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## German Industrial Relations

### ***Mitbestimmung:*** And **How Britain Tried To Prevent It After The Second World War**

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# Further Light on UK involvement in German Industrial Relations 1945 - 49 and its relevance in 2001

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## Introduction

The original purpose of this paper was to re-examine the two myths which have lingered on about the British Government's involvement in the development of industrial relations in Germany in the immediate post-war period: first, that the Foreign Office was responsible for the setting up of the system of Co-Determination and Workers' Councils, and second that the TUC was responsible for setting up the post-War structure of German Trade Unions, the latter a particular favourite of Victor Feather when General Secretary of the TUC and repeated by Neil Kinnock in a Parliamentary debate in 1971 (Hansard, 19 January 1971).

This was prompted by the release from secrecy in 1999 of two Foreign Office files on 'Trade Union Development in the British Zone of Germany', which we examined, and were led on to other material, with the assistance of people connected with the events, such as Len (Lord) Murray, who was in the research department of the TUC in 1946 and introduced us to a remarkable witness—George Foggon, who was an active member of the Manpower Division of the British Control Commission in Germany from 1945. He not only added valuable personal testimony to the evidence, but handed over to us his own files for the period and, very important, the files of the late Edward Barber, a leading member of the Manpower Division. Finally John Monks, General Secretary of the TUC, confirmed us that this was a burning issue in the present situation of EU labour legislation.

From these sources it was clear that the two myths had already been exploded, even if the evidence had not been made generally public. The TUC myth was dealt with in an interview which George Foggon gave to Albert Burdett—published in the AEU Journal in June 1988, under the title of *Post-War Germany—a myth exposed*.

The Foreign Office myth was extensively explored in the unpublished Ph.D. thesis of Ian David Turner, submitted at the University of Manchester in October 1984 under the title of *British Occupation Policy and its effects on the town of Wolfsburg and the Volkswagenwerk, 1945-49*, in its Chapter 6 on *British Policy on Worker Participation in Industry*.

Other sources we were led to were the TUC archives at Warwick, the DGB (*Deutscher Gewerkschaftsbund*) archives at the Friedrich-Ebert Foundation in Bonn, and various secondary sources, especially those in German by Rolf Steininger. From all these we were able to add to the exposure of the two myths by Foggon and Turner.

Indeed the material began to show that the situation was almost the opposite of what the myth had set out, that is, that there was a steady opposition by the Foreign Office to the setting up of the Workers' Councils and that it advocated restricting their role, and of any development of co-determination, except in special circumstances.

We came to examine the reasons why these exploded myths came into being and to linger on, and

then moved to the much wider question of why forms of industrial democracy failed to develop, and have continued to fail in the United Kingdom. This question became linked to what is happening today, when the British Government continues consistently to oppose

EU legislation which aims to widen industrial democracy across the Union—also linked to the clash between the British industrial relations tradition with that of Germany in particular and that of continental Europe in general.

## Historical background

But first—to the myth and the reality. The story begins well before 1945: it relates to the development of industrial relations in the UK from the 19th century, to the commitment of all three parties, employers, unions and state, to a pattern of collective bargaining, a confrontational pattern from which the state and the law should only intervene in a crisis, like a war or a general strike. One factor, which becomes important later in Germany, is the Whitley Report of 1918 from the 'Committee on Relations between Employers and Employed, with its recommendation of the setting up of a three-layered pattern of Joint Industrial Councils, Joint District Councils and Works Committees (Cd. 9153). This is the pattern which the British Manpower Division consistently tried to have established in Germany.

And in Germany too the past is important, with roots in the 19th century. Already in 1849, in the aftermath of the 1848 Revolution, a minority of deputies of the new Frankfurt National Assembly had submitted Article § 42 for trade regulations ('*Gewerbeordnung*') concerning the establishment of Factory Committees ('*Fabrikausschüsse*').

