THE MEANING OF CODETERMINATION

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CODETERMINATION is the name applied to the present major policy and program of the German Federation of Trade Unions (Deutscher Gewerkschaftsbund) or DGB. Much has been written in many languages about this program, but its meaning and intent seem to have remained unclear. In the United States especially, there exists a tendency to identify codetermination solely with legislation, enacted in West Germany in 1951 and 1952, which grants the trade unions representation on the managing boards of most corporate enterprises. Thus, codetermination is regarded merely as an innovation in labor-management relations.¹ It is, however, more than existing law, more than a novel approach to union-management relations. To the West German trade unions it represents, in fact, a comprehensive system of social, political, and economic thought aimed at transforming society. It is both a credo and a program designed to alter fundamentally West German society. Unfortunately, most American observers have failed to recognize this. They have been inclined to ignore the fact that the DGB conceives of codetermination as “the core of a social and economic reorganization” of West Germany.² Yet, the DGB is a powerful force, and its activities may profoundly influence the development of the second German republic. It is important, therefore, that the DGB’s principal program be understood in the terms in which it has been conceived. The purpose of this paper is to provide such an understanding by clarifying the more comprehensive meaning of codetermination.

² Bundesvorstand des Deutschen Gewerkschaftsbundes, Gesetzzvorschlag des Deutschen Gewerkschaftsbundes zur Neuordnung der deutschen Wirtschaft, Duesseldorf, May 22, 1950, 28. The entire passage reads: “It must be clearly seen that the codetermination of labor is the core of a social and economic reorganization which is characterized by the absolute equality of capital and labor.” This document will be referred to in the remainder of this paper as Gesetzvorschlag.
I. CODETERMINATION AND ECONOMIC DEMOCRACY

The German trade unions emerged, after years of banishment, convinced that democracy cannot survive if it is limited to the political sphere. They believe that labor's goals, identified with those of the nation, are attainable only if democratic principles are applied in other areas of life, particularly the industrial and economic. As the "Principles of Economic Policy," adopted at the founding convention of the DGB in 1949, state, "The experience of the years 1918-1938 has taught that formal political democracy does not suffice for the realization of a truly democratic organization of society. The democratization of political life must be supplemented by democratization of economic life." It is to attain this end, economic democracy, that the DGB has developed its program of codetermination. In fact, Walter Freitag, President of the DGB and a Social Democratic parliamentary deputy, said during a parliamentary debate, "We should not speak of a right of codetermination, but of democratization of the economy." And the document which contains the essence of the codetermination program, the DGB's "Proposal For a Law Concerning the Reorganization of the German Economy," says, "The unions' demand for the codetermination of labor and its organization is the logical supplementation of our political democracy. We may not again construct a state in which our public life is organized in accord with democratic principles while the economic organization remains fastened in enlightened absolutism. . . . The DGB demands, therefore, a continuation of the start once made toward a really democratic organization of our economy. . . ." As a system of thought, then, codetermination is to be identified with economic democracy. As a program, it is to be identified with institutional changes which the DGB believes are essential if democracy in West Germany is to survive.

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⁷ Gesetzworschlag, 28.
⁸ Cf. Fuer und Wider die Mitbestimmung der Arbeitnehmer in der Wirtschaft, Duesseldorf, no date, 3. The statement on which this is based reads: "The struggle for the right of codetermination means . . . the existence or non-existence of democracy in general." This brochure will be referred to in the remainder of this paper as Fuer und Wider. See also V. Agartz, The Trade Unions in the German Federal Republic, Duesseldorf, 1950. Dr. Agartz is the director of the DGB's
The idea of economic democracy has been widely discussed for many decades in western Europe. Unfortunately, the term has been used in so many different contexts and in so many different senses that, as Professor Schumpeter has remarked, "it has retained very little precise meaning." General agreement exists, however, that economic democracy means mainly the participation of workers qua workers in policy-making within industry and/or the economy. It is only when more rigorous definition is attempted that disagreement arises, since the general definition leaves several most important questions unanswered. For example, is economic democracy to mean that workers share only in decisions relating to pensions, bonuses, and welfare arrangements, and to matters of health and safety, or are they to share in policy-making in matters of discipline and organization, of production techniques and methods, of marketing and finance? A more rigorous definition of economic democracy clearly requires that the particular decisions in the making of which workers are to participate be delineated. Again, the general definition says nothing about the nature of participation by workers. Is it to be confined to criticism or giving advice when it is requested, or is it to extend to suggestion and advice on their own initiative, or even to taking part in executive decisions? If the definition of economic democracy is to be made rigorous, the extent to which workers are to participate in the making of decisions must be precisely stated. Finally, more rigorous definition requires an answer to a third question, namely: Is worker participation in decision-making to take place only within the enterprise or is it to extend to the industry, or even to the economy? The level of the economy on which workers are to share in the determination of policy must also be indicated if the definition is to be made rigorous.

