Hybrid Participation.
A Hinge between Individual Participation and Institutional Co-determination

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This article addresses a key problem of the German system of co-determination that primarily relates to the changed economic framework conditions of work. It presents a find as a variant of democratic participation that could function as a hinge between direct participation and representative co-determination. As a form of work participation it was included into the German Labour Constitution Act (BetrVG) as part of the major reform in 2001. These forms of 'hybrid participation' can potentially combine institutionally secured practices that are participatory oriented as well. Using own qualitative findings within the framework of in-company development projects and completing it with representative data the text analyses to what extent hybrid participation tools are already in use and what relevant experiences have been made.

Key words: participation, co-determination, industrial relations

In recent times, a growing number of social diagnoses have pointed to a crisis of democracy. The thesis of a "post-democracy" as formulated by Colin Crouch (2004) for the political sphere has similarly been attested for single company or company-wide co-determination processes (see Müller-Jentsch, 1998; Streeck, 1999; Frick et al., 1999). Here post-democratic tendencies can be detected, above all in the increase of co-determination-free zones, in the ongoing retreat from collective wage agreements and/or the extent of their coverage and a fundamental change in the function of industrial relations.

Not a few of the material and democratic achievements previously gained by interest representatives, within the framework of "concession bargaining", have been exchanged for guarantees by management to preserve job or location security (Lewis, 1983; Bronfenbrenner, 2000; for Germany, see Rehder, 2003). Yet apart from this erosion process in terms of co-determination power, we can also discern several innovative developments which go to support the legitimatory foundation of co-determination. This article sets out to present one example of what is known as *hybrid participation,* one which, moreover, could solve a central problem facing the German system of co-determination.

1. Co-existence of direct and institutional participation in companies

As in many other countries, various kinds of direct worker participation, which may be initiated by either the employer or by the employee side, and which may have been nourished by differing motivations, are to be found at companies in Germany. Whereas the participation strategies initiated by management primarily aim at mining the "gold in the heads" of the workers and stimulating their production intelligence, the workers' interests in participation models that relate to the workplace, work structures and work processes may be characterised as *genuine*.

One special feature of the German system is a system of institutionalised co-determination which derives from idea of "equal co-decision rights" for employees and their representatives (Däubler, 1973, p. 7).[1] These rights are exercised by the works council as the representative organ which is elected to represent the interests of the workers and which, to do so, can invoke the rights of co-determination as codified in Germany's Labour Constitution Act.

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[1] In the literature, the term "participation" is used in different ways, probably as the result of a uniformly recognised definition not having established itself. This article will use the term "co-determination" for the statutorily regulated and institutionalised form of worker participation. As such, "participation" here denotes those forms of participation which were initiated by management from the mid-1980s onwards and which pursue another set purpose. This form may therefore be described as instrumental and more situative. Democratic participation may thus be seen as the opposite of management-led participation.

The unspecified relationship between direct participation and institutional co-determination has in recent years continually given rise to discussions which, however, have been conducted with differing emphases, and against the background of differing experiences. At the core of the issue lies the question as to whether representative forms of co-determination might require augmentation and whether therefore the direct participation models need to be broadened out (see Müller-Jentsch, 1997). In this connection, the demand for "co-determination at the workplace", the subject of often intense controversy as early as the 1960s, has been heard. And although that widening-out helps to meet the call for greater grass-roots democracy in terms of work organisation, some representatives of statutory co-determination encountered such proposals with serious reservations that they traced back to an antagonism inferred between the works council rights already gained and management-led "delegative participation" (Greifenstein, 1993).

The difficulty with the co-existence of direct participation and institutional participation apparently lies in the twofold fact that these variants can act not only complementarily, but also competitively to one another, and that a systematic tie-up of the forms in Germany was for a long time not foreseen, neither on a legal nor on an in-company basis. It is from this that my article proceeds. It presents a finding that could function as a hinge between direct participation and representative co-determination as a variant of democratic participation. In doing so, it acts as a form of work participation which was absorbed into the rulebooks with the major reform of the German Labour Constitution Act in 2001. Inasmuch as it tied into the existing rulebooks and modified them incrementally, it made for a specific German solution. Experience gathered since then, however, would suggest more generalisable aspects and may, therefore, be fruitful in terms of an international discussion.

This article will present both variants separately: that of direct participation (Section 2) and that of institutional co-determination (Section 3), the main aim being to delineate in broad sweeps the main traditions and logics inherent to them against the background of German institutional structure. Section 4 will then discuss to what extent the permanent change undergone by the world of work can (still) be understood and processed by means of the conventional set of tools available to representative participation. Section 5

looks at the idea of hybrid participation as a hinge that brings together different critiques of capitalism at a content level as well as merging the different modes of direct and institutional participation into democratic participation. Exactly which arguments played a role in this kind of participation (§§80, 2 (3) and 28a) being adopted by the Labour Constitution Act as amended in 2001 will be set out in Section 6. Using a representative survey of works council officers and my own qualitative findings within the framework of in-company development projects, I will in Section 7 be asking to what extent hybrid participation tools are already in place and what relevant experiences have been made. The ensuing Sections 8 and 9 will discuss forms of participation under the aspect of formalisation and empowerment of institutional representation of interests.

