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The German Version of Deregulation - And Beyond

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Résumé de l'article

Cet article traite de différents apports de déréglementation du travail et des marchés de travail en Allemagne. Cette analyse fait une différence entre la flexibilisation comme stratégie surtout utilisée par les employeurs et la déréglementation comme étant un ensemble d'actions et de mesures prises par l'État qui actuellement fournit le support politique aux efforts des employeurs vers la flexibilité. Les plus importantes mesures de flexibilisation visent le découplage des firmes en utilisant le temps et les heures individuelles de travail, une plus grande différentiation dans la rémunération, l'externalisation, un accroissement de l'applicabilité fonctionnelle et de nouvelles formes d'emploi et de contrat de travail. Les principales mesures de déréglementation en Allemagne sont :

— La réforme des paiements de compensation salariale durant les conflits de travail limitant ainsi le pouvoir des syndicats.

— La Loi sur la promotion de l'emploi qui a accru les possibilités de contrats à court terme.

— La modification à la Constitution de l'emploi qui pourrait avoir comme effet d'affaiblir les Comités d'entreprise dans leur unité et comme représentant exclusif des intérêts de tous les employés, reconnu comme partenaire de négociation par l'employeur, en renforcissant les droits des groupes dissidents.

— Le projet de loi sur les temps de travail qui ajuste la longueur et les caractéristiques des temps de travail en visant à allonger la journée et la semaine de travail et en prévoyant la possibilité de quarts de travail de nuit et le dimanche.

— Les propositions de la Commission d'experts indépendants visant à abolir les réglementations contraires au marché qui tente de modifier ou de remplacer les réglementations législatives par les mécanismes de marché.

L'auteur prétend que ces mesures de déréglementation ne sont pas le fruit d'une stratégie politique générale à long terme suivie systématiquement et qu'en termes de comparaisons internationales, l'étendue de la déréglementation en Allemagne n'a été que limitée. Mais le cumul de différentes mesures de déréglementation procédurale et surtout substantielle a mené au démantèlement des droits des employés et de leurs représentants. Doublée de la politique de factorisation de la négociation, la politique gouvernementale de déréglementation supporte la tendance vers la fragmentation des relations du travail et la segmentation verticale des marchés du travail. Devant ces conditions institutionnelles changeantes, les biens collectifs centraux (v.g. un haut niveau d'emploi) jouent un rôle moins important dans les calculs des acteurs qu'auparavant sous un régime corporatiste d'intérêts spéciaux organisés plutôt collectivement. L'auteur critique ces stratégies de déréglementation qui, somme toute, sont implicitement fondées sur le modèle néo-classique de concurrence pure et d'équilibre général. Diverses institutions du marché du travail n'influencent pas réellement un seul côté de son habileté à fonctionner mais sont également des étapes régulatoires garantissant la productivité et améliorant l'efficacité. Le haut degré de flexibilité interne du système d'emploi allemand est oublié par les tenants de la déréglementation. Les effets attendus de celle-ci sur le niveau d'emploi ont été grandement surestimés.

L'auteur prêche en faveur d'une flexibilité politiquement contrôlée plutôt que dirigée par le marché. Il ne prône pas moins de déréglementation mais plutôt une déréglementation plus spécifique. Il prétend que l'intérêt collectif de l'État dans la re-réglementation provient non seulement de sa responsabilité sociale, mais surtout des coûts sociaux et des problèmes sociétaires associés au manque de réglementation. De nouveaux moyens traduisant une déréglementation politique spécifique pourraient provenir de différentes formes d'emploi marginal et précaire :

— Les bas salariés, avec des conditions marginales d'emploi, devraient être inclus dans le système d'assurance sociale.

— Le principe de la non-discrimination devrait s'appliquer aux employés à temps partiel. On devrait leur accorder les mêmes droits indivisibles que les employés à plein temps (v.g. protection contre le licenciement, droits de participer au perfectionnement et au recyclage); tous les droits divisibles (v.g. les salaires) devraient être accordés au prorata du temps travaillé.

— Tous les problèmes liés aux risques d'emploi, d'investissement et de responsabilité pour les différentes formes de télé-travail à domicile devraient être réglementés.

— Les travailleurs d'agences de location de main-d'œuvre devraient être protégés par une loi prévoyant le traitement égal de tous les employés, non seulement pour les salaires, mais pour toutes les autres conditions de travail. Ces mesures compensatoires défensives de déréglementation devraient être accompagnées de moyens formatifs offensifs de déréglementation. Pour réduire les coûts de transactions et pour augmenter la productivité sociale, il est nécessaire d'étendre les droits de co-détermination pour couvrir les effets de l'introduction de nouvelles technologies et établir des nouveaux droits individuels non représentatifs de participation en milieu de travail.

De plus, le perfectionnement ne devrait pas être seulement un sujet de négociation collective ou d'accords au sein de la firme. L'État doit réglementer ce sujet puisque des décisions eu égard au perfectionnement touchent plusieurs établissements et même toute une industrie (v.g. des droits de co-détermination pour la planification et l'introduction de mesures, pour la sélection des candidats, pour le contrôle des normes de qualité et pour l'accréditation de la participation).

D'autres problèmes, mais non les moindres, requièrent une re- réglementation plutôt qu'une déréglementation : les difficultés nouvelles des états fédéraux créés à partir de l'ancienne Allemagne de l'Est et le parachèvement du marché unique européen.

The German Version of Deregulation — And Beyond

Berndt Keller

The article deals with various deregulatory efforts in relation to labour relations and labour markets in Germany. The analysis differentiates between flexibilisation as a strategy of employers and deregulation as a collection of actions taken by the state, which currently provide the political flanks for employers' efforts towards flexibility. The central measures of German deregulation are described and criticized in theoretical and empirical perspective. A controlled form of flexibility instead of a market driven, non-controlled flexibility is given preferential treatment. Proposals are made for defensive, compensatory steps towards re-regulation; offensive, formative forms of regulation are discussed.

Deregulation, together with privatization, a catch-word and political programme since the beginning of the 80's, can be applied, as is well-known, to numerous, quite different sectors (for example health, transport, insurance, utilities, communications) (among others Thiemeyer 1988; Seidenfus 1989; Ewers and Wien 1989). In the following, I intend to cover only the various deregulatory efforts in relation to the policy field "labour relations and labour markets", which have continually served as a prominent area for the application of pure "market forces". Here, my analysis will clearly separate deregulation and flexibilization, something done too seldom in public discussions. The obvious reason for the prevailing confusion of definitions and the blurring

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of terms, lies in the fact that both strategies were applied in many countries in the 80's concurrently, something which is not, in itself, necessary.