Workers' Committees ('*Arbeiterausschüsse*') came on the agenda again after the great miners' strike in 1889 when the Emperor proposed to introduce them "*in order to stem social democratic influence*". The proposal was turned down by the employers. Eventually, as a result of protracted strikes in the mining industry, Workers' Committees were made obligatory for this sector in 1905 through trade regulations. As they stipulated amicable relations between employers and employees, they were, however, rejected by the majority of Social Democrats and Trade Unions.

The dispute about them reached a new stage in 1917 with the so-called 'Council Movement' ('*Rätebewegung*') which led to the 'November Revolution' and the temporary establishment of Workers' Councils as governing bodies at municipal and company levels.

The Weimar Constitution for Germany then provided the legal framework in Article 165 to establish Workers' Councils for "*the pursuit of their social and economic interests*" in regions and companies, which became the basis for the Workers' Council Act of 1920 ('*Betriebsrätegesetz*') (Däubler, p.184-189). This legislation of 1920, which was a defeat of the labour movement in the fight for the socialisation of key industries, gave extensive powers to the Councils, edging into forms of co-determination (Blanke et al. vol. 1).

The collapse of Trade Unions and Workers' Councils under the Hitlerian clamp-down, supposedly due to the fission of the German Unions into religious and political groupings, led to a post-1945 Union commitment to a single Union, with industrial divisions and a role in political and economic planning at various levels. The object was to prevent another state-employer dictatorship, and was based on the need for rights protected by law.

In Germany in 1945, the British and German systems of industrial relations clashed. Preparations for UK action in Germany began well before the end of the 1939 war. In the middle of the war, in 1942, the concept of a Control Commission was discussed, so that, by 1944, this had been set up in detail with 12 divisions, with the Manpower Division designated to cover the area of industrial relations (Foggon 3/XVI).

At the same time, in London, a group of refugee German Trade Unionists, '*Landesgruppe deutscher Gewerkschafter in Großbritannien*', set up in 1939, was meeting to work out in detail plans for a post-war Union structure (Barber II). The Chairman of this group, Hans Gottfurcht, became in fact a kind of liaison officer between the UK and the emerging German Unions, with the backing both of the Foreign Office and the TUC. He went for an official visit to Germany from 6th March to 30th April 1946 and wrote a confidential report to the Foreign Office and the TUC (TUC Archive, MSS 292/943/11, Report Gottfurcht).

At the centre of action on industrial relations in Germany in 1945 was this Manpower Division: it was made up mainly of members of the UK's Ministry of Labour, with all their experience of consultation, conciliation and the existing pattern of collective bargaining, with the Joint Industrial Councils, *à la* Whitley, having temporarily been a pattern in wartime Britain. This was exceptional within the UK tradition and only the special circumstances of the War pressurised it into being—so that for it to be recommended as the pattern for Germany was eccentric.

Some, like George Foggon, were pulled out of the Forces in action, and briefed in London before being despatched to the British Zone. (This was one of the four zones of occupation, the largest in population, alongside a Soviet one, an American one and

the later addition of a French one. Berlin was a separate zone, divided into four sectors between the four powers and it was here that the quadripartite Commandatura was based.)

The difficult position of this Manpower Division illustrates how some of the issues were to develop. It was one of the 12 divisions under a British Control Commission led by military men, not knowledgeable about industrial relations and not particularly sympathetic to Trade Unions; there was in the field a Trade and Industry Division, which, according to Foggon, was rather a rival and either more in sympathy with German employers, or at least seeing the re-installing in control by employers as essential for the re-birth of the German economy; and there was the British Foreign Office, with a new Foreign Secretary, Ernest Bevin, widely experienced in Union and business affairs and keen to be involved in IR [Industrial Relations] affairs:

Then there were the Division's equivalents in the other Zones, of which the most important was the Soviet group with fundamentally different aims to those of the British Government.