2. Direct participation

The concept of worker participation describes processes and structures relating to the direct participation of (dependent) employees in business enterprises.[2] The concept can refer to: (i) measures taken by management to sound out the advice of workers as to decisions pertaining to their work tasks: (ii) the delegation of responsibility to individuals or groups; and (iii) the empowerment of workers to take their own decisions. Addressed in that process are issues or activities that have an immediate relevance for the workplace, the organisation of work and the working conditions. Due to the diversity of participative concepts and practices, there are in the literature any number of proposals vis-à-vis categorisation, namely, the *range* of participation, the *level* of participation at which participation occurs (task-related, department-based etc.), the *proportion* of workers concerned, the *abundance* of topics that are dealt with on a participatory basis and the different *motives* that lead to the introduction of specific participation tools (see Benders et al., 2000; Marchington & Wilkinson, 2005).

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[2] In the international literature, the definition of participation also includes forms of material participation (see Kessler 2010) and co-operative participation.

The enormous spectrum and variation we observe when it comes to defining "direct participation" is an expression of the specific national development routes and traditions inherent in industrial relations (see Brannen, 1976). As for the debate in Germanophone countries, two central strands of tradition can be identified: a content-thematic discussion of direct forms of participation took place here after the Second World War mainly in the form of "co-determination" (at the workplace). The term *participation* first emerged in a significant way circa 1965 (see Gather, 1970) and was initially inspired by research in the USA into "political participation" (see Milbrath, 1965).

Models for direct co-determination at the workplace as experimentally developed in Germany in the early 1970s emerged on the one hand under pressure from ongoing rationalisation processes in the companies; on the other hand, the models were clearly inspired by the objectives of an economic democracy (in line with Napthali, 1926/1966; see Vilmar, 1975, 1978). Against that background, the labour-policy demands that did prevail were those which again prioritised the "quality of work" and which, based on work humanisation policies, were also be implemented in part (see Neubauer & Oehlke, 2009; Bieneck, 2009). Within the framework of programmes promoted by the state, it was therefore found possible to test different approaches relating to the transformation of work practices by means of directly involving the people concerned on a practical research basis. In line with the programmatic objective of combining rationalisation and humanisation and thus "examining the possibilities of how working conditions can be adapted to the needs of the working people more intensively than hitherto" (in the words of the then Federal Minister of Research & Technology), the research programme provided space for development projects that yielded a whole array of ergonomically sound results and company-based experiences, this with workers participating directly in the shaping of their working conditions. The innovation-related aspects that enable democratic participation were seen above all in the following: the articulation of common interests, values and objectives; the acts of solidarity; the overcoming of a culture of failure; collaboration on an equal basis with line managers and specialists; being aware of and making use of existing rights; and, not least, in the creation of

realistic strategies for action (Fricke et al., 1981). In doing so, and by taking their lead from the tradition of action research, the researchers assumed that neither company managers (including those with the best of intentions) nor outside experts would have been able to design the work process without the participation of the workers according to their aspirations and interests, and ultimately only imperfectly anyway. No-one but the workers themselves, i.e. those who are permanently exposed to the actual working conditions, are in a position to provide adequate deficit analyses and appropriate assessments for alternative design approaches (Fricke et al., 1982). State-initiated institution-alisation processes such as the setting up of the Federal Institute of Industrial Health & Safety, the reform of the Labour Constitution Act (German abbre-viation: BetrVG) and the enactment of other occupational health and safety laws were all aimed at the continuation of active workplace design.

The attitude of the German trade unions to a broadening out of co-determination at the workplace was ambivalent (see here in detail Leminsky, 1985). On the one hand, it had always been a recurring demand of theirs, on the other, many trade unionists feared an undermining of the interest repre-sentation structures already established. Inasmuch as the work humanisation projects of the initial phase had not only given the workers a voice of their own but had also allowed them a direct say in the shaping of their working conditions, this ambivalent attitude risked the solidarity and collective protec-tion of the employee institutions, at least in the eyes of the "participation sceptics" (ibid.).

Although the employers rejected the widening-out of co-determination in principle, and attempts at economic democratisation in particular, they knew how to exploit the humanisation projects as an experimental and learning arena for their own participation strategies (see Peter & Pöhler, 2009). This pragmatism can also be assigned to the state promotion of those humanisation projects where the employers were able to test new flexible working struc-tures with the assistance of qualified labour (Fricke, 2004, pp. 146f.).

From the 1980s onwards, Germany was to see the gradual spread of in-company participative approaches from the management side leading to a revival of the research activities originally launched in the 1960s and 1970s. This time round, however, the focus was on interdisciplinary concepts from

the field of lean production and human resources management (HRM). In the formal sense, both participation offensives were a response to workers' wishes for an improved structure of participation. But whereas the management-led initiatives were driven by the desire to boost productivity and profitability, at shopfloor level the in-company participation projects served to pursue goals of work humanisation and democratisation.

This fundamental conflict of aims came to a head at the end of the 1970s when the trade union wing, no longer prepared to support democratic forms of participation and the development of change in performance policies, made its force felt. In other words, the accusation levelled by the employers, that projects were being misused to import strife into the workplace, received confirmation in that, from then on, a taboo catalogue was declared to be binding by the ministry-cum-project sponsor concerned. The shoots of democratisation of the first programme phase were thus stopped (see also Fricke, 2004).

3. In-company co-determination within the German system of industrial relations: the dominance of institutional participation.

The basic idea behind institutionalised worker participation at the workplace is rooted in the essentially weaker position of employees as opposed to that of employers within the overall corporate structure of hierarchy and power (see Jürgens, 1984; also Burawoy, 1979; Edwards, 1981). And although the freedom of employment contract that obtains for both sides recognises equal rights status at a formal and/or legal level, this does not prevent workers within the framework of their individual contractual relationship having to subordinate themselves to the executive prerogative enjoyed by management. The ensuing structural asymmetry of power can only be shifted in the workers' favour by means of an institutionally anchored representation of interests, in the company via the works councils and staff associations, and by a system of co-determination directed at the equal co-decision rights for employees or their representatives (Däubler, 1973). In addition, co-determination in companies operating in the coal and steel industries or other

capital companies is safeguarded by employee representatives sitting on the supervisory board and the board of directors.