The current moves toward flexibilization arise in all Western countries, above all at the instigation of the employers, who — varying from country to country (Rodgers 1989; Ricca 1989) — are thus responding to greatly changed technical and economic conditions.[1] Their aim in general is a quick overcoming of the "supply shock" as well as a rapid amortization of invested capital, whereby the last few years have seen a significant growth in the amount of capital investment necessary per employee. The employers' most important measures are flexibility strategies in relation to the factor labour, directed above all at a de-connection of factory and plant use times and individual work hours, but also, for example, at a greater pay differentiation, at externalization (through farming out of factory functions), at an increase in functional applicability (among others through an intensification of factory internal training), and as well as at new employment and contract forms resulting in a greater segmentation of the labour markets.[2]

Employers would have been able to introduce various flexibility strategies[3] even without the resumption of an active (weekly) work-time policy on the unions part, as new information and communication technologies have made this step possible. Indeed, this was perhaps made necessary because of business internal cash-flow calculations. Employers would then have run up against greater collective opposition from the employees' representatives ("collective voice") than with an exchange of shorter work-time for its greater flexibility (through varying and/or differentiation) that was typical for the latter half of the 80's.[4]

In the following, deregulation is to be understood as a collection of actions and measures of the state, which currently provide the political flanks for employers' flexibility efforts. Thus I offer a definition of regulation which is relatively narrow and relate it totally to the macro level. Especially the formative actions of the collective bargaining contract parties will not be taken into

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1 Among others increased price competition in domestic and above all world markets from new industrial countries, stagnation of demand for long-term consumer goods, shortened production cycles, shift in production from mass to specialized quality products, general technological change. See, summarizing for others, Sabel (1987: 31ff).

2 See as critical summary Lampert (1986); on the concept's various levels of application as well as on problems of empirical examination, the articles in Pollert (1990).

3 In the available literature a distinction is often made between various forms (among others numeric, temporal, functional, financial). We do not wish to explore these distinctions as the following concentrates above all on regulation.

4 To this extent a non-intended consequence of union work-time policy exists in having made flexibility possible more quickly, thereby indirectly encouraging the necessary structural changes.

consideration in the following (see for broader definitions of regulation most recently Buttler 1990; Büchtemann 1990). Of course, agreements made only at decentralized levels, and thus ever more differentiated, would be only a partial substitute for a legal and thus uniform, generally binding regulatory form within an — internationally seen — more legislatively structured system of labour relations like that in the Federal Republic of Germany.

Deregulatory measures are intended as a long-lasting, more or less clear limitation of existing, historically based social legislative structures of the welfare state through the dismantling of "labour market and especially wage rigidities" and "inefficiencies" as well as through a reduction of the rights and scope of action of certain actors and institutions.[5] The intention behind the state's greatest possible retreat from economic and social policy is, above all, an improvement in the labour market ability to adapt to economic changes; that is, in an increase in employment (see for a summary Buttler 1986: 9-24).

Thus not only the economic, but also the political framework changes. The outlined employers' flexibility efforts are flanked and supported by central political changes; that is, through the replacement of a social-democratic governmental coalition by a liberal-neoconservative government in a number of Western industrial countries. This development, like those in the economy, runs against the unions' interests, thus placing them on the defensive. The quite successful Keynesian economic policy of the past, which within the implicit framework of a prosperous economy aimed especially for high employment levels and continual growth sought to regulate emerging distribution problems, above all, through organized bargaining processes — and if need be through governmental action. This strategy is increasingly losing importance, without, however, the corresponding patterns of conflict solving of the cooperation model disappearing completely (see Lompe 1986).

The potential for governmental global steering and legal regulation has retreated as a whole. Within the framework of a neoconservative change of strategy away from rather "demand" oriented Keynesian policies and toward rather "supply" oriented monetaristic policies, this is not seen as a problem. Rather, this has been encouraged by the government through strategies of deregulating labour relations and labour markets. The trend towards the decreasing importance of the (welfare and intervention) state and its laws regulating economic and employment policies has become a central plank in conservative policy, which seeks to replace, to a great extent, centralized forms of political regulation with decentralized "free market (self-healing) forces";

[5] The start of the political discussion is marked by the Lambsdorff paper of September 1982, the George paper of 1983 and the Albrecht theses of August 1983, which ushered in the "new" labour market and employment policy programme.

that is, at the very minimum, collective with individual forms of contractual regulation.

The government has itself at least partially taken back its long-existing promise of full employment, passing on this goal to the collective bargaining parties (''re-privatisation of employment risks''). State abstention from many policy fields is intended to replace, for example, an active labour market policy at least as a programme. Immediate, effective labour market programmes, as demanded by, among others, the unions and the opposition, are totally rejected by the government. In practice, however, the situation is rather less clear than one would assume from the concepts. Rather, it is a matter of restructuring in the sense of ''re-regulation'' and less a systematic dismantling of state functions.

DEREGULATION IN THE FEDERAL REPUBLIC

Central Measures

The increasing trend towards deregulation in the 80's included, above all, the following legislative measures in the areas of social and especially labour law:[6]

— Through the reform of the wage compensation payments during industrial action, by changing paragraph 116 of the Labour Promotion Law (*Arbeitsförderungsgesetz*, hereafter AFG) in the spring of 1986, the de facto possibility of taking action in an industrial dispute has been shifted away from major unions, while their ability to act and their power during labour conflicts has been drastically limited: Those indirectly effected by labour disputes — that is, employees in the same industry but outside the contract region — usually no longer receive wage compensation payments from the Federal Labour Office (*Bundesanstalt für Arbeit*); thus the long practiced and quite successful regionalized wage policy — especially that of IG Metall — has been made much more difficult to implement (see Keller 1987).

— With the Employment Promotion Law (*Beschäftigungsförderungsgesetz*, hereafter BeschFG), ''which represents a moderate German version of labour market deregulation'' (Streeck 1987: 10), an attempt has been made to dismantle legislative labour protection regulations — that is, a significant portion of individual labour rights — as an employment policy measure. The central instrument of the BeschFG, originally set to end in 1989 but since then

6 Apart from the examples sketched below, mention should be given to changes in the Youth Labour Protection Law (*Jugendarbeitsschutzgesetz*), University General Law (*Hochschulrahmengesetz*), as well as the Labour Promotion Law (*Arbeitsförderungsgesetz*).

extended to 1994, exists in the greatly increased possibility for short-term contracts (up to 18 months instead of 6 months as per the usual regulations governing termination of contracts).

The empirical evidence available is unanimous in showing that the law did not start the trend towards an increase in instable, precarious employment relations (among others a growth in limited term contracts). But it certainly accelerated this trend, without however bringing about a significant increase in employment.[7] The BeschFG, "the core of flexibilisation on the labour market" (Kühl 1987a: 48), has had a minimal effects on levels (of growth in employment). Its structural effects, however, (increasing labour market segmentation) are quite clear.

— The amendment of the Works Constitution Act (*Betriebsverfassungsgesetz*, hereafter BetrVG) in 1988,[8] rejected equally by both collective bargaining parties, implied a series of changes in details, to which belong above all: the creation of so-called Spokesman's Committees for senior staff (*Sprecherausschüsse*) as independent, formalised interest representatives with certain set rights of information and appeal vis-à-vis management and workers' councils; change in election methods to benefit smaller groups by reducing the number of signatures required and change in election procedures (so-called strengthening of minority rights); expanding the works councils rights of information and consultation in the introduction of new technology, without bringing, however, in true rights of co-determination.[9] Seen together, these changes could have the effect of weakening the works councils as "unified", self-contained interest representatives of all employees and as management recognized negotiation partners by strengthening the rights of splitter groups.

