

# WORKER PARTICIPATION IN MANAGEMENT: A COMPARATIVE VIEW OF THE POTENTIAL EUROPEAN INFLUENCE ON SOUTH AFRICAN INDUSTRIAL RELATIONS\*



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## OPSOMMING

*Die konsep van werkersdeelname in besluitneming in ondernemings geniet tans baie aandag, op sowel die teoretiese as die praktiese vlak. In hierdie artikels, die eerste van 'n reeks van twee, word 'n deeglike oorsig gegee van die Wes-Duitse stelsel van "Mitbestimmung" (Mede-bestemming). Die studie dek onder meer die geskiedkundige ontwikkeling van die stelsel, wetgewing en sekere praktiese aspekte, asook 'n vergelyking met benaderings en praktyk in verskeie ander lande. Die vraag word gestel in watter mate die Duitse stelsel van arbeidsbetrokkinge, wat in baie opsigte as model van industriële demokrasie kan dien, na Suid-Afrika oordraagbaar is. Alhoewel hierdie studie hoofsaaklik die agtergrond vorm vir die tweede artikel, waarin die moontlike toepassing van die stelsel in Suid-Afrika in meer besonderhede bespreek sal word, word dit voorlopig genoem dat die Duitse stelsel nie sonder meer hierheen verplaas kan word nie, onder meer weens die groot verskille in die vlak van ekonomiese en sosiale ontwikkeling van die bevolkings in die hoogs-ontwikkelde Duitsland, en die ontwikkelende Suid-Afrika.*

## 1. INTRODUCTION

Workers' participation in the decisionmaking in enterprises represents, at present, one of the most prominent issues, not only on the academic plane of industrial relations theory, but in the 'real' world of socio-economics and the day to day dynamism of labour orientated social policy. The demand of labour for at least a share in the ownership of undertakings and the advocacy of workers' rights to partake in the making of decisions which affect, as is claimed, their lives in equal measure as that of management, if not even more so, is nothing new. Tied to the evolution of social thought in the wake of European industrialism at the beginning of the 20th Century in general and the broad, divergent streams of the labour movement in particular, the concept of workers' participation gained major impetus in the post World War II period. New directions in the socio-economic orders and socio-political concepts in Western European countries during this period synthesized workers' participation and cast it in the mould of 'democracy'.

## 2. INDUSTRIAL DEMOCRACY IN ITS SOCIAL, IDEOLOGICAL CONTEXT

### 2.1 The divergence of interpretations

From the plethora of what has been said and written on 'industrial democracy' it becomes only too obvious that no consensus has been reached as to its demarcation and procedural realization. Rather, it appears

that there are as many designs of institutions for industrial democracy as there are interpretations of the concept 'democracy' in general terms, ranging between collectivistic and individualistic orientations, and voluntarism and mandatory determination, to mention only some parameters of the classical problem of achieving the optimum 'social justice' for the individual and society alike.

That workers' participation in its connotation of industrial democracy has dissociated itself from its function as a mere management technique and as a feature of entrepreneurial personnel and social policy, and has become a fundamental political issue, is obvious. (1, p. 2) Whereas in the United States workers' participation acquires the connotation of workers' involvement under organizational behaviouristic aspects and in the area of job enrichment, and methods encouraging workers to identify themselves with the objectives of the company are aimed at an improvement of work organization and communication at shop floor level, the 'democratization' of the work process by workers' participation in Western European countries aims at a redefinition of the respective roles of ownership, management and workers in their social power constellation. (1, p 2) Labour, and not management, has taken the initiative in this redefinition, and not at enterprise level, but in the social framework in total. (2, p 25) The focal point of this drive is not an improvement of what in Herzbergian terms might be classified as hygiene or intrinsic factors, but a redis-

\* The first in a series of two articles dealing with the German workers' participation system, discussing the implementation and implications of the system, and the possibility of the application of some of these concepts in South Africa.

tribution of social power via the property mechanism. In fact, the former is said to be pursued at the cost of the latter. (3) To labour, the ownership of large enterprises entails a privilege for social power, a privilege which is regarded as incompatible with an 'industrial democracy'. (4) The vision of an industrial democracy in these terms thus represents the strongest challenge to traditional prerogatives of management in the socio-economic framework, and to ownership on the socio-political plane. Its strongest opponents have called it 'cold socialization'.

## 2.2 Political and industrial democracy

### 2.2.1 *The enmeshment under divergent social concepts*

As the perceptions of 'democracy' differ in their political orientations, so interpretations of 'industrial democracy' range from normative abstractions such as "... the abolition of any factually unwarranted domination of man over man, the introduction of the highest possible degree of self-determination and co-determination by man in all aspects of his social life" (3, p 5) via the creation of institutions geared to a redistribution of 'social power' by eliminating the 'unnatural' dichotomy between labour and capital in the decision-making process in industry, (5) but mainly as social premises, to the full confrontation of the parties in the collective bargaining process and the freedom to exercise their strength within voluntarily accepted, common sets of rules. (6)

Democracy as understood and practised in the industrial situation thus reflects the ethics of the political system under its own, prevalent interpretation of the concept. Conversely, it could be argued that the procedural rules in the 'democratic' process of interest and power balancing are conceptually transferred from the socio-political to the socio-economic sphere. As, however, in industrially maturing countries 'society' and 'industrial society' are synonymous concepts and socio-political and socio-economic ethics are inextricably enmeshed, a neat compartmentalization of their derivatives and a clear differentiation in the ethics of 'political' and 'industrial' democracy is futile. The institutions of workers' participation in the decision-making process in enterprises thus present themselves in many mutations over a wide spectrum in the image of prevalent social concepts, ideologies and political systems.

