other cases fear was either created, stimulated or tolerated by employers that works councillors would be victimized. Information about corporate affairs was often either withheld or packaged in such a way that little knowledge could be attained from it. 9

During this entire period the labour movement vacillated in its attitude towards participation. Originally the Social Democratic Party was opposed to workers councils because it saw them as collusion with and therefore a legitimation of capitalism. 10 By the First World War, although the formal policy of the trade unions and the party was still anti-capitalist, the movement had come to accept workers' participation as one step on the road to democratic socialism. Although the strength and permanency of the German trade unions had been well established they had made few inroads onto the shop floor. Philosophically the goals of the unions were much broader than job control. They sought to improve the lot of the working man as class rather than a mass of individuals with specific job needs and desires. 11

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10 Teuteberg, op. cit., pp. 302-316.

More practically, however, employers militantly opposed any union voice inside the enterprise. The firm was the employer's "house" and he adamantly upheld his right to order and direct the affairs of those entering his house.\textsuperscript{12} The assumed right was generally recognized by the great majority of German society. Reluctantly the employer would negotiate with trade unions through the auspices of his association but he would have no part of union attempts to exert influence inside the firm. Because of this forceful opposition union attempts, where they were made, to gain more control over the day to day affairs of their members were generally a failure. Thus, works councils became not only ideologically acceptable but also a practical instrument for the achievement of worker influence inside the organization.

There was, however, considerable concern within the trade unions that the existence of works councils would alienate the allegiance of the workers. This fear was exacerbated by revolutionary leftists who, impressed by the Russian revolution, called for "all power to the workers councils". Therefore, at the 1919 Congress of the Free Trade Unions a resolution was passed stating that the councils should be closely tied to the unions and that they should serve as "an instrument for the achieving of union aims".\textsuperscript{13}

\textsuperscript{12} Although somewhat diluted this value continues today. See D. Granick, The European Executive (Garden City, N.Y.: Doubleday, 1964), Chapter 4.

\textsuperscript{13} Taft, op. cit., p. 277.
Under the Works Council Act of 1920 the unions were granted the right to send representatives to council meetings. Unions were also permitted to put forward lists of council candidates and the great majority of workers who served as councillors during the Weimar period were also trade unionists. The role of the trade unions was explicitly recognized in the 1920 Act which provided for the "right of the economic associations of wage-earning and salaried employees to represent the interests of their members".14

Although employers protested vigorously against the establishment of works councils and the provisions for dispute resolution, in practice most of their traditional prerogatives were maintained. Legislated provisions calling for works council cooperation with management went largely unheeded and workers, fearing for their jobs, resisted management initiatives to implement new technology and work methods, usually without success.15 Because of the scanty influence of the works councils, there seems to be little reason to suppose that organizational performance was significantly affected, one way or the other, by these early participation efforts.

The works councils and the trade unions were destroyed after the Nazi acquisition of power in 1933.16 Following World War II, however,

14 Section 8 of the Works Council Act of 1920.

15 Potthoff, op. cit., pp. 7-12.

16 For the destruction of works councils and trade unions in the "Third Reich" see ibid., pp. 12-16; and also H. Grebing, The History of the German Labour Movement (London: Oswald Wolff, 1969), pp. 138-142.
when the unions and the Social Democratic Party were re-constituted they immediately began to call for the legal re-establishment of works councils and worker participation on supervisory boards. 17 Because of the Weimar experience, the unions wanted the power of the workers' representatives to be significantly strengthened. In 1947 the British occupying authorities granted the right to workers to choose 50% of the members of the supervisory boards in the iron and steel industry. 18 Moreover, one member of the management board which directed the affairs of the firm on a day to day basis, had to be a labour director who could not be appointed against the wishes of the workers members of the supervisory board. 19 This right was re-affirmed in law by the West German Government in 1951 and extended to the coal mining industry after serious strike threats.


18 Only in the British occupation zone which also comprised the heavy industrialized Ruhr area co-determination was extended to parity representation on the supervisory board by law. G. Briefs has the opinion that the British authorities considered co-determination as a means to paralyze the reconstruction of the German economy. See G. Briefs, "Demokratie und Wirtschaft", in A. Rauscher, ed., Mitbestimmung (Cologne: J.P. Bachem, 1968), p. 66.

19 In practice the labour director is also nominated by the union. See W. Tegtmeier, Wirkungen der Mitbestimmung der Arbeitnehmer (Goettingen: Vandenhoeck & Ruprecht, 1973), p. 67.
In the years immediately following the Nazi demise, worker co-determination rights were supported by a wide spectrum of political opinion in Germany including many employers. However, after the return of relative normalcy in the early 1950's opposition to extreme forms of participation rose rapidly and the Christian Democratic government of Konrad Adenauer refused to extend the parity provisions. Indeed, the CDU attempted first to reduce the amount of power acquired by workers in the co-determination industry and only relented when a solid front of miners and steelworkers threatened a mass strike.

The parity co-determination structure applied to 71 mining companies and 34 steel-producing companies when it was originally legalized by the German authorities in 1951 but many mergers between 1952 and 1968 reduced the number of companies subject to the co-determination law to only 31 in mining and 28 in steel. These mergers raised the issue of the fate of employee representatives in the new enterprises. Under union pressure, representative positions were generally found for these officials. In some cases, for example, supervisory boards were expanded or new advisory boards were created. Labour directors often became directors of personnel affairs in individual plants.

20 In the years after 1945 employers and the labour movement had many common interests in the reconstruction of Germany. The works councils, together with management appealed to the allied authorities against the dismantling of the remaining factories. See Potthoff, op. cit., p. 22; For the political and ideological background of support for co-determination see H.J. Spiro, "Co-Determination in Germany", American Political Science Review, December, 1954, pp. 1114-1127.

21 Potthoff, op. cit., p. 44.


In 1956 a law concerning holding companies specified that parity co-determination would be applicable wherever more than 50% of the operations of such a company was in coal and steel. Some companies could still evade the provisions of the co-determination law by changing from a joint-stock corporation to a partnership. Very few organizations took advantage of this loophole, however.

Instead of full co-determination a system similar to that existing in Weimar with a works council, one-third supervisory board representation and no labour director was established outside iron, steel and coal. For the next two decades the unions and the Social Democratic Party would continually work for the expansion of works council rights and for the general extension of full co-determination. These efforts have recently borne fruit. In 1972 the Works Constitution Act was revised and the councils were granted substantially increased powers. A somewhat restricted form of parity co-determination was introduced in 1976 for organizations with more than 2000 employees.

The Institutions of Industrial Democracy

Since the formal stipulations of German participation have been widely reported elsewhere we shall only briefly review them here. There are two basic patterns of workers participation in Germany, one in the "Montan" or coal and steel industries and the other covering

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25 The term "Montan" refers to industries that obtain their raw material through mining. The German word for mining is "Bergbau", literally translated "mountain mining". The term "Montan" covers coal, iron and steel producing industries.
the remainder of German industry. Perhaps the best way to illustrate the German system is to begin from the perspective of the individual worker and consider the various bodies which influence the conditions under which his work is performed. In the coal and steel industries the following bodies are of key import: the management board, the works council, the supervisory board, the shareholders meeting, the trade unions, and the employers' associations.

