

Developments in German Industrial Relations

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Edited by

Ingrid Artus,
Martin Behrens
Berndt Keller
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Britta Rehder
and Carsten Wirth

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INTRODUCTION

INGRID ARTUS, MARTIN BEHRENS,
BERNDT KELLER, WENZEL MATIASKE,
WERNER NIENHÜSER, BRITTA REHDER
AND CARSTEN WIRTH

The German model of industrial relations is currently back in the spotlight on the international stage. It was German “crisis-corporatism”, – that is, close cooperation between government, business, trade unions and works councils – which during the economic crisis of 2008/09 contributed considerably towards stabilising employment levels during the period of economic downturn. Thanks to this successful crisis management, the German export economy after the (presumed) end of the crisis quickly returned to its former level of performance and is now proving more competitive than ever. A purported “German job miracle” also contributed to “German capitalism” being once more attractive after the German labour market was for some time during the 1990s considered too inflexible and over-regulated.

The social science and political interest in the “German model” is however nothing new. It has long been considered, in international industrial relations (IR) research, to be of comparatively significant relevance, enjoying much attention as an “ideal type” of coordinated market economy and social partnership model, with its dually constructed interest-representation system and strongly anchored possibilities for worker-participation and co-determination. Although in IR-research there has always been a certain amount of exchange between the English-speaking IR scientific community and German researchers, this has been (and is partly still) hampered by language barriers and also by an historical “asynchrony” in the development of IR research in Germany and the Anglo-Saxon countries.

In those countries, especially the UK, the delimitation of IR research as a separate discipline has a long tradition. In Germany, debates about worker-participation, co-determination, trade unions, collective agreements,

employer organisations, etc. were for a long time not “thematically bundled”, but scattered and decentralised among various specialist fields: in the sociology of work and industrial sociology, economics, political science and employment law. It was to take some 25 years after the end of WWII for interested social scientists in the German-speaking countries to come together and concentrate their research interests in a professional interdisciplinary association: the German Industrial Relations Association (GIRA). It was to take another two decades for them to establish a journal as an independent research publication forum. The first issue of the *German Journal of Industrial Relations* (German title: *Industrielle Beziehungen. Zeitschrift für Arbeit, Organisation und Management*) appeared in the spring of 1994.

The present contributed volume on industrial relations in Germany has resulted from close cooperation between GIRA and the *German Journal of Industrial Relations*. It can therefore be considered to some extent a “joint venture” of the greater German IR research community. The majority of the following contributions were written to commemorate the 20th anniversary of the *German Journal of Industrial Relations*, and were first published in German in the journal’s 4/2013 anniversary issue. The “Nestor” of German IR research and founding editor of the German Journal of Industrial Relations, Walther Müller-Jentsch, outlines in his article the central questions posed in that “jubilee issue”, and now in this book. His article takes stock of what has changed over the past two decades in the field of German industrial relations. Where are we today? What developments have industrial relations – and the accompanying research – gone through? What successes have been achieved, and what problems and future tasks have appeared in the meantime?

To answer these questions, the editors of the *German Journal of Industrial Relations* (who are also the editors of this book) asked some respected colleagues (as it turns out, exclusively men) to give a written reflection on their assessments of the current IR situation from their different professional standpoints. Precise prescriptions of content were dispensed with, and the choice of emphasis was left largely to the authors. While there was some attempt to prevent content overlaps and “duplications” from occurring (at least to some degree), these were also deliberately accepted as an expression of “parallel world views”, with the similarities, despite different disciplinary perspectives, considered to be the intentional expression of a common perception of reality. Occasional contradictions in the presentations were considered interesting evidence of controversial, as yet not thoroughly discussed, interpretations of issues. The raw versions of the manuscripts were intensively discussed among the

editors and provided with critical comments for the consideration of the authors. For this English edition the original concept of the anniversary journal has been partially adapted and supplemented. In particular, the contributions have been updated by the authors so that they represent the most recent state of the legal and factual circumstances. In order to make the German discussion understandable and readily accessible to a foreign audience who possibly has less prior knowledge relevant to Germany, the book also provides two contributions outlining the historical development and characteristics of the German model of industrial relations.

Martin Behrens, program director of European industrial relations at the Economic and Social Research Institute (WSI) of the Hans Böckler Foundation, currently board member of GIRA and co-editor of the *German Journal of Industrial Relations* as well as of this book, introduces the history of German labour relations, presenting its key actors and some perspectives on foreseeable future developments.

Heiner Dribbusch, expert on labour disputes and head of the department of tariff and trade policy at WSI, and *Peter Birke*, research assistant at the Sociological Research Institute Göttingen, give an updated picture of the organisational and membership structure of the German trade unions, outline factors relating to the right to strike and industrial action in Germany, and discuss a number of current challenges facing German trade unions.

The contributions summarising the development of industrial relations in Germany in the past 20 years open with *Walther Müller-Jentsch*, Emeritus Professor of Sociology at the Ruhr University Bochum (1992–2001, Chair for Co-determination and Organisation), founding co-editor of the *German Journal of Industrial Relations* and board member of GIRA in 1996–2003. He gives a very broad overview of the development of the Journal and the German IR-research landscape, as well as developments “on the ground” in production systems and of the central actors in industrial relations at the enterprise, collective bargaining and European levels.

Similarly broad is the overview provided by *Friedrich Fürstenberg*, Professor of Sociology (Prof. Emeritus from 1995) at the University of Bonn, who through his many important publications strongly influenced the early economic and occupational sociology in Germany. From 1983 to 1986 Fürstenberg was also president of ILERA (International Labour and Employment Relations Association), the international umbrella organisation of GIRA.

Herrmann Kotthoff, who may well be the most renowned researcher on works councils in Germany, provides an overview of more recent research

into co-determination in Germany (from about 2000), which sets itself apart in many ways from earlier research.

