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## Problems of Social Science

### The Discussion about "Co-determination"

by Professor Bruno Molitor, Würzburg

**M**itbestimmung" means, literally, "Co-determination". What is meant by this term is shared management in running big companies, sharing it between the representatives of the shareholders and/or owners and those of the labour force employed there. That this shared management is the subject of public discussion in the Federal Republic of Germany does not mean that it does not exist. On the contrary, for many years now, there have been two forms of co-determination in force in the Federal Republic — the more advanced one known as "qualified co-determination", which applies to all the large enterprises in coal, iron and steel industries, and the other one called "simple co-determination", which was laid down in the "Law on the Constitution of Enterprises" (Betriebsverfassungsgesetz) for all the rest of the economy. Special rules and regulations, moreover, exist for civil servants and all other public employees, which are contained in an act on the representation of staff. Nor does the current discussion call co-determination in doubt, for nobody advocates its abolition in principle. On the contrary, the vast majority of all concerned agrees that co-determination, by and large, has proved its worth. The main issue of the talks and discussions going on now is whether "qualified co-determination" ought not to be the rule for all companies above a certain size, which might be measured by the numbers employed by them, by their balance-sheet totals, or by their annual turnovers.

#### **Extension of Qualified Co-determination**

The trade unions demand more co-determination everywhere, and they argue that what is sauce for the goose should also be sauce for the gander, meaning that what has proved itself in coal-mining and steel-making could not possibly be wrong for other sectors of the economy, especially as the overall economic importance of the coal and steel industries has long been outstripped by that of

other growth industries. It is also stated that advancing mergers of firms, which are becoming more and more frequent also in Germany, should make it advisable to make one set of rules all-embracing and mandatory for everybody. When the bill on co-determination in the coal and steel industries was passed, it was thought unlikely that the big industrial groups which had been broken up into their constituent parts after the war would soon tend to come together in new big concerns. When a law was enacted later on co-determination in holding companies, this made the situation more complicated rather than clear-cut and simpler.

The powerful employers' associations, naturally, have different views on these problems. They argue that managerial responsibility must not be watered down or interfered with, and that management ought to be protected against the interference of expanding trade union power. In place of the proposed extension of "qualified co-determination", they suggest that the Law on the Constitution of Enterprises be improved instead, as this alone would safeguard the interests of individual workers and employees.

The Federal Republic of Germany was ruled, until the autumn of 1969, by a Grand Coalition of Christian Democrats (CDU) and Social Democrats (SPD). This Government sought to by-pass the question by first appointing an independent commission of enquiry under the chairmanship of Professor Biedenkopf, which was briefed to give an expert opinion. But since the Federal Republic has a new Government, led by the Social Democrats, in which the Free Democrats (FDP) are the smaller partner, the chances for making decisions in this field have not improved, the less so as the Biedenkopf Commission has now published its report. This counsels the Government to enlarge the field of co-determination but in a direction which does not follow the pattern of the rules governing steel and coal companies, by reducing

the influence of the trade unions. This makes things awkward for both the contending vested interests, who might equally reject the proffered advice, but for different reasons.

### Socially Conscious Management

In general, some form of shared management, or co-determination, seems to be universally accepted by practically everybody as required by modern notions of democratic conditions and the dignity of man. The place of work is, after all, the spot where the vast majority of grown-up people spend more than half their waking hours. Economically, on the other hand, it cannot be doubted that the prime mover towards co-determination has been full employment, for in a state of the economy where the employers' demand for labour is bigger, more or less permanently, than the available supply of working "hands" and brains, employers will only be able to keep and increase their labour forces under favourable conditions of work and in a human atmosphere prevailing at the place of employment. Good wages and a short working day, or week, however, are not the only fundamentals for creating such an atmosphere. At least as important, psychologically, are the current methods of decision-making on methods of production and the way in which work is organised, which may, and do, cause day-to-day conflicts and friction between employers and the employed. Only by canvassing the employed persons' views and counsel in permanent joint consultation will it be possible to take the strains out of that relationship. Moreover, it becomes progressively more difficult to replace individual workers and employees under conditions of prolonged training for work and specialisation. Management "with a social conscience" thus becomes indispensable for the employer even for reasons of his enlightened self-interest.

What the Law on the Constitution of Enterprises has done is no more than to institutionalise and unify objectively inevitable material conditions of employment. Under this Act, the employed persons elect a works council who has not only to be consulted, but must contribute to any decision on changes in the employment of personnel and on the voluntary "fringe benefits" granted (or to be withdrawn) by the employer. This has led to a vast increase of such voluntary benefits, which exert a questionable influence on the national economy because, as long as claims for benefits earned in one place of employment may not be transferred to the next, mobility of labour will be severely affected. On the other hand, in case of conflicts with the employer, the individual employee will still be in need of the advice and help from his trade union.