The management board is usually composed of three top executives (although it may be larger) who jointly run the day to day affairs of the firm. These top officials are elected by the supervisory board which is also charged with overseeing their activities. The supervisory board is composed of at least eleven members, twenty-one members, five of whom are chosen by the shareholders meeting and five of whom are chosen by the workers. Two of the five workers' representatives are nominated by the works council and three by the relevant trade union. One of the three union nominees must be an "outsider" (e.g. not a union official), and one of the five shareholders' representatives must also be an "outsider". The eleventh member is an independent person, agreed on as acceptable by both sides. Although each member of the management board is elected by a majority decision of the supervisory board, one of the three members may not be elected against the

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26 In cases where the capital of the company exceeds a certain specified amount, the board will be increased to a number between fifteen and twenty-one members, but its composition remains unchanged. Tegtmeier (who belonged to the research team of the Biedenkopf Committee which had to evaluate co-determination on behalf of the German Government) found that in the coal and steel industry 37% of the supervisory boards had eleven members, 37% had fifteen members and 22% had twenty-one members, Tegtmeier, op. cit., p. 73.

27 Research by Blume and Voigt have shown that the outsiders normally support their reference groups. See O. Blume, "Zehn Jahre Mitbestimmung" in E. Potthoff, O. Blume, H. Duevernell, Zwischenbilanz der Mitbestimmung, op. cit., p. 70; Voigt, op. cit., pp. 350-351.
wishes of a majority of the workers' representatives. He is generally designated as the "labour director". Both the labour director and the worker representatives on the supervisory board are required in law to conduct their affairs in such a way that the best interests of the enterprise as a whole will be taken into account.28

The works council is composed of enterprise employees elected by the workers of the firm. It has no formal connection with the trade union although an officer of the relevant union may attend council meetings. Moreover, unions may nominate councillor candidates and in practice the great majority of works councillors are union members.29 By law, the councils are expected to work together with management so that decisions will be taken which benefit the employees and the enterprise.30

Depending on the issue, the council might have the right to co-determination, consultation, or only information.31 Under the 1952

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29 See A. Szakats, "Workers' Participation in Management: The German Experience", Journal of Industrial Relations, March, 1974, p. 31.

30 Section 2 of Works Constitution Act of 1972. Before 1972 the public interest also had to be taken into account.

31 This commonly used three-fold classification of the methods of participation can usefully be extended on the basis of the German law into an eight-fold system of rights: information, hearing, initiative, consultation, participation, veto, agreement, co-determination. See for this classification H. Seidel, Die Willensbildung der montanindustriellen Einzelwirtschaften unter dem Montanmitbestimmungsge setz (Cologne, Ph.D. Thesis University of Cologne, 1961), pp. 17-22; Although the legal provisions of the Co-determination Act of 1951 and the Works Constitution Act limit the term "co-determination" to workers' participation on the supervisory board and joint-decision making rights of the works council the majority of German authors and the public extend the term "co-determination" to all methods of diffusing decision-making power based on the above mentioned laws. For a discussion about the dimension of the expression "co-determination" see for example O. Blume, "Betrachtungen zum Sprachsymbol und zum Begriff 'Mitbestimmung'", in K. Nemitz, R. Becker, ed. Mitbestimmung und Wirtschaftspolitik, Cologne, 1967. In the Biedenkopf-Report the term "co-determination" covers all forms of workers' participation. See Mitbestimmungskommission, Mitbestimmung im Unternehmen (Stuttgart: W, Kohlhammer, 1970), p. 12.
Works Constitution Act, for example, hours of work, the principles of remuneration, the fixing of piece rates, the operation of welfare services, the leave schedule and several additional issues were subject to co-determination. If mutual agreement between management and council could not be reached, the issue would have to be submitted to arbitration. These co-determining rights were extended under the 1972 Act, although in practice such rights had quite often been negotiated previously in "plant agreements". The councils do not have the right to strike, and indeed are forbidden to encourage strikes.

Concerning mass layoffs, the councils had the right of prior consultation after 1952. The 1972 Act increased the grounds on which the works council can veto the hiring and firing of employees to such an extent that it comes very close to joint-decision making. A special committee of the council also has the right to receive periodic information on the economic condition of the firm. The participation rights of the council were substantially expanded in 1972, especially in the field of personnel and manpower policies. It was an express intention of the legislation to involve the council at a stage where it can still influence management's plans. Therefore, the 1972 Act extended participation to the planning stage by granting rights in personnel planning, the planning of vocational training, and the planning of the workplace environment. The primary changes introduced in 1972


33 This committee is called the Economic Committee. It was a joint labour-management body under the 1952 Act, whereas it is now an employee committee only which by majority vote of the works council can be formed as one of its subcommittees.

are presented in Table I. (Page 14)

The unions in Germany are organized on the industrial principle. Typically, negotiations are carried out between trade unions and employer associations on a regional industry basis. Issues include wage levels and increases, maximum hours of work, annual holidays, minimum welfare benefits, etc. The unions have the right to strike but once an agreement is reached both parties have a peace obligation during the life of the contract. The works council is charged with overseeing the implementation of the contract in the firm.

In recent years some German unions have attempted to increase their influence within the firm by encouraging the election in each group of a shop steward or "man of trust" as he is known in Germany. These

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35 For the role of the unions on the West German industrial relations scene after 1945 see O. Kirchheimer, "West German Trade Unions", World Politics, July 1956, pp. 484-514; and also A.M. Ross, "Prosperity and Labour Relations in Europe: The Case of West Germany", The Quarterly Journal of Economics, August, 1962, pp. 331-359.

36 No accurate estimates of the number of "men of trust" in German industry are available. The two major unions concerned with shop stewards are the IG Metall which has a membership of 2.3 million, by far the largest West German union covering the whole of engineering, electrotechnics and steel and the IG Chemie, covering chemicals, paper and ceramics. C.H. Rummel who made an inquiry with works councils in several hundred firms covered by the IG Metall found that about 67% of these firms had shop stewards. For the results of this empirical study see C.H. Rummel Die Mitbestimmung des Betriebsrats bei personellen Entscheidungen aufgrund des BetrVG 1972 - Eine empirische Untersuchung im Organisationsbereich der IG Metall, to be published in Schriftenreihe der IG Metall early in 1977.

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Personnel Matters

Planning of the structuring of jobs, operations and working environment
altered in jobs, operations or working environment contrary to ergonomics
personnel planning
personnel questionnaires
written employment contracts
recruiting and selection standards
establishment of in-plant vocational training facilities
introduction to vocational training programmes
implementation of vocational training hiring, classification, transfer,
redeployment
dismissals

Economic Matters

economic condition of the company, production situation, production programme, financial situation, marketing situation, investment programme, rationalisation plans, new work methods, reduction or close-down of the company, transfer of the plant, mergers, changes in the organization and the business purposes

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officials generally distribute union information, collect dues where necessary, sign up new members and act as a resource for union members. They have no legal standing and many employers resent and oppose their existence. In some companies employers have encouraged the establishment of "trust men" independent of the union as a kind of extension of the works council.  

Workers' participation in the works council industries is similar to that in coal and steel with several exceptions. First, workers elect only one-third of the members of the supervisory board and there is no specifically designated labour director on the management board. In the co-determination industries, union nominees to the supervisory board may be "outsiders", individuals who are not employees of the firm.

