

# HOLDING THE SHOP TOGETHER

German Industrial Relations  
in the Postwar Era

STEPHEN J. SILVIA

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*To Jenny,  
for holding our shop together*

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## PREFACE

My big aims in writing this book have been: (1) to integrate into a single volume the economic, historical, legal, political science, and sociological assessments and methods used on both sides of the Atlantic to analyze the major aspects of German industrial relations; and (2) to make innovative arguments using new evidence regarding the trajectory of German industrial relations.

Academics often wax eloquently in the abstract about the superiority of interdisciplinarity and multidisciplinary, but in practice most stay in their individual disciplinary lanes and focus their scholarship narrowly. Indeed, it is rare to find any study of industrial relations anywhere that discusses both trade unions and employers in a single book, no less one that uses multiple methods drawn from the different tribes of academe. In this book, in contrast, I do take an interdisciplinary approach. I use the tools of a range of disciplines to address the questions that each discipline commonly asks. I then integrate these assessments to gain a broader and deeper understanding of German industrial relations than could be obtained through individual studies undertaken by scholars in each discipline acting in isolation.

The uneven chapter lengths are the most immediate manifestation of the book's interdisciplinary approach. This is most apparent when comparing chapters 3 and 4. I intentionally wrote chapter 3 the way economists write. Consequently, it is relatively short. Chapter 4 takes a historical approach. As a result, it is considerably longer. The other chapters, which incorporate a range of disciplines, fall somewhere in between. I should also note that the first two chapters are in part intended for people new to the topic of German industrial relations. Those more familiar with the topic are likely to be most interested in chapters 3 to 5 and the conclusion, because these feature more novel arguments and original evidence.

Finally, it is worth noting why I chose *Holding the Shop Together* as the title for this book. First, it captures what many of the actors themselves say they are doing. During the hundreds of interviews that I have done over the years with officials at German employers associations and trade unions, many

interview partners summed up their efforts by saying that they were simply trying “to hold the shop together” (*den Laden zusammenhalten*) in the face of increasingly difficult circumstances. Second, *Holding the Shop Together* in English (but not in German) contains two words with double meaning that deepen the title’s import. First, the word *Laden*, which is commonly translated as “shop,” simply means store in German. In English, however, shop can also mean workshop, the traditional focal point of industrial relations. Second, the word “together” can be understood in two ways. One meaning is not letting things fall apart. A second meaning places the emphasis on labor and management working *together* rather than as adversaries. These double meanings turn the title into a nice summary statement of a signature aspect of postwar German industrial relations: the embrace of a mutually accepting “social partnership” by both collective bargaining parties. It also captures the ongoing effort of both labor and management to hold together their organizations and the industrial relations system in the postwar era.

I have been working on the topic of German industrial relations for three decades. Finishing a book on the topic gives me the opportunity to thank many people, some of whom should have been thanked long ago. I would first like to thank my parents Pauline and William Silvia for their extraordinary love and support over the years. They made my career possible, for which I am forever grateful. I would also like to thank their friends Ekkehard and Sybille Feustel. On many occasions, they showed me what *Gemütlichkeit* really means. John Windmuller was an extremely helpful and influential mentor while I was an undergraduate at Cornell University and beyond. Although he is no longer with us, he certainly deserves acknowledgment.

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Returning to this side of the Atlantic, the social counselors at the German embassy have all been extremely helpful over the years in providing me with both information and opportunity to meet with the top figures in German industrial and labor relations when they have passed through Washington and keeping me up on what was going on in Germany: Karl Feldengut, Markus Franz, Günther Horzetzky, Michael Mersmann, and Karl Pitz. I would particularly like to thank Marion Knappe for her helpful comments on a draft chapter. Andrew Martin and George Ross, two greats in the field of comparative labor relations, have always been extremely supportive, for which I am extremely grateful. Conversations with Adam Posen of the Peterson Institute were very helpful for framing things in the context of the larger German economy, as were numerous exchanges with individuals in the private sector, in particular, Robert Dugger, Thornton Mattheson, Amy Houpt Medearis, Robert McNally, and Angel Ubide. I would like to thank Dieter Dettke and Jack Janes for all of their substantial support over the years. Special thanks go to Andrei Markovits for his extraordinarily insightful comments on the penultimate draft of this book. I very much appreciate the help I received from my research assistants Heidi Hiebert, Rob Kevlihan, and Mike Stanaitis, as well as the encouragement and support that I received from Louis Goodman.

It has been a great pleasure working with Cornell University Press ILR editorial director Fran Benson and acquisitions assistant Kitty Liu. I have very much appreciated their very helpful advice and guidance.