— The proposal for a Labour Work-Time Law (*Arbeitszeitgesetz*), under discussion since the spring of 1987, is intended to replace a similar law from 1938 and to adjust the length and location of work time to changed conditions. It would leave a lot of leeway in setting position and length of daily and weekly work-time,[10] "the practical result of which would be the dismantling of the normal work day" (Mückenberger 1986: 37). Further proposals include, among other things, the plan of retaining numerous exemptions from Sunday

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7 See Dragendorf, Heering, and John (1988); as summary of different examinations Keller (1989); the broadest empirical examination is to be found in Büchtemann (1989).

8 'Law to Change the Works Constitution Act, for Spokesman's Committees for Senior Staff and to Insure Montan Co-Determination" ("*Gesetz zur Änderung des Betriebsverfassungsgesetzes, über Sprecherausschüsse der leitenden Angestellten und zur Sicherung der Montanmitbestimmung*").

9 See for summary Lompe (1988).

10 Basis is the 8 hour day, but possible are also extensions up to 10 hours a day or 60 hours a week with quite long compensation time of up to three calendar months.

and holiday labour regulations,[11] thus greatly extending the legal possibilities for night and Sunday shifts.

With this proposal, the government coalition has not seriously attempted to deal with, for example, the pressing problem of overtime, avoiding a strict limitation of the allowable amount which would lead to a certain reduction; such a variation of a labour distribution policy could greatly effect employment. The proposal does not intend to adopt the standard work-time as legal limits, the former being, as a result of post war work time policy, common and set in many bargaining contracts; the latter are moreover quite differentiated and flexible.

— The "Independent Expert Commission for the Dismantling of Regulations Adverse to the Market" (*Deregulierungskommission*), set up by the government, intends to "adjust" existing regulations, without repealing them altogether. Its proposals try to "improve the way the labour market functions".[12] Unlike "economic radicals", the "economically moderate" commission, whose membership consists almost totally of academic and industrial supporters of further deregulation, is not trying to totally eradicate legislative labour regulations, but certainly to modify them greatly and replace them with market "steering" mechanisms: "Market oriented regulation" is the maxim for these and similar demands of the past years which have been clearly following the path of neoclassical theory.[13] Unions and employers' organizations equally reject a change in the Act on Collective Agreements: Unlike some of its members the German Confederation of Employers' Associations (*Bundesvereinigung der Deutschen Arbeitgeberverbände*) sees in the dismantling of the minimal standards of collective agreements "the danger of an uncontrolled wage explosion", the German Federation of Trade Unions (*Deutscher Gewerkschaftsbund*) is afraid of "a lifting of the constitutionally guaranteed bargaining autonomy". Both umbrella organizations also see the danger of a "ruinous competition".

Range and Scope

The influence of individual legislative changes on labour market institutions and the bargaining power of labour representation at both shop-floor and industrial level can probably be ignored. The real importance and significance does not arise from any long-term, systematically followed political "general

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11 "The permissive tendency is especially clear in the labour work-time law proposals, which consist of few substantial regulations, but rather mostly of the setting of exemption procedures." (Mückenberger 1986: 38).

12 Deregulierungskommission — Unabhängige Expertenkommission zum Abbau marktwidriger Regulierungen 1991, Marktöffnung und Wettbewerb. Berichte 1990 und 1991: 207-285.

13 See for critical comments Hickel (1991), Müller and Seifert (1991), Neumann (1991).

strategy", that in reality does not exist. Rather, the real danger for employees (and their representatives) lies in the successive cumulation of single measures of procedural and especially substantial deregulation, leading to a dismantling of, above all, individual rights of employees. This is all the more worrying as these measures are being introduced in a period of high long-term unemployment with a consequent reduction in union negotiating power. The danger of a more intense vertical segmentation of the labour market can no longer be lightly dismissed.

These attempts at deregulation in the Federal Republic are, when compared internationally — especially to England and America under the governments of Thatcher and Reagan — of only limited scope.[14] The institutions, regulatory mechanisms and strategies of the corporate actors work as safeguards, barriers and important conditions for stability, so that one cannot seriously speak of a "crisis" in labour relations and labour markets in an international comparison. We need to take this quite significant differentiation of the various conservative policy concepts into consideration if we are to be able to correctly represent their reality and effect in our analysis.

The actual result of the "de-nationalization" is not a seriously pursued dismantling of the "regulatory web" of labour legislative protective norms and functions, "but rather a change in the norms' contents and a transfer of the regulatory level ... regulatory changes favouring the employers." (Linne and Voswinkel 1989: 19; similarly Buttler 1986: 24). Here we are rather dealing with an alteration of the regulatory system towards a new relation of "state" and "market"; that is, with a "decentralization of regulatory competence" (Büchtemann and Neumann 1990: 32) from the legislative and collective bargaining to the individual level: it has rather less to do with an economically radical policy of true deregulation of social state institutions in the sense of a strict replacement by "market processes". In practice this complex hotchpotch of de- and re-regulatory attempts (see Keller 1990) is thus less clear and consistent than the concept would lead one to assume; continuities in practical policy can clearly be seen.[15]

These politically motivated changes in the institutional framework have attempted to stop, without compelling necessity, decades old and quite proven

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14 See for England summerizing Crouch (1985), Mückenberger and Deakin (1989). The scenario of a split in the umbrella organization or the founding of a competitor organization in the Federal Republic is unrealistic, in England it is quite real.

15 See also the steady increase of employment promotion measures from 1982 to 1988, which went hand in hand with a "re-privatization and division of responsibility for employment support measures" between the private sector, collective bargaining parties and labour market policy, with the "retreat of the state from its responsibility for a full employment policy" (Kühl 1987b: 10).

developments; the long-term consequences for the corporate actors and the forms of interest representation can hardly be estimated at present. One consequence, it would seem, is that under changing institutional conditions, certain central collective goods (especially a high level of employment) play a less important role in the actors' calculations than previously under the corporatist premise of a rather "collectively" organised reason of harmonized special interests.

The tendency towards fragmentation of labour relations and the segmentation of labour markets will thus continue, without, however, leading to a break-up of the institutionalised interest mediation system.[16] The reasons for this lie in part in the so-called factorisation of bargaining policy ("*Verbetrieblichung der Tarifpolitik*"); that is, in the partial shift of regulatory competence from industrial level to shop-floor actors. Here, the shop-floor actors could well follow another rational from that of the sectoral actors; the imperatives which have for a long time informed the industrial unions, among others, in their policy of unifying interests are no longer as influential as in rather corporatist arrangements. The reasons are also to be found in parallel governmental deregulatory aspirations which favour the pursuit of special over collective interests.

TOWARDS A CRITIQUE OF DEREGULATORY CONCEPTS

It would be idle to raise the question of whether the trend towards flexibilisation will continue as the answer has long been clear: if only because of employers' general interest in reducing costs, flexibilisation efforts will rather increase and probably proceed with a further decentralisation of labour relations. This factorisation ("*Verbetrieblichung*") has usually been discussed on the basis of contemporary examples of work-time policies from the mid 80s. In the future however, parallel developments will also be seen in other areas of "qualitative" bargaining policy, especially with the introduction and implementation of new technologies as well as with the various problems of further training and qualification policy.