A representation of collectively organised interests is intended firstly to ensure that, in the course of specific day-to-day altercations in the company, an individual employee does not end up in de-solidarising rivalry with another. Secondly, the object of co-determination traditionally bears on the regulation of working conditions that apply to the majority of employees at the same time and in the same way, that is, collectively. That applies in particular to the pay-to-performance ratio which is either set out in the collective wage agreement or which arises from the general performance standard for the entire workforce or working party (see Ehlscheidt, 2006).

Just like in-company agreements that come about as the result of bilateral negotiations, collective wage agreements contain formal rights and obligations for the contracting parties that have a moulding influence on company labour relations. On the basis of binding standards, rules and practices, an attempt is made to configure the working conditions using these collective agreements. Whereas wage agreements are concluded by the parties to the collective agreements: the trade unions and the employer associations (and thus company-wide) in Germany, the company agreements, i.e. the consultation rights vis-à-vis the management side, act as the central tool of a workers' council: they are formally anchored and have to be applied. To do so, the works councils draw on defined tasks as set out in §80 of the Labour Constitution Act, namely, *control* (covering adherence to legal standards and wage norms), *initiative* (covering specific measures laid down by the Act in terms of hazard assessment), and *welfare* (which refers to employees in need of protection). Meanwhile, the Labour Constitution Act affords the works council certain rights of participation which authorise it to be involved in social, personal and economic aspects as well as enforceable rights of co-determination (§87 BetrVG), i.e. the right to co-decide on matters relating to over-time and short-time, the settlement of performance-related remuneration, the principle of the in-company suggestions system etc. The Act also imposes on employers the duty to inform the works councils before the actual implementation of measures. That applies, for example, to introducing time-

limitations on contracts, the deployment of (sub)contract labour and the use of aptitude tests (§80 BetrVG).

The legal anchoring of these rights and obligations, and their observance, has an ambivalent effect on the relationship between the works council and management. If born of a desire to restrict the management's powers of disposition over the workers, this kind of consultation also, ironically, has an alleviating effect for the management side of the institutional structure of representation, as has been pointed out (see Kotthoff, 1994; Eberwein & Tholen, 1990). In many companies, the works councils take on such co-managerial tasks, especially in the context of modernising or restructuring processes (Piorr & Wehling, 2002). Thus they participate in the corporate decision-making process.

The tendency first and foremost to pursue a strategy which safeguards the existence of the companies, and which therefore may be deemed as a co-operative strategy, was also in evidence with many East German works councils during the period of structural transformation. In the struggle for economic survival, they came together with management to form an "emergency association" (Senghaas-Knobloch, 1992; Kempe, 1995) in which the works council repeatedly assumed responsibilities that went well beyond the participative framework as provided for in the Labour Constitution Act. Even today, that culture of conflict and trade-union involvement that emerges from the traditional opposition of interests between capital and labour plays a less significant role with many East German works councils than with their West German colleagues (Kädtler & Kottwitz, 1994; Röbenack, 2005).

4. The crisis of institutionalised co-determination

That brings us to a problem of institutional co-determination that primarily relates to the changed economic framework conditions of work. Since the 1990s, there has been a shift in political power relationships that goes hand in hand with a recommodification of labour. It is in this context, then, that, at a time of job cuts and international wage competition, many of the material and democratic achievements previously fought for and gained by interest representatives were given up in exchange for management guarantees that jobs

and locations would be maintained and secured. This process is known as "concession bargaining".

One fundamental phenomenon of the crisis was the result of constant change in the world of work in general and in the substance of work in particular: changes with which the tightly structured institutions that make up the German system of co-determination could not keep pace. This is why traditional labour-policy concepts in the German culture of co-determination and latest developments in the field of working conditions are frequently unable to adapt: they now require a hinge, as will be presented later in this article.

Changes in the world of work are taking place against the background of developments that might be subsumed under terms that are linked with new demands on workers such as the tertiarisation, informatisation (Schmiede, 1996), acceleration (Rosa, 2011), flexibilisation and subjectivisation of labour (Moldaschl & Voss, 2003). The momentum common to all these development tendencies lies in the growing pluralisation and polarisation of labour that poses new challenges for any strategy of workplace design and labour policy. Against this background of increasingly precarious working conditions, it will become more and more necessary. If somewhat oversimplified, today's world of work can be characterised for two main strands that look set to continue in the future: on the one hand, there is a burgeoning area of subjectivist (knowledge) work and, on the other, the spread of atypical and precarious work. One only needs to consider the expansion of subcontracting and peripheral working as well as contract labour, currently an issue. Both strands lead to a situation where existing rights, rules and practices are subverted or simply no longer adaptable.

An attempt will be made below to explain to what extent the traditional forms of institutional co-determination, seen within the context of change in the world of labour, reflect current problems and/or symptoms of crisis.

1) Differentiation of workforce
Over a long period of time, in-company policies of co-determination were to develop on the basis of a more or less coherent frame of reference shaped by

a "Fordist standard employment contract"[3] that provides for fixed conditions of deployment and use of labour. Comparatively speaking, this homogeneity coincided with the interests of a core workforce of skilled employees, interests which were bundled and codified by the trade unions and the company representatives in collective agreements.

