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Book Reviews

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BOOK REVIEWS

U.S. MULTINATIONALS AND WORKER PARTICIPATION IN MANAGEMENT: THE AMERICAN EXPERIENCE IN THE EUROPEAN COMMUNITY. By Ton DeVos. Westport, Conn.: Quorum Books, 1981. Pp. 229.

*Reviewed by David M. Helfeld**

This book's title does not accurately describe its scope and content. First, the book presents informative data that encompasses far more than the European experience of United States multinational companies with worker participation in management. Second, the book seeks to answer the question of whether "the experience of American business managers in Europe [has affected] the way they conduct labor relations in the United States."¹ Last, throughout the book the author makes an implicit or explicit argument in favor of greater worker participation in the management of business enterprises. His position is stated obliquely in the preface by his questioning of the expectation that workers "be content and constructive in a nondemocratic work process if they have been socialized to think of themselves as individuals whose ideas have value for society as well as for themselves."²

The book reviews the existing literature in light of data the author gathered from approximately sixty interviews conducted with managerial personnel of United States multinational companies in Europe, United States Chamber of Commerce officials, national and international trade unionists, officials of international and national employer organizations, high-ranking personnel of the European Commission, national government officials, and academicians.³ DeVos made the fundamental decision not to sepa-

* Professor of Law, Catholic University School of Law, Ponce, Puerto Rico. J.S.D. 1954, Yale; LL.B. 1948, Yale; B.A. 1943, City College of New York. Chairman, Governor's Advisory Council on Labor Policy.

1. T. DEVOS, U.S. MULTINATIONALS AND WORKER PARTICIPATION IN MANAGEMENT: THE AMERICAN EXPERIENCE IN THE EUROPEAN COMMUNITY at xiii (1981).

2. *Id.*

3. *Id.* at xiv.

rate data received through interviews from the material gathered from published sources. He gives two reasons for adopting this approach: (1) "The original research was done to double-check for possible biases in the published materials"⁴ and (2) his lack of interest in reaching "only academicians who specialize either in worker participation or in industrial relations."⁵ Rather, he wanted to inform "generalists, and even more particularly, those who have or expect to have managerial responsibilities in American industrial corporations."⁶ Both stated reasons are unsound. Not only is it difficult to understand why interview sources would be less biased than published sources, but his failure to identify interview sources clearly makes it difficult, if not impossible, to evaluate the validity of a number of his key conclusions. No matter what segment of the reading public the author had in mind, his failure to disclose explicitly his interview sources necessarily weakens the persuasiveness of his analysis and conclusions.

This book's effectiveness is strengthened by the author's marshalling and analysis of multidimensional data taken from published sources. The data he has gathered, organized, and evaluated can be best summarized and considered in the form of findings of fact, opinions, and trends.

Contrary to common belief, investing in and establishing United States enterprises in Western Europe is not a recent phenomenon; it can be traced back to the post-Civil War period. Following World War I, the movement became significant. The beginning of the 1960s witnessed a spectacular growth in direct investment; by 1970, the book value had reached \$24.8 billion from the 1960 book value of \$6.7 billion. By 1979 United States multinational corporations had invested \$55,283 billion in the Common Market countries,⁷ which was almost one-third of the total worldwide United States investment. Although there is no

4. *Id.*

5. *Id.*

6. *Id.*

7. United States investment is divided among the Common Market countries as follows: United Kingdom — 36.8%, Federal Republic of Germany — 23.1%, France — 12.2%, Belgium-Luxembourg — 8.6%, The Netherlands — 8.4%, Italy — 6.5%, Ireland — 2.9%, and Denmark — 1.6%. *Id.* at 8 (citing SURV. CURRENT BUS., Aug., 1979, at 27). The investment breakdown by industrial sectors at the end of 1978 was: 58.2% in manufacturing, 22.1% in petroleum, 8.4% in trade, 7.5% in finance and insurance, and 3.8% in others. T. DEVOS, *supra* note 1, at 15 (citing SURV. CURRENT BUS., Aug., 1979, at 27).

authoritative study of the precise number of United States firms operating in the European Community, it has been estimated that there are seven thousand companies with more than two million employees in Western Europe. In September of 1977, the *Economist* reported that International Telephone and Telegraph's (ITT) employees in Europe numbered more than two hundred thousand. Ford, General Motors, and IBM employed over one hundred and forty thousand, one hundred and ten thousand, and one hundred thousand persons respectively.⁸

Public opinion polls and surveys of elite groups in Western Europe demonstrate that the amount and impact of United States investment have caused considerable apprehension. The polls also reveal a tendency to exaggerate the impact. In a 1974 poll a significant percentage of those surveyed expressed a fear and apprehension of United States multinational companies' capacity to "get a stranglehold on whole sectors of the economy and, as a consequence, [to] threaten the existence of local national companies."⁹ The results of a 1975 poll express criticisms of multinational corporations for their lack of interest in the countries in which they operate, for behaving "as if they were above the law,"¹⁰ for taking out more than they invest, and for tending to fix prices and promote monopolies.¹¹

In recent years United States companies increasingly have divested themselves of their European holdings and the overall rate of direct investment has slowed down markedly. Whether this is a result of the recession, which has affected the United States since 1979, or an outgrowth of a more deep-seated trend is not clear. There appears, however, to be a reverse trend in direct foreign investment in the United States, increasing from \$13 billion in the 1970s to \$40 billion by the end of 1978.¹²

The author concludes that "[t]he American perspective [on industrial democracy] is changing."¹³ The data he presents, however, at most supports the conclusion that the United States perspective on industrial democracy "may be" changing, or "should

8. T. DeVos, *supra* note 1, at 19.

9. *Id.* at 25 (quoting G. PENINOU, M. HOLTUS, D. KEBSCHULL & J. ATTALI, *MULTINATIONAL CORPORATIONS AND EUROPEAN PUBLIC OPINION* 62 (1978)).