Therefore a fundamental rejection of any form of flexibilisation — and thus of an extension of decision-making capacity on the shop-floor — is not a realistic strategy for the 90's. The shop-floor bargaining process will not be about whether, but rather how and its resulting influence on the various interests of different groups (see Ortmann *et al.* 1990).

16 Clearer developments in this direction can be seen in England (Prigge 1987).

View of the Labour Markets

The question, on the other hand, of whether deregulation should be continued has not yet been politically answered. Criticism has been made at various levels.

The various deregulation strategies are based at least implicitly on derivations within a neoclassical model of full competition and general balance. This "market paradigm":

— is strictly centred on a single business;
— assumes that price levels in labour markets function without special structural features, that is, like all other markets (of money, goods and capital), something which has often been challenged, both in the past (summarising Hickel 1989: 88ff.);
— is based on a pure market clearance function of the wage rate, without fully taking into account other functions (such as control, motivation, output promotion, information and efficiency functions), something which cannot be said of "new microeconomics of the labour market" (among others in the contract and efficiency wage theories) which include a wide variety of coordination mechanisms and interpret, for example, wage rigidity as a consequence of rational decision-making calculations (see Buttler 1990; Neumann 1990);
— with its partial analytical viewpoint, it attaches itself one-sidedly to the way the labour markets function, without giving equal consideration the interdependence of money, goods and capital markets, as is common in the Keynesian tradition;
— overlooks the — economically quite justifiable — necessity of institutional regulation which also exists in the labour markets and the non-price, especially legal-institutional, coordination mechanisms which lower the necessarily arising "transaction costs" and insure greater stability of conduct (Williamson 1990);
— promotes instead, with intentions of economic policy , the "free and unhindered play of market forces" and the "self-regulation" of the economy.[17]

Experience has shown that the neo-conservative strategies arising from these rather unrealistic models rarely function in reality: "The expected effects on employment level of deregulatory measures have probably been highly overestimated by their supporters. From what reliable empirical evidence there is, one cannot draw convincing proof of significant effects of deregulation on employment levels." (Buttler 1986: 50).

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[17] See for critique summarizing Buttler (1986); Mückenberger and Deakin (1989: 171ff.); Walwei (1989); for an introduction to the controversy Dichmann and Hickel (1989).

Using the current case of the BeschFG as an example, we can demonstrate quite clearly that the promises of deregulatory concepts are rarely kept: the continually officially asserted effects on the level of total employment can hardly be measured empirically, are quite uncertain and at most minimal (quantitative dimension). The structural effects, on the other hand, (qualitative dimension) are quite serious; negative labour market and especially social consequences are becoming more clear the longer the law is in effect; The BeschFG has led to new, greater differentiation and to an increased segmentation of the workforce and their chances of employment (see among others Dragendorf, Heering and John 1988; Keller 1989). The author of the implementation study commissioned by the Federal Ministry of Labour and Social Affairs (*Bundesministerium für Arbeit und Sozialordnung*) summed up his results thus: "The relatively low utilization of the relaxed conditions for limited contracts by the companies, their only marginal net employment effect and the inherent (greater) employment risks of the increasing limited contract practice suggest that "deregulatory" measures such as the BeschFG's new regulations for limited contracts are, at least for the Federal Republic of Germany, hardly suitable for a long-term improvement of employment dynamic and for an effective antidote to the problem of continued high and increasingly immovable unemployment." (Büchtemann 1989: 549).

Political Regulation of Market Activity

As part of the deregulations discussion, economists have, after jurists, often identified "social rigidities" and/or "institutional sclerosis"[18] — or in its European variety, anti-market "eurosclerosis"[19] — as an important, if not the only cause of the crisis (recently Ewers and Wein 1989: 24f.; 1990: 320, 327f.). This simplified viewpoint is indebted to one-sided neoclassic thinking in which the collective action and institutions of the labour market have remained to a great extent foreign and furthermore politically suspect. This contrasts to others, for example the institution-alistic school of labour relations or the segmentation theory of labour market analysis. The "encompassing distributional coalitions" and interest groups, accused of being the central interfering factors in "market processes", do not, however, in practice work in the at least implied institutional and political vacuum. Rather they are bound, in their respective "choice of strategy", to a multitude of political and social regulations of an institutional form (see Keman, Paloheino, and Whiteley 1987). In other words: The various labour market institutions do not in reality influence one-sidedly its ability to function, as the textbook model of a utopian

18 Above all Olson (1985) as oft quoted, prominent "state's witness".

19 See for "eurosclerosis school", among others, Giersch (1985).

economy suggests; they are rather also regulatory stages which guarantee productivity and improve efficiency.

The necessary political pre-conditions of macro regulation of pure market activities thus does have positive effects — not only in the sense of a certain political stability and continuity — and seeks to prevent market defects and failures. They remain, however, excluded from a point of view which is limited to a non-political-idealised, pure market, and competitive economy with a largely inactive "minimal state". Moreover, the problems which arise from a precipitate normative-ideological expression of an empirical-positivist based theory in the form of "policy recommendations" and regulatory policy implications are seldom approached.

Furthermore, it is typical for the discussion that its supporters never set an exact limit for deregulation, although everyone agrees that a certain minimal level of institutional provision is intrinsic to secure and protect property rights and indispensable for reducing transaction costs. The loss of "order" and/or "welfare" through deregulation in the sense of a reduction and not an abolition of regulation is a question not raised.

Potential for Accommodation and Exchange of Labour Markets

In the comparisons with above all the Anglo-Saxon countries, especially popular in the 80's, the high horizontal and vertical accommodation and exchange of firm specific, internal labour markets in the Federal Republic have not adequately been taken into consideration; especially the high level of the specific, transfer flexibility within companies is systematically underestimated in comparisons of formal structures which do not consider institutional elements such as the level of division of labour, specific types of extended, standardised basic training and the general acquisition of qualification in the "dual" system of vocational training, strategies of mobility rather than strategies of job control, etc.[20] In this labour market context and its often ignored influence on labour relations, the type of the German skilled worker (*Facharbeiter*), not found in other countries, is of central importance: especially industrial workers receive both a firm specific as well as an industrial and thus more general training within the "dual system" of vocational training. This creates numerous employment possibilities, including the chance of transferring to other factories, contributing much to a high labour force flexibility.

20 See here Sengenberger (1987: 96ff., 180ff.); also Kühl (1987b: 29ff.); internationally based comparison OECD (1989); Piore (1986).

In the reference, popular in the deregulation discussion, to the high "flexibility" and "dynamics" of the US employment system vis-à-vis the "inflexibility" of the German system, these various institutional determinants of labour markets and labour relations, like the positive results of regulation, are often ignored; for this reason, these comparisons remain purely formal and their prescriptions without empirical basis (see for more detail Sengenberger 1984; 1990). The necessary ability to adapt, quantitatively and qualitatively, need not only be created externally (through a policy of "hire and fire") but can also be created internally (among others through variation of work time or internal transfer).