And, of course, there were the Germans themselves, with their very different traditions in IR, anxious to re-group, take on industrial, economic and political powers, and conscious of their failings in the past and the need to learn from their experiences, and German employers anxious to resume their ownership and managerial positions.

## British intervention in Germany 1945-49

Many documents testify to the British Foreign Office's recognition that the development of a strong, but democratic German trade union movement was essential, for economic reasons and as a stable social force :

"British Policy ... is that there should exist in Germany a strong trade union movement, independent of the State and of employers, whose principal function is the representation of workers' interests in industry, and the settlement, by way of collective agreements with employers, of wages and conditions of work" (Foggon 3/II, Confidential paper, p.2).

But it was seen as much more than this, of which a secret letter in 1947 from the Foreign Office to the Control Commission is evidence:

"It should be made clear that the struggle for control of the German labour world is a very important aspect of the present struggle between east and west to decide whether the future Government of Germany shall be totalitarian or liberal" (Wilson/Foreign Office to Steel/Control Commission, P.R.O., LAB 13/437).

It was this struggle which informed the major

decisions by the Foreign Office and the Control Commission from the first days of the occupation, a struggle of which the situation in Berlin became a microcosm of the larger whole.

In 1947, relating to eight questions of the Man-power Division, the Foreign Office formulated the politics to be pursued with regard to Trade Unions in Germany. (P.R.O., LAB 13/437).

This touches upon issues relating to different histories of Britain and Germany, which have brought about diverse understandings of the term '*industrial democracy*'. Whereas the British 'totalitarian/liberal' dichotomy associates democracy with the rise of liberal capitalism and the defeat of communism, the German fascist/socialist dichotomy, predominant in the labour movement after the Second World War, identified democracy with the rise of socialism and the defeat of fascist capitalism. The German concept of democratic socialism as incorporated in Workers' Councils and Co-Determination remained fundamentally incompatible with the 'totalitarian/liberal' Cold War confrontation of the forty-five years to come.

Against this background the struggle for the UK was a balancing act between giving the German Unions in the British zone of occupation, when established, sufficient strength to distance themselves from a feared communist-dominated single German Union, but not so much power as to lead to forms of industrial democracy neither established in Britain nor approved of for a new Germany.

The British Control Commission in August 1945 posted up in workplaces a procedure of rules for the formation of Unions, "*building up from the bottom*", with groups democratically elected by the workforce, with rules, regular meetings, and final approval by the Commission to form a Union. This procedure proved very slow and bureaucratic to German workers eager to start taking part not just in forming a Union, but in having a say in controlling their industries and also their future Government's economic policy.

From 1945 onwards Workers' Councils were re-established whilst statutory co-determination in civil and industrial firms was being discussed and put forward by emerging Trade Union groups as part and parcel of any future Trade Union achievements.

Similar moves were being made in the Soviet, American and French zones, and the Commission was faced by a variety of problems, questions of possible Union amalgamations, of inter-zonal links, especially of the attractions in the Soviet Zone of the confiscation of the large industrial companies, a much more rapid establishment of the single Trade Union, and a Workers' Council pattern—with a Workers' Council law in the region of Thuringia passed as early as August 1945.

As the Unions emerged, in various areas there were strongly expressed ideas of creating a single union—to avoid a repetition of past experiences, especially since 1933—an action which disturbed the British authorities.

At this point the British TUC enters the story. At the invitation of the War Office, a delegation of three General Council members—H. Bullock, W. Lawther, and J. Tanner—visited Germany in November 1945 for the first time. Though visiting Austria and Czechoslovakia on the same journey—where they advocated the formation of a single Union movement, after controversial discussions within the TUC—they reported back on 10th January 1946 to the Foreign Office that there should not be such a structure in Germany, but looser links between autonomous unions (Report of the T.U.C. Delegation to Europe, Foggon 2, Steininger, p. 85 f., T.U.C. Archive MSS 943/911). In a letter dated 27th November 1945 to the Ruhr Trade Unionists, the delegation expressed its view as briefed by the Foreign Office (Annual Report to the T.U.C. Congress 1946):