10. T. DeVos, *supra* note 1, at 26 (quoting *EUROPEAN ATTITUDES TO MULTINATIONALS* (1976)).

11. T. DeVos, *supra* note 1, at 26.

12. *Id.* at 27.

13. *Id.* at 60.

be" changing. Though studies demonstrate that United States employees are increasingly concerned with nonmaterial values such as dignified treatment and meaningful work, industrial executives, with few exceptions, continue to emphasize the value of profit maximization. The exceptions that he cites to this general rule, Johnson & Johnson and Harmon International Industries, simply serve to underscore the dominant value system of most United States companies. Although the author concludes, on the basis of a study of the opinions of *Harvard Business Review* subscribers and MBA students,¹⁴ that opinions are changing, his data is hardly conclusive. Only twenty-seven percent of executives in the manufacturing sector favor allowing employees to express their preferences and views on such matters as relocation to new plants and mandatory retirement age.¹⁵ Regarding the selection of a company's chief executive officer, a key issue in industrial democracy, only seventeen percent of executives in 1971 felt that the selection should be made with "accurate knowledge first of his acceptability or lack of acceptability to key employee groups."¹⁶ Public opinion poll results showing declining degrees of confidence in organized labor and major companies are presented as pertinent evidence of industrial democracy, but, in my judgment, have no bearing on any possible trend of greater employee participation in shaping the quality of his work life or in formulating the decisions made in the boardroom. More relevant is the overwhelming disinterest of United States labor leaders in being appointed to corporate boards of directors. The appointment of UAW President Douglas Fraser to the board of Chrysler is hardly evidence of a trend, unless and until other companies in equally desperate circumstances feel compelled to move in the same direction. Three years have passed since Fraser's appointment and no trend has yet materialized. The author makes an equally doubtful representation that "a possible bridgehead for labor to claim the right to be represented on the corporate board of directors of key multinationals"¹⁷ exists because private sector pension

14. *Id.* at 45-46. Compare Ewing, *Who Wants Corporate Democracy?*, 49 HARV. BUS. REV. 25 (1971)(results of the initial sampling), with Ewing, *What Business Thinks About Employee Rights*, 55 HARV. BUS. REV. 81 (1977)(results of the subsequent survey).

15. T. DeVos, *supra* note 1, at 46.

16. *Id.* at 47.

17. *Id.* at 59.

funds, in 1976, held twenty-five percent of United States equity capital.¹⁸ Perhaps labor should make this claim, but, over the past six years no trend in that direction is discernible, most probably because of federal law requirements that pension funds be managed by boards of trustees representing management and labor on a parity basis.¹⁹

Although the industrial relations reputation of United States multinational corporations includes such affirmative elements as increased productivity, shorter work weeks, higher wages, and a higher standard of living, the overall reputation has been negative. There are four basic reasons for this perception: (1) reluctance and resistance to trade union recognition; (2) plant withdrawals and worker layoffs without adequate notice and consultation; (3) resistance and rejection of established centralized collective bargaining procedures; and (4) the contracting of migrant or guest workers.²⁰ The author concludes that this "kind of reputation has been a key element in the dynamics of the European movement toward greater direct worker participation in business-enterprise decisions."²¹ That conclusion, however, is not supported by any substantial evidence. The data in the book gives no reason to assume that the direct worker participation movement would not have run its course, more or less as it has done, with or without the presence of United States multinational corporations.

The author correctly characterizes the extent to which worker-participation experiments have taken place in the United States as "limited."²² The vast majority of United States enterprises operate on the principle that it is the prerogative of management to manage and to manage unilaterally. A minority of companies have conducted a variety of experiments to include worker participation in management functions, for example, quality control circle experiments. This experimentation has occurred both on the sole initiative of management, as in the case of Monsanto, and in collaboration with union leadership, as in the Scanlon-Golden col-

18. *Id.* at 58 (citing Drucker, *Pension Fund "Socialism,"* 42 PUB. INTEREST 3 (1976)).

19. See Labor Management Labor Relations Act of 1947, Pub. L. No. 80-101, § 302(C)(5)(B), 61 Stat. 136, 156.

20. T. DeVos, *supra* note 1, at 68, 79.

21. *Id.* at 79.

22. *Id.* at 83.

laboration.²³ A number of experiments have emanated directly and indirectly from federal governmental entities: the TVA, under the sponsorship of the National Center for Productivity and Quality of Work Life, and the Federal Mediation and Conciliation Service, which has assisted the formation of labor-management committees.²⁴ At the local government level, perhaps the most notable initiative was taken by Jamestown, New York.²⁵

The establishment of a company ombudsman and the use of employee surveys, letter writing systems, and employee stock ownership plans are other techniques of worker involvement. The tendency of Japanese multinational corporations operating in the United States to follow Japanese worker involvement policies is especially noteworthy. In 1978, Matsushita, for example, accepted consultation with worker representatives on all corporate policy decisions as a management obligation.²⁶ Matsushita and a very few United States companies belong to a tiny minority of the minority of multinational corporations that have adopted any worker involvement policies. These policies generally provide for the functions of consultation and recommendation, and leave management authority over the production process essentially untouched. Direct participation in company boardroom decision-making is virtually nonexistent in the United States.

The author has failed unaccountably to draw upon the experience of the collective bargaining process as it relates to industrial democracy in summarizing United States worker participation experiments. A majority of employees select the union which represents them for purposes of bargaining collectively with the employer. The collective bargaining contract usually covers more

23. *Id.* at 85-87.

24. *Id.* at 85, 100-02.