### 2.2.2 *The premises of absolute socialism*

In socialistic countries such as the USSR, organized labour, under the auspices of the unity party, is integrated into the functions of the state and thus 'participates' in decision making at the highest level. It represents an integral part of the bureaucracy directing the planned economic system. (7) As the institution of private property, and thus the object and cause of the 'labour/capital' dichotomy has been conceptually eliminated, the functions of management and labour

are regarded as identical. (8) A polarization of interests and, more so, a possible confrontation, is excluded *a priori* as it would constitute a logical inconsistency within the ideology of communal property and state capitalism. The functions of enterprise trade union committees, if considered as works councils at all, must be seen in the light that "... the soviet trade unions conduct all their activities under the guidance of the communistic party ... (and) ... rally the masses of workers and other employees around the party and mobilizes them for the struggle to build a communistic society". (9)

### 2.2.3 *The premises of reformatory, democratic capitalism (10)*

In contrast, on the other side of the spectrum, stands the American perception of labour's power and participation in decision making. As the concept of democracy is founded in the social market mechanism, and competition is seen as an ethical component in society in general, industrial democracy rests on the acceptance of the 'capital/labour' dichotomy and of collective bargaining between wage earners and owners on this basis in particular. Not a complete negation or a partial reduction of the dichotomy by an institutionalized social power reallocation process, but its acknowledgement as an intrinsic and unalienable element of individualism constitutes its very core: Private ownership and free enterprise, the naturally divergent interests of individuals and groups, free competition between these groups on their respective power bases and the institutionalized framework of the free play of the market forces.

In the view of reformatory capitalism, workers' participation is contained in the democratic process of free, vigorous and hard collective bargaining over the proceeds flowing from the economic process. A joint deployment of the means of production is rejected by management and labour alike, the latter feeling that the responsibilities entailed in joint management would limit it in its freedom to obtain the largest possible 'slice of the cake'. (11)

### 2.2.4 *The premises of reformatory, democratic socialism*

Between these two poles, the many forms of workers' participation produced by reformatory socialism can be found. Efforts are aimed at a reform of socio-economic and political institutions by pressure on both, the industrial and political fronts for the achievement of social equality between capital and labour. The democratization of industrial life is perceived as a redistribution of economic, and thus social power.

Depending on the extent to which this redistribution and reallocation is envisaged, workers' participation and industrial democracy present themselves in the form of workers' self-management in Yugoslavia (a reactionary movement away from complete socialization on the Soviet model), (12) workers' representa-

tion on the boards of nationalized industries as in Britain and in state undertakings in India, (1 p 1) works committees with a strong trade union and political link as in France and Belgium (13) and, finally, parity representation of workers by worker directors on the control boards of German companies and the concept of co-determination in the German industrial relations system. (14)

### 3. THE KEY POSITION AND POTENTIAL INFLUENCE OF THE GERMAN CONCEPTS OF INDUSTRIAL DEMOCRACY

At a time when the question of trade union rights of workers in general, and workers' participation in some form in particular, has also become a topical issue in South Africa and a crucial point of departure, not only in its industrial relations system, but also in its implications on the country's orientation in its socio-political concept, (7, pp viii-x) the German system assumes particular significance.

The system represents a prototypical compromise between elements of socialism and late capitalism, or neo-liberalism for that matter, though this assessment contains the considerable danger of oversimplification. Secondly, the view advanced very often in developing countries of 'taking the best from both systems' has found its practical realization in the German socio-economic order and has brought to the fore certain logical inconsistencies. Thirdly, the German solution partially reveals the problematic and contradictions contained in the question as to how an industrial democracy should be introduced, developed and promoted — mandatorily by legislation or voluntarily, by agreements between employers and organized labour with the state in an abstaining role. (15) If an industrial democracy in the image of democratic socialism entails a forceful redistribution of ownership of the means of production by the legislative, it ceases to be democratic in its intrinsic connotation. Conversely, if it aims only at a changed mix in a mixed economy, it cannot be regarded as socialistic. (16)

Fourthly, the system represents the most advanced attempt to realize in practice the ethical claim that "... employees who invest their lives in a company, like shareholders who invest their capital, have a right to influence decisions" and to realize fundamental concepts of justice on the grounds that "... the ordinary worker invests his labour and ties his fate to his place of work. For this reason he has legitimate claim to have a share in influencing various aspects of company policy." (1, p 4)

Lastly, it is the strong influence of the concept and system of German industrial democracy within the countries of the European community (17) which make the implications of the German system significant on an international level, South Africa not excluded. The Proposal for a fifth directive on The Structure of Sociétés Anonymes of the Commission of the European Communities provides for the harmonization

of company law in the member countries, integrating into the envisaged uniform law workers' participation in the form of workers' directors on the control boards of companies. (18) The adoption of the German precedence in this proposal is clearly discernible and thus gives the German industrial relations system a pace-setting rôle in Europe, as can be deduced from the findings of the Bullock Commission (19) and the controversy and developments in Britain ensuing in its wake. (20)

### 4. SOUTH AFRICA'S EXPOSURE TO EUROPEAN INFLUENCES

As far as South Africa is concerned, it can be expected that some of the implications of industrial democracy on the German model will manifest themselves in two ways: Firstly, through the tie of German investments in South Africa to their mother companies, in the shorter term. It is reasonable to assume that a parity control board of a German mother company would, and in actual fact for ethical reasons would have to be, more than sympathetic to the 'democratization of work life' and the creation of a similar structure in its South African 'branch'. (21)

Secondly, some influence will be exercised in the long term through the investments of European companies being in the process of harmonization with the German model. (22) The direct effects of the EEC code and the precedents it has already set in South Africa is an adequate basis for speculation on future developments. (In one particular instance, black workers exposed the management of their British-owned company to considerable embarrassment. They demanded trade union recognition in the literal fulfilment of the code which management, though free to grant it, refused on the grounds of the very same principles of voluntarism obtaining in Britain). (23)

Formal measures may become binding on European companies in South Africa within the legal complexity of multinational companies, and may thus advance European style workers' participation in South Africa at some time in the future. At present, however, it is the informal pressure and the implied threats of sanctions and disinvestment in the event of South Africa's failure to 'democratize' its industrial relations in self-understood European terms that assume the greatest importance. (24)

Basically all codes and resolutions (25) of importance directed at change in South Africa, with the exception of the Sullivan Code, demand workers' participation in its most fundamental form: The granting of trade union and collective bargaining rights on an undifferentiated basis, and a unitarian industrial relations structure. To South Africa, the seemingly necessary and eventual compliance with this demand will undoubtedly have far-reaching implications.