"We feel, in all sincerity, that the great weakness of the German trade unionists is this tendency in the German people to blindly obey instructions from headquarters. We, therefore, as representatives of a great Trade Union Movement, which sincerely desire to see a real democracy in Germany, ask you to modify your plan so that a small number of unions shall have complete autonomy over the industrial affairs of their members. ...in order to have one body to co-ordinate general industrial policy we recommend that a confederation be formed to co-ordinate the policy of the Unions, negotiate with the Military Government and be generally responsible for the welfare of German Trade Unionists, without, however, having authority to interfere with the autonomy of any Union in matters affecting that Union alone."

This was in fact the structure known in Germany as the '*Hamburger Modell*', advocated by Franz Spliedt, who had returned to Hamburg with a group of emigrant trade unionists from Sweden and whom the T.U.C. delegation went to visit 24th November 1945, a day after the meeting with Hans Boeckler and Albin Karl in Düsseldorf.

The attitude of the British Trade Union delegation on this and other occasions and in correspondence was particularly hostile: there was a feeling of 'why can't the Germans be more like the British?'

The Unions in the British zone had to give in and accepted autonomous Industrial Unions, a step which Thoe Pirker, writing in 1960, regarded as the first decisive defeat of the post-war Union movement (Pirker, pp.39-41).

Behind the Foreign Office worry was the fear that a united Trade Union movement across the four zones might allow a political point of view, which the Soviet Union was unable to establish by democratic party elections, to become a reality through a Trade Union route. This danger was lessened when the Unions in the Western Zones broke away from the Soviet-backed Union in Berlin, abandoned the idea of a single Union, and settled for a system of Industrial Unions, initially 12, which eventually united under the umbrella of *Deutscher Gewerkschaftsbund* (DGB) at the Düsseldorf Conference in November 1947.

There was an interesting situation in the Berlin zone. "*The trade union situation in Berlin is a mirror of that in Germany as whole*" (P. Nicholls/Foreign Office in P.R.O. LAB 13/437/44). Developments in Berlin were even more than this—they were a kind of microcosm of the wider political picture—an early instance of the Cold War. It was here that the Western Allies feared a 'radical' take-over of the Trade Unions and through them, a political take-over.

There was at first a single union, the FDGB (Free German Unions) from which the UGO (*Unabhängige Gewerkschafts Opposition* = Independent Union organisation) broke away in 1947 with the assistance of the American Control Commission under the influence of the strongly anti-communist American Federation of Labour (P.R.O. LAB 13/437).

Berlin was now divided not just between the Unions, but substantially between the Russian sector and that of the Western trio. One illogicality was that electric power for the Soviet Union airport came from the Western Zone, and the power for the Western airport came from the Soviet zone.

After the re-development of a German Union movement in the British Zone, there were two issues which were to be fought over—the role and powers of Workers' Councils and the larger question of rights of co-determination—"Mitbestimmungsrecht". The Military Government had been surprised to find the spontaneous emergence of groups claiming to be legitimate Workers' Councils *à la* 1920 in a significant number of workplaces across the Zone as the military front advanced:

"From the very outset of the British and American occupation of Western Germany bodies of workers' representatives, for the most part self-appointed, sprang into existence. One of the earliest acts of Military Government was to authorise the democratic election of workers' representatives in individual undertakings as an interim measure to operate until such time as Trade Unions would be able to take over the job" ((P.R.O. LAB 13/437/Doc. 5B, App. E))

This it was felt had to be stopped, as there was no control possible over the background of those involved—there was fear of either Nazi backgrounds or of what the various files call "*radical*" elements.