37 Although most of the co-determination rights in "social matters" already existed under the 1952 Act, the 1972 Act specified these rights.

38 Under the 1972 Act also including financial factors of wages.

39 Right to Veto.

40 Although the works council could veto individual measures under the 1952 Act on grounds enumerated in the law, only the 1972 Act increased these grounds to such an extent that you can speak of real co-determination.

41 Although the 1972 Act does not yet introduce a full right of veto, dismissals against the will of the works council have become so difficult that it is only a small step towards a full right of co-determination.

42 The field of information about economic issues was considerably widened under the 1972 Act.

43 The 1972 Act asks for voluntary arbitration.

In the works council industries, all workers' representatives on the supervisory board are, except where the board is very large, enterprise employees.\textsuperscript{45}

Under the new Co-Determination Act of 1976 a modified version of parity co-determination is to be introduced into most undertakings with at least 2000 employees and this will affect more than six hundred firms.\textsuperscript{46} On supervisory boards with twelve members, six will be chosen by the shareholders and six by employees. Senior executives are guaranteed at least one of the six employee seats and there is considerable concern within the labour movement that this individual will generally side with the shareholder representatives.\textsuperscript{47} Where there are six employee members, the unions may nominate two. The chairman of the board who may have considerable power to determine board procedures and information flows will be chosen by a two-thirds majority vote. If no plurality is attainable then the shareholder representatives elect the chairman and the worker members elect the deputy chairman. The 1976 Act dropped the coal and steel provision of a "neutral member". If there is

\textsuperscript{45}If the supervisory board exceeded six members the unions could be represented but many companies limited the size of their board's in order to prevent union representation. See Tegtmeier, op. cit., pp. 73, 271.

\textsuperscript{46}For an analysis and an English translation of the new Act see "New Parity Co-determination Act for West Germany", European Industrial Relations Review, April, 1976, pp. 9-10, 21-26.

\textsuperscript{47}In a recent study of German executives 51\% stated that they do not identify with either of the two major interest groups in the enterprise but only 6\% of the sample felt that managers should align themselves with blue and white-collar employees. Senior executives will not, however, be elected exclusively by their colleagues but rather by all salaried employees. See H. Hartmann, "Managerial Employees - New Participants in Industrial Relations", British Journal of Industrial Relations, July, 1974, pp. 271, 277.
a voting deadlock, the chairman may cast two votes. This aspect of the law would seem to give the shareholders effective control of the supervisory board. 48 The law also calls for a labour director on the management board but he will be elected by a two-thirds majority of the supervisory board and the employee representatives have no power of veto. 49

The Performance of the German System Since World War II

When the new participation legislation was introduced after World War II, great hopes were expressed by some and dismal predictions were made by others. Some conceived of the laws as a means of extending full political democracy to the workplace, 50 of providing the individual worker with a greater sense of dignity and individual worth 51 and as a means of control 52 to prevent the re-emergence

48 The designated head of the German Employers' Association has recently suggested that Chairmen have a "responsibility" for casting their deciding vote "for the benefit of the firm" (i.e. with the shareholders). See "Mehr Kontakt mit dem DGB" Die Zeit, June 11, 1976, p. 14.

49 The unions and the SPD expected that the labour director would be nominated by the workers' representatives as in coal and steel but the employers have not been willing to concede this procedures. In the months just prior to the 1976 Act coming into effect, several German firms appointed their own man personnel director with the intention of fighting to keep him in the labour director position. See "Schriftliche Information der Mitglieder der SPD Bundestagsfraktion vom 9, 12, 1975, Die neue Koalitionseinigung in der Mitbestimmung", Bonn, 1975, p. 8; "Noch viel Ärger", Der Spiegel, No. 16, April 12, 1976, pp. 110-112.

50 For the justification of co-determination as a form of industrial democracy see F. Nahtali, "Wirtschaftsdemokratie. Ihr Wesen, Weg und Ziel" (Berlin: Verlag des ADGB, 1928); DGB, ed., Mitbestimmung-eine Forderung unserer Zeit, (Duesseldorf: without year), p. 23.

51 For this motivation of co-determination see G. Neermann, Freiheitlicher Sozialismus - Sozialdemokratische Partei Deutschlands - Wirtschaftliche Mitbestimmung der Arbeitnehmer, (without place and year), p. 9.

52 For the co-determination as control against the abuse of economic power see DGB, ed., Mitbestimmungsrecht der Arbeitnehmer in Deutschland, (Duesseldorf: without year), p. 13.
of a totalitarian dictatorship. Supporters of business interests especially feared that co-determination would lead to industrial inefficiency, the flight of investment capital, and the undermining of the competitive dynamics of the free enterprise system. Still others feared that co-determination would depress trade union militancy and rebound to the detriment of the workers.

Despite a quarter of a century of experience with the system, these hopes and fears continue to be voiced by both German and foreign observers. Many of the arguments appear to be characterized by either ignorance of, or disdain for, the factual record. While the amount of research carried out on the operation of German participation is

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53 See for example E. Schrewé, Die Umgestaltung unserer Sozialordnung, (Hannover, 1950), p. 29.


55 See, Schrewé, op. cit., p. 29.

56 Some observers felt that through co-determination the unions had pulled the rug out from under themselves. See C. Kerr, op. cit., pp. 535-564.
less than one might hope for, we believe that sufficient evidence exists from which a balanced judgement may be made.

Impact on the Worker - General Effects

Specifying certain prescriptions in law is no guarantee that they will be followed in practice. As noted above, experience with participation during the Weimar Republic is generally considered to be disappointing. For several years after World War II the experience in coal and steel was also below expectations. Surveys indicated that workers had an incomplete and inexplicit idea of what co-determination was or how it was supposed to function in practice. They were also sceptical of the ability of their delegates to adequately represent their interests and the elected representatives were, indeed, handicapped by their lack of expertise. Surveys carried out in the mid-1950's showed that while workers had high expectations of benefit from co-determination, only a small percent felt that they had personally benefited from co-determination during its first few years of operation.

Wilpert reported only fifteen empirical studies over a period of more than twenty years. See B. Wilpert, "Research on Industrial Democracy: The German Case", Industrial Relations Journal, No. 1, 1975, pp. 53-64.

A survey of Popitz et. al. in 1954 revealed that only 39% of the employees knew in general what co-determination meant and fewer knew how the institutions functioned. Another survey by Friedeburg in the coal and iron industry showed that 85% of the employees didn't know that the workers' representatives have parity on the supervisory board of their firm. See H. Popitz, H.P. Bahrdt, E.A. Jueres and H. Kesting, Das Gesellschaftsbild des Arbeiter, (Tuebingen: J.C. Mohr-Paul Siebeck, 1957), p. 125; L.V. Friedeburg et. al., Betriebsklima -Eine industrie-soziologische Untersuchung aus dem Ruhrgebiet (Frankfurt: Europäische Verlagsanstalt, 1955), p. 199.

Popitz et. al., op. cit., p. 143.


More recent research indicates that considerable improvements have been made during the past few decades, although there are still substantial problems.