Increasing differentiation on the workforce landscape now demands from the works councils more complex policies of interest representation: both from the viewpoint of thematic diversity and specificity, and with a view to the workers and their employment status. Such policies can only be realised if works council members systematically check back with the workers and seek their participation.

2) Problems of co-management

Researchers in the field of industrial sociology in Germany began to investigate quite early on the intriguing and even tense position of works councils within a system of company labour relations, identifying them as a "borderline institution" (Fürstenberg, 1958) or as an "intermediary institution" (Tietel, 2006) that has to mediate between the interests and action logic on the part of the company management and those on the part of the workforce. The ensuing "integration problem", as Fürstenberg calls it, can be solved by that type of works council that acts as a co-manager and that proactively takes on managerial tasks for the well-being of the company as a whole. In this case, the contribution to the corporate decision-making process tends to involve new topics such as work organisation. However, if the co-managers gives equal ranking to company well-being and workforce well-being alike, they run the risk of losing sight of corporate policy alternatives and, ultimately, of being instrumentalised.

If workers' representatives help to shape negotiations with management on a participation-oriented and open-ended basis, they not only raise their credibility. Democratic processes of participation similarly provide an opportunity for decisions to be run through consultative and reflective procedures

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[3] "Standard employment contract" is usually understood to mean a permanent full-time job unlimited for time and based on salary or wage structures resulting from collective bargaining agreements.

in advance or give feedback on decisions arrived at. All this can be implemented at a practical level by means of, say, employee surveys (Becker et al., 2011) with which works council members can also tap into resources of legitimacy (Rehder, 2006). Experiences made in the course of various work humanisation projects of the 1970s: the Peiner Project, for instance, in which workers attended workshops and drew up concepts for improving their working conditions (see Fricke et al., 1981, 1982), could also be drawn on here. Added to which, the field of action research provides an array of in-depth findings generated by organisational practice (see Fricke, 2012).

3) Paradoxes of professionalisation

Closely connected with this in the everyday practice of the works council is an observable tendency towards a certain professionalization, which has its advantages and its disadvantages. An increasing number of works council members are seconded from actual work for several periods of office (Greifenstein et al., 2011) and thus have an opportunity to acquire for themselves the corresponding skills and expertise in terms of carrying out their function of protection and co-determination. In contrast, secondment can lead to a situation where the representatives become alienated from the interests of the workforce they represent, this being manifested in works council members taking on a role image and, for purely strategic reasons, merely acting out a part as "representatives". What is problematic here is a form of representationalist policymaking which recognises only selectively the interests of the workforce, which dismisses any criticism from the workers as inexperience, and which acquiesces in lack of political commitment, even viewing it as a confirmation of their own political style (see also Haipeter, 2010). Works council members thus run the risk of succumbing to the problems of oligarchisation and, perhaps, of placing their own interests above the concerns of the workers they represent. Typical for such distinct representationalism is a situation where any mobilisation of the workforce will proceed in a non-systematic fashion; it is at the most a demonstration of power or, at times of negotiations with the management, it rustles up a suitably threatening atmosphere. This form of pseudo-participation may therefore be viewed critically, since it causes the enormous potential that worker mobilisation entails to sputter out as a resource. Indeed, there are numerous examples where work-

ers, who repeatedly have the experience of seeing their participation come to nothing, either develop signs of participation-fatigue or reject it completely from thereon in.

4) Internalisation of control and coordination
The fourth and final point here relates to a growing replacement of hierarchical or general external controls by modes of governance which address labour as the subject and which take its subjectivity into account (Moldaschl & Voss, 2002). By which we mean that the transformation problem usually the onus of management: that of converting the labour so purchased into specific work performance (Braverman, 1985), is shifted to the workforce. In German sociology, drawing on the labour process debate conducted mainly in the Anglo-Saxon countries, it is often interpreted as a "control turnaround". The proponents of the new market-centred control and governance forms (see Halal, 1996) point to the gain in freedoms and options, e.g. in the form of greater time sovereignty and working hours flexibilisation which the now more self-aware workers can fall back on, or at least the promise thereof.

This paradigm change is also a reaction to the rising pressure of competition to which all companies operating on the product and capital markets have been exposed since the 1980s, and which is increasingly reflected in various inter-organisational processes, structures and measures relating to pay and performance. Whereas traditional labour policy could tap into a work governance logic in which the efficiency of the workers was the starting point for regulated working hours and remuneration (which, in turn, measured the price of the product), this was to change under market- and-result-oriented management. The default nowadays is the price that the product may cost on the market, the corollary being that working hours and large parts of the pay packet have become variable parameters often broken down to the last individual worker. The outcome is frequently this: that the workers internalise these economic constraints to such an extent that they increasingly desist from challenging the constant stepping-up of pressure on performance that the market insists on. In more and more cases, this orientation develops its own dynamic which, driven by time pressure and performance stress, leads to work-generated mental illnesses and burn-out. For the workers' representatives, such developments mean that they must cope with several new issues at

one and the same time, issues for which, furthermore, they must find collective modes of discourse other than the conventional ones.

As early as the work humanisation projects of the 1970s, it emerged that organisational aspects such as individual piecework (by which machine operators of the time were often paid) also acted as an extra burden, engendered by that constant pressure to perform as well as uncertainty as to the exact amount of daily pay. In addition, piecework was found to complicate the "development of collaborative and creative work on a solidarity basis" (Fricke 1980 et al., p 26). Back then, as now, problems of internalised pressure to perform could only be resolved if the participation approaches initiated also permit the workers to ask critical questions about the logic behind forms of corporate governance, and build on these to develop now joint ways ahead.