Institute for Economic Research. He says on page 6, "The Trade Unions' demands are based on a real desire for democracy as they believe that only active participation of the workers in and their contribution to an autonomous democratic administration will make it possible to construct a democracy and to maintain it."


9 This question and the preceding one have been posed by Professor D. H. Robertson in his The Control of Industry published in New York in 1948. See page 150.
These three questions and the variety of answers they permit indicate why the meaning of economic democracy lacks precision. If economic democracy, and consequently codetermination, are to be understood in the sense which the DGB intends, then the DGB’s answers to these three questions must be clearly stated. As a preparatory step, however, it is necessary, by drawing on German discussions of codetermination, to classify the forms which worker participation may assume; to establish the levels of the economy on which it may occur; and finally, to delimit the areas of decision-making within which worker participation may take place.

II. FORMS OF WORKER PARTICIPATION

The forms which worker participation may take can be differentiated on the basis of the extent of workers’ influence on decisions and their responsibility for them. Using this basis of differentiation, two major categories appear which are called in German discussions Mitwirkung (cooperation) and Mitbestimmung (codetermination). In the former, cooperation, workers or their representatives may influence policies, but ultimate decisions remain the prerogative and sole responsibility of some other authority. In the latter, codetermination, workers and their representatives share responsibility with some other authority since they control decisions either to the extent of co-making them or to the extent of being able to prevent their execution. In addition, each of these basic forms may exist in a number of variations. Unfortunately, German discussions of this problem of classification reveal no agreement about nomenclature and utilize a bewildering myriad of types of both cooperation and codetermination. It is possible, however, to group


11 The word “authority” is used to represent enterprise management, either private or public; quasi-governmental bodies such as the Chambers of Commerce in Germany; governmental administrative agencies such as our Wage Stabilization Board; and local, state, or national legislative bodies. As will become evident below, the DGB seeks worker participation in decisions made by all such bodies.
all the types which have been suggested so that four kinds of cooperation and three kinds of codetermination suffice to show adequately the variations of each of the basic forms.

Types of Cooperation

The most rudimentary type of cooperation is the right to information (Informationsrecht). It may be defined as the right of workers to be informed about decisions and their results. This information may be provided by the decision-making body on its own initiative or it may be obtained upon request or through independent investigation by representatives of the workers. The workers or their representatives do not participate in the decision-making process, but this right enables them to obtain "a survey and insight for the purposes of general orientation, ... [an orientation which serves] as a basis for the other types of worker participation." 12

The next type of cooperation, the right to protest (Beschwerderecht), enables workers to express disapproval of a decision or policy to the decision-making and administrative authority. The workers have the right to present their grievances to such bodies and these bodies are obliged to consider and evaluate them. As one writer has expressed it, "The worker has the right to present a petition about things which trouble him or which he considers important, and the body [i.e., the decision-making authority] has the duty to take cognizance of this expression of disapproval and to judge and evaluate the petition accordingly [i.e., evaluate its soundness]." 13 A protest does not, however, prevent a decision from coming into force.

The right to suggestion (Vorschlagsrecht) is the third type of cooperation that may be defined. It concedes to workers or their representatives the privilege of notifying the decision-making authority, on their own initiative, of their wishes and plans with regard to decisions and policies. The authority need not wait for suggestions before making the decision, nor must it consult with worker representatives before executing the measure in question. The right to suggestion grants workers the privilege of a hearing but offers no guarantee that the opinions expressed will in any way affect the ultimate decision which remains the prerogative of some body in which the workers qua workers are not represented.