Last but not least: "Flexible labour markets are no panacea for social and economic problems." (OECD 1986: 7). To this extent, the deregulation discussion should not be allowed to obscure the fact that sufficient employment possibilities (full employment) and not the general conditions of the labour law are the conditions sine qua non for the ability of labour markets to function.

TASKS AND COMPONENTS OF A RE-REGULATION

Following this empirically based criticism of deregulatory concepts, we would like to look at the actors' policy alternatives within the span of flexibility and regulation. Here we will only be able to sketch a few important components rather than present a complete new model of an elaborated, practice-oriented theory of optimal regulation because a non-price influencing and coordination of options is not yet available. However, older deregulatory concepts are not able to present a systematic, complete theory, in spite of a significant amount of effort.[21]

First of all, it is unrealistic to suppose that a restoration of the status quo ante and thus a return to the old regulation model which dominated into the 70's could solve current problems: the technical-organizational and economic conditions have been altered decisively during the structural change of the 80's. Thus, for example, the declared intention of the opposition that their future government would reverse the amendment of paragraph 116 AFG or to repeal the BeschFG, while necessary, are not a sufficient framework for a new regulation model.

The current alternative of determining action and policy "more laws or fewer laws" (as part of a greater strategy of "less state, more market") is

21 Hickel (1989: 87) diagnoses, apart from "theoretical vagueness" (among others a microeconomic-short term alignment, fully vague level of regulation of labour markets, missing macroeconomic judgements), a foregoing of an empirical examination of the consequences of deregulatory policy".

fundamentally flawed because it is too one-sided. Its strategies hardly lead to the intended goal, as most recent experience shows. Furthermore, it is strategically applicable, if at all, for the concepts of flexible specialization, which seem to fit various forms of political regulation; it is not fitting for industrial mass production of the Taylorist-Fordist type which, while loosing in importance, is still quite significant.

In the following I argue against the main thread of the discussion on "more laws or fewer laws" in that I call for not fewer, but rather more specific, that is intelligent and appropriate regulation. The problem is thus *not* one of how "free market forces" can be best brought into play through a considerable reduction of the legislative framework. Rather, it is one of how the appearance of naturally arising particular interests within technological developments can be steered and directed into more or less collectively acceptable, "socially compatible" lines through specific changes in the framework of labour legislation.

What laws are required by structural change and employment[22] in a difficult and at present not clearly estimable transformation phase? The "second industrial divide" implies, in view of its experimental and searching character, a great range of political possibilities, as various current studies have shown (for others Piore and Sabel 1989).[23] The direction and formation of structural change are not predetermined by one-sided technical determinism and/or economic "objective laws", as we had mistakenly assumed for many years, but is rather fundamentally open: the corporate actors can form new technologies' potential for flexibility, within certain limits, through directed intervention.

The strategic alternatives for action are then "(market) non-controlled vs. (policy) controlled flexibility" and no longer "flexibility: yes or no". Unlike present policy and practice, increasing flexibility could proceed together with a greater regulation of its essential framework, especially of the institutions of the labour market. As the protagonists of deregulation typically do not examine current problems, objects of deregulation cannot be identical with those of re-regulation.

The following passages are an attempt to put the regulation discussion back on its feet and to move from a defensive criticism to offensive proposals for a formation of collective balance of interest. One conceptual difficulty arises is that the discussion about deregulation (including the criticism of

22 Schmid (1986) makes a distinction between prohibitive (deregulatory) and preventative (offensive-formative) law.

23 Flexible specialization makes possible rationalisation for small series and individualised products, removing the existing cost advantage for mass production, and making possible a greater range of supply and smaller production sizes up to single units.

various deregulation proposals) is much more encompassing than the one on future "policy implications" of re-regulation.

Extension of Laws Protecting Certain Groups

From a sociological perspective, the development of microelectronics as a new basis and key technology has consequences at the macro level, beyond the limited area of product and labour organisation and thus through labour markets and labour relations well into the social structure. The consistent conclusion of recent organisation and industrial sociological studies is that from "new production concepts" and "systemic rationalisation" there results an ever-deepening division of the workforce into "rationalisation winners", "tolerators", "victims" and "long-term unemployed"; thus generally, compared to the era of Tayloristic-Fordistic rationalisation, to an increasing consolidation and deepening of status differences along the labour market's various segmentation lines. The consequence of "neo-industrialisation" in the core sectors of industrial production and of "systemic rationalisation" in the various private and public service sectors is a growing social inequality and an intensification of disparities in living conditions within the workforce with quite uncertain consequences for social integration (so-called "two thirds" or "three quarters society" or two-tier society).

These differentials within the workforce can increase as a result of a successful introduction of "new production concepts", and as the consequence of deregulation on the macro level intensify.[24] Unions and works councils, with their limited range of options, can only be effective at a sectoral and single factory level; they are thus, of necessity, hardly able to represent the workers who find themselves outside the internal labour markets and productivity coalitions in the unprotected market segments.

Therefore the "state" as corporate actor must, at the macro level, and as part of a re-regulation, take over social and labour policy protective functions to a greater extent. The state's collective interest in re-regulation arises not only from its constitutional social responsibilities (*Sozialstaatsgebot*), but especially from the social costs and resulting problems for society (negative external effects) which would be associated with a dominance of efficiency drives on the micro level and with a lack of regulation. Moreover, governmental regulation, which avoids social costs by applying the "principle of the causer", effects everybody equally; whereas decentralized regulation through collective agreements on the sectoral or factory level show clear differences in their effectiveness.

24 A current US study argues in the same direction (Lewin 1990: 12).

New policy fields for various forms of a specific political re-regulation can certainly be found.[25] First and foremost are various marginal and reduced status employment conditions (*statusgeminderte Beschäftigungsverhältnisse*), whose number and share have been on the increase, especially since the mid 70's, because of structural and socio-economic changes in the labour market. They are, however, only unsatisfactorily secured by traditional state regulation of labour and social law, which is oriented towards the formerly de facto and normatively dominant "normal labour conditions" ("*Normalarbeitsverhältnisse*"). What needs to be aimed for is not a general government ban or a union blocking of this flexibilisation — an employment form which diverges, for various reasons, from the strict lifelong full-time employment of the "normal labour conditions" — but rather a more differentiated extension of its insufficient individual and collective protective legal safeguards:

— According to social law statute-book (*Sozialgesetzbuch*), so-called limited employment conditions (*geringfügige Beschäftigungsverhältnisse*), where the employee works less than 15 hours per week and/or does not regularly earn more that 480.00 DM per month (to 31/12/1990 470.00 DM) do not fall under the social insurance requirement (*Sozialversicherungspflicht*); the 2.1 million employed (about 9% of all non-self-employed)[26] thus contribute neither to statutory health, old age, nor to unemployment insurance. This employment form was originally created to "give otherwise well-provided sections of the population the possibility of a limited, levy-free extra income" (Schwarze and Wagner 1989a: 185). Since then, this employment form, the composition of which is quite clearly changing towards a heterogenisation, is no longer the exception.

Thus one should include these "low earners" in the social insurance requirement by dropping the limited earnings clause (*Geringfügigkeitsgrenze*) in order to better protect them from social risks. Here it is above all a case of closing loopholes in their own pension qualifications — that is in the independent social safeguarding of especially women, who make up the vast majority (1.5 of the 2.1) of those in limited employment.