The experiences made with participation programmes offered by management in the wake of lean production and HRM illustrate that workers have to rely on an institutional foundation that safeguards a binding practise of participation. More often than not, the possibilities of participation as conceded by the "top floor" were not only selective (applied to only parts of the workforce) but also withdrawn from situation to situation, especially if the gains from rationalisation lagged behind management's expectations (Springer, 1999; Dörre, 2001).

5. The hybrid participation approach

The rejection of direct participation at the workplace by institutional representatives like works council members and trade unionists does not only reflect their fear of losing power or polarising workforce representation. It also indicates a deeper cause, rooted in two differing historical traditions of capitalism critique which do not necessarily complement one another. On the one hand, the critique cultivated by the labour movement and Christian social doctrine with regard to insecurity and, on the other hand,[4] the critique of the

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[4] Highlighted by Boltanski and Chiapello (2003) in their work *The New Spirit of Capitalism* as social critique versus artistic critique.

alienation inherent to capitalism both address not just different basic problems of capitalist socialisation, they both emphasise different approaches for a solution. Roughly speaking, it seems that from a historical point of view the *movement* (which was more collectivist in nature and reliant on institutions) and the *outrage* (which had a more individualist bent) were often at odds with one another, a phenomenon that helps to explain the opposition between institutional co-determination and direct participation. Several empirical experiences suggest that the new models of "hybrid participation" (Brinkmann & Speidel, 2006) might provide a solution to this problem and thus act as a hinge between institutional co-determination and management-led participation in an authentic sense of democratic participation. Using established procedures of co-determination, within a corporate structure of hierarchy and power, to communicate a critique of alienation and a demand for autonomy in any meaningful way is at once a potential and a challenge, especially if, in doing so, assured freedoms for understanding and direct participation are to be opened up. This was made possible with the adoption of new participation tools §§80, 2 (3) and 28a by the Labour Constitution Act (BetrVG) in the course of the last reform in 2001, tools with which different institutionally safeguarded *and* participation-oriented themes[5] can be processed. To the extent that these instruments go to combine institutional co-determination and direct participation, we can speak of hybrid models of participation.

6. The adoption of hybrid participation models by the reformed Labour Constitution Act

One aspect of the reform of the Labour Constitution Act was the inadequately clarified relationship between direct participation and the institutions of co-determination, an inadequacy which would again become obvious against the

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[5]   By which is understood themes that, according to Boltanski and Chiapello (2003), lie more in the tradition of the social critique (affecting, for example, remuneration or the time limitation of employment contracts) but also those that are covered by the artistic critique (referring, for example, to in-company modes of decision-making : participation-oriented versus hierarchical).

background of later management-led participation offensives. The reform of the act by the Federal Red-Green Government set out to pursue the goal of "strengthening company co-determination in the interest of employee participation and motivation", for which it primarily aspired to a "modernisation of working conditions for the works council, especially by means of "modern technologies and the delegation of participation rights by the works council to workgroups" and "greater integration of the individual into the activities of the works council" (Deutscher Bundestag [German Parliament], 2001a). The Green MP Thea Dückert argued as follows:

> "When it comes to co-determination, we are of course concerned that the rights of employees be strengthened by a structure of collective representation. We are equally concerned that the individual rights of employees be strengthened. This too is a principle of democracy. We are also concerned that the rights of groups be strengthened and not just those of institutions. Which is why in the new Act we see elements that will strengthen individual rights – for example […] by means of the fact that, for the first time in co-determination legislation, we have made it possible for works councils to delegate rights of co-determination to workgroups, to groups that work in a team" (Bundestag 2001b, 17399).

Similarly, the argument for Labour Constitution Act reform as put forward by Klaus Brandner (an MP for the SPD) clearly illustrates that the discussions leading up to the draft legislation took place against the background of a varied and vibrant praxis: on the one hand, approaches relating to "co-determination at the workplace" within the framework of the work humanisation programmes of the 1970s and, on the other hand, tenets of "managed participation" (Greifenstein et al., 1993) some 15 years later: "Workers also require rights which they can invoke as the case may be. Also, people who work and co-operate on a committed basis must be given the chance to participate in decisions" (Deutscher Bundestag 2001b, 17396). The idea expressed here, the idea of a viable, institutionally embedded, direct participation, is nourished by the experience that the wish for worker participation is not predicated on the goodwill of a more or less sympathetic management, but that it requires sustainable protection. It is also a good example of how experiences made in industrial praxis can sometimes result in changes to the law. This also applies to the Occupational Safety & Health Act into which

development outcomes from the work humanisation projects found their way and which since 1996 has taken a new approach, namely, of designing the workplace generally on a humanised basis (§2 Occupational Safety & Health Act) and in that process stipulating worker participation on an irrevocable basis (Becker et al., 2010). Thus it was that new models of co-operation in terms of interest-led workplace design were tested in the Peiner Humanisation Project. Proceeding from that, the workers themselves suggested, amongst other things, "that competent colleagues from various departments be co-opted to take part in works council consultations and joint committee negotiations" (Fricke et al., 1980, p. 575). The idea went on to find fruition in §80, Para. 2, Clause 3 of the Labour Constitution Act 2001.

