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Industrial Democracy Through Law? Social Functions of Law in Institutional Innovations

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Introduction

What does the law learn when it is confronted with its own consequences? It is this feedback loop from legal norm to social consequence to legal norm which probably constitutes the most important contribution of social science thinking to legal argument. There is a tradition in legal methodology, the so-called teleological approach, which is very similar to this kind of argument. Legal norms are interpreted in the light of their purpose and one important consideration is the question if the purpose has been actually reached or not. However the teleological method is still an intra-legal device. It relates the legal norm to the legally-set purpose, be it the legislature's goal, be it the judge's reformulation of the legal purpose. In contrast, the consequentialist method I am following here is going a step beyond the law itself. It necessarily utilizes extra-legal modes of analysis and feeds them back into the legal argument. The basic argument has the following elements: (1) What is the basic legislative or judicial social purpose of a norm? What are the intended social effects on social behavior and social structure which are expected to follow the enactment and implementation of the legal norm? (2) To what degree have these goals been reached in the social reality? What are the side-effects, what are the unintended consequences of a legal norm in social reality? (3) How has one to reformulate the legal norm in the light of its social consequences?

For this type of legal argument, there are no limits as to academic speciality of the information involved. Social science information in the broadest sense is needed, be it of sociological, economic or psychological nature. However there is a special branch in legal sociology developing which could be in the position to develop common standards of argumentation. "Legal Effect Research" (Rechtswirkungsforschung) is concerned with the question what difference it makes if social fields are regulated by formal legal norms. This is an autonomous realm of legal sociology. It becomes part of a broader sociological jurisprudence, if the selection of criteria for this type of research is guided by legal regulatory intentions and if the results of that research are used for a reformulation of legal norms.

Empirical findings and theoretical insights are likewise suited to be used in this kind of legal reasoning. In the following I am going to use empirical materials as well as theoretical constructions in order to show how social science research on social effects of legal regulation can inform the law about what it is doing. I will concentrate on one of the most important experiments to change the character of organizations by means of law, the example of industrial democracy.

There are many roads to "Industrial Democracy". A lively academic discussion as well as numerous social experiments reveal a whole variety of approaches: Via work place participation, work councils, board representation, representation of public interests, pluralist constitution of the firm, collective bargaining systems, workers' self-management, socialization of enterprises. One road, which the German labor movement has chosen, leads via law, legislation and the legal process (e.g. Carnoy and Shearer, 1980). Guided by national bias and experience I want to follow the German road to Industrial Democracy and to describe some of the promising land it leads to as well as the darker areas it surpasses, its potential and limits, its direction, its traps, its detours. If we are interested in successful road construction work, what lessons can we learn from the peculiar German experience? The German road is peculiar, even extreme, in two respects. First, it does not lead through the somewhat muddy lower levels of workplace participation, but rather finds its way through the lofty heights of corporate hierarchies: work councils at the middle echelon as counterweight to managerial authority and representation of workers' interest at the top level of the corporation. Secondly, on this road we do not meet a spontaneous, eruptive, anarchic, unstructured flow of social and political movements but a highly disciplined traffic guided by complicated traffic rules and many, many traffic signs. A high degree of juridification of labor interest representation is the most conspicuous trait of German co-determination. Thus, one should attempt to exploit the German experience and ask the following questions: What are the actual social functions of legalized co-determination as opposed to official goals and political ideologies? What is the effective role of the law in strengthening participation, power equalization and industrial democracy?

I have two tentative answers to these questions which I will elaborate in this paper. The material I rely on is some empirical evidence about the factual consequences of co-determination and some pieces of theory on interest-mediation in industrial relations.

1. *Social functions*: The official doctrine, co-determination contributes to "economic democracy" through workers' participation is an excellent example for political rhetorics. The main function of co-determination lies neither in individual benefits for the workers nor in an enhancement of their political status as economic citizens. Rather, we have to look for relevant effects on the intra-organizational and inter-organizational level. Co-determination changes intra-organizational power relations resulting in a new form of co-management among capital and union elites. In addition, co-determination changes inter-organizational relations insofar as it contributes to a specific form of political ("neo-corporatist") organization in the relation between the economic and the political system.