Apart from the works council, this law prescribes the formation of an "economic council" (a form of joint consultative committee), which is to guarantee the regular flow of information on economic problems of the company to the labour force. Doubt was expressed, from the very beginning, in the effectiveness of such an instrument of information pure and simple, and experiences which have since accumulated go to confirm these doubts. During the boom of 1969, for example, when company profits were soaring, whilst trade unions had committed themselves to wage stability by longer-term collective agreements, "simple co-determination" was ineffective for persuading the employers to grant wage increases, and wildcat strikes became inevitable<sup>1</sup>.


<sup>1</sup> These "unconstitutional" strikes revealed another weak spot of the system, which had until then been overlooked: long-term collective wage agreements make wage levels lag severely behind economic growth whilst, at the same time, they make the trade cycle more rigid, thus rendering a national economic stabilisation policy more difficult.

The methods of Operations Research are being applied more and more in industry, administration and for military purposes. They are especially applicable in situations where the future events can not be determined with certainty. The series Methods of Operations Research possesses a twofold objective. On the one hand the up-to-date theoretical developments are presented; on the other hand it is felt that the evergrowing possibilities for applications should be available to those who are concerned chiefly with the theory for practical purposes. Until now the following subjects have been treated in this series: Problems concerning short term and long term production planning, inventory, capacity planning, quality control, investment, economic forecasting, market diagnoses, assignment, replacement and the numerical treatment of the above mentioned themes. The methods used in the numerical processing arise from many different mathematical sources: the theory of games, the theory of stochastic processes, the theory of graphs, Monte Carlo methods, linear and nonlinear programming and mathematical statistics.

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The crucial test of co-determination's value, however, is the way in which it tackles structural changes. Under conditions of economic growth, the proportions in which various branches of the economy contribute to the overall national product change. Technological advances, especially in the field of automation, will make certain kinds of work, on the one hand, redundant, whilst, on the other hand, much higher skills and training are required of the persons kept in employment. The trend towards ever more and bigger mergers is caused, largely, by the need to adapt company sizes to the vastness of growing international markets which promise enormous economies of scale. In spite of overall full employment in any given economy, there will be redundancies of staff, inevitable redeployment of labour, and a constant shift in wage and salary differentials in consequence of changes in the hierarchical structure of production. Especially for the older employees and those with inferior skills, this may mean serious hardship. The question arises in what way co-determination may be able to ease these burdens.

In this case, discussion mainly circles round its "qualified" form. In any big company, under this dispensation one member of the Board of Management (German Company Law prescribes two boards for each public company, one for management, the other one for supervision on behalf of the shareholders) must be elected as a trusted representative of the labour force. He is called the "Labour Director". The Supervisory Board, on the other hand, for half of its members, is to be elected by the workers and employees, which makes it necessary to appoint "an eleventh member", in case a casting vote becomes necessary in an equally-divided board meeting<sup>2</sup>. This super-numerary member, under present law, must be jointly chosen, or agreed upon, by both shareholders' and staff representatives. The main point at issue in current discussions is the position of the Labour Director. His situation, it is true, will never be an easy one. Under Company Law, he has the same rights and duties as all the other members of the Management Board, but in contrast to his colleagues, he may only be chosen by the members of the labour force, and this opens up a vast potential of conflicting loyalties.

<sup>2</sup> It appears that the Biedenkopf Commission has ignored this problem. It advises the legislators to increase the proportion of "labour" representatives on the supervisory boards of all big public companies from one third to more of the total membership, but as the Commission argues that companies are essentially "purpose-directed economic units", shareholders' representatives, in its view, are to retain their overall majority. It therefore proposes a division of supervisory boards into shareholders, staff representatives, and "co-opted members" in the ratio of 6:4:2. But what will happen if and when the two "neutrals" should join forces with the representatives of labour — which is certainly possible and conceivable?

Apart from this, it is certain that there has never been and never will be, a change in company structure and/or company purpose which does not produce hardship and discontent. No reasonable management of today will believe that it may "hire and fire" people at will. It will endeavour to proceed by persuasion and work out carefully agreed long-term plans and programmes. Any labour director will be able, in such a situation, to fight for the interests of the staff with more determination than traditional staff managers or establishment officers can ever attempt to do. Incidentally, the Biedenkopf Commission proposes to make the appointment of labour directors mandatory in the future. From the point of view of the economy as a whole, no harm will be done by resisting more strongly the blandishments of a purely technocratic philosophy. No valid reason has been found for abolishing the labour director's office, as long as suitable personalities can be found for such appointments. It seems to be more important for Government to do what it can and should do for planning more deliberately and carefully than hitherto for increasing the mobility of labour, by a more selective promotion of training and re-training in agreement with the necessities that can be foreseen in view of the development of production technology. The trade unions, for their part, will have chances to include in their wage negotiations—as they have done in metal industry—formal agreements on "protection against rationalisation". The outlay required under this head, however, ought not to be a burden on the individual companies only but might, in a similar way as workmen's compensation of accidents at work, be financed by contributions levied on all companies because in the absence of such a scheme, technological progress and reorganisation which has become imperative might be abandoned.