As additional wage costs would rise because of the employers' contribution to social insurance, negative consequences in the form of a disappearance of this employment form has often been feared. The *Deutsches Institut für Wirtschaftsforschung*, however, has been able to show through an analysis of the supply structure that there are "competition, social and labour market political reasons for an extensive abolition of regulations concerning limited

25 Similarly for the USA also Kochan, McKersie, and Capelli (1984: 35).

26 The number rises to 4 million marginally employed if one adds the part-time, second jobs. However, the figures given for the extent of limited employment vary greatly in the different studies. See among others ISG (1989).

employment'' (Schwarze and Wagner 1989b: 601) because of the necessity — indeed inevitability — of this form of employment in a service society, the vast majority — apart from the industrial sector — would not see any negative employment effects. Workers with functionalised, irregular work times should not be less, but rather better paid than employees with ''normal work times''.

— Part-time employment — under various labour market conditions and with different aims — has been increasing in volume since the 60's and currently makes up about 14% of all non-self-employed, 80% of whom are women (so-called feminisation). Moreover, short-term part-time work is rising.[27] Current analysis[28] shows, however, that the employment effects of the variants of part-time employment have been limited in the past; to this extent, the hope of an increase in employment levels through an extension of part-time work is unrealistic.

Further legislative framing are also necessary here.[29] ''With the regulation of part-time work, it is a matter of first removing the disadvantages of part-time employment in comparison to full-time employment. Overdue is a collective bargaining and social legislative equalization of part-time employees with full-time employees in the questions of, among others, pay (including overtime), classification, chance of advancement and further training, participation in firm specific social benefits, especially company pension plans and public supplementary benefits resp.'' (Bäcker and Naegele 1989: 39).

In other words, the principle of non-discrimination must be introduced for all indivisible rights (such as minimum work conditions, protection of existing conditions as well as protection against dismissals, participation in co-determination panels, and further training measures); for divisible rights on the other hand (wages, for example) a graded relative participation follows. To this extent, the basic regulation of this employment form through the setting of a legal minimum standard in paragraph 2-6 of the BeschFG (ban on different treatment, change of length or position of work, adjustment of work time to fluctuating amount of work, sharing of work place, precedence of the collective bargaining agreement) is a step in the right direction, but because of its minimal character, is insufficient.

— The series of examples can be extended: one specific form of flexibilisation on the factory level, which arises from the removal of jobs from the

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27 With a flexibilisation of personnel comes thus a flexibilisation of personnel assignment as well. Through an extreme flexibilisation of work-times (adjustment of production results to fluctuating amount of work) great rationalisation profits for businesses are made possible.

28 See above all Büchtemann and Schupp (1986); Schupp (1989); Dittrich *et al.* (1989).

29 The forms "capacity oriented variable work time" (*kapazitätsorientierte variable Arbeitszeit — Kapovaz*) and "job sharing" are only roughly regulated in the BeschFG. Altogether, part-time work is only weakly regulated.

immediate factory organisation, is homework (*Heimarbeit*) in the current form of the so-called tele-homework (*Teleheimarbeit*).[30] This employment form, pursued mostly by women, is relatively unimportant in size (about 160,000 employees) and is hardly growing. It could certainly grow in future, however, as a result of the possibilities of decentralisation which new information and communication technologies offer. A simple updating of the law on homework (*Heimarbeitsgesetz*) will not be sufficient for labour and social legislative securing and formation of this "new homework", which can, for example, take on the form of self-employment. "Especially the employment, investment and liability risks for the various forms of tele-work must be satisfactorily solved." (Müllner 1987: 324)

A further problem — relatively small when seen internationally but increasing from year to year — is legal (see Brose, Schulze-Böing, and Wohlrab-Saar 1987: 286ff.) and illegal agency labour (*Leiharbeit*) (see DGB 1988; Kock 1989). Because of necessarily unreliable statistics, the actual amount of illegal agency labour can hardly be estimated exactly. But is certainly great, as the experience of the past few years has shown. The DGB estimates that there are twice as many illegal agency labourers as legal ones. It is generally true that "...in the FRG agency labour tends to have worse pay and working conditions than permanent workers, as well as more restricted social security rights, because, on the one hand, they are excluded from the scope of collective agreements in the user firm and, on the other, the number of collective agreements directly signed by agencies is small." (Marshall 1989: 41) This problem has become more acute since the opening of the border of the former GDR.

With protection come the familiar problems of unprotected employment conditions. The problem can be overcome only with great difficulty through legislative regulation — for example a general banning as demanded above all by the DGB. The BeschFG only contains greater punishment for illegal employment of foreigners. One possible strategy would be a legally set systematic equality of factory and agency labour — not only in pay, but also in all other conditions of work — through a change in the agency labour law (*Arbeitnehmerüberlassungsgesetz*).

Extension of Collective and Individual Participation Rights

Up to now I have emphasised especially the social costs of deregulation strategies as well as the socio-political protective functions of re-regulation proposals in view of "untypical" employment conditions. In the following I will point out the direction and range of various labour political formative

30 See for the problem among others Brandes and Buttler (1987: 74-91).

functions. We thus move from a defensive-compensatory to an offensive-formative variation of re-regulation. The necessity of this second form of behavior regulation no longer exists in the avoidance of external effects and in the reduction of social costs but above all in the reduction of information, negotiation and realization costs (transaction costs); thus they also aim at increasing "social productivity".

— The socially acceptable introduction and implementation of new technologies, above all microelectronics as a new basis technology, is a further central policy field where legislative intervention and thus steering is necessary; the goal lies in the institutionalisation of improved and extended participation rights in the various phases (of planning, introduction and implementation). New technologies, at least also at the micro level, are not determined by "internal logic" or other "objective laws", but are a social process open to the actors' practical formative alternatives and strategies.[31]

The unions feel co-determination possibilities for rationalisation measures and for the introduction and application of new technologies, for the formation of work-places, for personnel planning and decisions as well as for changes of the factory (especially paragraph 90, 91 BetrVG) to be insufficient and too vague. At present, works councils are seldom active and are often brought in only related to the formal and informal negotiation of planning and decision-making processes. The unions demand, therefore, an extension and strengthening of works councils' existing co-determination rights in relation to the introduction and application of new technologies.

In this concept of a more factory-related work and production policy, it is a matter of whether, within the range of a legislative framework, the various effects of "technology" can become quantitatively and, above all, qualitatively objects of collective bargaining and factory level agreements.

On the one hand, extensive rights of full, preventive co-determination "for the introduction, application, change or extension of new technological equipment or processes" could be introduced, as demanded by the DGB and SPD. On the other hand mere participation rights could be established, as the governing coalition formulated during the reform of the BetrVG in 1988.[32]

The new problems of "technological" participation arising from the introduction of microelectronics in production and administration could not

31 See individually Altmann and Düll (1987); Ortmann *et al.* (1990); international comparison Wassermann (1989).

32 The information and consultation rights of the works councils and the employees were "defined more precisely and made more practicable", but not extensively expanded. In paragraph 81 BetrVG the information requirements of the employer, and in paragraph 90 the information and consultation rights of the works councils were extended.

have been foreseen during the first reform of the 1952 BetrVG in 1972; these technological-qualificational-labour organisational changes should, however, have been considered during the second reform in 1988.[33] Another change to the BetrVG, namely an extension of real co-determination rights for the consequences and effects of the introduction of new technology, should have been made.[34] The real problem of reform thus lies less in the changes actually made than in the failure to re-regulate the introduction of new technology.