2. *The role of law*: Due to their norm-centered perspective, lawyers tend to over-estimate the role of legal norms in promoting industrial democracy. Their occupation with decision procedures, formal competences, and standards of legal protection leads them to a problematic identification of formal democratic structures with real democratic processes. On the other hand, social scientists tend to under-estimate the role of law. They perceive law more or less exclusively as a dependent variable and concentrate on social, organizational, psychological conditions. Empirical evidence suggests that both approaches fail to take account of the specific potential and limits of law in its "protective" and its "facilitative" functions. In both respects, legal norms have turned out to be a decisive factor – if not the most decisive factor – in changing effectively intra-organizational as well as inter-organizational power structures.

In order to work out these theses, we cannot fruitfully discuss the complex interrelations between co-determination law and industrial democracy as a whole. Rather one has to distinguish carefully between different levels of social organization and to scrutinize the social functions of law and its potential for change separately on each of these levels. I propose to distinguish three levels: individual interaction, the organization of the firm, the economic system in its relation to society at large.

1. Individual Effects

An old tradition of thought relates co-determination primarily to the individual worker in the firm. His status as a subdued individual in the framework of hierarchical authority and industrial subordination should be transformed into the status of an "economic citizen". This perspective of co-determination is underlain by a concept of economic democracy that aims primarily at the participation of those concerned. Co-determination is conceived as an antidote against "alienation". This treatment of the co-determination idea in terms of the individual is widespread. In a number of variants co-determination is interpreted as compensation for social domination. Individual participation by workers – admittedly mediated through complicated representation mechanisms – is supposed to promote the worker's human dignity, humanize the world of work, give the worker a sense of involvement in his work, control managerial domination and also extend the realization of the democratic principle of participation in decision making to economic enterprises.

Indubitably individual democratic participation and humanization of the world of work constitute social policy goals of the highest rank. But there are certainly great doubts whether the function of institutionalized co-determination has really been grasped hereby.

International empirical studies have scrutinized again and again the democratizing effects of co-determination for the individual worker (see for summaries Blumberg 1968, Wilpert 1975, Batstone and Davies 1976, Wall & Lischeron 1977, Adams and Rummel 1977, IDE 1982). They concentrated on the questions: Does co-determination lead to a reduction of personal alienation? Does it increase workers' motivation which might result in higher productivity?

The findings are contradictory and ambivalent, however, altogether they suggest a rather skeptical assessment.

These findings show the following picture. In general, workers have a rather positive attitude towards co-determination. However, if it comes to details, the attitudes become more negative. As the relation between co-determination and satisfaction is concerned, Tannenbaum et al. found that in countries where workers' representatives had more influence, the workers did not have more satisfaction, trust, sense of responsibility or work motivation than in the other countries (Tannenbaum 1974). In addition, the attitude of workers as to the effects of the representative system is not too positive. In a recent cross-national comparison, less than fifty percent of workers and supervisors in each country showed a positive evaluation of the functioning of representative bodies (IDE 1982: VII, 15). Rather than to democratize the workers' situation, the representative bodies are perceived to function as part of the control structure of the organization (IDE 1982: VII, 13). In more detail, it turned out that rank and file employees do not know much about the work of their representatives. Their attitude to personal involvement is lack of interest, indifference or even apathy. They assess the influence of the representative bodies as rather marginal. Streeck (1984) concludes as follows: "Workers under parity co-determination were as much subject to hierarchical control as workers everywhere else, the organization of their work continued to be determined by impersonal mechanisms beyond their influence and understanding, and their attitudes toward their work did not differ in any perceptible way from that of workers in other industries".

If we contrast these somewhat depressing findings to the high aspirations connected with co-determination, we have to admit that in this respect, political goals and actual social function do not coincide. Due to the large social distance between individual interaction at the workplace and organizational decision making in the corporate hierarchy, co-determination through worker representatives in corporate bodies is clearly not a suited means to achieve the goals of participatory democracy. There are other means which may have some success on the individual level: job enrichment, autonomous working groups, rotation system, and other ways of direct workplace democracy. In vain, however, we will look for democratizing effects of co-determination on this level. Its main social functions should instead be identified rather on the intra-organizational and inter-organizational levels. Thus, co-determination law should give up this orientation toward a non-suited purpose and concentrate its regulatory powers on the other.

2. Organizational Effects

Co-determination law plays a much more important role in the complicated power relations of intra-organizational decision making. Co-determination law seems to change considerably the distribution of power and influence, the goal structure of the organization and the structures of the capital-labor conflict.