12 A. Koestel, op. cit., 178.
13 J. Welty, op. cit., 113.
Finally, cooperation may exist as the right to consultation (*Bera-
tungsrecht*). It has become well known in this variation in the
English-speaking world, as the result of the experiments during and
after World War II with "joint consultation" and labor-manage-
ment committees. In this type of cooperation the decision-making
authority is obliged to consult with workers or their representatives
before a decision is made and executed, but the decision itself is
made solely by the authority. The consultation is used only as a
source of information and as preparation in arriving at a decision.
Clearly, in "joint consultation" the rights to information, protest,
and suggestion are also recognized if the consultation is to have any
real meaning. However, the decision-making authority initiates the
consultation and sets both the time and place of discussion subject
only to the obligation not to execute a decision before discussion
has taken place. "If the authority transgresses this obligation then
the workers can protest and this protest results in suspension of the
decision until it is ruled on by some arbitrating agency." 14 Of
course, if no arbitrating agency has been provided for, suspension of
the decision can be brought about by use of any other legal means
available to the workers. This right to block execution of a decision
taken without prior consultation makes this last type of cooperation
a bridge to the types of codetermination.

These definitions indicate that, though the extent of workers' influence on decisions increases as we pass from the right to inform-
ation through the rights to protest and suggest to the right to consult, in none of the types of cooperation do workers actually control decisions and their execution. They may exert varying degrees of influence but ultimately the decision-making power is reserved for some other authority. In the three types of codeter-
mination, on the other hand, the workers do have a measure not merely of influence but of control over the decision-making process.

**Types of Codetermination**

The most elementary type of codetermination which may be isolated is the right to veto. It may exist in two sub-types: the temporary veto (*Einspruchsrecht*) and the permanent veto (*Zu-
stimmungsrecht*). Both confer on workers or their representatives the power to "invalidate decisions already made and conceivably

14 A. Koestel, op. cit., 179.
being executed” 15 by some other authority. A declaration by the workers or their representatives that a certain decision or action is disapproved postpones execution of the decision or interrupts the action. 16 In the case of the temporary veto, the postponement or interruption leads to discussion and negotiation of the matter being questioned—to collective bargaining. If no agreement can be reached, then, as in collective bargaining, two possible courses are open: one, the matter may be referred to arbitration; or, two, the authority may proceed with execution of the decision or with the action, and the workers may resort to strike or any other legal means for bringing the decision or action in line with their views. 17 In the case of the permanent veto, however, the decision cannot be executed until the consent of the workers is obtained. “If consent is never given, execution must not take place.” 18 Also, the permanent veto permits workers a greater degree of control over the decision-making process in another respect. The temporary veto can be used only after an authority has made a decision and placed it in effect. In the permanent veto, on the other hand, the opportunity for exercising the veto power must be given before the decision becomes operative. Consequently, it is sometimes referred to as the right of control (Kontrollerecht). 19

The right to codecision (Mitentscheidungsrecht) is the second type of codetermination which may be defined, and in the view of some it is “the most expressive and truest form of codetermination.” 20 The prerogative of decision-making is shared by the workers and their representatives and some other group or groups. “The parties come together from the start to discuss a matter, exchange opinions, weigh arguments for and against in order ultimately to obtain a binding decision . . . ” 21 Each party is given the

15 Ibid.
16 It will be noted that the right to veto differs from the type of cooperation called the right to protest by virtue of the fact that use of the right to veto delays or prevents a decision from coming into force while use of the right to protest does not.
17 The suspension of a decision discussed above in connection with the right to consultation may be regarded as a special case of the temporary veto. There the right to veto is confined to the situation in which a decision is made and executed without prior consultation. Here the right to veto is more general, since even decisions not subject to consultation may be suspended.
18 A. Koestel, op. cit., 179.
19 C. Mannheim, op. cit., 175.
20 J. Welty, op. cit., 115.
21 A. Koestel, op. cit., 179.
opportunity to present, substantiate, and defend its view before a
decision is made. And the decision may be achieved ultimately as
a result of persuasion or compromise as in collective bargaining, or
as the result of a majority vote within a body empowered to make
decisions in which the workers are represented. Of course, if the
latter procedure is followed, it appears to be implicit that "co-
decision" occurs only when the parties to the decision are equally
represented in the decision-making group.\footnote{However, see the opposite view expressed by Welty, op. cit., 114.}

The last type of codetermination which may be defined is the
workers’ right to make decisions subject to the veto right of some
other body (Entscheidungsrecht). This right to make decisions is
the converse of the veto power described above. The right to veto
grants the workers or their representatives the power to overrule
decisions made by some other person or group of persons. In the
right-to-decision, the initiative in decision-making has shifted to
the workers while the veto is the right of some other body. This
type of codetermination probably represents the greatest degree
of control which workers may exercise in decision-making in industry
and in the economy.