Rulings handed down by the German Federal Labour Court in 1987 and 1982 suggested quite early that it was reasonable to turn to the knowledge of in-company specialists to carry out works council tasks, and, since 2001, a regular legal basis has existed for it. As for the scope and actual deployment of the competent employees, the responsibility for any initiative taken and final decisions made lies with the works council. The employers may only object on the grounds of "operational necessity" within a specific period of time (Becker & Thomas, 2005; Gramm, 2005).

A further participation tool that found its way into the reformed Labour Constitution Act is §28a. It gives works councils the possibility of transferring certain in-company constitutional tasks to workgroups: the setting of working hours, for example, or questions of vocational education and training. In this way, the law follows an intention similar to the use of internal knowledge resources (the skills and experience of the workers) such as the instrument of co-opting competent employees. However, workgroups pursuant to §28a can do more than just support immediate works council tasks on a specific project. Workgroups with assigned delegation rights may also conclude group agreements (rather like company agreements). Nevertheless, in contrast to the *competent employees* who enjoy discrimination and dismissal protection privileges, the provisions of §28 in terms of legal safeguards for the *workgroups* so created are not clearly defined (Hromadka & Maschmann, 2007; Busch, 2003). To attain a comparable level of protection as anchored in

§80, 2 (3), the works council would have to conclude an appropriate com-
pany agreement with the employer side.

At implementation level, the opportunities and freedoms assured by both
participation tools have turned out to be differently far-reaching in effect and
thus of different practice use. The trade union side sees the disadvantages of
this regulatory shortcoming with §28a in the absence of internal rules of
procedures for the workgroups as well as in the pressure to which workgroup
members can be exposed. This part of the Act thus allows much leeway when
the situation is not fully regulated by means of a company agreement; it is
also open to abuse by management. The following section gives a company-
based example of such a regulatory arrangement.

7. The role of competent employees and workgroups collaborating with the works council – empirical findings

We will now draw on a mix of quantitative and qualitative data, to ask to
what extent hybrid tools of participation are actually being used in practice,
and what experiences the in-company actors have made in applying them.
The evaluation of a representative survey of works council members in
German companies (with a workforce of over 20) gives us a some useful
information about distribution rate and application practice regarding compe-
tent employees and workgroups since the two relevant clauses were adopted
in the Labour Constitution Act 2001.[6] Similarly, I will present some of my
own findings gleaned in organisational practice and, in addition, permit
myself a few generalising propositions about the difficulties and the positive
factors that can emerge in the course of implementing the new participation
tools. Working together with other research partners, I was also able to
develop these propositions within the framework of various participation-
oriented company projects.

One of the projects was the Pargema Project, which entailed the develop-
ment, testing, evaluation and generalisation of design approaches for a par-

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[6] The survey was conducted in 2007 by the Institute of Economic & Social Research
(WSI) in the Hans Böckler Foundation. It is the only representative survey to deal with
the subject of participation tools.

ticipative healthcare management scheme ("Pargema" is the acronym in German). Taking part in this project were a number of institutions[7] and companies where participation processes involving prevention had already been set into motion, and where new forms of participation and constellations of actors had been proposed and consolidated, both in the individual companies and on a company-wide basis. This drew on existing legal regulations, the potential of which for participatively structured innovation processes in company healthcare management at a practical level had not yet been fully exhausted. These were, on the one hand, the risk assessment as prescribed by the Occupational Safety & Health Act; and on the other, the role of the competent employees as foreseen by Labour Constitution Act §80, 2.

The GRAziL[8] Project specifically focused on the physical and mental strains and resources associated with temporary work. The main aim of the joint project was to proceed on a target-group-basis and enable everyone *in situ,* i.e. the directly relevant groups of actors, to feel responsible for the safety and health of the temporary workers. In approx. 30 temporary employment agencies serving the production and service sector, a series of participation-oriented design approaches, partly based on co-opted competent employees and workgroups, were tested, implemented and generalised for transfer to further enterprises. The works councils in both projects functioned as prime movers. The results of this application research indicate that a synthesis of different participation models can be effected in practice.

The evaluation of the data from the works council survey shows that 61% of the works council respondents were not familiar with the two pieces of legislation while a third of the respondents acknowledged awareness of the relevant items. Of the cognisant works councils, 63% use the instrument of competent employees (§80, 2 (3)), and 39% use that of workgroups (§28a) to

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[7] Including the ISF Munich, the University of Freiburg, FBU Satzer, the WSI and the University of Jena. See too www.pargema.de

[8] GRAziL is the acronym derived from the German for "design, implementation and transfer of instruments for resource management and occupation health & safety within the framework of a target-group-related project for temporary employees in temporary employment agencies". Members of the project were: prospektiv GmbH in Dortmund, MA&T GmbH, bsb Cologne, FBU Cologne, INIFES and the Universities of Jena and Trier. More details at www.grazil.net.

assist them in their work. Extrapolated for the total sample, that makes 18% and 14% of the companies with works councils and with over 20 workers who (a) are aware of the new possibilities for participation in line with the reformed Labour Constitution Act of 2001 and who (b) had already had recourse to them at least once in their practical work. From this it can be deduced that a familiarity with, and a conscious use of, the newly created participation tools were comparatively widespread at the time of the survey. However, the awareness of being able to form workgroups significantly outweighed the inclination to actually use the option. The converse holds true as regards the competent employee tool: that, although this appears to be less well-known, the cognisant works councils use it significantly more often in comparison. One may read such preferences both as an indication of the practical suitability of these tools and as an indication that works councils will shrink back from transferring the power of decision-making to other workers. This is partly because two things speak against these kinds of workgroup: the high level of co-ordination input and, secondly, concerns by works council members that their room for decision-making will be restricted. Co-opted competent employee involvement requires less communication input while also ensuring that the control of the overall decision-making and project process stays with the works councils. They remain "Lord of the Process" (Brinkmann et al., 2008).