Firstly, the applicability and practicability of the policy of separate or multi-national development in the

industrial situation will be strongly challenged. Secondly, and simultaneously, the differential institutionalization of workers' participation will be of crucial significance. Workers' participation as embodied by works and liaison committees, but only for black workers in terms of the Bantu Labour Relations Regulation Amendment Act 1973, would change in its basic essence. (26) Supported by a strong union movement from 'the outside', committees might well change their character from management technique inspired bodies, and present a somewhat stronger challenge to management prerogatives than that contained in the presently so-called 'tea and toilet' issues.

Lastly, and probably most importantly, industrial democracy in South Africa in European terms would raise the question of the country's present and future position on the continuum of social ethics in terms of collectivism and individualism.

The key position of the German industrial relations system and its unique interpretation and controversial, yet influential, practical implementations of 'industrial democracy' under both aspects has been sufficiently stressed. A further discussion of the implications which German developments hold for South Africa requires a brief description of the functional structure and underlying ideology of the German industrial relations system itself.

## **5. INDUSTRIAL DEMOCRACY IN THE FEDERAL REPUBLIC OF GERMANY**

### **5.1 The basic philosophy**

Democracy in industrial life in Germany is perceived as a transfer of the basic rights contained in the 'Basic Law' of the constitution (27) to the economic sphere and has become embodied in the concept of 'co-determination'. Co-determination entails the rights of workers, in analogy to democracy in the political sense, to participate actively in the decision-making process which influences and governs their work life, their economic conditions and thus their whole life as such. Co-determination in Germany has been advanced by institutionalization to such an extent that the industrial relations system of that country has served as model of industrial democracy. This, of course, on the premises that the institutionalization of co-determination, and 'parity co-determination' in particular, is a valid criterion and major determinant of a democratic industrial order in the wider frame of the socio-economic, political framework.

From the facts that, firstly, the commitment to an 'industrial democracy' is commonly deduced from the basic rights contained in the constitution of 1949 (27, art 1-19) but that, secondly, the nineteen 'basic rights' articles of the constitution are open to ideologically opposed interpretations, the German industrial relations system acquires its particular character in a fusion of diverse political, social and economic doctrines.

### **5.2 The structure**

The German industrial relations system can be regarded as a three tier model in which the company's extraneous 'capital/labour' relationship is linked with the company's indigenous 'employee/management' relationship as formed in the works council system. The basic principle in this arrangement is that all negotiations for an industrial agreement take place outside of the enterprise and on an industry union basis. By contrast, the works council is enterprise related and is built on an employee/employer (management) relationship. Its basic purpose is aimed at the realization of effective workers' participation in the daily affairs of the company as far as these affect workers as 'employees' of the latter.

In addition, and independently of the works council system, employees are represented on the supervisory (control) boards of companies.

This briefest characterization of the German industrial relations system represents, however, a simplification and fails to convey the enmeshment of socio-political forces and the practical implications of the industrial democracy philosophy. Rather than a relatively static, three tier, functional model, the German industrial relations system should be regarded as a model of social dynamism with three major impulses, although a clear separation between the latter and their deterministic interaction in the system is difficult to make at most times.

In South Africa 'co-determination' and 'workers' participation', despite the institutionalization of some of the basic principles in the Bantu Labour Relations Regulation Amendment Act 1973, assume the characteristics of a management technique and are perceived by management as mutants of job enrichment and psychological factors in motivational terms. The German interpretation of workers' participation, in contrast, is strictly delineated in legal terms. 'Participation' exists when the employer has the duty to inform employees of certain matters and intended measures, and to consult with them on their implementation. In contrast, 'co-determination' implies a range of 'co-decision' rights and makes a decision of the employer dependent on the consent and approval of employees.

### **5.3 The institutions of co-determination**

Co-determination in the latter sense permeates the whole German industrial relations system but assumes different forms and degrees at various levels in and beyond the enterprise. Simplified, three levels and forms of co-determination can be distinguished:

- Co-determination at works council level in individual and collective, shop floor and daily affairs;
- Co-determination at supervisory (control) board level in policy decisions and the management of the company;

- Co-determination through negotiation at industry, but either local, regional or national level.

These three distinct components can be demonstrated in the simplified model of Figure 1. Every one of the three enterprises standing as representatives for all enterprises forming an industry has a works council through which workers participate in the day to day, shop floor level affairs of the company.

The link between the works council and trade union members on the shop floor and the trade unions is represented by the 'Vertrauensleute', the trustees of the trade unions. (28)

Distinct from these works councils, employees and shareholders are represented on the supervisory boards. The supervisory boards constitute the highest level of the company at which the company's general policy is formulated and from which the board of management is appointed. At industry level, employers' associations and industry unions negotiate industrial agreements. This, in essence, is the German industrial relations system.

## 6. TRADE UNION RECOGNITION AND COLLECTIVE BARGAINING

The basic collective bargaining positions in the German industrial relations system represent no exception to the common rules of voluntarism except that no plant unions may exist and that the principle of 'one enterprise-one union' dominates the system.

The negotiations for an industrial agreement are initiated by a letter of notice and a letter of demand and lead, in the case of fruitful negotiations, to the conclusion of a new agreement. The number of agreements concluded in the Federal Republic amounts to approximately seven thousand per year. (29)

It is customary that two agreements with overlapping periods of validity are concluded between trade unions and employers' associations. One agreement, the 'Tarifvertrag', concentrates merely on the wage aspect, the other, the 'Mantelvertrag', on general working conditions and social matters. The advantages in separating wages and working conditions as focal points in separate negotiations are obvious: A separation between the wage aspects proper and social conditions in the work environment enforces a concentration in the negotiations on relevant issues, creates a relatively unemotional, sober negotiation climate and brings about a de-politization of economic issues.

Should the negotiations come to a standstill, arbitration is initiated by the trade unions and employers' associations. A failure to reach an agreement by arbitration releases the negotiating parties from their duty to maintain industrial peace and entitles them to initiate 'industrial war' measures, with a strike or lock-out being the last resort conducted only if all other means to settle a dispute are exhausted. A strike

is subject to the relevance of the subject matter, must be conducted on the principles of a fair fight and may be conducted only for the enforcement of the terms of an industrial agreement. General and political strikes are prohibited. (14, pp 33-43)

In accordance with the underlying principle that an interference by the state in the negotiation, arbitration and strike processes is undesirable and that the negotiating parties should be free to regulate their own affairs, no legislation has been passed stipulating explicitly the steps and conditions involved in the reaching of an industrial agreement. The 'Tarifvertragsgesetz', the Industrial Agreement Act, consists of only eleven articles and regulates only the most essential principles applicable to an agreement in a broad framework.