Hartmut Wächter, Emeritus Professor of Business Administration at the University of Trier (Chair of Work, Personnel and Organisation), as a prominent representative of the business and economic sciences and long-standing active member of GIRA, agreed to provide an overview of recent research into human resource management and its lines of connection to IR research. We were thus all the more shocked at the news of the death of Hartmut Wächter only a few days after his completion of this article. We shall hold him in honoured memory as the highly professional scientist, solidary colleague and kind individual that he was.

Uwe Jirjahn, Professor of Economics (Department of Labour Economics) at the University of Trier, then follows with an overview on the contribution of labour economics to research into trade unions and collective bargaining relationships.

Finally, *Manfred Weiss*, Professor Emeritus of Civil and Labour Law at the University of Frankfurt, editor of various journals on jurisprudence, long-standing active member of GIRA and President of ILERA in 2000–03, summarises the development of labour relations from the perspective of labour law.

In publishing this book it is our hope to make these updated “self-interpretations” of the German model of industrial relations easily accessible to the English-language IR-research community. Experience shows that distance to events facilitates their critical analysis. In this sense it is our concern, as observers of German industrial relations “from the inside”, for this book to also encourage critique from the perspective of “outsiders”. It will be gratifying if, thereby, the discussions between German and international researchers can be intensified.

Last but not least we would like to thank the contributors for their papers, Hans-Böckler-Stiftung and Helmut-Schmidt-University supporting the translations and Rebekka Hensen for the layout.

CHAPTER ONE

EMPLOYMENT RELATIONS IN GERMANY

MARTIN BEHRENS

Introduction

For decades employment relations in Germany have served somewhat as the role model for stability and orderliness. As Katzenstein put it in his seminal work *Policy and Politics in West Germany* this stability was the result of several factors: “the reformist ideology and practices of unions that are centralised and leave little scope for rank-and-file militants; a well-institutionalised system of works councils which involves workers at the plant level; and laws that constrain what unions and business can do” (Katzenstein 1987: 126). To understand where this system comes from and probably also where it is heading, it is important to take a brief look at German history.

Many of the core features of German employment relations have their roots in the time of the Weimar Republic and even earlier, most prominently this is true for multi-employer collective bargaining and works councils. While multi-employer collective bargaining was significantly strengthened, when in 1918 employers signed the legendary Stinnes-Legien-Agreement, accepting unions as partners in collective bargaining (Grebing 2007), two years later works councils were established by the Works Council Law of 1920 (Müller-Jentsch 1995). It should be noted, however, that the shape and inner logic of the German industrial relations system was not established before the reconstruction of the country after the Second World War¹. Core features which had not been established before 1950 were the unified union movement and also the “tamed” role of

¹ As Jacoby (2000) has shown, continuity is much more pronounced in education at least when compared to industrial relations. In her analysis of the development of the German system of education and training, Thelen (2004) comes to similar conclusions.

the German state. These new elements represent key lessons that important parts of German society (of course, critically informed by the occupational forces) had learned from the breakdown of the first German democracy - the Weimar Republic - and the resulting horrors of Nazi dictatorship and the world war.

Thus, the so-called collective bargaining autonomy (*Tarifautonomie*) could be understood as a response to a close involvement of the state with collective bargaining, which during the years of the Weimar Republic seemed to have paralysed the ability of unions and employers to bargain and to take responsibility for the results of bargaining. At that time, provisions which had entitled the state to issue binding arbitration verdicts (*Zwangsschlichtung*) had effectively reduced the ability of unions and employers to agree on terms and conditions of employment (Artus, 2001: 55f). As a lesson from this, in 1949 when a new constitution was passed for the Federal Republic of Germany, section 9 III was included which guaranteed the right to build associations for collective bargaining free from state interference. As also section 4 I of the Collective Bargaining Act states, collectively agreed standards had the direct and enforceable power to regulate the subjects covered by them.

Another lesson from the pre-war years concerns the structure of the German union movement, or to be more precise, the union movements. Up to the point when Hitler and his followers had effectively banned free unions and had collapsed all existing organisations into the “*Deutsche Arbeitsfront*” the German labour movement had been split up into three wings: a socialist/communist, a liberal and a Christian union movement (Schneider 2000). Because these wings were fighting intensely against each other (most dramatically after the split-up of the first and strongest wing into a social-democratic and a communist branch), they failed to build up effective resistance to the Nazi dictatorship. A more unified union movement, representing workers’ interest within one but not three peak confederations, would – according to this perspective – have made it easier to give organised labour a powerful voice to be heard even in times of authoritarian rule. Consequently, when after the war the occupational forces in the west and the east allowed unions to be reconstructed, and after some of the key leaders of the Weimar unions came back from either prison or exile, they created a unified union movement with the German Confederation of Trade Unions, the *Deutscher Gewerkschaftsbund* (DGB), as its main key confederation (Jacoby 2000, Chapter 3).

In this sense, German industrial relations – particularly when compared to those in the UK, the Netherlands and the USA - can be considered a “late-developer” in two different ways. First because in Germany industrialisation

occurred comparatively late (1830-1873), decades after the industrial revolution had shaken the United Kingdom (second half of the 18th century), and second because major key elements of the German model of employment relations did not occur before the mid 1950s - at the time when reconstruction of the country was well under way.

Core features of the post war model

As we have seen in the previous section, a unified union movement was one of the core features of German employment relations after its reconstruction. Until the late 1980s the DGB had 16 affiliates, organising workers in both the public and the private sector. The most important function of these unions was, and probably still is, industry-wide collective bargaining with one of the approximately 700 employers associations, most of them directly or indirectly affiliated to the Confederation of German Employers, BDA (Behrens 2011). Collective agreements were mostly negotiated for an entire industry within a certain region (in most cases this is one of the 16 German states (Länder)) but a few national-level agreements can be identified, for example in banking but also in the public sector. The German collective bargaining Act (Tarifvertragsgesetz), however, also allows for company-level agreements to be negotiated between a union and a company's management. by the year 2013, when as a result of several mergers, the number of unions within the DGB has been reduced to eight, 32 percent of establishments in west Germany and 20 percent in east Germany are covered by a collective agreement (both types: industry and plant-level) (Ellguth/Kohaut 2014: 288).² Because the likelihood of coverage increases along with company size, this leads to 60 percent of all employees in west Germany and 47 percent in east Germany being covered by a collective agreement. Also, it should be noted that usually employers do apply terms and conditions provided by a collective agreement to their entire workforce, rather than just to the union members who, by law, would be entitled to benefit from those collective agreed standards. One reason why employers do so is that companies do not want to provide non-union workers with a strong incentive to join the union and thus to increase labours' collective power.