If workers' delegates are to be able to influence decisions, they must have access to information. Some sceptics have suggested that shareholder representatives have been able to restrict and determine the flow of information in such a way as to undermine the capacity of the workers to participate. Supervisory board agendas are, for example, sometimes determined by the chairman and in most coal and steel firms the chairman is a shareholder member. The Biedenkopf Committee, however, found that discussion formats in most co-determination firms are not unilaterally determined by the chairman, but rather by an executive committee on which workers have representation.62

It is also sometimes claimed that important issues are worked out on subcommittees and that employees are often underrepresented on these committees. Biedenkopf found, however, that coal and steel workers are adequately represented on most of these subcommittees.65

62 Tegtmeier, op. cit., p. 79.

63 The Biedenkopf Committee found that 71% of the co-determination firms had an executive committee on which workers always had representatives. Outside coal, iron and steel industry such committees could be found in 44% of the firms but only 7% included worker representatives. See Mitbestimmungskommission, op. cit., pp. 223-224, tables 7, 9.

64 In the co-determination firms 8% of these subcommittees also have decision-making powers, whereas 17% of those committees outside coal, iron and steel, have these powers. See Tegtmeier, op. cit., p. 83.

65 Mitbestimmungskommission, op. cit., p. 54.
Outside of coal and steel where workers have only one-third representation, committees are often structured to favour the employer and information is restricted. Thus the general consensus is that worker influence on these boards has been quite limited.

In addition to the need for worker representatives to receive information from the top, one might also posit a need for board representatives to communicate with their constituents. In actual fact, day to day intercourse between the rank and file worker and the supervisory board members is minimal. Moreover, German company law specifies that board members are legally bound to secrecy concerning sensitive company matters. This had lead critics to argue that co-determination does little to alleviate worker alienation and some attitude surveys of workers support this claim. Contrarily, however, surveys also indicate that most employees perceive a necessity for having a representative system rather than one of direct participation. When this contradiction is pointed out a common response is that the "right representatives" are not available.

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66 See, Tegtmeier, op. cit., pp. 90, 274.


68 See, Companies Act, Section 93 (I).

69 Popitz et. al., op. cit., p. 146.

One of the most difficult positions in the German network of participation is that of the labour director. In practice, he is almost always chosen from a trade union slate by the worker members of the board who usually renounce entirely their right to influence the choice of the other directors. The labour director is charged in law with carrying out his managerial function in the best interests of the firm as a whole. Since he is chosen by workers he is theoretically subject to extensive loyalty conflict. Most labour directors have resolved this conflict by functioning as responsible managers rather than as worker agents per se. They have been most


72 See, Co-determination Act of 1951, Section 13; Companies Act, Sections 76 and 84.


74 See Commission on Industrial Relations, op. cit., p. 20. Labour directors have been successful in injecting social considerations and the interests of workers into decisions of the management board. See Tegtmeier, op. cit., p. 177.
successful where they have been able to win the trust and acceptance of the other management board members. Where they have not been able to do so, they have been isolated and their influence has been drastically reduced.  

Because these officials have, in the main, adopted a role very similar to the other top managers, some critics have suggested that, from a worker's perspective, the position has been a failure. Others point out that it was not to be expected that these people should act as a representative and negotiator for pure worker interests at the top management level. Rather, the aim was to ensure that right-thinking people with humanistic values would be placed at the top level of day to day managerial decision-making. If this modest objective is accepted, then the office of labour director should not be judged a failure. His presence has resulted, in practice, in the anticipation of social considerations and the reduction of negative effects for the employees in the managerial decision-making process. Neuloh considers this one of the most essential outcomes of decision-making under co-determination. Furthermore, co-determination industries have, due largely to the efforts of the labour directors, often been the pace-makers in the initiation of efficient and equitable personnel policies.

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75 Voigt, op. cit., pp. 212 et seq.

76 O. Neuloh, Der neue Betriebsstil - Untersuchungen ueber Wirklichkeit und Wirkungen der Mitbestimmung (Tuebingen: J.C. Mohr-Paul Siebeck, 1960), p. 56.

77 Voigt, op. cit., p. 266.
Many surveys indicate that most workers, both in coal and steel and elsewhere, know of, and give strong support to, the works councils. In one survey, 92% of the respondents stated that they could not do without the councils. The support of workers for the councils is further indicated by the fact that about 80% of those eligible usually vote in works council elections. Numerous studies have found that councillors do initiate action along the lines suggested by legislation on most issues. Other studies indicate that the councillors themselves have a high degree of satisfaction with their influence concerning most issues. By and large, managers have very positive attitudes toward the operation of these bodies.


80 The works council elections in industry covered by the IG Metall (this industry covers roughly 45% of the industrial labour force) showed a participation of 78.2% in 1972. The survey by the IG-Chemie-Papier-Keramik in the chemical, paper and ceramics industry even showed an 88% participation. See, IG Metall, ed., Ergebnisse der Betriebsratswahlen 1972, (Frankfurt: Union Verlagsanstalt, 1972), p. 7; IG-Chemie-Papier-Keramik, ed., op. cit., p. 62.

81 For the practice of the Works Constitution Act of 1952 see O. Blume, Normen und Wirklichkeit einer Betriebsverfassung, op. cit.; G. Kliemt, Die Praxis des Betriebsverfassungsgesetzes (Tuebingen: J.C. Mohr-Paul Seibek, 1971); For the practice under the 1972 Act see the forthcoming study of C,H. Rummel, op. cit.

82 See, Commission on Industrial Relations, op. cit., p. 31.

83 Tegtmeier, op. cit., p. 139.
The councils have not, however, been free from criticism. As noted above, contact between rank and file workers and councillors is infrequent. This is due in part to the fact that "works assemblies", where all workers are informed about plant matters, take place quarterly at most, and are often poorly attended. Poor communication is also due, in part, to an insufficient number of works councillors and an inadequate amount of time accorded to councillors in order for them to discuss individual issues with workers. Typically, the man on the shop floor sees his councillor only rarely, and if he has a grievance he usually has to contact his representative after working hours. Shop steward systems were initiated, in part, as a response to this communication gap but their effectiveness to date, in this regard, is questionable. Another criticism is that the councillors typically have a long tenure in office and that they may tend to become arrogant and divorced from the rank and file as a result. Some observers have pointed out

84 Tegtmeier, op. cit., p. 145.


86 In Blume's sample, 25% of the works council chairmen has been in office since 1952 and another 25% had been elected between 1953 and 1956. Within the sample interviewed by Kliemt, more than one third of the chairmen were in office more than eleven years. See, O. Blume, Normen und Wirklichkeit einer Betriebsverfassung, op. cit., p. 51; Kliemt, op. cit., p. 67.

87 It should be noted in this context that in one survey 19% of the workers expressed the feeling that the works councillors are only interested in their position. See Popitz, et. al., op. cit., p. 143.
that long tenure in office may be a benefit rather than a detriment to the rank and file. It takes time to acquire sufficient expertise concerning the complex operations of the modern industrial firm, and short tenure representatives may be much less efficient than those who have had long experience and training.

The "non-representativeness to worker needs" thesis has not been adequately researched via carefully designed empirical studies. However, in recent years there has been a large increase in "wildcat" strikes and this upsurge would seem to be an indicator that the councils (and the unions) have not been representing their members' needs as effectively as they might.  