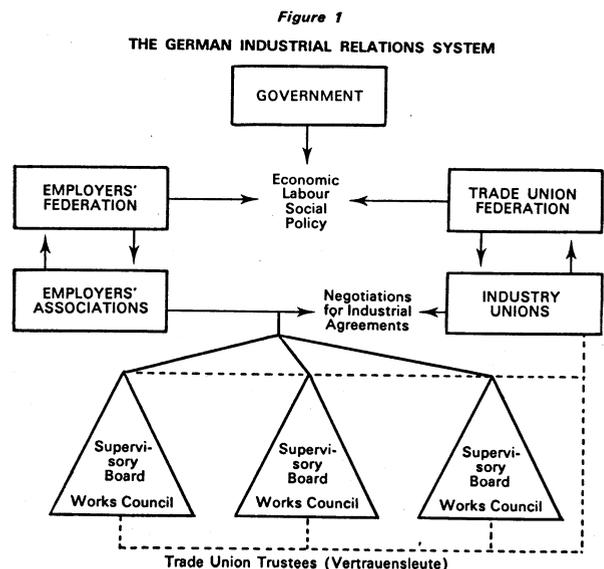
The most important condition, that is the duty to maintain industrial peace during the validity of an agreement and the duty to comply with the terms of the agreement, are not stipulated in the Act as they apply by general deduction in any case, whether they form a part of the agreement or not.

Of great importance is the 'Tariffähigkeit', namely the legal entitlement, competence and ability of the negotiating parties to conclude an industrial agreement. Representing the basic criterion for recognition, the 'Tariffähigkeit' is a prerequisite for the 'Tarifautonomie', the ability to negotiate free from the influence of any other party.

The industry level at which collective agreements are concluded thus represents the primary and exclusive area of negotiations between trade unions and employers.

## 7. THE LEVELS OF EFFECTIVE WORKERS' PARTICIPATION

Workers' participation and co-determination is effected at the supervisory board level and within the



enterprise through the works council system. At both levels, co-determination rights are legally entrenched, but vary in their degrees of effectiveness.

At supervisory board level, the co-determination right of workers is exercised by their representatives' status as full directors of the company, at par with the representatives of the shareholders. Their co-determination rights are thus not limited to specific decision areas, but extend over the total scope of the company's policy formulation process at board level.

At the works council level, participation in the day to day affairs of the company and the decision-making process range over the wide spectrum of participation, co-decision and co-determination with specified rights to consultation and information and rights of approval and rejection related to specific decision areas.

For the purpose of a further discussion of the institutions at the various levels within the enterprise and the infra-structure of the total economic system, it is necessary to differentiate between co-determination 'proper', namely the implied co-ownership in the deployment of the resources of the company at control board level, and 'deterministic' participation in the form of joint regulation of the 'social contract' at works council level.

In 1976, a Co-determination Act (30) was passed which prescribes the equal representation of workers and shareholders on the supervisory boards of companies with more than 2 000 employees, thus expanding the concept of co-determination in its proper connotation. This Act has given rise to the hottest disputes on the constitutional legality in the wider socio-political framework of the Federal Republic. Before this controversy can be discussed, a short resumé of the history of co-determination and the development of 'industrial democracy' prior to the passage of this Act is necessary.

## 8. THE HISTORICAL DEVELOPMENT OF CO-DETERMINATION

### 8.1 The pre-World War II period

The drive towards co-determination founded in the '... fight for democracy in work and economic life ...' (31, p 283) has always been the core objective of European organized labour, and German labour in particular. In its basic concept, co-determination in the European or German meaning has its roots in the evolving labour philosophy of the middle of the 19th and the early 20th centuries. "Revolutions liberated man only as a citizen. They were not able to remove the actual cause of human enslavement rooted in work life." (31, p 283)

Although unambiguously socialistic in character, the thinking in the direction of co-determination in Germany did not manifest itself in the form of a revolutionary enforcement of co-determination on a large,

abstract and collective level as demonstrated by the precedence of socialistic countries, but in piecemeal reform to the present stage. Table 1 contains a short summary of the historical steps leading to the present structure of the German industrial relations system.

The beginnings of legislation leading to co-determination in Germany can be traced to 1891. (31, pp 283-299) Following the growth in the labour movement and the miners' strike of 1890, basic rights of participation were granted to workers. The 'Trades Regulations Act' (32) of 1891 made provision for the establishment of works committees subject to the approval of the employers concerned. These committees were to be consulted and were entitled to offer comments and suggestions prior to the passing of a regulation affecting their work in the enterprise.

1905 saw the great miners' strike, the growth in the social democratic party and the trade union movement, and the amendment to the 'Prussian Mining Act' (33) making the establishment of works committees in mining enterprises with more than 100 employees a legal requirement.

During World War I, (1914 to 1918), with the gentlemen's agreement of all political parties, labour and the state, to bury all differences for the time being and to concentrate on the war efforts in order to bring about an early victory, the 'Patriotic Services Act' (34) was passed in December 1916. This Act made the establishment of blue and white collar works committees in all armament industry enterprises with more than 50 employees legally binding. The collapse of the imperial state in 1918 was followed by the spontaneous and revolutionary rise of a multitude of worker and soldier councils, as well as the formation of a 'Socialization Commission' which prescribed blue and white collar works councils for enterprises with more than 20 employees.

The years 1919 and 1920 were overshadowed by revolutionary movements, the formulation of numerous councils and socialization associations, mass strikes, the "... fight of labour for total power" (31, p 286), in short, rather chaotic circumstances.

In August 1919, the Weimarer Republic was founded. Its Constitution provided in article 156 for the socialization of the economy. In article 163 it established the right — and moral duty — to work in the interest of the community and in article 159, very similar to article 9 of the 1949 Constitution, the basic trade union rights. Article 165, for the purpose of an effective execution of the socialization law, envisaged a democratic, economic order — an industrial relations system — under the auspices of works councils at plant level, regional industry works councils and a national works council as top of this hierarchy.