25. *See id.* at 88-89. The city used the following eight guidelines for area-wide as well as in-plant action:

1. Adequate and fair compensation,
2. Safe and healthy working conditions,
3. Immediate opportunity to develop and use human capacities,
4. Future opportunity for growth and security,
5. *Social integration in the work organization,*
6. *Constitutionalism in the work organization,*
7. Work relative to the total life span,
8. Relevance to the larger society.

Id. at 88.

26. *Id.* at 105.

than wages, hours, and fringe benefits. Increasingly, production standards, wage incentives, promotion principles, work assignments, lay-offs, sub-contracting, plant relocations, and profit-sharing plans are the subject matter of collective bargaining. Most contracts include a grievance process terminating in arbitration which is intended to guarantee employees fair treatment. Far more is happening in the development of industrial democracy in the United States through collective bargaining than the author apparently realizes.

Having considered the limited worker-participation experiments in the United States, the author addresses West European trade unionism and its responses to the presence and practices of United States multinational corporations.²⁷ There are unquestionable differences between the trade union movement of Western Europe and the United States.²⁸ The intriguing development of transnational trade unionism by Western European trade unions as a response to United States multinational corporations has taken the form of (1) international secretariats, such as the International Metalworkers Federation which represents eleven million workers, and (2) efforts to achieve a coordinated collective bargaining framework across national boundaries. The latter response has had only limited success thus far.²⁹ International trade union organizations have had the most success in their training and publication programs and in gathering and disseminating reliable economic data about the multinational corporations. The author compares the international trade union organizations with European trade associations in the European Economic Community that have felt compelled to protect their interests and meet the competition of the United States multinational corporations through their own form of multinational organizations.³⁰ From the data presented, it appears that the EEC trade associations have been more effective in achieving their goals than have the international trade union organizations. The evidence, however, does not make clear whether transnational trade unionism grew

27. *Id.* at 109.

28. Differences include: the extent of organized membership, the emphasis on ideology directed to varying degrees of deep-seated social and economic reform, the extent of affiliation with labor-oriented political parties, emphasis on centralized bargaining and legislative reforms, and the incidence of strikes.

29. See T. DeVos, *supra* note 1, at 120-28.

30. *Id.* at 120.

up solely or even primarily in response to United States multinational companies, or as a broadly based response to the specific development of the European Economic Community and international capital investment in general, of which United States multinationals are a part.

The findings in Chapters 6 and 7, "Worker Participation Practices in the European Economic Community"³¹ and "The Response of U.S. Multinationals to European Laws and Practices,"³² are the heart of the book. The findings provide essential data for answering whether the "experience of United States business managers in Europe had any effect on the way they conduct labor relations in the United States."³³ The two types of worker participation, works councils and worker representation on supervisor boards, are summarized for the main countries of Western Europe. The author makes it clear that worker participation has varied from country to country.³⁴

The works council model³⁵ has been most fully developed in the Federal Republic of Germany, where it is used in ninety-eight percent of the country's manufacturing enterprises and seventy-five percent of its wholesale and retail enterprises. Because West Germany is the most advanced in its utilization of works councils, it provides the most interesting illustrative material. West German works councils must provide for elections of proportionate representation of hourly and salaried employees. Salaried employees include supervisors up to the level of senior executives. This

31. *Id.* at 133.

32. *Id.* at 165.

33. *See supra* note 1 and accompanying text.

34. T. DeVos, *supra* note 1, at 160.

35. The author provides the following synopsis of workers' councils:

The councils have four types of powers: administrative, codeterminative, consultative, and informative. They administer such company social services as kindergartens, vacation homes, and the emergency loan fund. They participate directly in the development of personnel policy, including the terms of employment (working hours, method of payment, job-performance-evaluation procedures, and piece rates); in decisions concerning hiring, firing, reassignment, or training, and how such training programs shall be executed; and in the development of a social-compensation plan for workers unnecessarily disadvantaged as a result of projected job relocations or organizational changes. Management has the obligation to consult the workers councils on all business decisions that add new jobs, change existing ones, and damage the interests of current workers.

Id.

mix of employee representation requires close monitoring by trade unions, or the councils may turn into the equivalent of company-oriented unions. At times, works council elections have served the cause of dissident radical employee groups who felt that their unions had become too conservative. Notwithstanding the legal duty to do so, companies have failed in some notable instances to inform and consult their works councils on delicate matters such as the negotiation of a merger arrangement.³⁶

Codetermination in West Germany takes a number of forms. The oldest form adopted for the coal, iron, and steel industries is the most advanced and most closely approximates the principal of parity representation for enterprises employing more than 1,000 workers. In the steel industry, appointment of "outside" directors nominated by the stockholders and the unions in consultation with the works councils is required. The personnel director must be acceptable to a majority of the supervisory board. The chairman of the directors, usually a representative of the stockholders, is also selected by a majority of the board.³⁷

For the other sectors of the West German economy, less than parity representation is the statutory norm. In the case of enterprises other than entirely-owned family corporations that employ between 500 and 2,000, employee representatives who must be firm employees constitute one-third of the supervisory board. For those firms employing more than 2,000, there is only apparent, not actual, parity for three reasons. First, the board chairman and vice-chairman must be elected by a two-thirds vote of the board; in the event of a failure to attain that support, the shareholders elect the chairman who has the effective authority to decide all tie votes. Second, the personnel director need not be acceptable to worker representatives. Last, and most significant, employee representation includes a proportionate share of salaried supervisors up to the level of senior executives.³⁸ Thus DeVos concludes that for West Germany "[t]he main effect of codetermination appears to be a tendency for company policies to reflect social and labor considerations as well as those of a purely financial and technical nature."³⁹ For the rest of the West European countries, with all their differences, the author is convinced that "worker

36. *See, e.g., id.* at 142.