### The Power of Capital

The influence of labour representatives on the supervisory boards of large companies—the second bone of contention in the discussion about "qualified co-determination"—will often be over-rated, because the powers of this controlling authority over management had been reduced progressively and decisively since the twenties. Those who are afraid of future changes are mostly shareholders because, when the issue is how much of the profits earned should be distributed, it is likely that representatives of labour might side with management in advocating the strengthening of reserves and show preference for companies using self-financing methods. Even increased capital savings accumulated by employees would hardly affect this inclination, unless such

savings assume the highly disputable form of "share in ownership" in the assets of the employing company.

Conflicts between staff and management are more likely to arise from management decisions on mergers and capital concentrations than from those on investments. In this field, however, the representatives of labour on supervisory boards may, in due course, come to act as the advance guard of government encouragement of competition. For the economy as a whole, greater publicity about merger projects will not at all be harmful. To achieve this, of course, members of supervisory boards must be obliged to report frankly to the workers they represent at least to the same extent as the boards of management must inform shareholders under paragraph 131 of the German Company Law. German law, as it stands, does not contain, to its great detriment, the required exemption from board members' duty to keep company secrets.

Objections, from the point of view of macro-economics, against co-determination are mainly based on the fear of dangers implied by a "cartel of the social partners", i.e. of ganging up by employers and the employed against the consumers, especially regarding the question of prices of a given company and, possibly, that of demanding State subsidies for its production. It is actually on record that there have been some such cases, which tend to be harmful. But their numbers would grow, if the recommendations of the Biedenkopf Commission should be adopted of cutting down the share of trade union representatives in supervisory boards membership and by increasing the share of workers' representatives selected from companies' own staff. It may confidently be assumed that board members who come from outside the company would tend more than those from the inside to bring more generalised views to bear on decisions regarding price policy. And effective co-determination via supervisory boards is also inconceivable without some expert knowledge and experience, which is not often found among representatives of workers and employees of a company.

#### Enforced Greater Publicity

Seen on this background, the frequent protests against "outsider interference" by the trade unions appear largely hollow, quite apart from the fact that shareholders often vote by proxy, delegating their right to co-determination to bank managers who, as members of supervisory boards, are also outsiders. Even if trade unions learn more of company secrets, through the representatives nominated by them (who still have to

be confirmed by their election through the staff), than they actually do, there is no great likelihood that they are interested in letting themselves be suborned as industrial spies by competing firms. For their collective wage agreements covering whole branches of the economy nationwide, they will anyway need information of quite a different type.

Big companies will have to get used to enforced greater publicity. In view of the vastness of their labour forces, their large numbers of shareholders, and the many favours they claim and receive from fiscal measures, not to speak of their frequently huge importance for certain regions of economic geography of a country, their decisions simply cannot remain their own private property. For this purpose, there is not even a big difference as to whether a business above a certain size is operated as a public or private company. To recommend the exemption of private companies from "qualified co-determination" rules, as the Biedenkopf Commission has done, one has to believe in a special philosophy about "family businesses" and their excellence. The only economically relevant criterion is size of a business, because otherwise, a premium will be placed on rewriting company articles for the sole purpose of evading the law.

Taking all in all, there is no earthly reason why co-determination of the kind which began to be practised in the coal and steel sector—of which even the Biedenkopf Commission has confirmed the satisfactory operation—should not apply in the future to all businesses of a similarly large size. Simply judged on their merits, it is high time to destroy their privileged position.

It has to be admitted, however, that the legal form which Germany has chosen to deal with these problems is only one of the several possible kinds of structural organisation of society. Therefore, it may easily be understood that trade unions who have been built on different traditions and experiences shy away from being tied to company interests and entwined with the fate of business, preferring to send their officials and militants into the fray of open battle.

In contrast to them, the trade unions of the Federal Republic seem to be followers of Joseph Schumpeter, who stated that all those who have not acquired the habit of endlessly repeating Marxist rosary prayers will normally advocate co-operation between the employers and the working classes. In the state of public opinion in the Federal Republic, German trade unions can be sure to have selected the correct tactical approach. Co-determination has, after all, been among the foundation stones of the almost complete absence of industrial strife in West Germany.