The operation of the German system cannot be fully understood by considering each aspect in isolation. To appreciate the responsiveness of the procedures to workers' interests it is necessary to consider the interrelationships between the various elements of the system.

The main point of labour-management interaction within the firm is between the works council and the management board or the top management in individual plants. If an issue is raised by the councillors with


89 Works councils exist in each plant but there is also a company council which is compulsory in multi-plant companies under the 1972 Act. Members are drawn from the different works councils. The company council regulates company level issues and coordinates plant level issues at company level.
management and it is not satisfactorily resolved then it may be:

- **a.** Taken to arbitration, or the labour courts in many cases.

- **b.** Bumped up to the supervisory board. The equality of labour and management on the supervisory board creates the distinct possibility of managerial actions being either overruled or delayed. As a rule, the workers' representatives on the supervisory board from inside the firm are also works councillors.

- **c.** Brought to the attention of the trade union which, in turn may, if the issue is general enough, raise it in negotiations at the next bargaining round. The union may also take it directly to the employer's association. While these associations are employer vehicles, they also have a stake in maintaining good union-management relations and therefore may seek to find an acceptable solution rather than have an irate and disgruntled union on their hands. Works councillors, in general, have a good relationship with unions because they are union members and many are active local leaders.

In coal and steel, works councils generally discuss their concerns first with the labour director who helps them to develop a strategy. Issues are then raised and settled satisfactorily at the plant level. Management is prone to seriously seek agreement because failure to do so may result in:

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91 The Biedenkopf Committee found that 88% of the works councillors consider the meeting with the labour director "very useful". Tegtmeier, op. cit., p. 143.

92 Fuerstenberg found in his survey that the initiative for discussions usually starts at the works councils' side, the average ratio being 1:5 in their favour. See F. Fuerstenberg, "Workers' Participation in German Industry", in C.P. Thakur, K.C. Sethi, ed., Industrial Democracy. Some Issues and Experience, New Delhi, 1973, p. 317.
a. A decision taken by an arbitrator who may not fully comprehend the internal problems and operations of the firm.

b. The issue being bottled up in the supervisory board, perhaps with the neutral member there (who is also considered an outsider) casting the deciding vote thus adding to the uncertainty of the outcome.

c. The possibility of a wildcat strike. While works councils are forbidden to strike, a recent British team which visited Germany concluded that the potentiality of wildcat strikes did play a substantial role in organizational decision-making.94

Outside of coal and steel, worker influence is lower. However, the threat of arbitration, union action at the bargaining table and wildcats is still important and, as noted above, workers judge these councils to be a success.

Many observers of the German scene have, we believe, underestimated potential worker influence because of their failure to adequately understand these complex interrelationships.

The most notable achievements of co-determination in Germany have been at the enterprise level. Co-determination has provided for the smooth evolution of industrial change. In the post war period numerous technological innovations, mergers and shutdowns have been introduced in coal and steel. The changes have, for the most part, been carried out smoothly and without disruption or notable psychic stress.95

93 Both management and labour have a distaste for "outside interference" and work diligently to avoid arbitration. In a recent survey of 240 works councils Rummel found only 4 cases where disputes were settled through arbitration between 1972 and 1975. See C.H. Rummel, op. cit.


95 The reduction of the labour force in the iron and steel industry from 420,568 workers in 1961 to 343,297 in 1973 was executed with minimal conflict. In the same period the yearly production of raw steel increased from 33.4 million tons to about 48 million tons. The labour force in the coal industry was reduced from 620,000 employees to 220,000 between 1951 and 1961. At the same time the output per man day increased from 1600kg to 4200kg. See W.Spieker, "Mitbestimmung bei Eisen und Stahl", Das Mitbestimmungsgespräch, No. 10/11/12, 1973, p.157; W.Beer,"Die Mitbestimmungssituation im Steinkohlenbergbau" Das Mitbestimmungsgespräch, No. 10/11/12, 1973, p. 162.
Worker representatives on the supervisory boards and works councils have been able to negotiate the pace and conditions under which the changes would take place. As a result, worker needs have been given high priority from the outset.

Although not an aim of legislators, one early worker expectation of co-determination was the achievement of higher compensation.\textsuperscript{96} These expectations have not, in the main, been met. Although labour directors, who have some influence on the actual wage have supported "high and just wages",\textsuperscript{97} remuneration in coal and steel is not substantially higher than elsewhere for work of similar skill and responsibility.\textsuperscript{98} The co-determination industries have, however, been a leader in the development of wages and benefits and it is debatable whether conditions elsewhere would have developed as rapidly in the absence of co-determination. There is some evidence that employers have attempted to keep up with coal and steel in order to alleviate political pressure for the expansion of parity co-determination, but the relative equality of compensation is probably due as much to a tight labour market as to other factors.

Union and works council pressure combined with the existence of the labour director has produced more rational, objective and equitable systems of administration. The historical pattern in Germany of arbitrary and capricious paternalistic management has been substantially

\textsuperscript{96} Early surveys revealed that the majority of the employees expected such a monetary outcome of co-determination. See Dahrendorf, op. cit., pp. 37-38.

\textsuperscript{97} Voigt, op. cit., p. 238.

\textsuperscript{98} Mitbestimmungskommission, op. cit., pp. 161-162.
modified by what Hartmann has called "functional authority". While this change has also occurred in the works councils industries, it is likely that the demonstration effect has played an important part. In small firms, without works councils, authoritarian management is still the norm.

From a North American perspective co-determination has been least effective in providing shop floor control. In a recent comparison of Germany and the U.S. Herding notes that Co-determination has achieved least in humanizing immediate job conditions. He goes on to say that "exhausting physical effort, excessive heat, hazardous safety and health conditions have been far less points of attention (and redress) than in the American steel industry; at least straight-time workers endure a high measure of personal, not objectivated coercion -- speed-up, in one word -- by supervision". He sums up by saying "on the job itself management's discretion is hardly restricted." In comparison to North America, Herding also found that grievance procedures whereby individual workers might find redress from perceived or real mistreatment were underdeveloped


101 Ibid., pp. 329-330.

102 Ibid., pp. 330-331.
or non-existent. In an informal survey of 65 companies he found only five where workers had an explicit right to grieve.\textsuperscript{103} Discipline was found to be handled in a "rather haphazard way".\textsuperscript{104}

German unions are not unaware of, or unconcerned with this problem. Indeed the inadequate amount of job control is one of the main reasons why some unions have supported the establishment of a network of shop stewards. In recent years also, German unions have begun to push harder in negotiations for job control regulations.\textsuperscript{105} Unlike North America, Germany lacks a tradition of strong worker shop floor influence. While the American worker finds it incredible that worker representatives should sit on boards of directors, the German worker finds it equally incredible that management's control on the shop floor should be questioned. In a study of the electronics industry in the late 1960's, Fuerstenberg found that the workers made little use of the shop stewards as an instrument for correcting perceived personal problems on the job. Workers were much more prone to take up personal problems with supervisors, and secondarily with works councillors.\textsuperscript{106} Recent demands for more shop control have usually originated at the top union level rather than with the rank and file worker.