Also instructive in terms of generating knowledge from practice and through practice[9] is the way in which the works councils configure the two models of participation for content. The projects that predominate when works councils turn to the competent employees solution are those dealing with occupational health and safety or working hours and organisation design. In the case of workgroups pursuant to §28a, the topics are similar if weighted slightly differently in priority.

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[9] This perspective goes back to the psychologist Kurt Lewin who characterised his approach to "action research" as an "iterative process whereby research leads to action and action leads to evaluation and further research" (Lewin, 1946, p. 206).

8. The formalisation of participation

The extent to which a participation project should be formalised in the company depends on various factors which include: the political culture of relations or discourse between management and works council (conflict- versus consensus-oriented, see Bosch et al., 1999); experience already made with worker participation and with the participation competence thus acquired by the works council; and, not least, the way in which the works council members perceive their role (co-manager, representational policy-making or counterforce).

So when it comes to the implementation of different forms of participation, in-company practice as regards the degree of regulation is correspondingly diverse. Here two examples …

(1)

At a mechanical engineering company that had already had experience with the participation of competent employees pursuant to §80,2 (3) of the Labour Constitution Act and that had concluded a company agreement, the Chair of the Works Council described the interaction of informal and formalised participation as follows:

> "If no objections have been voiced against the proposal that I co-opt colleagues for my work, then I do not need a company agreement. At the moment, we have enough room to manoeuvre anyway; a company agreement would be of no help at all. On the contrary, ultimately it would only restrict us more. Which doesn't mean that one day we won't enter into a company agreement. For the time being, though, anything not expressly forbidden is allowed … that's the name of the game!"

By virtue of the new legislation, the works council was given legal security for a practice that was already being followed. The positive experiences made by co-opting competent employees thus led to a consolidation of participation practice also accepted by management. Indeed, the participation competence at this particular company is relatively high – evidenced by all the freedoms available being used. But decisive here is the fact that the freedoms are legally assured: the works council can, in the event of conflict with the

management, invoke them and, where necessary, nail them down by means of a company agreement.

Participation projects can be systemised on the basis of three participation levels:

1. forming a steering group with equal representation;

2. carrying out a survey and involving all the workers; and

3. forming workgroups at departmental level to process the issues identified in the survey.

The three levels of participation are remarkable for their hybrid character, if at varying degrees. Whereas the use of the first and third level can fall back on competent employees and on workgroups, the survey option involves all the workers and thus requires management approval (which, in turn, is guaranteed thanks to equal representation in the steering group) although legally this is not explicitly provided for. The speaker role in the steering group for the works council ensures that a worker survey enjoys the protection afforded by the system of institutional co-determination.

(2)

At a second company, a publishing house, in which the works council aimed to invoke §28a to help improve company healthcare administration, the employers and the works council came to a number of internal arrangements: Before carrying out the risk assessment as provided for by the Occupational Safety & Health Act, a specially formed steering committee with equal representation was entrusted with the task of drafting a company agreement setting out the chief responsibilities and procedures for the risk assessment. The company agreement was preceded by an understanding between the two parties as to the "future prioritisation of healthcare as a theme". Among the relevant actors, there was unanimity (at least on a formal level) that first and foremost it would be the practical knowledge of the workers combined with the know-how of the employees that would be used (i) to identify the causes of health complaints at the workplace and (ii) to elaborate suitable technical, organisational and/or person-related solutions with the goal of overcoming the stresses. This approach, viewing workers as experts in their own affairs

not only with regard to work topics but also with regard to health-relevant working conditions, ties in conceptually with a view of healthcare administration posited on an interconnect of behavioural and structural environmental preventive measures. All the same, the workforce demanded that a way be found to avoid the results of participative co-operation being instrumentalised by management. They wanted to avert the possibility of solutions originally conceived by the workers in the field of stress elimination being primarily used to serve as new sources for exploiting rationalisation potential. For this reason, a clause was written into the *Company Agreement for Promoting Health at the Workplace* which stipulates how the results of workshops were to be handled.

> "If, in the course of the workshops, proposals for greater efficiency be made by the workers, then the savings which so result will in the first two years of the project be wholly reinvested (100%) in measures to improve working conditions and health promotion concerns. In subsequent years, the steering committee shall decide which proportions are to be invested in productivity and health protection."

The survey results reflect actual practice at the two companies exemplified. In 92% and 91% of the companies that have had experience with the tool of competent employees or workgroups, *not one* company agreement was concluded: here the works councils simply relied on the force of legal norms and their own power potential in the company. This picture of a highly informal practical situation in the application of both models of participation will alter if one considers only those companies where the respondents tell of conflict with management when it comes to using one or the other form of participation. Where there is conflict, the conclusion of a company agreement is more frequent. Instead of 8% on average, a total of 14% of works councils who have experienced conflict confirm the existence of corresponding written concords as to the co-opting of competent employees. In the case of workgroups, the figures are 21% instead of 9%. It is possible to read this greater inclination towards company agreements as a kind of insurance strategy on the part of the works councils vis-à-vis management, all with the aim of ensuring that the use of legally guaranteed principles for participation are indeed brought about.

9. Empowerment of collective representation through participation

The reservations held by parts of the trade unions in the run-up to the legislation process are a good illustration of the high claims that various actors make for participation. On the basis of the empirical evidence, then, we will now take a look at how works councils value participation tools in practice, and whether they plan to have recourse to them in future. The results will be discussed within a context of possible weakening or strengthening of co-determination and interest representation.