2.1 Power and Influence

At first sight, co-determination law does not seem to matter very much. Although complicated rules, procedures, competencies and conflict resolution bodies are created these institutionalized patterns are only rarely used. Open, formalized conflict with decision by vote is only seldom. For example, Tegtmeyer (1973:88) reports that most of the supervisory board decisions were taken unanimously. And the Biedenkopf report (1970:130) contains data according to which only very rarely the "neutral" member of the board had to give the decisive vote. Thus, it might seem that the new legal machinery is not accepted and utilized for the labor interests. Does law only have symbolic functions?

Looking closer to the real decision making processes, the picture changes drastically. Indeed, open conflict is seldom, the legal machinery for conflict resolution is only used as a last resort. However, what happens is a change of informal negotiating processes. And there we can identify the most important albeit indirect effect of the law. The formula is "bargaining in the shadow of the law" (Mnookin and Kornhauser 1979). Management and labor representatives deal with each other by anticipating the power distribution in formal conflicts. The legal rules of co-determination have changed these power relations drastically. The increase of formal decision making power from practically nil to parity positions for the workers influences considerably the actual day-to-day behavior of management and labor. It does so not directly by the new procedures and rules, but by the changed formal positions which are anticipated in the ongoing negotiations. Matters of political conflict are discussed in informal meetings between labor and management before the formal board meeting takes place. And many issues even do not reach that stage of informal negotiation since management tries to adapt to anticipated labor positions in order to avoid conflict (Tegtmeyer, 1973:126). Finally, labor representatives are often consulted even if legally it is not required (Streeck, 1984:23).

In a recent empirical study the direct and indirect effects of law in changing the actual power and influence structure have been scrutinized in a comparative way (IDE, 1982:VI). Economic organizations through all the countries are highly hierarchical. Co-determination does not abolish the hierarchy, but it modifies the power-distribution in a considerable way. It does so directly by granting a legal "meta-power" through the re-distribution of control rights and, indirectly by restricting the power of competing groups. Granting legal power to representative bodies does not only increase their influence, but diminishes at the same time the power of top-management.

It seems that the indirect effects of co-determination law (changes in negotiation power) are much more important than the direct effects (installation of a conflict resolution system). This impression is strengthened if one looks to the effects which co-determination had on the union's position as a whole. Streeck (1984:9) has argued that co-determination law has an indirect effect of strengthening the positions of unions in the respective industries in regard to three aspects: (1) Union control over the personnel department made it possible to recruit union members in a way very similar to a closed shop. As a consequence

the density ratio of union membership had increased drastically in the coal and steel industry. (2) The presence of a full-time union official on the supervisory board strengthened the crucial contacts between union headquarters and the workforce in the enterprises. (3) Under conditions of parity co-determination, there occurred a practical fusion of the works council and the "external" union. These indications of a relative improvement of the unions bargaining position through law suggests that one indeed should concentrate the attention on indirect effects if one wants to assess functions of co-determination law.

Moreover, if we attempt to compare and evaluate the relative influence of legal norms on power distribution as opposed to structural and organizational variables the IDE-study confronts us with a rather surprising result. Social scientists occupied with worker participation have tended to expect a rather minimal influence of formal legal norms. For example, personal variables like high education of the workers are classically treated as crucial for organizational participation (Lipset et al. 1956, 127). Moreover, technology and organizational structure are seen as the main predictors for power distribution in the organization (Evan 1977). Others stress organizational factors like the size of the organization (Blau and Schoenherr 1971). Quite in contrast to these expectations, the authors of IDE conclude "that institutional norms relating to medium term decisions seems to be the most important instrument of power equalization and of further democratization of those work organizations . . ." All the other contextual variables – personal attributes of employees (skill, education, unionization), technological contingencies (automation, complexity), organizational contingencies (differentiation, formalization, control), economic and environmental contingencies – turned out to have much less influence on power distribution within the organization. It seems the law has only two serious competitors in changing effectively the power structure: "mobilization" of workers, their active participation in unions, labor actions and workers representative bodies and, second, strong outside influence within supervisory bodies. The policy lesson to be learned is a more "voluntaristic" approach to industrial democracy. It seems to be conditioned much more by human action – law, mobilization, outside influence – than by existent technological, structural and economic conditions.