\textsuperscript{103} Ibid., p. 338
\textsuperscript{104} Ibid., p. 322
\textsuperscript{105} See U. Engelen-Kefer, "Humanization of work in the Federal Republic of Germany - A labour-oriented approach", \textit{International Labour Review}, March-April, 1976, p. 237. The government has also begun to support efforts to achieve a higher quality of work life.
\textsuperscript{106} P. Fuerstenberg, op. cit., p. 321; Herding also found little evidence that stewards are approached with grievances by the employees. Herding, op. cit., pp. 323-324.
Impact on the Worker - Differential Effects

Participation does not work equally well (or poorly) in all covered concerns or for all workers. Nor is it viewed the same by all employees. Numerous studies have indicated that participation is most effective in representing workers interests in large organizations where management is professional rather than paternal and where the workers are highly unionized. These three traits tend to hang tightly together. In small private and partnership companies where the owner is also the chief executive it is likely that no works councils will be formed despite legal requirements which specify the establishment of works councils in every plant with more than five workers. There is no legal penalty for failure to establish a council. Thus, although works councils exist in the great majority of large organizations, only a small percentage of all covered firms do in fact have a council. Workers in small firms are typically poorly unionized and the unions, by and large, have not expressed deep interest in them. Furthermore, the owner-manager (Unternehmer) in Germany has very high prestige and large sections of German society accept the right of these

107 Further variables which are closely related with the above mentioned factors and which also modify the effectiveness of participation are the existence of a supervisory board, release time, qualification of works councillors, technology, industrial sector and the level of aspiration among employees for co-determinative influence in the firm. See Tegtmeier, op. cit., pp. 125, 134-136, 154; Kliemt, op. cit., pp. 152-154; Wilpert, op. cit., p. 62.

108 In 1972, only about 14% of all plants with less than fifty workers had a works council in the industrial sector which is covered by the metal workers union. The percentage increased to 71% in plants which 100-499 employees. In plants with 1,000-4,999 employees 694 plants out of 696 had a works council and all 81 organizations with more than 5,000 workers had such a council. For the data see IG Metall, op. cit., p. 32. About two thirds of all German workers are employed in a plant with a works council. Tegtmeier, op. cit., p. 132.
"entrepreneurs" to manage their firms as they see fit. In short, it is likely that many workers in small firms do not consider participation to be legitimate and thus have not exerted themselves to push for it. Even when such a firm has a works council, the councillors typically accept the authoritarian position of the owner-manager. Moreover, without the protection of a trade union, workers in small firms stand to be victimized or otherwise threatened if they take the initiative to form a council. The recent German Works Constitution Act of 1972 addresses these problems by allowing the unions to demand the establishment of a council where one does not yet exist. The Act is apparently having a significant effect already. The metal workers union (IG Metall) made use of the provision to expand the number of plants in its jurisdiction with a works council to 9,576 in the elections held subsequent to the passage of the new law. This was a gain of 1,834 new councils of which 940 were in firms with less than 100 workers.

Knowledge of and satisfaction with co-determination has been found to vary with sex, union membership, tenure on the job, job level, overall job satisfaction and place of residence. Male, urban dwelling union members with long job tenure, a skilled position and high overall job satisfaction are the ones most satisfied with and knowledgeable about co-determination.

From the perspective of certain workers the German participation schemes may actually be dysfunctional. Women, foreign workers and low

109 Granick, op. cit., p. 49
110 Kliement, op. cit., 141
111 IG Metall, op. cit., p. 31.
skill workers have been greatly underrepresented on works councils.\textsuperscript{113} For several years foreign worker representation was restricted by law. The new Works Constitution Act, however, removed this barrier and the number of foreign works councillors in the industrial sector covered by the metal workers union for example increased from 150 in 1968 to 1,445 for the works council elections in 1972.\textsuperscript{114} In recent years women workers, also, have made representation advances. During International Women's Year in 1975, the German Trade Union Confederation initiated a drive to increase the number of women delegates serving on works councils. As a result, the number of women councillors increased from 23,400 in 1972 to 30,000 in 1975, a gain of 28.2%.\textsuperscript{115}

While the effects of underrepresentation have not been thoroughly researched, instances of discriminatory policies have come to light. In one case the works council and management board decided that, although the enterprise was understaffed, new workers would not be hired. Instead the increased work load would be handled by overtime. The principle losers were alien workers who would have filled most of the additional positions.\textsuperscript{116} In another case the works councils and management board agreed to sub-contract work rather than hire additional

\textsuperscript{113} F. Fuerstenberg, "Workers' Participation in Management in the Federal Republic of Germany", op. cit., pp. 107-108.

\textsuperscript{114} IG Metall, op. cit., p. 13.


\textsuperscript{116} For details see, Herding, op. cit., p. 322.
foreign workers. Herding claims that "discrimination in work assign-
ment, grievance disposition, etc. prevails" concerning foreign workers. 117

Many German companies have openly decided to hire foreign workers from one country only, in order to facilitate social assimilation. This practice is not only tolerated but also approved of by the German authorities. In other countries, this practice would be considered discriminatory because workers with equal ability to do the job are excluded solely because of their national origin.

Pirker, observing that works councils are principally staffed by highly qualified, high income workers, has labelled co-determination a "notables' democracy". 118

One cannot draw firm conclusions about the extent and severity of discrimination under co-determination on the basis of these scanty observations. They do, however, indicate potentially dysfunctional consequences.

Impact on Organizational Performance

Employers in both Germany and abroad have continually held that universal parity co-determination is unacceptable because it is likely to have negative effects on the performance of the enterprise and thus be to the ultimate detriment of society as a whole. The experience with German coal and steel nevertheless provides little support for this contention.

117 Ibid., p. 329

118 Pirker, et. al., op. cit., pp. 322 et seq.
A priori one might suppose that the internal efficiency of the firm would suffer due to continual haggling and ad hoc decision-making but this has rarely happened. Instead, there is general consensus, that due to co-determination, management has become more rational, more professional and more efficient.\textsuperscript{119} The consensus is supported by data which indicate that productivity has advanced rapidly since the advent of co-determination.\textsuperscript{120}

When co-determination was initiated there was a general fear that worker representatives on supervisory boards and works councils would attempt to block the implementation of a new technology as they did during the Weimar Republic. Instead, in an environment of rapid economic progress, technological change has been fully accepted in most cases. Moreover, as noted above, since workers have had early notice of proposed changes and have been able to negotiate the substance, pace, and conditions of the transition, industrial change has been initiated smoothly with a minimum of labour-management conflict.\textsuperscript{121} Although there have been great changes in the structure of the German steel and coal industries there have been almost no strikes concerning these changes. This situation may be contrasted with the agony experienced in North America by management and workers

\textsuperscript{119} See, Tegtmeier, op. cit., pp. 198-199; Fogarty, op. cit., p. 90.

\textsuperscript{120} Engelen-Kefer, op. cit., p. 231.

\textsuperscript{121} Mitbestimmungskommission, op. cit., pp. 76-82; Tegtmeier, op. cit., pp. 185-187.
alike due to unilateral and arbitrary managerial decisions concerning technological change.