² It is striking that even 20 years after the German unification has extended the reach of west German industrial relations laws and institutions to the territory of the former GDR, differences in major practices such as bargaining coverage but also establishment-level interest representation through works councils still remains substantial.

While in general, multi-employer agreements are the most common form of collective agreements, single employer agreements also determine the wages, hours and working conditions of a significant number of employees. Such company-level (single employer) agreements, however, are more popular in east Germany than in the western parts of the country. In the east, 12 percent of all employees are covered by a company agreement while for the west this share is just 8 percent (Ellguth/Kohaut 2014: 287).

Against the long tradition of weak state involvement in collective bargaining, the federal government has passed measures to help stabilising the system just recently. While in the past provisions for minimum wages were rarely used, covered selective industries only and were based on collective agreements, in 2014 the parliament passed legislation for a new statutory minimum wage (€ 8.50 taking effect in 2015) to cover most of the German workforce. In addition, the new law has eased the state's right to declare collective agreements generally binding, thus extending collectively agreed standards to groups of employees and companies which are not covered directly (*erga omnes* extension) (on the debate leading to this new legislation see: Bispinck 2012).

In Germany, employees do not have an individual right to strike. According to several rulings by the federal constitutional court (Bundesverfassungsgericht) and the federal labour court (Bundesarbeitsgericht) unions can call their members out to strike when a collective agreement is not in force. Strikes are also considered to be illegal if a strike is not called by a union or if the goal pursued by a strike is beyond the range of subjects to be regulated within a collective bargaining agreement. The latter point is one of the main reasons why in Germany political strikes are banned. With only 16 work days/year lost per 1,000 employees (average for the time period 2005-2012) in Germany strike activity is comparatively low (Dribbusch and Birke 2014: 11-12).

A second feature of the post WWII model, which together with multi-employer collective bargaining constitutes the so-called "dual system" of employment relations, is establishment-level interest representation through works councils (Frege 2002, Müller-Jentsch 2003). According to the Works Constitutions Act, workers in establishments with more than 5 employees have the right to elect a works council. Once elected, works councils are entitled to a variety of participation rights, which include the right to information and consultation, but in some cases also more far-reaching co-determination rights. Co-determination rights as the most far-reaching rights keep employers from acting unilaterally. According to survey data, in 2013 about ten percent of all establishments (only those

with more than 5 employees) had set up a works council. Because the overwhelming majority of the large establishments with 500 and more employees do have formal interest representation, 43 percent of all workers in west Germany (35 percent in the east) work in an establishment with a works council (Ellguth/Kohaut 2014: 292).

In addition, there is also a system of board-level representation of employees. According to the Co-determination Law of 1976 (Mitbestimmungsgesetz) employee representatives in establishments with more than 2,000 employees are entitled to 50 % of the seats of a company's supervisory board (most of representatives are works councillors or union officials) while the remaining half is reserved for representatives from the owners' side. According to the law, the board's president is to be selected by the owners, he or she has the tie-breaking vote. Major strategic decisions are reserved for the supervisory board, it is also in charge of controlling a company's management board (Vorstand). While labour representatives do not have a majority of votes, board-level representation gives them privileged access to important information but also provides them with some influence affecting management decisions. Different laws apply to companies from the mining and steel industries (with more far-reaching representation rights) and smaller companies with more than 500 but less than 2,000 employees (in these companies labour can only claim a third of the boards' seats).

Over a long period of time this dual system, with industry-level collective bargaining on the one hand and establishment-level co-determination on the other (in large companies the latter being supported by board-level representation), has structured German employment relations in a way that has separated different spheres of conflict. Conflicts over bread and butter issues such as wages, hours and working conditions, have been assigned to unions and employer associations, mostly operating at the industry level. At this level conflicts have occurred in the form of strikes and lockouts. Because works councils were neither allowed to pursue collective bargaining nor to call a strike, they were able to enter rather peaceful negotiations with the individual establishment-level management. This does not mean, however, that there is no conflict to be found at the establishment-level (Kotthoff 1981: 11). Indeed, there are still disputes over a variety of issues but they are "bound" in the sense that conflict is over different issues and there are different mechanisms through which conflicts are dealt with and resolved. As works councils are not allowed to call a strike, they apply pressure on their particular employer by, for example, refusing to permit overtime work. In certain areas the Works Constitution Act assigns arbitration panels (Einigungsstellen) that

have the task of resolving conflict with the help of a neutral chairperson to be assigned to serve as the tie-breaking vote on such bi-partite panels (Behrens 2007). As these structures of establishment-level conflict resolution already indicate, large parts of German employment relations are founded on elaborate legal norms which provide for both social rights as well as mechanisms for legal redress. This principle is known as “juridification” (Verrechtlichung) (Erd 1978).