2.2 Goal structure

Quite apart from those effects on power structures, co-determination law has a different function which we can call the "internalization of external conflicts" (Teubner, 1978:228). Without co-determination, workers' interests are mainly channelled through labor market structures and inter-organizational negotiations. In the collective bargaining system, labor-management conflicts are a matter of external relations. Insofar as co-determination shifts decisions and conflict resolutions to intra-organizational boards with labor representation, the industrial conflict becomes (partially) internalized into the economic organization itself. This changes the medium of communication: The collective bargaining system works via economic market mechanism – in Hirschman's termin-

ology via "exit"-mechanisms – while co-determination leads to a politization of the conflicts, to the dominance of "voice" mechanisms. Moreover, the goal structure of the organization changes considerably. Workers' interests like job security, easiness of work, cushioning of rationalization are no longer external cost factors which must be minimized but a legitimate goal for the intra-organizational decision process itself (Luhmann 1966:8). This change in the goal structure leads to the partial internalization of the labor market into the organization and by its transformation into organizational manpower-planning and the creation of internal labor markets in large organization. Since labor interests arrived at a more prominent place in the goal hierarchy, management was put under constraints to develop mechanisms that would reduce the exhibition of labor to the fluctuations of the external labor market. Streeck (1984:30) argues that in this respect co-determination has not only created a problem for enterprises but also offered a solution. The new solutions, manpower planning and internal labor market were possible since co-determination "has provided the organizational instruments to cope with such rigidities without major losses in efficiency" (Streeck, 1984).

2.3 Capital-Labor Conflict

Thus, co-determination has changed the conditions of the labor-capital conflict. The great ideological battle on secular issues is transformed into nitty-gritty divergences which have to be dealt with on a rather trivial basis of day-to-day arrangements. And it creates a conflict solving mechanism which a German scholar has labeled as a "stroke of genius of modern social systems" ("Geniestreich moderner Sozialordnungen", Lutter 1982:567): the "dual loyalty" of interest representatives. While many empirical studies analyze the amount of frustration and alienation on the side of work councils, labor board representatives and labor directors, who suffer psychically from the role-tensions they are exposed to, one should not forget the other side of the coin. It is an old sociological insight that intra-role conflicts can serve as a link between highly divergent social interests (e.g. Stouffers 1949, Dahrendorf 1958). The structural conflict is "personalized", is transformed into a burdensome personal problem and the dual loyalties compel the individual to search for – socially and psychically – bearable solutions, compromises and temporary arrangements. Thus, we can generalize about the role the law is playing in this respect. The law which has created this conflict situation can, in a way ease the role-tensions without abolishing them. By granting formal power to the representative it legitimizes the ambivalent position he occupies and his desire to "balance antagonist interests".

The effects of co-determination law in this respect are, however, even more pervasive. They are not confined to change the conditions of conflict from antagonistic confrontation to stabilized compromise, they change the very structure of management. In the long run, the role of labor is not limited to the role of a pressure group influencing management by negotiations and threatening with sanctions backed by social power. Rather, the very combination of the

work council system, the supervisory board representation and the collective bargaining system leads to mutually reinforcing effects and results in a kind of co-management between capital and labor. Tegtmeier (1973:150) concludes that the main consequence of co-determination is a “joint and integrated decision-making process”. The effect of the law is for capital and for labor a reciprocal internalization of interests. Streeck (1984:35) speaks of a “mutual incorporation of capital and labor by which labor internalizes the interests of capital just as capital internalizes those of labor, with the result that works council and management become subsystems of an integrated, internally differentiated system of industrial government which increasingly supersedes the traditionally dualistic class-based system of industrial relations”.

3. Economic and Societal Effects

If we change now the system reference from the organization to the economic system in its interaction with other functional subsystems – especially politics and law – we realize that co-determination stands in strong contrast to principles of economic rationality. Co-determination relies on voting procedures, on pressure politics, on bureaucratic hierarchy, on negotiating and power balancing mechanisms, which are not compatible with economic principles of profit-maximization, with market-structures and with money as the economic communication mechanism.