37. *Id.* at 140.

38. *Id.* at 141.

39. *Id.* at 142.

participation appears to be a distinct part of a progressive movement—a movement directed toward the attainment of greater dignity for the worker and improved labor stability and productivity for the employer.”⁴⁰

The data and comments presented by DeVos on United States multinational corporate response to worker participation are difficult, if not impossible, to evaluate. No systematic survey was taken; rather, an impressionistic set of responses (some of which are inconsistent with each other) is presented. In West Germany, for example, the responses from United States multinational corporations can be broken down as follows: (1) most obeyed the legal requirements for works councils and codetermination; (2) some felt that worker participation practices could be advantageous because they raise the quality of plant and office management; (3) others felt that such practices lead to eventual nationalization and are inherently un-American; and (4) others stressed that worker participation combined with good wages served to keep unions out or in check.⁴¹ Worker participation in West Germany is not incompatible with increased post-1952 United States investment. A probable explanation acknowledged by the author is that “most supervisory boards have been rubber-stamping management decisions and have left subsidiary chief executive officers plenty of room to run their businesses without much interference.”⁴² Ironically there is a growing tendency among European multinational corporations to establish subsidiaries in the United States in regions that are largely free of trade unions.⁴³

The concluding chapter returns to the questions posed at the beginning of the book. DeVos' conclusions regarding the impact on United States industrial relations from the experience of expatriate managers of United States multinational companies are equivocal, inconsistent with the preponderance of his own evidence, and, at times, entirely speculative. At one point, for example, he makes the bland statement: “The probability that the experiences will not have any Stateside impact whatsoever is extremely low.”⁴⁴ The significant questions, however, concern the degree and nature of the impact in the United States. DeVos' own

40. *Id.* at 160.

41. *See id.* at 171-78.

42. *Id.* at 173.

43. *Id.* at 194-95.

44. *Id.* at 202.

evidence on the degree of impact demonstrates that statistically United States expatriates returning to the United States constitute only a very small percentage of the managerial pool; that those expatriate managers most satisfactorily adjusted to European worker participation tend to stay in Europe longer and consequently have less potential impact on their home-country enterprises; that industrial relations and personnel directors tend to be drawn from the country where the multinational is located; that an increasing number of chief executive officer positions are not being assigned to United States citizens; and that many United States specialists tend to have negative impressions of worker participation after having served tours of duty in West European countries.⁴⁵ After explicitly recognizing these realities, DeVos concludes weakly and unconvincingly: "This does not mean, however, that there are not at least several high-ranking executives in corporate headquarters and in stateside operations who have had direct experience with worker participation and could thus have an impact on American practices if they so choose."⁴⁶

DeVos is equally equivocal, inconsistent, and resistant to his own evidence in discussing the nature of the impact. At one point he concludes that "most expatriates who are thoroughly committed to American management's traditional values of individualism, competition, and confrontation, will still tend to be highly uncomfortable with the more consensual labor-management relations."⁴⁷ A few lines later, however, he posits that "[i]t seems likely, though, that some of those who became converts restrained their enthusiasm for a more propitious time when the corporate hierarchy might become interested or when they would have reached a position from which to initiate such desired reforms."⁴⁸ The latter statement could be evaluated only if DeVos had indicated how many "some" connotes, who they are, and the likelihood that the "converts" are acting on their beliefs. He recognizes that his conclusions are impressionistic because no "systematic survey has been taken of a truly representative sample of expatriates."⁴⁹ He, nonetheless, speaks of "an overwhelming impression that only a few are apt to return to the United States with the

45. *See id.* at 202-06.

46. *Id.* at 203.

47. *Id.* at 204.

48. *Id.* at 205.

49. *Id.*

determination to initiate a holy crusade for worker participation, whatever the personal costs might be."⁵⁰ There is no way to judge the soundness of such statements.

DeVos' book concludes with a section on the pressures for "workplace and corporate-governance reform" in the United States.⁵¹ Research has shown that "an increase in the level and content of labor-management cooperation is definitely associated with an increase in group productivity."⁵² This labor-management cooperation "could alleviate some burdensome governmental regulations,"⁵³ such as the need for OSHA. He notes that workplace reform is being recognized "as a matter of enlightened self-interest for management as well as for workers."⁵⁴ DeVos, on the basis of these considerations, concludes on a hopeful note: "The drive for workplace reform in the United States is becoming increasingly consensus based."⁵⁵ In his judgment, such reform "may even have become somewhat unavoidable, considering slackened productivity and more vigorous competition";⁵⁶ and although the "experience of American expatriates in Europe may not have been the primary catalyst for such reforms, nevertheless, it has played and will continue to play a part."⁵⁷

DeVos' argument that workplace reform "is becoming increasingly consensus based" is entirely unpersuasive. His own evidence demonstrates that workplace reforms represent a minority of United States industrial experience. Nor is there any evidence of a strong trend toward workplace reform, as that idea is understood in Western Europe, either on the part of the major United States corporations or the union movement in general. No reliable evidence is presented to determine the extent to which returning United States expatriate managers will support, oppose, or re-

50. *Id.*

51. *Id.* at 206. According to DeVos, factors which are catalysts for the reform movement include: recession, unemployment, layoffs, plant closings, "inner city eruptions," "increasing educational level of today's workers," "the human rights movement," and less inclination by workers to "tolerate the inegalitarianism that comes with the hierarchial authority structure of the traditional workplace." *Id.* at 206-07.

52. *Id.* at 208.

53. *Id.* at 209.

54. *Id.* at 207.

55. *Id.* at 211.

56. *Id.*

57. *Id.*

main indifferent to workplace reforms in their native country.