The Works Council Act of 1920 (Betriebsrätegesetz) prescribed the establishment of councils in all enterprises with more than 20 employees. In 1922, the representation of works councils on the supervisory

boards of companies was enacted. (35) This enactment, and the development of the General German Trade Union Federation's 'revolutionary reformatory' programme during 1925 to 1928 represented the last step in the direction of socialization efforts and attempts to establish an industrial democracy in these terms before the period 1933 to 1945, when these concepts were changed drastically. Co-deterministic thinking had to be shelved and had to wait for its revival and further development until the post-war period.

The constitution making process prior to and during 1949 held the tenor of a compromise between the social forces of the body politic. From the polemic between the two basically different interpretations of the desired social, economic, political and industrial order, the practical implications of co-determination crystallised and manifested themselves in the Montan Co-determination Act of May 1951, (36) the Works Constitution Act of 1952 (37) and its amended enlargement of 1972, (38) and the Co-determination Act of 1976. (30)

## 8.2 The Post World War II period

### 8.2.1 The Montan co-determination Act of 1951

The Montan Co-determination Act constituted the first step towards the legal entrenchment of practical and active worker participation in the general policy formulation process of German companies in the post war era. Its ideological heritage leads back to 1928.

The reformatory programme of the *Allgemeine Deutscher Gewerkschaftsbund* represented the last phase in the general and broad formulation of the co-determination concept before the ensuing period of suspension of all trade union activities. The strongly prevalent sentiment in 1928 culminated in Fritz Naphtali's declaration during the ADGB congress in this year. Naphtali declared that "... an industrial democracy and socialism are inseparably connected in the final count. The objective of the industrial democracy, a really democratic development of the economy, cannot be realized within the capitalistic economic system." (39, p 18) It appears that this sentiment found its strong revival in the political clash over the applicability of the Montan co-determination Act of 1951.

In the reconstruction, but pre-constitution period of 1947 to 1948, the British Military Government and the newly founded trade unions had come to the agreement to revive the heavy iron and steel industry under joint worker/shareholder management at the highest level of the company, the supervisory board.

Although the trade unions saw in this agreement an advance of their reformulated programme and claimed it to be a step forward in their interrupted programme towards the achievement of co-determination and a democratic industrial order, (2, pp 7, 13) British policy played a large role in this achievement. North Rhine

Westphalia contained more than half of the total population of the British zone and three quarters of the total German heavy industry, and the joint worker/owner management of these strategic industries were, among other policy features, thought to be an effective measure to eliminate the potential danger of a fast re-armament of Germany.

In January 1950, the *Deutscher Gewerkschaftsbund* demanded the extension of the parity co-determination system, applicable to the coal, iron and steel industry, to all enterprises. (39, p 16) Protracted negotiations started, yet no consensus was achieved. Employers accepted workers' participation and a system of co-determination in principle and were prepared to concede to employees an equal say in the personnel and social fields. However, they disputed strongly the extent of parity co-determination in basically economic and financial decisions at the highest level of the enterprise, if not co-determination on whatever power basis in this field at all.

Before the first bill of the Montan Co-determination Act could be read in Parliament, the *Deutscher Gewerkschaftsbund* threatened to enforce its demand by industrial war and called a general vote (2, p 16) of its members in the iron and steel and the mining industries. In early 1951 Germany was thus threatened with her first general strike, a political strike which, by the interpretation of article 9 of her new Basic Law, was unconstitutional as it would have been intended to pressurise the legislative to a certain action. An extra-parliamentary commission was appointed which finally achieved a grudging consensus. The Montan Co-determination Act of 1951 was enacted in Parliament in May 1951, amid serious threats of strikes by the trade unions.

Figure 2 contains a schematic representation of the parity co-determination model under the Act. This model is applicable to all public companies in the coal, iron and steel industry with more than 1 000 employees. As a rule, the supervisory board of a company consists of 11 members. Companies with a share capital of more than DM 20 million and more than DM 50 million may extend their boards to 15 and 21 members respectively. (59)

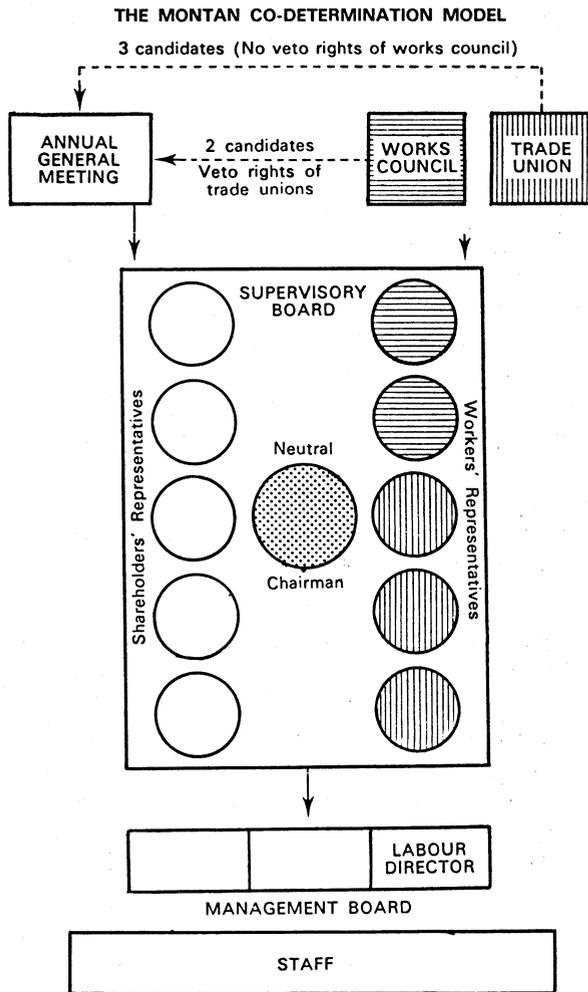
A supervisory board composed of 11 members has been chosen for the example in figure 2. This board must be composed of

- four representatives of the shareholders and an additional member
- four representatives of the employees and an additional member
- an additional member. (36, para 4:1)

The neutral chairman of the supervisory board is elected by all other members of the board. For his election, a majority of 3 votes on either side is required.