3.1 Contradiction to the Prevailing Orientation

This politization of the economy through law is the conspicuous target for fundamental critique. Either, co-determination is supposed to destroy effectively economic rationality (Prosi, 1976) or co-determination is said to be one of the last tricks of capitalism: corruption of labor through pseudo-participation (Deppe 1969). Both positions have their merits by revealing important partial aspects of co-determination. Indeed co-determination flatly contradicts pure economic principles. The question is only to what degree and with what results. Indeed, co-determination changes the attitude of labor, from “conflictory” strategies to “cooperative” ones. Again, the question is only to what degree and with what effects. Both positions in a way tend to over-generalize their concrete observation of “market corruption” or “labor corruption”. However, they fail to analyze the potential and limits of those phenomena by a closer analysis of the relations between market and organization.

If the relations between market and organization are defined by conditions of perfect competition, co-determination does not matter. Under perfect competition the constraints of the market on the organization are so strong that there is only one best solution. However, under conditions of market-imperfections – concentration, oligopolization – those constraints become weaker and management gains a considerable discretionary power in its decisions (e.g. Lindblom, 1977:152). And precisely this discretionary power is the main target of co-determination. Again, it is precisely the range of discretion which gives a limited

justification to the liberal and to the leftist critique. Economic rationality is impaired, however not by co-determination, but by the very existence of managerial discretion which is due to market-imperfections. On the other hand, labor gets “corrupted” insofar as labor representatives have to bend to economic constraints, but this is only true for decisions outside the room of discretion. Insofar as management has gained discretionary power, labor with a strong formalized position within the enterprise possesses the power to make “non-corrupted” demands for the workers’ interest. From the perspective of organization-market-relations it becomes clear that a description of co-determination as a total politization of the economy is just as inadequate as describing it in terms of corporate corruption of authentic labor interests. The crucial point is partiality. Economic rationality remains the prevailing principle, however it is modified to a certain degree by countervailing institutions which work as “built-in” contradictions to the prevailing orientation (Luhmann 1966:15).

3.2 Neo-Corporatist Coordination Mechanism

What then is the social function of co-determination if it represents a built-in contradiction to economic rationality? It is our thesis that the function of co-determination can be understood only in terms of differentiation and integration. Co-determination serves as one of the main integrative devices in a society which is characterized by extreme functional differentiation. The most conspicuous trait of differentiation processes is the high degree of functional autonomy the economic system has gained. This gives rise to the secular problem: How can the societal integration of the economy be carried out without losing the advantages of high differentiation. Even more: Do we have to conceive the relation between differentiation and integration as a zero-sum-game, where winning for one part means losing for the other? Or is there a possibility of integrative devices which not only maintain a given degree of differentiation but which support even increasing differentiation? (Willke 1978:228; 1983).

The interesting point about co-determination law is its indirect control technique as opposed to interventionist direct control. It is the specificity of co-determination law that the state does not intervene with external controls, for example with regulations of the market structure, with instruments of global steering, with legalization of corporate behavior, or with a direct politization of economic action. Rather it relies on indirect means of control, as an external stimulation of internal self-regulation. The crucial point is that state law changes the internal structure of the corporation by redistributing property rights, however by maintaining the economic principles of corporate autonomy and decentralized coordination. In this respect, co-determination represents one possible answer of how to integrate economic large scale organization politically without subduing them to direct state control which would end in de-differentiating tendencies.

Viewed in this perspective, co-determination has its main function clearly neither on the level of individual participation, nor on the intra-organizational level of labor-management-relations, but on the societal level as a re-integrating

mechanism. It is not only a peculiar element of company law, but forms part of a whole ensemble of coordination mechanisms. Co-determination is the lowest echelon in a system of coordination mechanisms for which political scientists have coined the term "neo-corporatist syndrome" (Schmitter, 1974; Alemann 1981). This is a form of political organization in which organized business and organized labor are directly involved in state decisions and at the same time serve as implementation mechanisms for governments' economic policies.

Neo-corporatist arrangements should be clearly distinguished from "state-corporatism" on the one side and "interest group pluralism" on the other side. In Schmitter's terms (Schmitter 1974, 1979) "pluralism can be defined as a system of interest mediation in which the constituent units are organized in an unspecified number of multiple, voluntary, competitive, nonhierarchically ordered and self-determined (as to type or scope of interest) categories that are not specifically licensed, recognized or otherwise controlled in leadership election or interest articulation by the state and that do not exercise a monopoly of representational activity within their respective categories. Corporatism can be defined as a system of interest intermediation in which the constituent units are organized into a limited number of singular, compulsory, noncompetitive, hierarchically ordered, and functionally differentiated categories recognized or licensed (if not created) by the state and granted a deliberate representational monopoly within the respective categories in exchange for observing certain controls on their selection of leaders and articulation of demands and supports."