If DeVos presented his argument in terms of what should be, by advocating what would be desirable for United States industrial democracy, instead of casting it in terms of consensus and trends, he would be on firmer ground. The kind of reform he advocates represents a vision of a democratized workplace. This reform has strong appeal to all who believe in democracy and human dignity. His ideal is a possibility which may win acceptance, but no more than that can be claimed at this time or in the predictable future. Acceptance of reform depends mainly upon how basic economic problems are perceived. If labor and management become convinced that increasing productivity and competing successfully in the world market require deep-seated workplace reform, it will be accepted and adopted. This reform may be influenced by the experience of Western Europe and Japan, but more likely it will develop out of the United States industrial culture. Recent examples of adaptation to insure survival are the Ford and General Motors contracts with the UAW, in which the reductions in benefits were the *quid pro quo* for guarantees of job security. Whether through collective bargaining or the unilateral initiative of nonunion companies, workplace reforms (assuming they occur) will probably respond to and be shaped by the need to resolve problems of productivity, competition, and economic survival.

DeVos recognizes that worker representation on company boards is unlikely to become common practice, "at least within the foreseeable future,"⁵⁸ but exaggerates the significance of the few examples that presently exist; namely the nomination of UAW President Douglas Fraser to Chrysler's board of directors by the shareholders and the worker representation established by the Rath Packing Company. Both instances are interesting experiments, entirely atypical of United States industrial practice, that arose from desperate economic circumstances. DeVos, however, builds from the Fraser appointment to a dream of a better future: "Were Chrysler to be revitalized and were it possible, even partially, to link Fraser's contributions and improved worker morale to that resurgence, American firms might find themselves experiencing a long lasting impact of the European experience."⁵⁹ Indeed, he is dreaming on a utopian scale.

58. *Id.*

59. *Id.* at 213.

DeVos ends his book with a quotation from Louis Brandeis' testimony in 1915 before the National Commission on Industrial Relations:

The employees must have the opportunity of participating in the decisions as to what shall be their condition and how the business shall be run. They must learn also in sharing that responsibility that they must bear the suffering arising from grave mistakes, just as the employer must. But the right to assist in making the decision, the right of making their own mistakes, if mistakes there must be, is a privilege which should not be denied to labor. We must insist upon labor sharing the responsibilities for the result of the business.⁶⁰

He fails to recognize the irony of citing Brandeis at the close of his book. Why have sixty-seven years passed without the adoption of Brandeis' vision in the United States?

60. *Id.* at 214.

COOPERATION BETWEEN MANAGEMENT AND LABOR. By Walter Kolvenbach. Deventer, The Netherlands: Kluwer Law and Taxation Publishers, 1982. Pp. 89. Dfl. 65.00, \$26.00.

*Reviewed by Robert N. Covington**

*Cooperation Between Management and Labor*¹ is Walter Kolvenbach's third book-length contribution to the burgeoning literature on worker participation in company decision-making. His first book, *Workers Participation in Europe*,² is a compact description of the mechanisms established by law or agreement in several European countries for worker participation at the board of directors level. *Employee Councils in European Companies*,³ the second contribution, provides a detailed discussion of the history and operation of works councils, the typical mode of worker participation at the shop level in central and northern Europe. The present book in part synthesizes and updates the earlier two. Separate chapters describe the operations of both works councils and board-level participation schemes. The information is updated by his use of recently available documents and studies.⁴

These three books merit a place on the shelves of major American law and management libraries, not so much because each provides a good description of developing codetermination systems,⁵

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1. W. KOLVENBACH, COOPERATION BETWEEN MANAGEMENT AND LABOR (1982) [hereinafter cited as COOPERATION].

2. W. KOLVENBACH, WORKERS PARTICIPATION IN EUROPE (1977). A particularly attractive feature of this monograph is its use of schematic diagrams to amplify and clarify the text. See, e.g., *id.* at 12-15 for accompanying text and diagrams. The appendix to COOPERATION provides similar visual aids.

3. W. KOLVENBACH, EMPLOYEE COUNCILS IN EUROPEAN COMPANIES (1978).

4. In the final section, entitled "Outlook," Dr. Kolvenbach cites eleven books and articles, none of which were published before 1977. He includes brief references to developments outside Europe, especially in Japan and the United States. See COOPERATION, *supra* note 1, at 79-81.

5. Some books are equally impressive and less formidable for Americans who are not already familiar with the subject. Probably the most readable introduction to codetermination is offered by J. FURLONG, LABOR IN THE BOARDROOM: THE PEACEFUL REVOLUTION (1977). Furlong is a journalist who writes more colloquially than most commentators. Another valuable resource is the set of papers presented to the September 1982 meeting of the International Society for Labor

but because they express the attitudes and values of an intelligent, effective, German lawyer-manager.⁶ The beginning of Dr. Kolvenbach's career coincided with the introduction and implementation of the first formal codetermination mechanisms.⁷ Although Dr. Kolvenbach's views are not universally shared by all European, or even German, managers,⁸ his perspectives and attitudes are well within the mainstream of managerial thinking in Continental Europe and track the actual European legislative developments in the area. Some of his values will seem strange to many United States readers.

First, Dr. Kolvenbach advocates the position that worker participation programs are justified as a means of achieving industrial democracy. The goal of industrial democracy is seen as an end in itself rather than merely a means to achieve a more efficient and competitive enterprise system.⁹ The firm belief in the intrinsic value of industrial democracy is deeply rooted in the German philosophic thought of the nineteenth and twentieth centuries,¹⁰ but is less firmly adhered to in other nations.¹¹ One con-

Law and Social Security (ISLLS) in Washington, D.C. The general report to the ISLLS by Prof. Leroy Merrifield is a particularly valuable review of worker participation schemes in diverse political and economic settings. The ISLLS, however, uses four official languages, so publication of its proceedings is necessarily slow. See also COOPERATION, *supra* note 1, at 15-17, nn.19-25; W. SÓLYOM-FEKETE, CO-DETERMINATION RIGHTS OF EMPLOYEES IN THE FEDERAL REPUBLIC OF GERMANY 143-64 (1976).