The experiences of the work humanisation projects show that successful direct worker participation will tend to lead to a boost for the works council. (Fricke et al., 1981). The participation projects under review also show this: the works council at the mechanical engineering company (Example 1) had previously taken a representationalist perspective. The strategy was abandoned after a works council election,which firstly, confronted the representatives with a substantial decline in voter turn-out and, secondly, with an election result that led to members of Christian trade union sitting on the works council committee. Due to that election outcome, the Chair of the Works Council realised that he no longer had sufficient backing in the workforce, and that the time for a re-alignment of works council policy had come.

> "Move away from the fixation with management and their policies, which had to be opposed at all times, and move forward to the real topic: the workers."

Self-critically, he reflected on the fact that …

> "We have in the past not involved our people in any genuine way; instead, we simply posed questions to which we already had the answers."

The Chair of the Works Council's new course of action thus entailed engaging in a systematic policy of participation, and making the work of the representatives more transparent for the workforce. This approach not only led to significantly improved results at the subsequent works council election (higher voter turn-out and representation on the committee consisting only of IG Metall members). The evaluation of the first participation project aimed at reconfiguring working hours in consultation with competent employees also showed that the conclusions drawn up by the colleagues coincided with the

interests of the entire workforce. The approval ratings of 70% for the new working hours arrangement, ascertained in the course of a workforce survey, may be considered exceptionally high.

In the representative works council survey too, satisfaction with the participation models came out relatively high: 53% for the participation of competent employees; and 62% for the use of workgroups. A good indicator of the benefit and practicability of the participation models is the use of the legislation planned for the future. There are remarkable differences between the two participation tools: whereas 70% of the respondents stated that in future they were planning to use competent employees to assist the works councils with their tasks, only 34% said that they want to push for the creation of workgroups .It would appear that the shortcomings of §28a already mentioned are a major factor in that they inhibit a robust and effective application of interest-group representation. The Chair of the Works Council at a logistics company explained as follows the preference for the tool of competent employees as opposed to the formation of workgroups …

> "If I need a workgroup, then I form one by calling in several competent colleagues. And I don't need Section 28 anyway since it doesn't protect my people as well as the 80, 2 (3) provision. They would always have to worry that their commitment would be used against them. With the co-opted colleagues, though, the law is quite clear about what influence management has on these people during the time they put into the works council project – in a word: none."

That being so, any participation model that offers the workers less protection and security is bound to hold fewer attractions for the future. Experiences of conflict with management can only favour the use of competent employees in the future. At least, there is no evidence that this action option has been abandoned by virtue of any management objections to such a form of participation. Crucial for success and future participation strategies are the positive experiences that the workers make with these participation approaches.

In terms of a discussion as to the strengthening or weakening of representation, this means that works councils, by offering participation as such and by presenting positive results from these participation models to dispel any doubts among the workforce, are laying the foundations for acceptance in the

event of continuing down this route. Thus it is precisely their role they enhance when participation turns out to be no passing phase. However, it would seem that not every tool is equally suited to succeed as a direct and effective way of involving the workers. Where the satisfaction with results achieved by way of participation is predominantly found to be "high" to "very high", views as to the future use of the two pieces of legislation examined in this article vary to a wide degree. Those approaches which entail the co-option of individual colleagues in a competent capacity enjoy a much greater popularity than participation facilitated by formalised workgroups. The reasons behind this preference, which are sure to affect the works councils' cost-benefit-ratio thinking. are the high levels of co-ordination required to form workgroups and the shortcomings in protection, already addressed, inherent to §28a. There appears to be no doubt as to the effectiveness of hybrid approaches to participation as examined in this article.

10. Conclusion

This article has taken a close look at the German culture of co-determination, and presented an approach that could offer a solution to a specific weakness within the system. That weakness lies in the fact that the traditional labour-policy concepts behind the relatively established co-determination institutions have not always been able to keep pace with the constant change taking place in the world of work. At the same time, the tradition of institutional co-determination itself seems not to succeed in fully satisfying the direct aspirations for participation held by workers: it fails to bridge the gap between representation and participation. To do so, a hinge is required that binds the potentials of direct participation and representative co-determination with one another: forms of hybrid participation that will strengthen in-company democracy. As the result of the adoption of these participation tools (§§80, 2 (3) and 28a) in the Labour Constitution Act of 2001, the experiences of earlier work humanisation projects came to be used, projects that on the one hand show that it is the workers themselves who are best capable of shaping their own working conditions (and that they are willing to). On the other hand, experiences with the management-led participation offensives of the 1990s

point to the necessity of anchoring democratic participation on an institutional basis.

That being the background, this article proceeds from the assumption that the hybrid models of participation so presented can act as a missing link, as an effective means of combining the two forms of participation. The evaluation of a representative works councils survey, which investigated the extent of the knowledge that works councils have of hybrid participation tools and the extent of their experience with them, and the findings gleaned in the course of specially conducted design projects at various companies, have permitted the formulation of several generalisations about the practicability of the new tools and about the issue of participation formalisation. Similarly, on the basis of empirical in-company case studies, the article has also shown that systematic and direct worker participation by way of the new participation tools made possible in a legally assured form ultimately strengthen both the works councils and the workers, not least because the tools create a platform for endowing the company co-determination structure with a new legitimacy. Implementation in practice, however, has already revealed a further need for regulation in order to provide a higher standard of protection for workers when workgroups are being formed pursuant to §28a of the German Labour Constitution Act.

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