As the French and Soviet military authorities were in favour and the Americans were not against Workers' Councils, the British Control Commission could not avoid agreeing to a Workers' Council Law: a first draft of this for all four zones could not be agreed, but eventually a British draft was agreed by all four occupant states, which became Act No. 22 on 10th April 1946 (Turner, pp.366-377). This Act was not what the German Unions wanted, as it offered lesser powers to the Councils than the 1920 Law and left many issues open to negotiation with the employer, rather than giving a legal right with no mention of co-determination, especially over dismissals.

The Workers' Council agreements, all of which had to be submitted to the Control Commission, were not valid without its approval. Guidelines were laid

down which had to be complied with, which protected the rights of employers (DGB Archiv 5/DG AC 000063/111).

So, the aims of German Unions for the advance of co-determination through the Workers' Councils, as laid down in a 'Model Works Agreement' were not granted under the framework laid down by Act No 22 and its guidelines (Foggon 3/II, Confidential paper).

"Bevin regarded the British model of industrial relations as perfectly suitable for the British zone. Consequently he completely rejected demands for co-determination of the kind presented by the zonal secretariat's 'Model Works Agreement'" (Müller 1987, p.244).

They then had to pursue it by another route.

This was the second major issue and a key plank in German Union expectations. There are many references in the files to the attempts to persuade the Unions to drop these aims and to settle for a British pattern of collective bargaining with a system of Joint Industrial Councils, as recommended in the 1918 Whitley Report and existing in Britain during the 1939-45 war years. The main argument used to the Unions was that they could not be both independent and share in employers' and owners' decision making (e.g. Luce on 'British Trade Unionism', Barber, I/13). There was clear fear that the very issue of private capital ownership was being challenged. The Unions were also pressing for representation at higher levels of Regional Government and at Zonal level as part of their aim to be involved in political as well as industrial decision-making.

The Manpower Division of the Control Commission took the lead in the hard task of bringing together representatives of the German Unions and Employers and persuading the Unions to accept the employers' organisations as negotiating partners. For example one Manpower file records :

"To the (German) unionists all employers are Nazis and to the (German) employers all trade unionists are communists" (P.R.O. LAB 13/437, General Brian Robertson to Ernest Bevin, 4th April 1949).

Reginald Luce, head of the Manpower Division, tried to entice both parties to adopt the concept of '*Mitbestimmungsgeist*', spirit of co-determination,

instead of '*Mitbestimmungsrecht*', rights of co-determination (Luce on 'Industrial Relations in Germany, Barber, I/4). This was in fact a desperate attempt to stem co-determination in Germany in the sense it was understood and pursued as one of their paramount aims by the German Trade Union movement (Müller 1987, *Vom 'Mitbestimmungsrecht' zum 'Mitbestimmungsgeist'*, pp. 248-264).

British policy throughout was to oppose any moves towards co-determination in management, a system which had had no place in British industrial relations and not been sought for by British Unions. The British Control Commission gave way on some representation of Unions on planning committees at Zonal level and to inter-Zonal Union conferences and on the international Industrial Secretariats. One problem for the Control Commission was that some of the Länder Governments, such as Hesse, gave co-determination rights to Unions in economic councils in their territory and the Commission opposed these:

"The decisive issue was to prevent pre-emptive legislation by the Länder before the creation of a West German Government" (Turner thesis, p381).

The joint statement of the British and American Military Governors was approved on 18th August 1948 and the co-determination clauses of the Hesse Law were subsequently suspended. For the German labour movement it meant that the last avenue for achieving full co-determination in the occupation period was closed. The decisive struggle would now be fought out with a West German Government (Turner thesis, p384).

Related to this issue was the need for a rapid development of production in the iron and steel industries. These were being developed under a British agency—the North German Iron and Steel Agency (NGISA)—whose 'Controller', W. Harris-Burland, was anxious to gain Union support for the British de-cartellisation policy and to avoid the disruption of what he called "*radical elements*" in the Workers' Councils:

"Giving the workers and the trade unions a share in these responsibilities of management should go a long way towards preventing such anarchistic developments and towards fore-stalling troubles in the industry" (Turner, p.378).