— The traditional, greatly labour divisive and clearly restrictive organisation of work along the Tayloristic-Fordistic principles is losing importance as part of a process of change from standardised "mass production" to flexible and diversified "quality production". With the introduction of information and communication technology, a "flexible" reorganisation of the, by this time, more unitarily formed and used work is made possible. Through the introduction of microelectronics, not only the works councils' traditional alternatives of action change, but also to a great extent the labour organisation and individual work conditions.

Apart from the already outlined extension of existing group and collective rights of the works council as a representative organisation, the formation of non-representative, individual rights of participation at the workplace becomes necessary, with reference both to the introduction and application of new technology as well as to the general formation of work conditions. To this extent, the BetrVG, which regulates collective labour relations on the shop-floor through statutory structures ("*Verrechtlichung*"), should be extended "downwards" with a strengthening of individual rights at the workplace and their dovetailing with collective rights. A continuous neglect of this lowest level of co-determination is traditionally peculiar to German regulation, which are directed solely towards the factory and industrial level, ignoring both the macroeconomic and especially the individual level (Adams and Rummel 1977: 15).

In this context, not only management participatory proposals, but also concepts of co-determination at the work-place[35] discussed in the 60's and early 70's but never capable of attaining a majority acceptance within unions due to organisational policy calculations, are — under radically changed

33 The DGB's "concept for co-determination at the work-place" has been in existence since 1984. Apart from policy programmes, few practical results can been seen. See Kiefer and Schönland (1988: 139-150).

34 The "Proposal for a Law for the Extension and Securing of Factory Co-determination" ("*Entwurf eines Gesetzes zum Ausbau und zur Sicherung der betrieblichen Mitbestimmung*") introduced by the SPD parliamentary group in 1988 (BT-publications 10/3666), which took up the ideas of the DGB to a great extent, was conceived as a political alternative to the government's plans to reform the BetrVG.

35 See for others Vilmar (1974a; 1974b: especially 176ff).)

conditions and with quite different aims than "basis democracy" and "work self-stewardship" — becoming topical once again.

On the one hand, not only the new highly qualified production workers who carry the introduction of technology and the "new production concepts" within the factory demand and expect a high level of direct, individual participatory rights and strategically oriented free hand at formation, with the aim of a greater consideration of their special interests during the negotiation process of labour organisation and conditions.[36]

On the other hand, since the 80's, "modernistic" management has been making, as part of its Human Resource Management, numerous novel, decentralised offers of participation to at least certain groups of (core) workers, which could go beyond pseudo-participation and social techniques.[37] These functionally oriented social techniques, directed towards a modernisation and flexibilisation of factory production potential, take the form, among others, of work-place or quality circles. This direct worker participation can, however, come into competition with the collective rights of the works council institutionalised in the BetrVG if it is not used offensively for a work-place related extension of internal participation rights for all employees.

In all probability, within the continuing process of a structural change in labour relations systems — with the well-known trend of factorisation (*Verbetrieblichung*) and decentralisation — the factual importance of industrial level co-determination will decrease in relation of the factory level. As part of this change of emphasis within a total concept of "industrial democracy" co-determination on the company level (especially after the Co-Determination Act (*Mitbestimmungsgesetz* of 1976) on the one hand will certainly not become completely unimportant, because it offers the chance to intervene in company decision-making processes in the board of supervisors. On the other hand however, "decentralised" co-determination at the work-place within a more encompassing regulated infrastructure of participation will gain in importance. Necessary, still, is an institutionalised extension of various forms of participation which is adequate of the changed framework, i.e. a mixture of improved old, that is representative-collective and new, that is direct-individual rights of participation.

— A general consensus has arisen on the central importance of systematic basic and further training which clearly goes beyond traditional vocational training, not only for the individual but also for future social and economic

36 See Birke and Schwarz (1989; 1990).

37 In the current jargon it is a question of a change from "industrial relations" to "employee relations", that is, from more collective to more individual, from more two-sided to more one-sided relations.

development. However, a clear difference of opinion exists on the question of how the problem should be solved in detail and with which instruments; the basic alternatives are factory level and collective bargaining agreement vs. statutory (framework) regulation plus collective bargaining supplementation. Statutory regulation could produce certain outlines for a right, or at least on the question of further training. Government measures seem sensible, not the least because through systematic further training the country's position within the international division of labour as well as the international competitiveness in tight markets can be improved; the production of goods that are competitive because of their quality has as a pre-condition a well-qualified workforce. As this is, at least for broadly based "key qualifications", a matter of a specific sort of collective good for an improvement of the macroeconomic ability to adapt and compete, the state should support its development. Finally we can view further professional training, like the "dual" system of vocational training, as a socio-political task, which thus requires a dual regulatory framework.

A sensible (maximum) demand is that "those decisions about professional further training should be codified which are of a super-factory and super-industrial nature, such as: individual minimum claims to professional further education; special consideration of disadvantaged employee groups; rights of co-determination and co-participation of employees and interest representatives during the determination of qualification requirements, during planning and introduction of measures and during the choosing of participants; resort to qualification advisors; systematisation of further training measures ("building block principle"), establishment and control of quality standards and usable certification of participation, ..." (Bispinck 1990: 23; similarly 1988: 331).

The factory level and collective bargaining agreements[38] — which have dominated up to now — would then have the task of filling in, realising and "applying" the statutory framework in relation to specific factory or industry conditions. Co-determination regulations (above all paragraph 96-98 BetrVG), while offering favourable points of departure, are not sufficient for an effective exercise of influence.

In the past years various unions have attempted to turn the problem of further training into an object of collective bargaining. This offers the advantage that it can be practiced with or without government (framework) regulation; however, demands in this area would be easier to achieve within the framework of state regulation and they can easily be overcharged without such regulation. On the other hand, this strategy of "qualitative" bargaining policy

38 In the *Lohn-und Gehaltsrahmen-Tarifvertrag I* (LGRTV I) of 1988, an "agreement has been succesfully reached for the first time in an encompassing collective contract of central importance which contains detailed regulation on qualification." (Bispinck 1988: 406; Bispinck 1990).

has hardly any chance of success if it is pursued isolated and alone at the factory level, that is, in the form of factory level agreements; it needs more than the collective safeguarding through collective bargaining agreements which formulate binding minimum standards and generalise specific (particular) regulations.

CONCLUSION

The basic political alternatives of action are: Should the process of restructuring proceeding equally in the industrial production and the private and public service sector take place under political and thus also under some sort of social control, or should these processes be left to the forces of the "free" market of the economic textbooks (politically controlled vs. market oriented uncontrolled restructuring)? Continuing and increasing flexibilisation has made political coordination through a reformulation of legal framing of social developments more difficult, because it is more differentiated, but definitely not superfluous. A more specific regulation through an extension of protective rights, especially for marginalised groups, as well as an expansion of collective and individual rights of participation will be necessary in the 90's.