6. Dr. Kolvenbach received his professional education in the years immediately after World War II.

7. The first extensive legislation was the Law on the Co-determination of Employees in the Boards of Supervisors and the Boards of Management in the Enterprises of Mining, and Iron and Steel Producing Industries of May 21, 1951. This legislation resulted, in part, from the outgrowth of practices and official positions of the Allied Military Government during the period of occupation after World War II. See W. SÓLYOM-FEKETE, *supra* note 5, at 34-39.

8. Compare SEYFARTH, SHAW, FAIRWEATHER & GERALDSON, LABOR RELATIONS AND THE LAW IN WEST GERMANY AND THE UNITED STATES 430-33 (1969), with W. SÓLYOM-FEKETE, *supra* note 5, at 70-71, 89-90. Codetermination issues have been sharply debated in religious circles. See *id.* at 41-42: "[In 1950] the Pope declared that the Catholic Church favors co-determination . . . but rejects the idea that employees have a natural right to co-determination in the management of enterprises." *Id.* In comparison, in 1981 the German Catholic bishops urged all Christian employees to vote in worker council elections. See COOPERATION, *supra* note 1, at 30.

9. COOPERATION, *supra* note 1, at 15-17.

10. *Id.* at 11-14; W. SÓLYOM-FEKETE, *supra* note 5, at 17-29.

sequence of giving this value so much weight is that the claims of the trade unions to be the sole representatives of the workers are undercut, particularly in those instances in which no single union commands the allegiance of the majority of an employer's workforce. Even where there is a single, clearly dominant union present, employees in senior white-collar positions will almost certainly not be union members. As Dr. Kolvenbach explains:

Since the works council as an institution is part of a system of industrial democracy it can be very well argued that the word 'democracy' in itself requires a universal electorate with voting rights for every employee and that in those cases where the voting rights are reserved for trade union members only a limited industrial democracy has been achieved. Full industrial democracy exists if members of the workforce who are not members of a trade union are not deprived of their right to elect their own representatives and participate through this representation in the governance of their workshop.¹²

Second, Dr. Kolvenbach treats "cooperation" and "conflict" as opposites and expresses a clear preference for the former.¹³ He supports his preference with a study¹⁴ conducted by Professor Maitland that compares labor relations in a German plant and a British plant. Both these plants are owned by the same multinational firm, use the same types of equipment, and perform substantially the same manufacturing functions. In Germany, a works council played a major role in setting the piece rates, while in Britain, those rates were set entirely through the process of bargaining. Labor-management confrontation and work stoppages occurred with much greater frequency in the British plant.

Many students of labor relations in the United States would raise fundamental objections to the dichotomy that Dr. Kolvenbach presents. They would argue that it is a mistake to treat "cooperation" and "conflict" as necessary opposites, and even more of a mistake to think of "conflict" as an evil always to be avoided. Conflict can be a creative force, provided there are

11. See, e.g., COOPERATION, *supra* note 1, at 76-77 (discussion of contrasting attitudes in France and Germany).

12. *Id.* at 21-22.

13. *Id.* at 73-76. This is not an unusual attitude. See, e.g., J. ELLIOT, CONFLICT OR COOPERATION (1978), cited in COOPERATION, *supra* note 1, at 63 n.60, 74 n.3.

14. COOPERATION, *supra* note 1, at 31-33.

satisfactory mechanisms to manage that conflict.¹⁵ At about the same time that *Cooperation Between Management and Labor* appeared in Europe, Irving Siegel and Edgar Weinberg published a study¹⁶ entitled *Labor-Management Cooperation: The American Experience*. On the second page of the book, they state an "important large truth": "the adversary style of American industrial relations has permitted, rather than forestalled, ventures in cooperation, both homegrown and adapted, and it remains sufficiently plastic to adjust to new parameters."¹⁷ The sharp contrast between this perspective and that of Dr. Kolvenbach is clear.

Although there is disagreement among authorities as to the proper perspective to assume, managers and worker representatives on both sides of the Atlantic can still profit from studying one another's conflict-management procedures. Consider, for example, the Maitland study of disagreements over piece rates.¹⁸ The German approach, whereby rates were set ultimately by a works council subcommittee chaired by a worker trained in time study, is commendable but not free of significant drawbacks. There is a clear danger that a subcommittee will resolve any piece rate problems on an exclusively technical basis and thereby ignore the significant facts of interaction and personal dynamics implicated in the determination. In the United States, an outside neutral party, typically an arbitrator, before whom the parties would defend and attack a particular arrangement, would settle the disagreement. This approach, although fair and decent, is also flawed. An arbitration procedure is unlikely to be available in a nonunionized establishment. In addition, the parties may draw an arbitrator who is not adequately versed in the techniques of time study.

Third, there is the matter of the responsibilities owed by a company's board of directors. Dr. Kolvenbach insists that the same duties are required, independent of whether an employee or shareholder constituency elected the director.¹⁹ In some respects, United States lawyers will find this conclusion a comfortable, and

15. I. SIEGEL & E. WEINBERG, *LABOR-MANAGEMENT COOPERATION: THE AMERICAN EXPERIENCE* 8-16 (1982).

16. The Siegel-Weinberg study was sponsored by the Upjohn Foundation.

17. *Id.* at 2; see also *id.* at 12-16 (review of American industrial relations literature).