He was mainly responsible, according to Turner, for pushing through, surprisingly, a pattern of co-determination in iron and steel.

The British authorities were prepared to grant labour a substantial role in the management of de-cartelised enterprises, including equal representation on the "*Aufsichtsrat*" (Supervisory Board) and a labour nominee as "*Arbeitsdirektor*" (labour manager) on the "*Vorstand*" (three person management directorate). That ideological considerations were not decisive in prompting the British innovation, however, is evident from Harris-Burland's account:

"The experiment of giving the workers a share in the responsibility of management should not be regarded as an installment of socialisation, but rather as a measure of democratisation" (Turner, p379).

These reforms were fully approved by the British authorities in 1947, so that this regulation of co-determination in a restricted area—at this time in the so-called 'public sector'—was accepted without establishing any precedent for its wider application.

This form was eventually passed on to the new German government, who confirmed and extended it to the mining sector by Act of Parliament in 1951 and by 1976 passed another Act for all other sectors, though with only a minority stake of workers on the Supervisory Board (Annex 2). This is an interesting contrast to the form of nationalisation of industries on a wide scale, which was being carried through by the new British Government, also in 1946-47, without co-determination beyond the Whitley Council system.

The overwhelming evidence exhibits the opposition—whether it be on Workers' Councils or on Co-Determination—rather than support, of the Foreign Office. Contrary to the White Paper of 1950, any concessions in both areas were made reluctantly, and the role of the TUC in establishing the German Union structure was minimal, apart from supporting the official policy of discouraging a single Union in this country, and sending two other delegations—one to Berlin to support the breakaway UGO Union and the other to try help in the dispute between the DGB and the white collar faction.

## Industrial Democracy in Britain 2001

Much of this began to bear some relation to what had happened in the past in Britain over industrial democracy and what is happening in Europe in 2001. As Turner's thesis stresses, the events in Germany post-1945 illustrated a fundamentally different attitude by the Unions of Germany and Britain towards industrial relations.

The British Union tradition was to keep clear of involvement in management and not to seek the Government to pass laws on issues, but to stress collective bargaining with the employer as the way to sort things out. The German tradition was more to seek to have the state make laws giving legal rights to workers and to seek a say in managerial policy and actions. The caveat made at the end of the 1918 Whitley Committee Report by some Trade Unionists and others on the Committee illustrates the British position over the idea of Joint Industrial Councils:

"But while recognising that the more amicable relations thus established between capital and labour will afford an atmosphere generally favourable to industrial peace and progress { '*Mitbestimmungsgeist*', G.S & J.J. }, we desire to express our view that a complete identity of interests between capital and labour cannot be thus affected, and that such machinery cannot be expected to furnish a settlement for the more serious conflicts of interests involved in the working of an economic system primarily governed and directed by motives of private profit."

And though such a system had been established as important to the 1939-45 war effort, with Bevin then Minister of Labour, but post-1945 now Foreign Secretary in a nationalising Government and deeply involved in what was happening in Germany, neither he nor the Unions pressed for anything approaching Industrial Democracy on the German or any other

pattern, or any great legislative programme on industrial relations.

In Britain this Whitley pattern was soon dismantled under pressure from the Unions. It is significant that the term 'Social Partnership', common in Europe since the 1960s, was never used in Britain until introduced by the Blair Government in 1998.

Towards the end of the 1960s, some attitudes were changing:

"Certainly by the sixties there were many in Britain on both sides of industry who were coming to the conclusion that the German system had much to be said for it" (Turner, p. 409).

All Governments began to see the need for legislation, because collective bargaining between Employers and Unions was not working in a number of areas important to Government in a changed economic, non-imperial world for Britain, and the Governments could not afford the luxury of free collective bargaining to be the only pattern.