The supervisory board appoints the board of management in accordance with the stipulations of article 75

Figure 2



of the German Companies Act (36, para 12). The particular feature of the Montan Co-determination Act is the appointment of an *Arbeitsdirektor*, a labour director, to the management board. The management board constitutes the legal and executive organ of the company and, like all other members of this board, the labour director assumes the full status and responsibilities of a director.

The appointment or dismissal of the labour director is subject to a majority decision within the *labour* faction on the supervisory board (36, para 13). This majority accrues automatically to the trade union representation. The labour director must, therefore, have the confidence of the trade unions and can thus be regarded as an extension of the trade unions into the company's management board. The theoretical implications resulting from his dependence not so much on the employees of the enterprise, but on the trade unions are, however, strongly rejected by the latter.

The labour director is responsible for all personnel and social matters, and it is obvious that, in theory and in practice, his *dual status* creates delicate situations in dealing with trade unions, particularly in the negotiation of industrial agreements.

### 8.2.2 The Works Constitution Act of 1952

The initial formulation of the Works Constitution Act of 1952 occurred parallel to the development of the Montan Co-determination Act. Apparently, it had different considerations as the basis of its motivation. The objective of the Act was to create and protect a partnership by granting to all employees a spectrum of participation rights in the daily operations of the company through their elected works councils. The ruling principle of the Act is that the works councils and employers co-operate on the basis of good faith, trust and confidence and thus promote the success and welfare of all employees and that of the total enterprise alike.

It was in these terms of reference that employers accepted and even advocated the co-determination principle, and also accepted employee representation on the supervisory board, but tenaciously and vehemently defended themselves against the introduction of parity co-determination on the Montan model (39, p 16).

Since the Works Constitution Act of 1952, as far as it relates to the functions of the works council, is largely substantiated by the Works Constitution Act of 1972, it should suffice to point out merely the basic provisions which refer to the composition of the supervisory board and which still apply to companies not falling under the Montan Co-determination Act or under the Co-determination Act of 1976 (40, paras 76, 77).

The Works Constitution Act of 1952 stipulates that the supervisory boards of all public companies (41) must contain representatives of the employees to the extent of one third of all board members. This employee representation is elected by all employees of the enterprise in a direct, secret voting procedure. Candidates may be suggested by the Works Council, but not by the employer or by trade unions. In comparison to the Montan Co-determination model, trade unions are thus expressly excluded from any functions in the enterprise. Yet, it cannot be denied that they still exercise, at least unofficially, considerable influence.

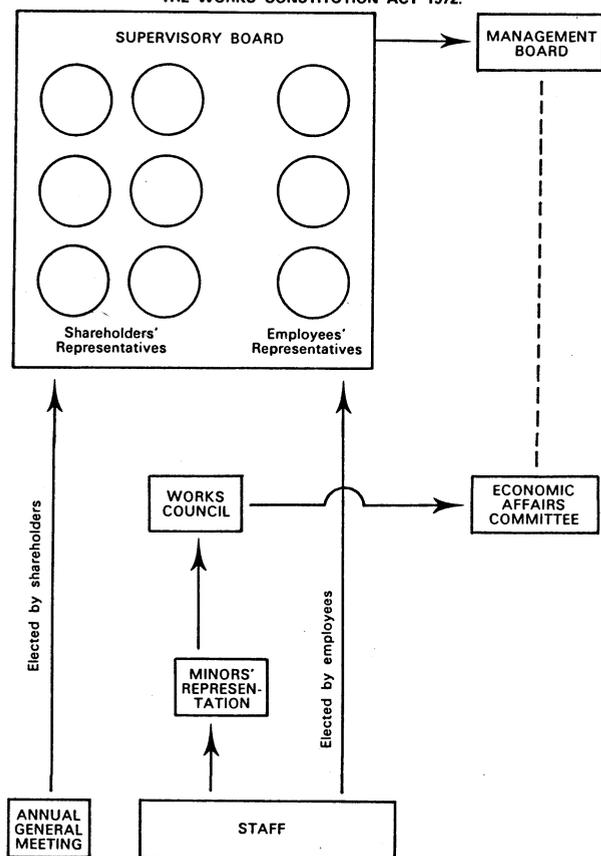
### 8.2.3 The Works Constitution Act 1972

#### 8.2.3.1 The machinery of the Act

Independently of the employee representation on the supervisory board of the company, participation and co-determination rights are vested in the works council. These rights concern all decision areas in the day to day affairs of the company as far as they affect the employees. Personnel, social and works regulation matters obviously rank very high in concern.

A model of the composition and functioning of the works council appears in Figure 3. Works councils can be established in all enterprises with five and more employees who are entitled to vote on reaching the age of 18 years. Eligible employees must have been

Figure 3  
THE STRUCTURE AND FUNCTION OF WORKS COUNCILS AND WORKERS' REPRESENTATION ON THE SUPERVISORY BOARDS OF COMPANIES UNDER THE WORKS CONSTITUTION ACT 1972.



employed for at least six months (4, paras. 1, 7, 8, 9). Depending on the number of employees over 18 years of age, the works council consists of one to 31 members, with additional representatives available to enterprises with more than 9 000 employees.

In accordance with the German division between blue collar and white collar personnel, the works council has to be composed proportionately of both categories of employees. Minority representation becomes effective provided that the minority group exceeds a total number of five and constitutes at least five percent of the total personnel (42, para 10).

The same regulation applies to the representation of minors on the works council (42, para 62). The works council should be composed in proportion to the employees in the various departments, the trades and occupations represented in the enterprise, as well as the sexes.

Members of the works council are entitled to conduct their business during working hours and are also entitled to a certain amount of leave with full pay for the purpose of receiving training relevant to and required for their activities as councillors (42, paras 37, 39, 40, 44). This training is usually conducted by the trade

unions. Depending on the number of employees in the enterprise and the size of the works council, works council members may be released from their occupational duties so that they can give full-time attention to their duties as councillors for their total period of office (42, para 38).

The works council has to convene a general meeting of all employees once per quarter calendar year, where it has to account for and report on its activities. The employer has to be invited to this meeting and he, or his representative, is entitled to address the meeting. In addition, the employer or his representative has to submit a report to the meeting concerning the personnel, social and economic position and development of the enterprise. Trade union or employers' association representatives may be invited to attend these meetings and may act in advisory capacities (42, para 43).