Thus, the attempt to answer one of the questions posed above—
To what extent can workers participate in the decision-making
process?—suggests the following classification:

| Cooperation                                      | Codetermination                      |
| (Workers influence decisions but are not responsible for them.) | (Workers control decisions and are responsible for them.) |
| 1. Right to information                         | 1. Right to veto                      |
| 2. Right to protest                             | a. Temporary                          |
| 3. Right to suggestion                          | b. Permanent                          |
| 4. Right to consultation ("joint consultation")| 2. Right to "co-decision"             |
|                                                | 3. Right to decision                   |

III. Levels of Worker Participation

A second question posed above indicated that if codetermination
is to be understood the levels of the economy on which workers may
participate in decision-making must be delimited. In German
discussions, two levels of economic government on which workers
may take part in the making of decisions have been distinguished:
the enterprise level (betriebliche Ebene); and the supra-enterprise level (ueberbetriebliche Ebene). The precise content of these terms is rarely stated explicitly. Nevertheless, since economic activity takes place on four levels—the plant, enterprise, industry, and economy—and since it appears that workers could participate in decision-making on each of these levels, the two terms must include all four levels. Consequently, worker participation on the enterprise level is to be interpreted to include the plant level where the enterprise is a multi-plant operation, and worker participation on the supra-enterprise level is to be interpreted to include both the industry and the economy levels.

IV. Areas of Worker Participation

The other question posed above suggested the need to differentiate the areas of decision-making in which workers may participate. In doing so, each of the levels defined immediately above must be considered separately since the nature and scope of decisions on each level differ so greatly.

German writers have discussed worker participation in terms of three areas of decision on the enterprise level; namely, the areas of personnel decisions, social decisions, and economic decisions. Personnel matters include decisions which relate to "the question of the composition and the structure of the work force, especially questions of hiring and firing, promotion, and transfer of workers." When executives or staff specialists are the object of such decisions, however, the decisions are regarded as falling within the economic rather than the personnel area. In addition, decisions

23 Cf. Gesetzevorschlag; C. Mannheim, op. cit.; and L. White, op. cit.
24 Differentiating the enterprise and plant may produce some question, especially when the terms are used loosely and therefore synonymously. Yet it should be apparent that some decisions in a multi-plant enterprise could be made on the plant level and not necessarily have a direct effect on the operation of the enterprise. One example is the setting of the date for the annual vacation. This decision could be made within the plant without reference to an authority governing the enterprise as a whole. Consequently, if the meaning of worker participation in decision-making were not extended to include the plant, such a decision could be made without worker participation even if such participation had been granted on the enterprise level. This is plainly not the intention of writers on the subject or of the "co-determination" laws which have been enacted.
25 R. H. Ruis, Entwicklung und Inhalt der Eroerterungen ueber das Problem des Mitbestimmungsrechts, 1, 2nd ed., 44.
26 Ibid.
relating to on-the-job training and the administration of personnel records are often included in this category.\textsuperscript{27}

The area of social decisions includes "spheres of interest of the worker with regard to the organization and administration of welfare schemes within the enterprise."\textsuperscript{28} It includes decisions which relate to health and safety regulations, and to such facilities as plant kitchens and canteens, day nurseries, convalescent homes, vacation arrangements, benevolent and pension funds, housing, and finally sports and other social activities.\textsuperscript{29} Also within this area are included "ultimately all questions bearing on the working together and living together of the plant community, including the relations between employer and employee and regard for the special traits of particular groups of workers (i.e., women, children, and the disabled). Aside from these, all collective matters affecting working conditions such as determination of hours of work, the time of vacations, etc. are included here."\textsuperscript{30}

The final area of decision on the enterprise level, the economic, consists of technical and "business" matters. The technical decisions relate to new methods of production, new bases for wage-rate calculations, and other decisions involved in production planning and control. "Business" matters are those pertaining to marketing and financial policies. Decisions are included which relate mainly to product lines, sales, expansion or contraction of plant, rationalization, capital investment, distribution and uses of profits, changes in plant organization, fusions, mergers and sales of shares and patents.\textsuperscript{31} The problems in this area are those usually subject to decision on upper administrative levels.