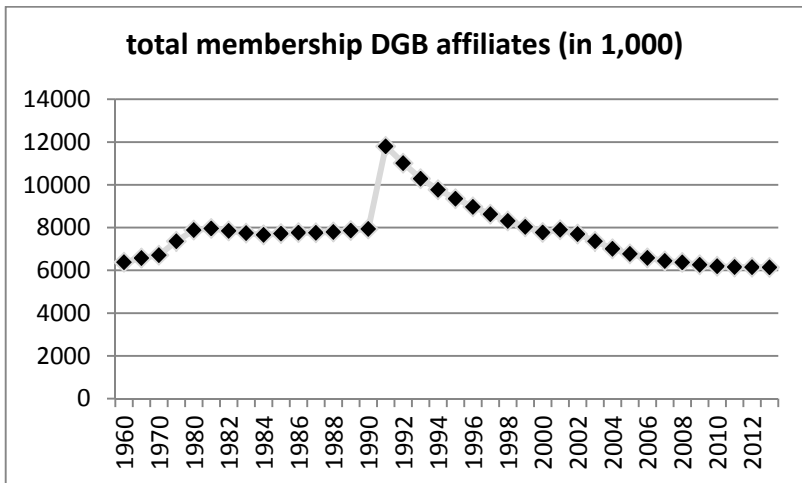
The federal state, in turn, protects this system by way of enabling key actors to pursue their duties. The German constitution and its interpretation by the Federal Constitutional Court (Bundesverfassungsgericht) as well as the Federal Labour Court (Bundesarbeitsgericht) supports collective bargaining autonomy through major rulings. The state assists collective bargaining by way of providing statutory minimum standards for workers such as minimum vacation-time but also by way of some welfare state regulation - most prominently the pay-as-you go pension system, unemployment insurance system and a mandatory health insurance system. While some of these benefits were reduced during the last decade, a process which triggered protest from the trade unions, in most areas the German welfare state still frees unions and employers from regulating welfare state issues, predominantly through collective bargaining. For example, in contrast to their brothers and sisters in the USA, German unions do not have to negotiate provisions for providing workers with an elementary health insurance (several unions, however, have included provisions on supplementary private pensions in their collective agreements). While the state has an important role to play when it comes to regulating the welfare state, regulation in other areas is less comprehensive. A universal statutory minimum wage has been introduced just recently (effective of Spring 2015), which was perceived as a big victory for the unions who have lobbied for this for many years. In contrast to this recent involvement of the state in providing minimum standards for pay, there are only limited opportunities to extend collectively agreed wages to industries and workers, which are not directly covered (*erga omnes* extension). This is in stark contrast to most other west-European countries which do provide such provisions for the extension of collective bargaining.

Key actors within the German system of employment relations

Labour Unions

As shown in figure 1, while trade union membership within the major peak confederation has been stable if not expanding in the 30 years since 1960, it has been in steep decline since the aftermath of German unification. It reached its peak in 1991, after west German unions extended their jurisdiction to the new east German states and organised 11.8 million members. This number had declined to 6.1 million by the end of the year 2013, almost cutting total DGB membership in half in just two decades.

Figure 1: Total DGB-membership 1960-2013



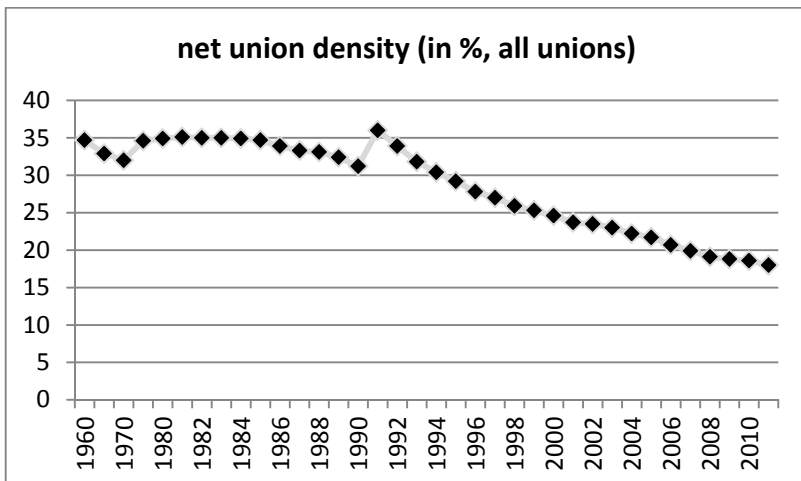
Source: DGB

This membership development also finds its expression when focusing on union density. While union density was increasing, to about 35 percent by the early 1980s, even under conservative rule, when Helmut Kohl became chancellor in 1982, this changed only little. Reaching its peak with 36 percent density in 1991, the year after the German unification, the following two decades were shaped by continuous decline. While up to the time of writing (July 2015) German unions have not yet been able to reverse decline (though decline has massively slowed down), several

unions have made major efforts to introduce new strategies for membership organising and recruitment (Dribbusch 2003, Bremme et al. 2007, Wetzel 2013).

A large part of union decline in the first half of the 1990s was due to a process of high union density (shortly after the unification this was close to 100 percent) declining in the eastern states to reach west German levels. For the years following this meltdown, however, scholars have identified several other reasons to account for membership loss in the unions. Among the most important factors that have been identified are the fading appeal of unions within the public debate (Pyhel 2006), the increased mobility of capital and workers as well as more flexible work organisation (Fitzenberger et al. 2011:160) and also the low level of perceived effectiveness of the unions and their reduced capacity for the mass mobilisation of workers (Dribbusch 2011:232ff). In addition, changes in the average size of establishments, the changing gender composition of the workforce but also the growth of the private service sector (a sector with a predominantly low union density) have been associated with membership decline. In contrast, however, authors have argued that some of the usual suspects, that is changes in the composition of workforce characteristics (full time/part-time work, age, skill), have contributed little to explaining the fading membership strength of the unions (Schnabel/Wagner 2007, Fitzenberger et al. 2011).

Figure 2: Net union density 1960-2011, all unions



Source: ICTWSS database

Membership of the more than 6 million union members is with one of the DGB's eight affiliates. The metalworkers' union IG Metall and ver.di, the United Services Union being by far the largest affiliates within the confederation, representing more than two thirds of total DGB membership. As a product of several union mergers, starting with the creation of the media and print shop workers' union IG Medien in 1989 but not ending with the creation of ver.di (an amalgamation of five former independent unions) in 2001, union membership in Germany is now fairly concentrated in a small number of organisations (Waddington/Hoffmann 2005, Keller 2005). During this rather short period of time, spanning just 12 years, the number of independent affiliates of the DGB was halved, from initially 16 to 8. While the motivations of individual unions to engage in merger activity are quite diverse, ongoing membership decline during the 1990s and the financial hardship arising from this, have served as powerful facilitators to drive union mergers (Streeck/Visser 1997).