In some cases co-determination does seem to have slowed managerial decision making. However, once reached, the quality of the decisions have been better than might have been expected in other circumstances due to a supervisory and management board which can balance and reconcile a variety of points of view resulting in worker commitment to the ultimate decision. Once an issue reaches the supervisory board as a whole votes are usually unanimous. Gaugler notes, that worker commitment to new organizational directions may reduce the amount of entrepreneurial risk and is thus of positive value to management.122

When co-determination originally came into existence employer spokesmen voiced the fear that shareholders would be driven away by the expectation that workers would force an inordinate appropriation of organizational revenue. In actual fact this did not happen and the organizations involved have not experienced difficulty in attracting sufficient capital. In some firms it is the practice to couple workers' bonuses to dividend payments.123

Despite the record, there is still fear in Germany that the recent extension of co-determination will induce potential foreign investors or current German investors to go elsewhere. In 1974,


123 Mitbestimmungskommission, op. cit., p. 82.
for example, the American Chamber of Commerce in Germany published a report charging that the new parity co-determination law would violate treaty agreements between Germany and the U.S., whereby U.S. companies were guaranteed the right to manage their German subsidiaries freely. The charge was rejected but it raised the spectre of an American exodus. In any case, the expectation of extended parity co-determination has not yet deterred foreign companies from investing in Germany. Foreign direct investment in Germany rose by 45% between 1970 and 1973 to a cumulative total of DM 43 billion. Fifteen hundred new companies with substantial foreign capital entered Germany during this period bringing the total to nearly 10,000. 124 Still, the fear of an adverse affect due to the recent act helps to explain the strong support given by Germany to the extension of co-determination throughout the European Economic Community.

Co-determination has not crippled the competitive drive necessary for survival in a free enterprise system. Indeed, in some cases, worker representatives have been more enthusiastic about new, potentially risky but potentially job creating, investment than have been small shareholders and banks. 125 Worker representatives have not, however, always gone along with managerial judgement. Thus the top management


125 Tegtmeier, op. cit., p. 165.
of Volkswagen wanted to establish production operations in the U.S. as early as 1970 but worker representatives, fearing the loss of German jobs, would not agree. Finally, in 1976, a compromise was reached that an assembly plant would be opened in the U.S. and parts would continue to be produced in Germany. Some observers have argued that the failure of Volkswagen to set up assembly or production operations in America in the early 1970's was the main cause of the company's reduced share of the North American automobile market and the loss is blamed on co-determination. A more careful analysis of the situation indicates that the setback was due as much to managerial bungling as to worker intransigence. For example, top management continually failed to provide the worker delegates with information they considered necessary to make an adequate decision.\textsuperscript{126}

To date managerial prerogatives to direct work on a day to day basis have not been seriously challenged. Instead, German managers have maintained significantly greater discretion than their North American counterparts. However, new inroads into these prerogatives are to be expected as a result of the new Works Constitution Act of 1972 and to the recent initiatives of German unions. The Metal Workers Union in South West Germany for example struck and won a collective agreement over new co-determination rights in the workplace and improvements in the speed, conditions, and physical burden of work - much of it through an enlargement of the influence of works councils.\textsuperscript{127}


\textsuperscript{127}See "German Agreement incorporates Work Humanization Provisions", European Industrial Relations Review, No. 16, April, 1975, pp. 8-10.
Finally, it is important to note that when interviewed, managers who have been subject to co-determination generally admit it has not been detrimental. Many are still suspicious of the principle, however, and sceptical of its potential for success elsewhere. A major problem will be finding a sufficient number of qualified people to sit on the supervisory boards as workers representatives in the more than 600 firms subject to parity co-determination under the 1976 Act.

Effects on the Role of the Trade Union

In the early 1950's Franz Neumann expressed the opinion that co-determination "may actually destroy the little militancy that is left in the German labour movement". American observers have often proposed that the existence of the works councils has resulted in little union influence on the shop floor. Still others have suggested that co-determination is inconsistent with the collective bargaining function of the union.

The actual experience in Germany indicates that each of these propositions must be carefully qualified, if not rejected outright. It is quite true that since World War II the German unions have not exhibited a great deal of overt militancy. The number of strikes in Germany has been very low and German unions have cooperated with government efforts to maintain price stability, encourage investment, and moderate the growth of consumption. This policy has, however, been accompanied by full employment, rapid economic growth, and the

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extensive expansion of social welfare services. There is little
evidence that co-determination as such has reduced union militancy.
Indeed, the metal workers' union is generally considered to be one of
the most militant unions in Germany. 130

The proposal that the existence of works councils is the cause
of low union influence on the shop floor is also misdirected. From
the beginning of the union movement German employers have been adamantly
opposed to any union influence on the shop floor and, as noted above,
the decision by the unions to opt for the establishment of works councils
in the Weimar period was perhaps the most they could hope to achieve
under the circumstances. Once this pattern was established the
social inertia which it created was difficult to overcome. Moreover,
the German unions have been traditionally more concerned with worker
needs as a class rather than as individuals. 131 The equalitarian
method of all workers in each factory electing a body to represent
them is consistent with this philosophy.

Nor is the union incapable of exerting significant influence
over the councils. Thus the great majority of councillors are, as
noted above, also union members and in many cases union officers.
In a recent study, Fuerstenberg found that even where councillors are
not union members prior to election, they often join shortly after
taking office. 132 They do so for several reasons. First, if

131 See, Kerr, op. cit., p. 537.
132 F. Fuerstenberg, "Workers' Participation in German Industry", op. cit.
pp. 318-319; similar observations could be made in the iron and steel
industry, see, IG Metall, op. cit., p. 11.
they are to be effective and thus maintain the allegiance of their constituency, union support is essential. The trade union is the councillors' primary source of legal and technical expertise. It also provides a wide range of training courses for councillors. Finally, works council election is generally the first step in a union career. 133

Although the role of the councils is ambiguous, the trade unions tend to think of them as the "prolonged arm of the trade union". 134 There is also evidence that at least some workers consider the councils to be the instruments of the unions in the plant. 135

It is certainly true that councils do exist which operate independently and somewhat contrary to the policies of the unions. This problem (if it is thought to be a problem) is much less in evidence, however, than in the United Kingdom where many national unions completely lost control of shop floor organizations during the 1960's. 136

Some observers have attributed the gradual decline in union membership as a percent of the labour force to German participation. It is more likely that this decline is due to the increase in female and foreign workers, white collar occupations, and employees in the service sector to which the unions have had difficulty appealing. No doubt it is also partly due to the fact that mandatory union membership

134 Ross, op. cit., p. 346.
is illegal in Germany. Some unions with close works council ties have, in fact, made use of a clause in the Works Constitution Act allowing the council to object to "socially undesirable" workers to establish informal mandatory membership requirements. 137

The accusation that co-determination is incompatible with collective bargaining is probably due to a misunderstanding of the decision-making processes in German industry. Most collective bargaining takes place not at the level of the firm where co-determination is practiced but rather at the industry level between trade unions and employer associations. The associations are instruments of the top management of the firms involved -- in short, the management boards. Although in the co-determination industries the management boards do have one labour director, these worker-chosen officials rarely play a significant role in the bargaining policy of the employer associations. 138 On the supervisory board, issues which have traditionally been subject to collective bargaining are avoided. 139

Negotiations do take place within the firm between the councils and the management but the situation is not, as we have tried to illustrate, one simply of workers bargaining with themselves. The day to day affairs of the enterprise are generally determined by the management board triumvirate, two members of which are normally chosen by shareholder members on the supervisory board. Thus the labour director is in a minority position and cannot, even if he so wished, 

137 For a discussion of this policy which is untested in court and virtually unknown in public see, Herding, op. cit., p. 322.
139 Mitbestimmungskommission, op. cit., p. 83.
take decisions unilaterally over the objection of the other members. Outright impasse situations are, however, a rarity. The management board, as well as the works council, is directed by law to behave in the best interests of the enterprise as a whole and, by and large, this directive has been respected.