While these definitions show the difference between pluralism and corporatism, the difference between state corporatism and societal corporatism can be shown for each element of the definition of corporatism. In societal corporatism, the limitation of number, the singularity and the compulsory character of the collectives are due to social processes, through competition, cooptation, social pressures and interorganizational arrangement. In contrast, state corporatism creates these elements by deliberate government restriction, state-imposed eradication of multiplicity and through means of the law. Again, their non-competitive and hierarchical character, their functional differentiation, under conditions of societal corporatism is produced by internal processes of oligarchization and bureaucratization and not by state-imposed regulation of their internal structure and their external relations. Finally, societal corporatism produces recognition by the state and representational monopoly by imposition from below upon public officials, and not as privilege granted from above by the state as a condition for association formation and continuous operation. In more abstract terms of differentiation and integration, the differences can be caught in the following way. Both of them represent attempts of integrating a differentiated society. Due to its pervasive politization of society through state-dominated organizations, state corporatism tends however to decrease differentiation and autonomy of social subsystems, while societal corporatism which is based on state-independent social power resources tends to maintain or even increase social differentiation and subsystem autonomy.

Co-determination should be understood as an important mechanism of neo-corporatist structures which permeate on different levels of coordination be-

tween politics and economy (Erd, 1982:149). The neo-corporatist syndrome should no doubt be looked at as a whole. Such attunement processes take place at least at three levels: (1) The macro level of major economic policy decisions on incomes policy, tax policy and price policy, negotiated among the summit bodies of the economy, the trade unions and government bodies, (2) the meso level of regional and sectoral structure policy and the relationship between employer associations and trade unions (3), the micro level of the enterprise, via co-determination processes and public involvement, which mediate between the systems for distributing the firm's yield (company law profit distribution and collectively bargained wages). The relations between those three levels are the object of a controversial discussion today. On the one side, the thesis is put forward that legalized co-determination is a supportive structure if not a prerequisite for a highly developed corporatism (Erd, 1982). This is contested by the counter-thesis that a highly developed corporatist structure on the macro-level is largely independent of micro-participation on the firm level, even that both mechanisms tend to work into different directions (Dittrich, 1983:89).

It should be realized that the integrative achievements of such neo-corporatist structures are bought at a certain price. For neo-corporatist negotiation systems in general and for co-determination in particular it is true that they carry with themselves consequential problems which can be circumscribed by "social closure". Centralization of decisions, the bureaucratization of organizations, the isolation of the negotiating elites, are some of the dysfunctional consequences of neo-corporatist procedures. In regard to co-determination it has been observed that the very installation of neo-corporatist mechanisms on the micro-level tends to have adverse effects on neo-corporatist mechanisms themselves, on the meso-level and on the macro-level. The more successful cooperation between capital and labor on the level of the organization transforms them into a collaborative "productivity coalition" the more they tend to exploit their environment and the less they are open to successful external regulation (Streeck, 1984:40). That means that co-determination which was intended by the union movement to be one part of a social planning system may become more and more resistant to the quasi-planning of neo-corporatist coordination. This poses threats to the interest aggregation process in labor unions as well as to labor policies and income policies of governments. Whether a solution out of this paradoxical situation can be found is an open question.

What are the institutional consequences? Firstly they would always have to relate the company constitution to the total context of neo-corporatist mediatory mechanisms at the various levels. Co-determination would have to be precisely aligned on this, also from the legal standpoint. In this view co-determination law would have to be separated from its individual or interest group related interpretation and reoriented towards this kind of social control concept. This would have consequences that would extend into the questions of the position in co-determination law of the trade-unions, of information and accountability obligations, of the delimitation of co-determination and collective bargaining system and of the institutional link of the organizations and their internal structures. Secondly, this approach would have implications particularly for state participa-

tion in co-determination models. If neo-corporatist coordination is to work successfully, it has to be made sure that a coordination exists between coordinating mechanisms. If this can be achieved by close integration or contrary by an increasing separation again is an open question.

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