The system of a universal union movement, however, always did and still does have its exemptions. Even immediately after the reconstruction of German labour relations in the years after WWII there were a number of independent labour organisations not affiliated to the main peak confederation DGB. Most prominently, the German Federation of Career Public Servants (Deutscher Beamtenbund, dbb), with its 39 affiliates representing 1.28 million members in November 2013. Most of these members are life-long public servants but there are also about 360,000 public sector employees with regular employment contracts (Dribbusch 2010: 25). While employment conditions for those regular employees are subject to collective bargaining, the wages, hours and working conditions for lifelong public servants are unilaterally determined by the state.³ While the bulk of former Christian unionists from the Weimar years ended up joining the ranks of the DGB's affiliates, there also remained a smaller (rival) Christian Trade Union Confederation of Germany (CGB) with 17 affiliates and total membership of about 283,000 (2009). Finally, there are also about a dozen independent unions, which are not affiliated to any peak confederation. While only the Marburger Bund, the Hospital Doctors Trade Union, exceeds membership of 100,000, and given that most of

³ While the state ordinarily applies the collectively agreed standards negotiated between the public sector unions and state representatives at the municipal, Länder and federal level, it does so on a voluntary basis, and it can (and in recent years sometimes has) deviate from those "patterns" established in collective bargaining. A second difference is that life-time civil servants are not allowed to strike (although this rule is contested under European law) but in exchange enjoy life-long job security.

those unions are very small, they have played an increasingly prominent role in recent collective bargaining drives (Schroeder et al. 2011). Small speciality unions such as the German union of air traffic controllers GFL, the pilots' union Cockpit or the train conductors union GdL (an affiliate of the dbb, the Federation of Career Public Servants), although small in size, are very effective in achieving wage increases for employees within their small jurisdiction - in some cases, by far exceeding those increases negotiated by the DGB's affiliates (Keller 2009). The bargaining strategy applied by some independent occupational unions has recently been subject to some criticism. From a union perspective, a number of observers have argued that some of these contracts negotiated by small independent unions achieve benefits for a small group of privileged workers only, which are perceived to be at the expense of wage increases for other, less exclusive groups of workers within the broader jurisdiction. Because competing unions with overlapping collective bargaining jurisdictions have created more frequent strike activity in industries such as hospitals, air and rail transportation, representatives of the government and employers (also supported by the majority of the DGB's affiliates) have supported new legislation to rule out unions competing for the same jurisdiction within collective bargaining. In July 2015 the new "unity of collective bargaining" bill (Tarifeinheitsgesetz) was approved by the German parliament. The bill provides that when more than one multi-employer agreement applies in an establishment, only the one which has been concluded by the union with the most members within this establishment will be valid. The new law has created substantial conflict within as well as between unions: affiliates of the dbb-confederation as well as many of the independent unions, seconded by Ver.di and some other DGB affiliates, spoke out against the law because they have concerns, the law would interfere with unions' right to call a strike. In contrast, the chemical, construction and metal workers unions as well as other small DGB affiliates voted in favour of the law, arguing it would benefit collective bargaining unity.

Employers

Traditionally, employers have played a very prominent role within the German system of employment relations. Due to the special system of industry-wide collective bargaining, employers' capacity to organise has been crucial in bringing collectively-agreed standards to a majority of German employees. Remember that with a union density of 18 percent, still about 60 percent of all workers are covered by a collective agreement.

In Germany, business interests are covered by two different systems of representation. First, there are product-market related interests of business which are represented by business organisations, with the BDI, the Confederations of German Industry being the national-level peak organisation of those interests. Second, there is a system of interest representation for labour-market related interests. About 700 employers' associations and their national peak confederation, the BDA (Confederation of German Employers' Associations), are in charge of multi-employer collective bargaining. In some industries there are also associations which do represent both labour and product-market related interests of companies within one organisation. However, in most areas the separation into two separate systems of representation – at least up to now – remains in place (Schroeder/Weßels 2010).

Employers' associations have something in common - they pursue a collective bargaining function vis-à-vis the unions they differ with, but according to a variety of issues. Within the structure of the BDA we find small associations side by side with some heavyweights such as Gesamtmetall and its state-level affiliates, which represent employers in the automobile, metal, machine-tool, and electronics industries, or the BAVC representing employers in the chemical-engineering industry. While the larger associations are usually equipped with sufficient resources and thus are able to provide their members with a broad spectrum of membership services, many of the smaller associations find it difficult to mobilise sufficient resources to hire staff to provide membership services which stretch way beyond collective bargaining.

Larger and more resourceful associations can support their members in a variety of ways. They not only negotiate collective agreements, they also provide the expertise to apply those agreements. For example, a number of affiliates of Gesamtmetall have hired engineers who assist companies in applying a new wage scale to their workforces and to assign new wage classifications to individual employees. Other services include advice in the area of labour and employment law (even representing companies' interests in the court room), assistance in public relations and the training of employees. The most prominent task to be pursued by those associations, however, is still collective bargaining. This has slightly changed since the beginning of the 1990s when many associations started to introduce a so-called "OT" membership status (Völkl 2002, Haipeter/Schilling 2006, Behrens 2011). "OT" is the short form for "without collective bargaining coverage" (ohne Tarifbindung) and means that those associations do offer an opt-out clause to their membership. Individual companies are allowed to maintain membership to the associations but are freed from applying the