The balance of trade between Britain and the rest of the world had altered dramatically, particularly through the shrinking of the colonial empire and the financial drain of the 1939-45 War. It now became more important for the Government to have more control over prices and incomes, inflation and the economy generally. With only 50% of the workforce organised by the Trade Unions, large numbers of employees were untouched by bargaining or protection over important areas of employment—prices and incomes, redundancy, contracts, training, equal pay, health and safety, and discrimination generally, and nothing about industrial democracy.

There were only a handful of Acts from the end of the 19th Century up to 1960, but from the 1960s onwards, there was a spate of legislation covering these fields, apart from industrial democracy, a pattern of state intervention which has continued to this day.

Signs of change were recognition by some Trade Unionists of the value of and need for legislation—something they had scorned in Germany post-1945. The Labour Party produced a report on Industrial Democracy in 1967, though the 1968 Donovan Committee devoted only 4 of its 350 pages to 'Workers

Participation in Management'. Then, spurred on by EU moves on the subject—in the 1970s there were two flirtations with industrial democracy in the steel industry and the Post Office—the TUC issued a report on Industrial Democracy in 1974 and it was mentioned in the 1974 Labour Party's Election Manifesto, leading to Giles Radice's Industrial Democracy Bill of 1975, the Bullock Committee's report in 1976 and the wide-ranging White Paper of May 1978, which, if made law, would have in five years established an industrial democratic pattern across British workplaces, based on the best practice researched across the world.

But Labour lost the 1979 election, and no Government since, remarkably including the present one, has made any moves.

On the contrary, since the European Community started to proceed towards discussing and regulating social and labour relations Britain has been leading the opposition. Margaret Thatcher declined to sign the 'Community Charter of the Fundamental Social Rights of Workers' at the summit in Madrid 1989. Britain opted out of the 'Protocol on Social Policy' in the Treaty on European Union signed 7th February 1992 in Maastricht. Though the Labour Government accepted the 'Protocol on Social Policy' as well as the 'Directive on European Works Councils' as soon as it came into government, it has opposed amendments enforcing the rights of employees and, more important, the 'Proposal for a Council Directive on the involvement of employees in the European Company' (complementing the statute for a European Company).

The British Prime Minister has however signed the 'Charter of Fundamental Rights of the European Union', 18th December 2000, including an Article 27 "Workers Right to Information and Consultation within the Undertaking" (Appendix 1).

Up to now, however, the Government has failed to comply with the 'Protocol on Social Policy' "to promote dialogue between management and labour" (Art. 1) and in implementing "representation and the collective defence of workers and employers including co-determination" (Art. 2). There was no debate or discussion in the run-up to the recent election on any of these points. Thus, since the Treaty of Amsterdam 1997 Britain has remained out of step even with the Treaty of the European Community

which obliges the Member States to introduce "*the information and consultation of workers*" as well as "*the representation and the collective defence of the interests of workers and employers including co-determination*" (Art 118).

In contrast, the German Government has updated the 'Works Constitution Act' on 22nd June 2001, e.g. facilitating the procedures for establishing a Workers' Council, making it adaptable to more complex company structures, including employees under non-traditional contracts, giving it new rights in strategic management—i.e. concerning product and process innovation, conservation of the environment etc.—enforcing proportional representation of women, lowering the size of a firm (200 instead of 300 employees) entitled to full-time councillors (Engels, Annex 2).

Not only has the Labour Government not changed very much, but has adopted a stance not dissimilar to that of the Foreign Office in 1945.

Some Union attitudes have changed. The TUC produced two pamphlets in 1995: *Representation At Work* and *Your Voice At Work*, while other actions since the 1970s have come from the EU. And it is in the European sphere that, to the annoyance of the TUC, the British Government is reluctant to adopt more regulations enforcing industrial democracy in Britain.

The pattern has been changing as we wrote this paper, for example the clash over the closure of Marks and Spencer's French stores, without consultation, where the French reaction showed the gap in British industrial relations thinking and legislation, together with the arbitrary closure by Corus of its South Wales steel plants, and the proposals to close Vauxhall Luton car plant. The European Union June 11th at Luxembourg over the 'Directive on information and

consultation rights for employees', and in the current movements in Germany.