If a works council consists of nine or more members, it forms a permanent committee which conducts the running business of the council (42, para 27). In all enterprises with more than 100 employees, an 'economic affairs committee' (42, para 106) is formed, with the task to consult with the employer on economic matters, and to inform the works council accordingly.

The areas of concern to the economic affairs committee are:

- *The economic and financial position of the enterprise*
- *The production and market position*
- *Capital investment, automatization and rationalization*
- *Production and work methods, particularly the introduction of new methods*
- *The retrenchment or dissolution of enterprises or plants and their transfer to other areas*
- *The merging of enterprises and plants*
- *Changes in the organization, the product mix of the company or the general purpose of the enterprise and*
- *All other intentions and decisions which affect the interest of the employees.*

The primary objective of the Works Constitution Act, 1972 and that of the works council system is the realization of the partnership concept by the institutionalization of participation and co-determination rights. Works councils and employers are subject to an unconditional duty to maintain peace within this framework, and industrial war measures at enterprise level, by and through the council system, are prohibited. This prohibition does not, by any degree, limit the company extraneous employer-trade union relationship subject to its own rules and regulations (42, paras 1, 74).

### 8.2.3.2 The participation and co-determination rights under the Act

#### Social matters

Full co-determination rights are vested in the works council in all social matters delineated by the terms of article 87 of the Act. These include:

- All work regulations of the enterprise, the beginning and end of the work day, the distribution of the work time over the work week, work breaks, arrangements of shifts, overtime and the temporary shortening of work times
- The time, place and manner of the paying of wages and salaries
- Leave arrangements and the relevant time schedule for individual employees and groups
- The introduction and application of time and performance controlling devices, e.g. time clocks, flex time systems and production records
- Safety regulations and health protection measures
- The administration of social institutions directly related to the enterprise
- The allocation of company housing and applicable regulations as far as housing forms a part of the employment policy of the company and
- Questions relating to the internal wage structure, particularly under the aspect of changes in work techniques, reorganization and piece rate systems.

#### Personnel matters

The works council has the right to be informed of all matters relating to personnel planning, that is the present and future manpower needs of the enterprise and the training needs arising from the personnel plan. It has the right to submit relevant suggestions for the execution of such plans (42, paras 92, 99). In individual personnel matters such as the restructuring of work groups, individual employment, induction and transfers, the works council has full co-determination rights in the form of veto resolutions.

The works council has to be informed of every dismissal by the employer. Every dismissal has to be motivated. "A dismissal which has not been submitted to the works council for consideration is invalid," (42, para 102:1). The works council may exercise a veto on this dismissal under certain conditions and take the matter to the labour court. Any dismissal thus requires the silent approval of the works council.

### 8.2.4 The Co-determination Act 1976

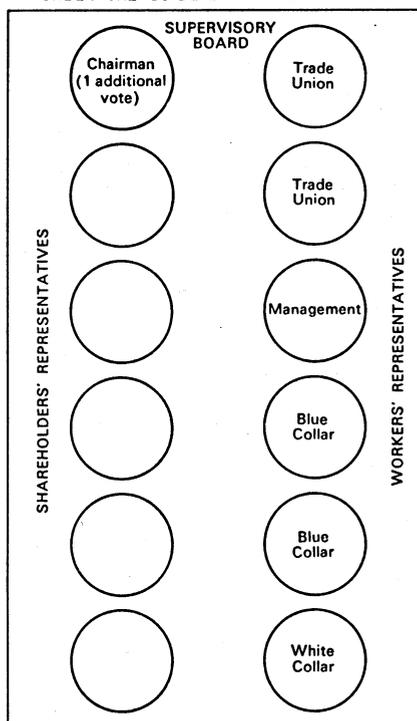
The demand of the trade unions for 'parity' co-determination was by far not satisfied by the passing of the Montan Co-determination Act 1951. They persevered in their endeavours to have this model extended to the remainder of all enterprises. However, until 1969, no parliamentary majority was prepared to introduce measures relevant to the promotion of the co-determination principle until an expansion of co-determination was selected by the Social Democratic-Liberal Coalition Government as a major point

in its social reform programme. (43) The first bill of the Co-determination Act was read on January 19, 1974, from which, after several readings and the submission of many models — and as a compromise — the Act became effective on May 4, 1976 (39, p 15).

In no way does the Act affect the Montan Co-determination Act 1951, or the Works Constitution Act 1972 in its intrinsic application. The major substance of the Co-determination Act 1976 consists of the restructuring of the supervisory boards of all public companies with more than 2 000 employees from one third employees' representation to 'parity' representation, that is, the representation of employees and shareholders in equal proportions on these boards. It is estimated that approximately 600 to 650 enterprises in the Federal Republic will eventually be affected by this Act which, at a first glance, does not appear to be an impressive number. If, however, it is considered that all major companies not falling under the Montan Co-determination Act 1951 are concerned, for example Siemens, Hoechst, Farben Bayer, Volkswagen, Daimler-Benz and other giants, producing approximately 50 percent of the total industrial output, (44) the picture changes and suggests that structural social changes will take place in the wake of the provisions of the Act.

The Co-determination Act 1976 prescribes that, depending on the size of the company in terms of employees, the supervisory board consists of twelve, sixteen or twenty members. The composition of a supervisory board for a company with more than 2 000, but not more than 10 000 employees, is described in Figure 4. The representatives of the shareholders are elected by the annual general meeting and are repre-

Figure 4  
THE PARITY CO-DETERMINATION MODEL  
UNDER THE CO-DETERMINATION ACT 1976



sented by the seats on the left of this model. Supervisory boards with twelve or sixteen members contain two union representatives; boards with twenty members three union representatives on the employees side. The remainder of the employee representation, in this case four seats on the board, is composed proportionately of blue collar workers, white collar employees and management personnel with minority representation rights guaranteed for each category of employees. The chairman of the supervisory board is elected by a two-third majority of the total board.

Should any vote on decisions to be taken by the board come to a deadlock which, with the view to the parity representation is likely to happen, the chairman of the board may exercise an additional vote in a second round of voting. The supervisory board appoints the board of management which is to contain a labour director. (45) This labour director has, however, little more than his title in common with the labour director of the Montan Co-determination model. Although his primary function lies in the personnel and social field of the enterprise, his appointment is not subject to the approval of the trade unions or their representation on the supervisory board, but merely to the normal election procedure of the total supervisory board members in their capacities as directors.