Table 1: Membership development of Gesamtmetall 2000-2013

	Total membership (firms)	Firms (with CB coverage)	Firms (without CB coverage)	Share OT/total membership (firms)	Total number of employees	Number of Employees (with CB coverage)	Number of employees (without CB coverage)	Share OT/Total membership (employees)
2000	6,252	6,252	0	0%	2,122,472	2,122,472	0	0%
2001	6,093	6,093	0	0%	2,103,799	2,103,799	0	0%
2002	5,704	5,704	0	0%	2,061,622	2,061,622	0	0%
2003	5,109	5,109	0	0%	1,922,167	1,922,167	0	0%
2004	4,774	4,774	0	0%	1,859,026	1,859,026	0	0%
2005	5,861	4,429	1,432	24.4%	1,986,792	1,822,441	164,351	8.3%
2006	6,113	4,214	1,899	31.1%	2,003,115	1,779,145	223,970	11.2%
2007	6,321	4,017	2,304	36.4%	2,065,812	1,775,620	290,192	14.0%
2008	6,366	3,897	2,469	38.8%	2,101,471	1,772,173	329,298	15.7%
2009	6,334	3,789	2,545	40.2%	2,016,986	1,698,738	318,248	15.8%
2010	6,437	3,712	2,725	42.3%	2,025,127	1,690,310	334,817	16.5%
2011	6,565	3,652	2,913	44.4%	2,117,464	1,745,602	371,862	17.6%
2012	6,774	3,604	3,170	46.8%	2,180,014	1,773,756	406,258	18.6%
2013	6,826	3,586	3,240	47.5%	2,210,691	1,784,290	426,401	19.3%

terms and conditions of the industry-wide collective agreement to their workforce. As members, companies can still benefit from all other services provided by that association but are free to either determine standards for wages, hours and working conditions with workers individually or to negotiate a separate company-level collective agreement. Based on survey data, it is estimated that between a third and half of all German employers' associations offer their members such an opt-out option (Behrens/Helfen 2010; Behrens 2011). As the following table shows, at least in the case of Gesamtmetall, one of the BDA's largest and most powerful affiliates, the use of bargaining-free (OT) membership status is becoming increasingly popular among member companies. After its introduction in the mid 1990s, OT membership status expanded within Gesamtmetall and in fact accounts for the association's entire membership growth in the second half of the decade. In 2013, the last year for which data is available, more than 47 percent of all member companies are within the "bargaining-free" status. When looking at the right side of table 1 (columns 6 to 9) it also becomes apparent that OT-membership status is rather an issue for small- and medium-sized firms than for large companies: in 2013, while representing 47.5 percent of all member companies, OT firms only accounted for 19.3 percent of all employees employed by Gesamtmetall's member firms.

Government

The government's role in employment relations is restricted in the sense that the state's ability to interfere with issues of collective bargaining is limited by the German constitution and the famous concept of *Tarifautonomie*. As Katzenstein (1987) has described it, along with federalism and coalition government this strong role of autonomous "para-public" institutions constitutes what he calls a "semi sovereign" state. This tamed government power does not mean, however, that German employment relations are free of state influence. Indeed, the state plays a dominant role in shaping what is known as the German "Bismarkian" welfare state, with its four pillars: the unemployment insurance system, the old-age pension system, the health insurance and the social care insurance, the latter system being the most recent addition to the welfare state (created in 1995) and pays for the care of patients in need. While the four pillars are administered by tripartite bodies (operating under public law and control) rather than by the state itself, state law is crucial in deciding the contributions individual employees and employers pay into that system as well as the benefits employees, who are covered by the system, receive.

Also, through changes in the Works Constitution Act (which was first enacted in 1952) the state has massively affected works councils' ability to represent workers' interest at the establishment level on several occasions in post WWII history. Major reforms occurred in the years 1972 and 2001, in both cases initiated by a government under social-democratic leadership.

Since after the war the German unions were reconstructed as a uniform movement ("Einheitsgewerkschaft") with no special peak confederation for different political orientations, the DGB and its affiliates have opened their ranks for workers with different party affiliations. While we find a large number of union members who belong to either the Social Democratic Party SPD, the Christian Democratic Party CDU, the Greens (Bündnis 90/Die Grünen) or the new Left Party (Die Linke), there traditionally existed something which was called a "privileged partnership" between the unions and the SPD (Schroeder 2005, 2008), a close relationship which even leads some observers to claim that both are "Siamese twins" (Ebbinghaus 1995). The share of union members within the SPD is particularly high. According to a recent (2009) survey among members of German parties 42 percent of SPD members held a union card, while this share was only 13 percent in the CDU. Union members represented 26 percent of membership of the Greens and 32 percent of Die Linke (the Left Party) (Klein 2011: 53) - two parties which were founded rather late: the Greens in 1980 and Die Linke in 2007. The Greens had been the product of the west German environmental movement while Die Linke has its roots in the successor party of the state-party of the GDR and parts of the west German union movement.

This data on cross-membership between the SPD and the union might explain why, despite holding on to the concept of *Einheitsgewerkschaft*, labour's hopes for worker and union-friendly policies have always been particularly high at times when the SPD has been in government.

Indeed, we find major pro-labour reforms of the Works Constitution Act at times when the chancellor came from the SPD (1969-1982, the Brandt and Schmidt governments and the Schröder government 1998-2005).

At the time of the latter government, the Schröder administration, we saw the SPD/union relationship coming under severe strain. With a series of labour market reforms, known as the Hartz-laws (named after Peter Hartz, at that time VW's leading HR executive and chairman of a commission proposing labour market reforms), the social democrats have aimed at making the German labour market more flexible (Bothfeld et al. 2009). Among other elements, the reforms included an easing of agency work, cutting unemployment benefits for some recipients, and increasing

demands on the unemployed to seek new employment, the latter being famously framed as a strategy of “encouraging and challenging” (fördern und fordern). In the case of agency work, the new law now enables employment agencies to hire agency workers on a fixed-term basis, to match the duration of the agency workers’ work contracts with the time they are hired out to other employers and finally to relax restriction on the maximum duration of employment with those employers (previously two years). For a majority of workers, unemployment benefits which are a fixed percentage of employees’ earlier income are paid for the duration of one year maximum. After this year unemployed persons are transferred to a secondary scheme which is commonly known as “Hartz IV”. These recipients receive housing subsidies plus a fixed sum to cover the costs of living (currently € 399 per month for an adult recipient) but are also subject to stiff fines if they do not collaborate with the employment agency or refuse to accept a job offer. Along with other measures, such as extending the retirement age from 65 to 67 and introducing an additional (private) pension scheme, these Schröder and post-Schröder years (the first grand-coalition of CDU and SPD under Chancellor Merkel) have marked a watershed in the privileged partnership between the SPD and the unions, with some member unions within the DGB emphasising their autonomy vis-à-vis partisan politics.