What emerges clearly from an examination of the British pattern of industrial relations in 1945 and in 2002 is the markedly continuing contrast between the British tradition and that of continental Europe. What the Foreign Office was trying to establish in Germany post 1945—a confrontational Union/Employer bargaining pattern with no basic system of employee rights to consultation and information—is still the assumed industrial relations pattern in Britain, until altered by home or European legislation.

It will be interesting to see how the British Government and the Trade Unions—and employers—respond to the ever increasing pressures from the EU on 'traditional' industrial relations in the United Kingdom and whether the Germans, Unions, Employers and Government, update the co-determination pattern of the 1970s.

To avoid misunderstanding, reflecting back on the 1945-47 period, we must emphasise the British Government's major role in the democratic reconstruction of West Germany, its Government and economy, and also the role of the UK authorities in relation to Workers' Councils and Co-Determination. In spite of all our reservations, the Authorities—the Foreign Office, the Control Commission, and in particular its Manpower Division—did help to reconstruct a strong democratic Trade Union movement, "*built up from the bottom*" following one of Ernest Bevin's instructions to the Control Commission (White Paper 1950, p.5)—a movement which played its part in the so-called economic miracle. And the Authorities did participate with uneasiness in the emergence of co-determination.

London, December 2001

# **Annex 1: Legal framework for the representation and co-determination of workers in the European Union**

## **Treaty of the European Community (according to the Treaty of Amsterdam 1997):**

### *Article 118:*

With a view to achieving the objectives of Article 117, the Community shall support and complement the activities of the Member States in the following fields:

...

- the information and consultation of workers

...

... the Council shall act unanimously on a proposal from the Commission, after consulting the European Parliament, the Economic and Social Committee and the Committee of the regions in the following areas:

...

- representation and collective defense of the interests of workers and employers, including co-determination, ...

...

## **Social Charter according to the Protocol on Social Policy of the Treaty on European Union in Maastricht, 1992:**

### *Article 1:*

The Community and the Member States shall have as their objectives the promotion of ... dialogue between management and labour ...

### *Article 2:*

3.... the Council shall act unanimously on a proposal

from the Commission, after consulting the European Parliament and the Economic and Social Committee, in the following areas:

...

- representation and collective defense of interests of workers and employers, including co-determination,

...

...

## **Charter of Fundamental Rights of the European Union**

(signed at Nice 18th/12/2000):

### *Article 27:*

Workers right to information and consultation within the undertaking

Workers or their representatives must, at the appropriate levels, be guaranteed information and consultation in good time in the cases and under the conditions provided for by Community law and national laws and practices.

## **Directive on European Works Councils, 1994** (Council Directive 94/45/EC)

(including the proposal for amendments)

## **Directive establishing a framework for improving information and consultation rights of employees in the European Community, 11th June 2001**

## **Proposal for a Council Regulation on the Statute for a European Company**

## **Council Directive supplementing the Statute for a European Company with regard to the involvement of employees, 1 February 2001**

## **Annex 2: Legislation on Workers' Councils and Co-determination in Germany**

### **Gesetz über die Mitbestimmung der Arbeitnehmer in den Aufsichtsräten und Vorständen der Unternehmen des Bergbaus und der Eisen und Stahl erzeugenden Industrie von 1951**

Act on the co-determination of employees in supervisory boards and management directorates of companies in mining and the iron and steel producing industry

### **Gesetz über die Mitbestimmung der Arbeitnehmer von 1972**

Act on the co-determination of employees

### **Betriebsverfassungsgesetz von 1952**

Act on the constitution of establishments

Major amendments were made in 1972 and a proposal for a thorough overhaul is expected to be passed this year 2001

### **Entwurf eines Gesetzes zur Reform des Betriebsverfassungsgesetzes von 2001**

Proposal of an Act to reform the constitution of establishments

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