The same imperative holds at the supervisory board level but here worker delegates and shareholder agents are equally represented and a neutral man acts as a conciliator and on occasion as an arbitrator. In short, the superficial observation that worker representatives are on both sides of the bargaining table falls apart on closer inspection.

So too does the claim that co-determination makes trade unions redundant. For participation to function adequately, the employee representatives within the firm (the supervisory board members and the labour director especially) must behave in a responsible manner. The law requires that they act in the best interests of the enterprise.

Co-determination in post-war Germany has worked as well as it has precisely because the various representatives have taken this precept seriously. As Neil Chamberlain has pointed out, managers must, as a function of their role, balance many forces simultaneously -- buyers, sellers, shareholder, the government, and employees. By accepting positions on the supervisory and management boards employee representatives become, in effect, managers with all of the responsibilities of effectively juggling the diverse influences being exerted on the firm.

Trade unions, however, are unidimensional organizations. Their sole function is to represent and better the conditions of the workers, and

only a trade union can adequately fill this role.

In practice, unions not only negotiate on an industry basis but also act as a source of final resort when employees feel that decisions are taken which, in their view, are intolerable. Such decisions occur less frequently because of co-determination, but despite the representative arrangements, they still occur.

The most ambiguous body within the system is the works council which delicately straddles the fence between being a cooperative organ and an agent for pure employee interests. In the last resort its effectiveness is dependent upon union power.

Summarizing, it may be said that the German industrial relation system resulted in a division of responsibility for the protection of workers' interests between collective bargaining and co-determination. Collective bargaining provides the basic pattern of working conditions on a regional and/or industry wide level; co-determination fills out this pattern on the plant and firm level.\(^{141}\)

Contrary to the union weakness arguments, some observers have suggested that co-determination, by allowing unions to nominate members of the supervisory board, makes them too strong. Fear is expressed that unions will eventually dominate all industrial decision-making through "remote control steering" of their delegates. The Biedenkopf Committee, however, could not find any evidence for such an effect in the coal and steel industry.\(^{142}\) Some also argue that union representation on the supervisory board is contrary, both to the rights of the

\(^{141}\) Tegtmeier, op. cit., p. 230.

\(^{142}\) Mitbestimmungskommission, op. cit., pp. 144-146.
shareholders and to the rank and file workers to participate in decision-making. Whatever the case may be concerning shareholder rights, union control of supervisory boards in co-determination industries does not appear to be a substantial problem. Although unions may nominate three of the five worker members, in practice the works council and the union jointly agree on the supervisory board slate. There is no evidence that unions have attempted to impose unwanted individuals against employee wishes. 143

Contention has arisen from time to time between council and union delegates due to their differing perspectives. 144 Employee representatives from within the firm have sometimes been more willing to go along with management initiatives than have the outsiders. While such disagreements might occur for several reasons, for example so called "plant egoism", it is not uncommon for the internal members to be intimidated by the wealth, knowledge and power represented by the bankers, economists and big businessmen who sit as shareholders delegates. The union nominees tend to counter this intimidation.

143 Ibid., p. 60.

144 One recent example is the fact that works councils from armament companies asked the ministry of defense to lift the strict embargo on the export of German weapons in order to prevent layoffs although the unions, in this case the metal workers' union opposes any export of arms and was protesting against the initiative of the works councillors. See, Metallpressedienst, from 23.2.1976.
There are also concerns that confidential information leaks from the supervisory board to the unions and thus influences collective bargaining demands. This is one of the bases of management opposition to worker representation on boards. Worker spokesmen counter by pointing out that shareholder representatives often hold positions on several boards and have from time to time also leaked information to the detriment of the enterprise.  

If union power has been inordinately increased, there are few objective indicators of it. Compensation in coal and steel has not risen out of line with that elsewhere and the competitive position of firms in the industry has not been compromised.

Conclusions

In a recent article Heinz Hartmann concluded that "On the whole, co-determination is functioning well enough in spite of several flaws". We concur with his judgement.

After a rocky beginning during the first part of the 20th century the performance of workers' participation in Germany since World War II has been much improved. Most workers in both coal and steel and

145 Although the Biedenkopf Committee couldn't find any indications for the leaking of sensitive informations, it stated that the possibility for such a breach of trust is given for both, labour and shareholder representatives. See Mitbestimmungskommission, op. cit., p. 94.

146 H. Hartmann, "Co-determination Today and Tomorrow", op. cit., p. 58.
elsewhere have benefitted substantially and stand to benefit even more in the future as a result of the recent legislative changes.

Many workers, however, have not been full recipients of these benefits. The extent to which the German system has been of value to women, foreign workers, low skilled workers and workers in small firms where no works councils exist is open to question. In recent years, women and alien workers have been making progress, but if the system is to reach its potential, further measures will have to be taken in future to ensure that there are equal benefits for all covered groups.

There is little or no evidence of widespread negative outcomes concerning organizational effectiveness of economic progress. Indeed a credible argument can be made that industrial enterprise has been made more efficient and effective as a result of participation. Technological and organizational change has not been impeded, entrepreneurial risk may have been reduced, and modern methods for the management of human resources have been initiated.

Although the available evidence strongly suggests that unions in Germany do not have a great deal of influence on the shop floor, it is doubtful that this condition has been a result of participation. Instead, works councils are best conceived as a compromise between strong union locals and no union influence at all within the firm. They are also consistent with German union philosophy and the attitudes and policy of German management.

Participation at the supervisory and management board level has not destroyed collective bargaining, nor has it made trade unions redundant. Despite participation in enterprise decisions, employee
organizations, which exclusively look after the needs of the workers, continue to play a vital role in German society.

German participation is not a panacea. As it has functioned to date, it is not the answer to all labour-management problems and issues. By and large, German workers have less procedural and substantive protection on the job than do those North American workers who are organized into strong unions. But co-determination in Germany has demonstrated the capacity to find solutions to major organizational problems before they evolve into hardened stands by one side or the other. As a result of continual contact and exposure to issues of common concern representatives of labour and management have come to trust and cooperate with each other to a much greater degree than was once thought possible. Overt conflict has, as a result, been held to a minimum to the benefit of all concerned.

A major difficulty with German participation is that it seems to provide the individual worker with little sense of involvement. The available research indicates that the worker, although relatively satisfied with the representation schemes, feels that he has little ability to affect his own destiny. Decisions are taken mostly at distant places and although the worker may benefit from them, he has little perceived capacity to notably influence them.

The present German system of industrial democracy should not be thought of as a static entity. It has evolved over many decades and is still in the process of evolution. Many problems encountered during the early stages of experimentation have been overcome but significant problems continue to exist. If history is an adequate guide, we have good reason to expect that these current failings will be successfully redressed in future.
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