It should be noted, however, that this alienation between the unions and the SPD was far from being complete. Three reasons may account for this: First, when the social democrats were elected out of office in 2009 they were eager to reach out again to the unions. Second, because a significant share of SPD activists maintains a dual membership as a party and a union member, this relationship - even when it came under strain during the Schröder years - found strong institutional support (Jacoby/Behrens 2014). Finally, the federal structure of the German state had always provided unions with multiple opportunities of collaboration so that multiple patterns of union-party relations could be maintained. While the lion’s share of policies which are significant for unions is located at the federal level, some issues can also be regulated by the state (Länder) governments. Among other issues this is true for public procurement laws and the extension of collective agreements but also to some degree for policies aiming at the structural development of certain industries.

It should be noted that despite this privileged partnership with the SPD, German unions have sought to maintain collaborative relations with governments at several levels, even at times when the SPD was part of the opposition camp. During the recent world financial crisis, for example,

with a mid-right coalition government led by Chancellor Merkel in office, unions have been engaged in talks with the government – leading to an easing of the use of state subsidised short-term work but also setting up a government programme to subsidise the purchase of smaller more fuel efficient cars. While most scholars seem to agree that short-term work and also more flexible working time regimes as negotiated between works councils and plant management have significantly enabled the creation of what is known as the “German job miracle” (remarkable employment stability at times of the most severe recession in Germany’s post World War II history) (Herzog-Stein/Zapf 2014), it is still heavily disputed whether the labour market flexibilisation brought on by the Hartz reforms have contributed significantly to the good performance of the German labour market at the time of the crisis (Herzog-Stein et al. 2010).

Employment relations: processes and outcomes, and general trends and developments

During the past two decades and beyond, German employment relations were the subject of several processes of change with aspects of decentralisation and Europeanisation being at the centre of academic observation.

Decentralisation

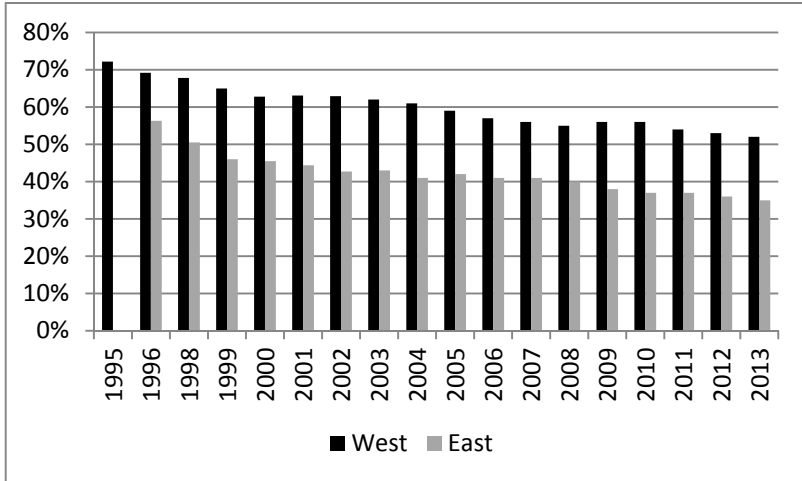
Issues of decentralisation mostly occur within the dual system, which is at the centre of the German employment relations system. When scholars talk about decentralisation, they usually mean a process through which competences are transferred from the industry or national level to the company or establishment level, with de-unionisation being the most extreme form of bargaining structure decentralisation (Katz 1993: 12). Observations of decentralisation mostly refer to the area of collective bargaining. It is assumed that powers to determine wages, hours and working conditions, in the hands of establishment-level actors such as works councils, workers and management, have been increased at the expense of industry-level actors such as unions and employers associations. Decentralisation has different aspects, but it also takes different forms. Focusing on the way through which decentralisation emerges, scholars differentiate between “organised” and “disorganised” decentralisation (Traxler 1995) or “controlled” and “wildcat” decentralisation (Bisping/Schulten 1999), respectively. While through organised decentralisation bargaining tasks have been deliberately

delegated to the lower level, disorganised decentralisation has frequently involved outright labour-market deregulation or key collective actors, such as employers refraining from the old more centralised system (Traxler 1995: 6-7). In Germany, decentralisation can be conceptualised by making reference to these two forms. Organised decentralisation first originated in the mid 1980s, when IG Metall negotiated language into its famous collective agreement on the introduction of the 35-hour working week. This agreement included a clause which allowed company-level actors to more flexibly adjust working time regimes to the needs of the company (Schmidt/Trinczek 1986, Thelen 1991). Following this first opening clause, all German unions have subsequently included such clauses into their industry-wide agreements: allowing for more flexibility in adjusting those collectively-agreed standards to the specific conditions at the establishment level and thus in many cases empowering works councils to take on bargaining responsibilities. Most frequently, such opening clauses allow for adjusting collectively-agreed standards for working time and the annual bonus but in increasingly also wages (Bispinck/Schulten 2011). First efforts to make wages subject to organised decentralisation include the east German metal and electronics industry, where in 1994 a so-called hardship clause (*Härtefallklausel*) was included in the multi-employer agreement, allowing companies to reduce collectively-agreed wages if permission by the union and employers association is granted (Artus 2001: 176f, Schroeder 2000: 328ff, Silvia 2013: 204), ten years later, in 2004, a similar provision known as the “Agreement of Pforzheim” was included into the agreements for the west German metal and electronics industry (Kädler 2014, Haipeter 2009).