18. See *supra* note 14 and accompanying text.

19. *COOPERATION*, *supra* note 1, at 74-75.

indeed a familiar, position. They are both well-acquainted with the problems of conflict of interest that arise with respect to directors who "represent" creditors or customers, and also have some limited experience with "labor" directors.²⁰ The more troubling aspect of the director responsibility problem for the United States legal community is the increasing extent to which the directors of European companies are expected to be responsible simultaneously to the shareholders, to the workforce, and to consumers of the company's goods or services.²¹ The scope of corporate social responsibility remains a lively issue. As the debate continues, Dr. Kolvenbach and other astute observers contribute to the controversy by positing the advantages and problems that flow from the broader view of the director's duties.

The sampling of themes presented in *Cooperation Between Management and Labor* has emphasized value-oriented issues. Much of the value of the book, however, lies in its sound technical description and explanation of the operation of codetermination mechanisms. Perhaps the most appealing aspect of Dr. Kolvenbach's work is his openness, as illustrated by his ability and willingness to adjust to new ideas and developments. In the author's first book, for example, he stated the opinion that worker participation at the board level reasonably could be achieved only by implementing a two-tier system, whereby the responsibilities of the day-to-day direction of company affairs are placed in a board of management, which is responsible in turn to a board of supervisors that formulates the general policies and monitors the management board.²² The present book still expresses a clear preference for the two-tier system, but is more tolerant of other structures.²³ Dr. Kolvenbach has clearly become more convinced

20. See [1982-1983 Transfer Binder] LAB. REL. REP. (BNA) 199, 203 (Mar. 14, 1983). The attitudes of Mr. Fraser, retiring president of the United Auto Workers (UAW), concerning his duties as a member of the Chrysler board include the overall conclusion that his service as director benefited the rank-and-file union membership. *Id.*

21. See COOPERATION, *supra* note 1, at 58 (Norwegian commission recommendation concerning obligations owed by business enterprises to communities). Dr. Kolvenbach states: "The company is no longer an instrument of profit maximization in the sole interest of the shareholders, but the interests of the employees and the public at large have likewise to be taken into account." *Id.* at 35.

22. WORKERS PARTICIPATION IN EUROPE, *supra* note 2, at 73.

23. COOPERATION, *supra* note 1, at 73-78. Dr. Kolvenbach's position mirrors the position of the Commission at Brussels in its recommendations to the EEC.

that the implemented codetermination mechanisms must reflect the history and culture of the particular industrial society in which they are set. That attitude, surely, is one with which all can agree.²⁴

Id. at 71.

24. See, e.g., I. SIEGEL & E. WEINBERG, *supra* note 15, at 18-24.

UTILIZATION OF OUTER SPACE AND INTERNATIONAL LAW. By Gijs Bertha C.M. Reijnen. Amsterdam, Oxford, New York: Elsevier, 1981. Pp. 179. \$65.30.

*Reviewed by Howard J. Taubenfeld**

Over the past few years, corresponding perhaps to the technological advances in satellite communication and space weaponry, a spate of scholarly books on "space law" has been published.¹ The tremendous development in human-controlled activities in outer space subsequent to the 1957 orbit of the Sputnik and the proliferation of treaty law present predictable legal problems, the current resolution of which is proving to be thorny but not hopeless.

With the relatively limited space-going capabilities of earth-oriented humans, it is presumptuous to assume that law governs the universal sphere rather than those human activities conducted in a space environment. In *Utilization of Outer Space and International Law*,² Dr. Reijnen³ "investigates in greater depth . . . the utilization of outer space in relation to the rules of international law."⁴ She suggests that the international legal community had emphasized the "use" of outer space in the early years of space research but currently is focusing on the "utilization" of space.⁵ Although the writer places significant importance on this distinction, this reviewer cannot discern the difference in focus, much less understand why this legal distinction should follow from or be based upon the two trends.

In the first chapter, "The Concept of Sovereignty in Interna-

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1. For examples of the earlier treatises, see P. JESSUP & H. TAUBENFELD, *CONTROLS FOR OUTER SPACE AND THE ANTARCTIC ANALOGY* (1959); S. LAY & H. TAUBENFELD, *THE LAW RELATING TO ACTIVITIES OF MAN IN SPACE* (1970) (a study for the American Bar Foundation); M. McDUGAL, H. LASSWELL & I. VLASIC, *LAW AND PUBLIC ORDER IN SPACE* (1963). For a recent treatise, see C. CHRISTOL, *THE MODERN LAW OF OUTER SPACE* (1982).

2. C. REIJNEN, *UTILIZATION OF OUTER SPACE AND INTERNATIONAL LAW* (1981).

3. Dr. Reijnen is associated with the Faculty of Law at Utrecht University of the Netherlands.

4. *Id.* at vii.

5. *See id.*

tional Law and Space Law,"⁶ the author reviews the historical concept of sovereignty and notes both the twenty century tradition and the lack of certainty in its political application. A basic tenet of the law, embodied in the 1967 Outer Space Treaty and applicable to outer space activities, is that nations will not acquire sovereignty (national "ownership") over space or the celestial bodies, including the moon. Historical origins of outer space law are not as important as recent events. Nations moved into space with a far different attitude than the attitude with which they approached exploration of unclaimed territories on Earth. Nevertheless, there have been some sovereignty disputes. The United States, for example, claimed that it "owned" the moon rocks brought back by United States astronauts once the rocks were removed from the moon's surface. Spokesmen from some nations, however, advanced the notion that the moon rocks belonged to all mankind. Dr. Reijnen fails to consider this controversy which has resurfaced in the context of a proposed treaty for the moon, now stalled in the United States Senate.