The introduction of the Co-determination Act 1976 represented the last step towards the institutionalization of an industrial democracy.

## 9. THE PRESENT FRAMEWORK OF THE GERMAN INDUSTRIAL RELATIONS SYSTEM

If the schematic representation of the German industrial relations system in Figure 1 is recalled, the German industrial relations system can be summarized in its essential characteristics as follows:

Wages and working conditions are negotiated between employers' associations and industry unions on local, regional and, theoretically, national levels.

The Works Constitution Act 1972 applies to all enterprises with more than five employees.

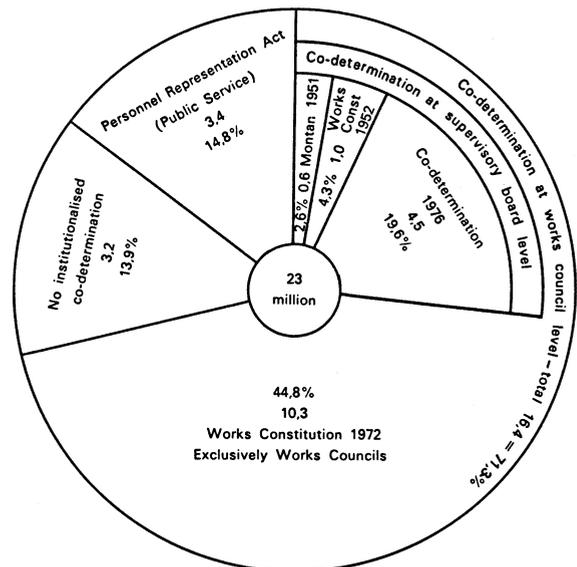
Enterprises in the coal and heavy iron and steel industry have a supervisory board with an equal representation of employees and shareholders under a neutral chairman and a labour director on their board of management whose appointment requires the approval of the unions.

Companies with more than 2 000 employees in all other but the coal, iron and steel industry have a supervisory board equally composed of employee and trade union representatives on the one side and shareholders on the other. The chairmanship with a second vote in the case of a draw is held by the shareholders' representatives.

In companies with less than 2 000 employees, employees are represented on the supervisory board to the extent of one third.

Figure 5 reflects the distribution of the total German work force in respect of the co-determination rights accruing to them under the relevant pieces of legislation.

Figure 5  
THE DISTRIBUTION OF PARTICIPATION AND CO-DETERMINATION RIGHTS AMONG THE GERMAN WORK FORCE IN TERMS OF THE RELEVANT ACTS.



## 10. PRELIMINARY CONCLUSIONS

To what extent are the principles of the German industrial relations system, serving as model of industrial democracy under many aspects, transferable to South Africa? This question has been raised at the outset and requires, at this stage, and answer, at least as far as the principles of transferability are concerned. A final and more detailed answer has, however, to be withheld until the effects of the passage of the Co-determination Act 1976 on the German social concept have been examined in their own environment. An attempt in this direction will be made following the discussion of the controversy over the constitutional legality of the Act, in a separate article in the next issue of *Business Management*.

The question of transferability automatically involves a comparison of the relative stages of economic and social development of countries. It is obvious that an industrial relations system in general and the form of workers' participation in particular assume different shapes, and also express different priorities in an environment of highly advanced technology, high standards of general education, a well-trained, skilled labour force, a high level of employment and a high standard of living on the one side, and a developing country with a proportionately small labour force, a high degree of illiteracy and relatively adverse economic conditions on the other (1, p 1).

South Africa does not fall into either category. In the African context, South Africa is the industrially most

advanced country. Compared with the maturing industrial countries of Western Europe, however, a considerable time lag in the industrialization process can be discerned. By these standards, South Africa can be regarded as an industrializing, rather than an industrial country, still evidencing 'developing' features.

An effective industrial relations system must concentrate on the most pressing needs of its community, and thus assumes its social character partially by the functions directed towards the fulfilment of these needs. As these needs change in an evolutionary process, the social character of an industrial relations system and the philosophy of workers' participation may also change. Both are never static. In its functional efficiency, an industrial relations system must effect a compromise and strike a balance between the factual economics of production, the cognitive socio-politics of distribution and the affective ideologies of economic and social justice.

Also, in order to qualify for the status of a model, an industrial relations system has to satisfy three basic criteria. It has, firstly, to be based on the consensus of its participants which means simply that all concerned must, on balance, be satisfied with their place and role in it. Participants must also be satisfied with the second criterion which requires that the system is effective in realizing its individual and collective social and economic priorities. Thirdly, in compliance with the scientific nature of models, an industrial relations system must be universally applicable — or transferable.

In contrast with the first two criteria which constitute the basis for tests of the system on its intrinsic value and relevance, the third criterion expresses the ambition for absolute standards. The mere fact, however, that every industrial country has evolved its own particular industrial relations system with essential differences in practices and socio-economic concepts suggests that the stage of universal model building has not yet been reached.

The logic enforces itself that in the South African industrial relations system, in its present stage of development, the emphasis in terms of priorities must still fall heavily on economic issues and fundamental institutions of workers' participation, rather than on the intricate design of abstract institutional processes transplanted as complete entities from other countries on different planes of economic and social maturation.

The theory has been advanced that all socio-economic systems and the nature of their institutions converge on the common basis of industrialization, a theory which, by observation of the European situation, acquires a certain amount of predictive validity. Complete convergence is, however, still far distant and this fact excludes a transfer of complete industrial relations systems for the foreseeable future. Yet all systems contain certain elements and components which,

transferred to conducive conditions, might bear fruit in their new environment. Transferability in degree is thus possible, but impractical in total.

Institutions of workers' participation such as work councils and particularly workers directors on control boards of companies evolved in other industrial and social climes cannot be easily transferred to other countries. Yet individual features that have proved themselves and promise to produce similar results in their new constellation might justify their imitation. The originality of such an approach lies not so much in the invention of completely new concepts, but in the combination of principles into one new, effective construction. Throughout the world, "... workers' participation is no longer a question of 'whether' but of 'how'," (1, p 15) and it is in this sense that the 'modernization' of the South African industrial relations system demands, by necessity, a very original approach.

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