Also, to safeguard jobs in times of crisis unions and employers have frequently negotiated agreements in the context of company-level “Pacts for employment and competitiveness”. Such agreements (in many cases based on opening clauses or even separate company-level collective agreements) included concessions from the side of unions and works councils in exchange for job guarantees (Seifert/Massa-Wirth 2005, Rehder 2006).

Disorganised decentralisation occurred in the context of the fading ability of employers’ associations to organise a stable share of their constituency. As shown in figure 3, the share of the German workforce which is covered by an industry-wide collective agreement has been declining since 1995 (the first year for which data are available).

Figure 3: Collective bargaining coverage 1995-2013, employees covered by industry-level agreements in east and west Germany



Source: IAB-establishment panel, various years

Only in west Germany, during the last four years, does decline seem to have been stopped. There are various reasons for this type of disorganised decentralisation. While during the years following German unification many companies left employers' associations because they were dissatisfied with the results of collective bargaining, later decline was due more to the fading ability of associations to recruit new companies into the organisation or to replace regular fluctuation. When in the mid 1990s the first associations started to offer companies a "bargaining-free" so-called OT membership status, this also contributed to the decline of bargaining coverage.

Europeanisation

As Marginson and Sisson (2006:1) claim, the term "European social model" has acquired widespread currency throughout Europe. In this sense the "European social model" is understood to be a combination of fundamental principles within the policy domain's right to work, right to social protection and the right to civilized standards in the workplace. While the focus of much of European-level legislation for some time was on implementing basic social standards in areas such as working time, health and safety or gender equality, a second focus was on providing new

institutions to accompany the on-going trans-nationalisation of business. The most important of those institutions are European Works Councils (EWC) but also workers representation on company boards as provided for by the European Company Directive (SE). Currently there are 1067 EWCs in Europe, about 200 of those operating in companies which have their headquarters in Germany (data for the year 2014, according to the European Works Council Database). Thus, close to a third of German multinational companies, which would be eligible to build a EWC, actually have one (Waddington 2011: 61). While EWCs, at least when compared to German national works councils, lack a number of more far-reaching participation rights, they still contribute a great deal to giving labour a say within multinational corporations (for more details see the contributions of Müller-Jentsch and Kotthoff in this volume).

While in the case of EWCs, institution-building has aided transnational coordination of labour (Greer/Hauptmeier 2008), Europeanisation also manifests itself in the context of voluntary coordination, most prominently to be observed in the case of the European coordination of collective bargaining (Schulten 2004, 2009). Such efforts for coordination have been pursued since the late 1990s (along with the introduction of the European Monetary Union) and are based on first, an exchange of information on collective bargaining at the European level and second, joint targets or even “rules” to be followed by national collective bargaining (Erne 2008). Coordination is mostly pursued by the European Union confederations, such as the European Metalworkers’ Federation (EMF) or the European Mining, Chemical, and Energy Workers Federation (EMCEF), but there are, however, no powerful instruments to enforce compliance by the national unions to those rules.

This one face of Europeanisation, institution-building and increased coordination, helps organised labour to follow up on multinational companies as the “key proponents of economic integration” (Marginson/Sisson 2006: 216). There is, however, a second face of Europeanisation which is closely associated with the four key principles (or “four freedoms”) of the European Union, the free movement of goods, capital, services and people. For example, Höpner and Schäfer (2008: 14) have argued that we are witnessing a substantial shift in the balance of power between key actors of society within the EU, leading to increasing emphasis on liberalisation. Indeed, recent developments nurture the assumption that within the EU there has been a shift in the balance of power, strengthening the advocates of a free-market perspective. First, there is a series of decisions by the European Court of Justice (ECJ), which have interfered with national-level union-rights and labour market regulation. In the famous cases Viking and

Laval, the ECJ decided that strike activity by Finnish and Swedish unions violates European law. Although these decisions did not directly affect German unions, they did, however, spark a vibrant debate on the role of the European Court of Justice, leading some commentators to argue for civil-disobedience vis-à-vis the ECJ. According to this view, EU member states should simply refuse to obey the ECJs decision (Scharpf 2008). Another prominent case, Rüffert, directly affected labour standards in Germany. In that case the court decided that the public procurement law in the state of Lower Saxony violates the principle of free exchange of services within the EU (Bücker/Warnecke 2010, Brunn et al. 2010). As a consequence of the Rüffert decision, most German states which had public procurement laws abandoned them or simply refused to apply them (Schulten/Pawicki 2008) and it has taken many years, before those state-legislatures have passed revised laws, which are in line with the ECJs decision.

In essence, these developments prove that the impact of Europeanisation on national employment relations is ambivalent and even more than this, heavily contested. On the one hand Europe provides labour with an opportunity to build new trans-national representative structures; on the other hand the European commission (and the European Council) arms itself with the tools necessary to liberalise national-level employment relations patterns.

Perspectives on change

For some time, Germany has served as a quasi paradigmatic case within the literature on “Varieties of Capitalism” (VoC) and has been used as a proxy for a group of countries labelled “Coordinated market economies” (see Hall/Soskice 2001, Crouch 2005, Hall/Gingerich 2009). Within this approach it has also been assumed that driven by “institutional complementariness” such models of national political economies are somewhat resistant to institutional change. As Turner (2009: 307) has argued: “...as global liberalisation proceeds and competition intensifies, reforms become necessary and adjustments are made. But a central message of the literature [on Varieties of Capitalism, MB] is that ‘the more things change the more they stay the same.’”.

As could be shown in the previous section, there indeed are important signs for change in terms of both employment relations, institutions and structures, but also in terms of outcomes. While major institutions of multi-employer collective bargaining are still in place, we have seen a remarkable decentralisation of selected responsibilities to the company or