The author does comment briefly on the claims raised in the "Declaration of Bogota" of December 10, 1976. Eight equatorial countries stated that the 1967 Outer Space Treaty was obsolete and demanded special rights in the geostationary orbit of 22,000-plus miles above the earth.⁷ Those nations possessing the power to explore and exploit outer space have refused to take these claims seriously. Given that the desired orbits are unique and limited, those states denied the best positions should be recompensed in some way.

The author also usefully notes the Soviet position on outer space legal issues. The Soviets contend that sovereignty over outer space is absolute and all "infringements" must be opposed.⁸ It is clear that disputes between nations have transcended the bounds of the earth and continue in space.

In the second brief chapter, "Position of International Organizations in Space Law,"⁹ Dr. Reijnen examines the European Space Agency, Intelsat (the International Telecommunications Satellite Organization), and some newer entities. She notes that the personalities of these organizations are derived from the

6. *Id.* at 5.

7. *Id.* at 10.

8. *Id.* at 12.

9. *Id.* at 15.

states that created them.¹⁰ She provides no new information; indeed, she barely treats those entities which are the viable, functioning, and much-studied actors in the communications field.¹¹

The next chapter¹² recounts the interesting history of the Committee on Space Research (COSPAR) which helped to organize man's move into space. COSPAR, associated with the International Council of Scientific Unions (ICSU), played a major role in space research conducted during the International Geophysical Year of 1957-58, the year that Sputnik I was launched. Scientists have been able to plan and discuss with more freedom under COSPAR's aegis than under the state-supervised technical subcommittee of the United Nations Outer Space Committee. In recent years, COSPAR has pushed for a formal delineation of the lower boundary of outer space. The participating nations have not agreed to devise formal boundaries; nor have they followed the scientists' positions concerning a moon treaty. The inability of the scientific community to persuade nations to adopt its suggestions may be explained by the increasing control that the military is exercising over the space programs of both the Soviet Union and the United States. Dr. Reijnen does not explore this possibility.

The fourth chapter is entitled "Space Law and the Use of Nuclear Power in Outer Space."¹³ While the 1967 treaty barred nuclear testing, *inter alia*, in outer space, it is not at all clear that any formal agreement currently proscribes the limited use of peaceful nuclear devices in space.¹⁴ Recently, world attention has been focused on two Soviet space vehicles that disintegrated upon reentry into the Earth's atmosphere, scattering radioactive debris over portions of Canada and the open sea.¹⁵ In view of this threat, this author posits that the law should deal with both nonmilitary nuclear devices and nuclear weaponry in space.¹⁶

"Remote Sensing from Outer Space"¹⁷ considers those now-es-

10. *Id.* at 21.

11. The reader may wish to consult THE MODERN LAW OF OUTER SPACE, *supra* note 1, for a comprehensive discussion of these organizations.

12. C. REIJNEN, *supra* note 2, at 27 (entitled "The Role of the Committee on Space Research (COSPAR) in Space Law").

13. *Id.* at 41.

14. *Id.* at 46.

15. *Id.* at 41-43.

16. *See id.* at 49-50.

17. *Id.* at 59.

established techniques used to observe crops, ice movement, fish, geological formations, and other phenomena. The concerns of many states with respect to such observation are described briefly. Because the sensing is conducted in space and is able to scan wide areas, the observation techniques assume an inherently international character.¹⁸ This ability is juxtaposed with the notion that "[t]erritorial sovereignty implies in our opinion that remote sensing by one State's satellite cannot be carried out in the territory of another State, unless it is with that State's consent."¹⁹ The United States and the other states possessing the observation technology do not subscribe to this view with respect to military sensing as long as the vehicle is in outer space. The United States has, however, supported the voluntary participation in resource-scanning satellite programs. Dr. Reijnen's arguments that remote sensing is illegal²⁰ seem overblown. The need to "clarify the State's responsibility"²¹ and "to develop a legal formula for safeguarding the individual from too much interference in his privacy by remote sensing conducted from satellites,"²² however, may be an appropriate concern.

"Direct Broadcast Satellites (DBS),"²³ Chapter Six, treats the technological possibilities of direct broadcast relays into homes. Obtaining the prior consent of nations to receive programs beamed to their citizens is an old but continuing problem. Some states advocate controlling these invasions, while others urge freedom of communication regardless of the source. The latter view is most probably not accepted by the controlled nations of the world. Yet "propaganda" beamed from a nation into home receivers would be widely protested. The author briefly describes the United Nations debates on the DBS controversy and discusses ancillary "nonhostile" problems such as the protection of authors' rights and copyright.²⁴ These issues promise to remain unresolved for some time.

Chapter Seven provides a limited review of the potential for private enterprise in outer space,²⁵ which has become a reality in

18. *See id.* at 67.

19. *Id.* at 71.

20. *Id.* at 71, 73.

21. *Id.* at 79.

22. *Id.*

23. *Id.* at 89.

24. *See id.* at 91-97.

25. *Id.* at 107.

the United States space program. Because existing treaties make states liable for launches and injuries, states are concerned with the acts of private entities.²⁶ The treaties provide some measure of accountability; however, the author's proposed international guarantee fund is of merit.²⁷

In the last full chapter,²⁸ Dr. Reijnen investigates the incorporation of treaty law into Dutch municipal law. This addition provides a general explanation of the assimilation of international law into state law and is moderately useful for those not acquainted with Dutch law. Finally, a chapter of conclusions summarizes the material presented in the book.²⁹ A few documents, a brief partial bibliography, and an index are appended to the treatise. Coming from this lively source, the book has to be rated as disappointing.

26. *See, e.g., id.* at 115 (discussion of liability concerns).

27. *Id.*

28. *Id.* at 125 (Chapter VIII is entitled "Treaties: Their Incorporation in Dutch Municipal Law").

29. *Id.* at 141.