The areas of decision on the supra-enterprise level have not been discussed in detail in Germany. Nevertheless, it may be inferred, particularly from DGB sources, that on this level also three areas of decision may be distinguished which are analogous to but not identical with those on the enterprise level. These may be called the areas of manpower, social welfare, and economic questions. The

\textsuperscript{28} R. H. Ruis, \textit{op. cit.}, 44.
\textsuperscript{29} Cf. \textit{ibid.}, 43; B. Broecker, \textit{op. cit.}, 58; and C. Mannheim, \textit{op. cit.}, 174.
\textsuperscript{30} R. H. Ruis, \textit{op. cit.}, 43-4.
\textsuperscript{31} These listings are based on those found in "The Plant Organization Law" of July 19, 1953, also referred to as the "Works Council Law," as well as those found in the cited works of Ruis, pages 44-5, and Broecker, pages 60-1.
manpower area would include decisions about such questions as education, particularly technical and vocational training, resettlement of population, immigration and emigration policy, and women’s activities. The social welfare area would include social insurance programs, national health and safety regulations, and housing programs. And the economic area would consist of decisions about industrial reorganization, investment policy, price and wage policy, fiscal and monetary policy, and tariff policy. In short, decisions on the supra-enterprise level are those usually made by agencies of the political government.

The answer to the two questions relating to the levels of the economy and the areas of decision-making in which workers can participate in the making of decisions may now be summarized as follows:

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<th>Levels:</th>
<th>Enterprise</th>
<th>Supra-enterprise</th>
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<td>1. Personnel</td>
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<td>2. Social</td>
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<td>Areas:</td>
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<td>b. &quot;Business&quot;</td>
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V. CODETERMINATION IN THE DGB PROGRAM

The categories and nomenclature defined above can be used to give codetermination the meaning intended by the DGB. The trade unions have said repeatedly that codetermination on the enterprise and supra-enterprise levels are an “indivisible whole,” that codetermination will function only if it is made operative simultaneously on both levels. The DGB’s “Proposal for Reor-

24 Cf. DGB Newsletter, October-November, 1952, Duesseldorf, 7.
25 Ibid., 5-7.
29 Fuer und Wider, 24.
ganization of the German Economy” clearly evidences this belief, for its major sections are devoted to a description of the institutional changes sought not merely within the enterprise but also “in organizations of the economy.” As regards the extent of worker participation in decision-making, the content of codetermination varies with the level of the economy on which it is to be exercised. On the enterprise level, it means “co-decision,” but on the supra-enterprise level it means “co-decision” only when decision-making is delegated by legislatures to quasi-governmental agencies. In matters in which final decision remains the prerogative of the legislatures themselves, the program indicates that “joint-consultation” is sought, not codetermination as defined in this paper. Finally, the unions are demanding “codetermination of the organized workers in all matters relating to personnel, economic and social questions of economic management and economic structure”; i.e., in all areas of decision-making on both levels of the economic organization. To summarize, codetermination as embodied in the DGB program may be defined as a form of economic democracy in which workers or their representatives “co-decide” all matters within the plant and enterprise or under the jurisdiction of quasi-governmental agencies, and are consulted before manpower, social welfare, and economic decisions are made and executed by parliamentary bodies.

Clearly, codetermination defined in terms of the legislation already enacted in West Germany will not suffice to make future trade union activity intelligible. On the one hand, such an identification interprets codetermination too narrowly. It omits all reference to codetermination on the supra-enterprise level which, as has been suggested, the DGB regards as absolutely necessary if codetermination on the enterprise level is to succeed. On the other hand, such an identification interprets codetermination too broadly. It suggests that codetermination is synonymous with worker participation in decision-making no matter what form it may take. The consequence of such a definition may be a failure to compre-

40 Gesetzworschlag, parts I and II.
41 Cf. V. Agartz, op. cit., 3.
42 Cf. Gesetzworschlag, 9-23.
43 Ibid., 23-6.
44 The term “codetermination” is used here in the sense of worker participation.
45 DGB Newsletter, October-November, 1952, Dusseldorf, 6.
hend the DGB's discontent with the "Plant Organization Law" of 1952. Even more important, such a definition offers no basis for understanding the course which DGB activity seems to be taking. Only by conceiving of codetermination in terms of the DGB program will it be possible for observers to comprehend the DGB's assessment and evaluation of the laws already passed; and such comprehension is the only key to an understanding of future trade union activity in West Germany.

\footnote{For a description of this course see D. Middleton, "Bonn Unions Seek Goal in Politics," \textit{N. Y. Times}, January 6, 1953.}