In this scenario of a re-regulation of labour relations and labour markets, the welfare and social state is required, not as a "strong" interventionist state but as the third corporate actor after employers and employees' representatives, especially in its role as law-giver. According to current deregulation concepts, on the other hand, the state should not take on a moderating function of compensation and limiting of particular interests, but rather become less significant, especially in labour and social policy, returning to the "night or market watchman" role, assuming only the classical function of maintaining order.

Finally, two current problems should be briefly mentioned.

Within the "new states" — that is the federal states created out of the former GDR — the basic problem of regulation will not appear in the variant deregulation; rather the specific difficulties will exist in trying to create institutions which function at all. Here, as far as can be predicted, the labour market structure of the "old states" will serve as a framework to a great extent — and lead to the problems discussed above of, for example, atypical employment conditions.

With the completion of the European single market and the formation of the "European social region", EEC regulations will have, not necessarily in the short-term but certainly in the middle and long-term, not only to formulate, but also to implement one common denominator out of the quite different

national forms of labour and social policy. It will probably be much more a matter of careful framework regulation in the form of setting limits and general (minimal) standards in certain areas (for example in the forms of atypical employment conditions) rather than a true unification or (social) harmonisation of a more general sort; for the form and extent of this re-regulation, the above-formulated maxims apply.

The "Community Charter of Basic Social Rights of Employees", approved in December 1989, is only a first step in the sense of a "programme of action", which does not dispel the danger of a general deregulation in the form of pure market logic ("social dumping" through internationalisation). Resistance to such proposals for guiding principles from the EEC Commission, which require unanimous approval from the Council, has arisen not only in England, but also quite clearly in Germany, as the rules would lead to an improvement in national protective legislation.

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La déréglementation à l'allemande et quelques éléments de prospective

Cet article traite de différents apports de déréglementation du travail et des marchés de travail en Allemagne. Cette analyse fait une différence entre la flexibilisation comme stratégie surtout utilisée par les employeurs et la déréglementation comme étant un ensemble d'actions et de mesures prises par l'État qui actuellement fournit le support politique aux efforts des employeurs vers la flexibilité. Les plus importantes mesures de flexibilisation visent le découplage des firmes en utilisant le temps et les heures individuelles de travail, une plus grande différentiation dans la rémunération, l'externalisation, un accroissement de l'applicabilité fonctionnelle et de nouvelles formes d'emploi et de contrat de travail. Les principales mesures de déréglementation en Allemagne sont :

— La réforme des paiements de compensation salariale durant les conflits de travail limitant ainsi le pouvoir des syndicats.

— La Loi sur la promotion de l'emploi qui a accru les possibilités de contrats à court terme.

— La modification à la Constitution de l'emploi qui pourrait avoir comme effet d'affaiblir les Comités d'entreprise dans leur unité et comme représentant exclusif des intérêts de tous les employés, reconnu comme partenaire de négociation par l'employeur, en renforcissant les droits des groupes dissidents.

— Le projet de loi sur les temps de travail qui ajuste la longueur et les caractéristiques des temps de travail en visant à allonger la journée et la semaine de travail et en prévoyant la possibilité de quarts de travail de nuit et le dimanche.

— Les propositions de la Commission d'experts indépendants visant à abolir les réglementations contraires au marché qui tente de modifier ou de remplacer les réglementations législatives par les mécanismes de marché.

L'auteur prétend que ces mesures de déréglementation ne sont pas le fruit d'une stratégie politique générale à long terme suivie systématiquement et qu'en termes de comparaisons internationales, l'étendue de la déréglementation en Allemagne n'a été que limitée. Mais le cumul de différentes mesures de déréglementation procédurale et surtout substantielle a mené au démantèlement des droits des employés et de leurs représentants. Doublée de la politique de factorisation de la négociation, la politique gouvernementale de déréglementation supporte la tendance vers la fragmentation des relations du travail et la segmentation verticale des marchés du travail. Devant ces conditions institutionnelles changeantes, les biens collectifs centraux (v.g. un haut niveau d'emploi) jouent un rôle moins important dans les calculs des acteurs qu'auparavant sous un régime corporatiste d'intérêts spéciaux organisés plutôt collectivement.

L'auteur critique ces stratégies de déréglementation qui, somme toute, sont implicitement fondées sur le modèle néo-classique de concurrence pure et d'équilibre général. Diverses institutions du marché du travail n'influencent pas réellement un seul côté de son habileté à fonctionner mais sont également des étapes régulatoires garantissant la productivité et améliorant l'efficacité. Le haut degré de flexibilité interne du système d'emploi allemand est oublié par les tenants de la déréglementation. Les effets attendus de celle-ci sur le niveau d'emploi ont été grandement surestimés.

L'auteur prêche en faveur d'une flexibilité politiquement contrôlée plutôt que dirigée par le marché. Il ne prône pas moins de déréglementation mais plutôt une déréglementation plus spécifique. Il prétend que l'intérêt collectif de l'État dans la re-réglementation provient non seulement de sa responsabilité sociale, mais surtout des coûts sociaux et des problèmes sociétaires associés au manque de réglementation. De nouveaux moyens traduisant une déréglementation politique spécifique pourraient provenir de différentes formes d'emploi marginal et précaire :

— Les bas salariés, avec des conditions marginales d'emploi, devraient être inclus dans le système d'assurance sociale.

— Le principe de la non-discrimination devrait s'appliquer aux employés à temps partiel. On devrait leur accorder les mêmes droits indivisibles que les employés à plein temps (v.g. protection contre le licenciement, droits de participer au perfectionnement et au recyclage); tous les droits divisibles (v.g. les salaires) devraient être accordés au prorata du temps travaillé.

— Tous les problèmes liés aux risques d'emploi, d'investissement et de responsabilité pour les différentes formes de télé-travail à domicile devraient être réglementés.

— Les travailleurs d'agences de location de main-d'œuvre devraient être protégés par une loi prévoyant le traitement égal de tous les employés, non seulement pour les salaires, mais pour toutes les autres conditions de travail.

Ces mesures compensatoires défensives de déréglementation devraient être accompagnées de moyens formatifs offensifs de déréglementation. Pour réduire les coûts de transactions et pour augmenter la productivité sociale, il est nécessaire d'étendre les droits de co-détermination pour couvrir les effets de l'introduction de nouvelles technologies et établir des nouveaux droits individuels non représentatifs de participation en milieu de travail.

De plus, le perfectionnement ne devrait pas être seulement un sujet de négociation collective ou d'accords au sein de la firme. L'État doit réglementer ce sujet puisque des décisions eu égard au perfectionnement touchent plusieurs établissements et même toute une industrie (v.g. des droits de co-détermination pour la planification et l'introduction de mesures, pour la sélection des candidats, pour le contrôle des normes de qualité et pour l'accréditation de la participation).

D'autres problèmes, mais non les moindres, requièrent une re-réglementation plutôt qu'une déréglementation : les difficultés nouvelles des états fédéraux créés à partir de l'ancienne Allemagne de l'Est et le parachèvement du marché unique européen.