I am grateful to the numerous funders that supported the research that went into this book. These include the American Institute for Contemporary German Studies, Deutscher Akademischer Austauschdienst, the Friedrich Ebert Foundation, the German Fulbright Commission, the Hans Böckler Foundation, and the National Endowment for the Humanities. I would like to acknowledge the support of my children Christopher, Sean, and Peter, who properly kept me engaged in the daily life of coaching and practices while I was working on the book and supported me daily through their love and encouragement. Above all I am forever grateful to my wife, Jennifer Paxton. Jenny lived through every twist and turn of this book. She gave me sound advice, considerable time, and an extraordinary degree of support. I could not have completed it if it were not for her.

Finally, I would like to let readers know that the bibliography for this book as well as the quantitative data and supplemental tables from the analysis in chapter 3 can be found at <http://www.american.edu/sis/faculty/Silvia-Holding-the-Shop-Together.cfm>.

## ABBREVIATIONS

ADGB	Allgemeiner Deutscher Gewerkschaftsbund (General German Federation of Labor)
AG	<i>Aktiengesellschaft</i> (joint-stock company)
ASU	Arbeitsgemeinschaft selbstständiger Unternehmer (Working Group of Independent Entrepreneurs)
AVE	<i>allgemeine Verbindlichkeitserklärung</i> (declaration of general applicability)
BA	Bundesagentur für Arbeit (Federal Employment Agency)
BAG	Bundesarbeitsgericht (Federal Labor Court)
BAT	Bundes-Angestellten-Tarif (Federal Collective Agreement for Public Employees)
BAVC	Bundesarbeitgeberverband Chemie (Federal Employers Association of the Chemical Industry)
BCCG	Berlin Center of Corporate Governance
BDA	Bundesvereinigung der Deutschen Arbeitgeberverbände (Federal Organization of German Employers Associations)
BDI	Bundesverband der Deutschen Industrie (Federal Association of German Industry)
BVG	Bundesverfassungsgericht (Federal Constitutional Court)
CDA	Christlich Demokratische Arbeitnehmerschaft (Christian Democratic Employees Group)
CDI	Centralverband deutscher Industrieller (Central Association of German Industrialists)
CDU	Christlich Demokratische Union (Christian Democratic Union)
CGB	Christlicher Gewerkschaftsbund Deutschlands (Christian Trade Union Federation of Germany)
CSU	Christlich Soziale Union (Christian Social Union)
DAF	Deutsche Arbeitsfront (German Labor Front)
DAG	Deutsche Angestellten-Gewerkschaft (German White-Collar Employees Union)



DBB	Deutscher Beamtenbund (German Civil Servants Federation)
DEEWC	Directive on the Establishment of a European Works Council
DFV ULA	Deutscher Führungskräfteverband Union der Leitenden Angestellten (German Managers Confederation)
DGB	Deutscher Gewerkschaftsbund (German Trade Union Federation)
DPG	Deutsche Postgewerkschaft (German Postal Workers Union)
ECJ	European Court of Justice
ERA	<i>Entgelttarifvertrag</i> (compensation framework agreement)
ETUC	European Trade Union Confederation
ETV	<i>Entgelttarifvertrag</i> (compensation collective bargaining agreement)
EU	European Union
EVG	Eisenbahn und Verkehrsgewerkschaft (Rail and Transportation Employees Union)
EWC	European works council
FBBB	Fachgemeinschaft Bau Berlin und Brandenburg (Trade Group Construction Berlin and Brandenburg)
FDGB	Freier Deutscher Gewerkschaftsbund (Free German Trade Union Federation)
FDP	Freie Demokratische Partei (Free Democratic Party)
GdED	Gewerkschaft der Eisenbahner Deutschlands (Railroad Workers Union of Germany)
GDL	Gewerkschaft Deutscher Lokomotivführer (German Locomotive Engineers Union)
GdP	Gewerkschaft der Polizei (Police Officers Union)
GDR	German Democratic Republic
GEW	Gewerkschaft Erziehung und Wissenschaft (Union of Education and Science Workers)
GGLF	Gewerkschaft Garten, Land- und Forstwirtschaft (Union of Horticulture, Agriculture, and Forestry Workers)
GHK	Gewerkschaft Holz und Kunststoff (Union of Wood and Plastic Workers)
GK	Gewerkschaft Kunst (Union of Artists and Musicians)
GL	Gewerkschaft Leder (Union of Leather Workers)
GLS	generalized least squares

GTB	Gewerkschaft Textil-Bekleidung (Union of Textile and Clothing Workers)
HBV	Gewerkschaft Handel, Banken und Versicherungen (Union of Retail, Banking and Insurance Workers)
HDB	Hauptverband der Deutschen Bauindustrie (Main Association of the German Construction Industry)
IG BAU	Industriegewerkschaft Bauen-Agrar-Umwelt (Construction, Agriculture, and Environment Employees Industrial Union)
IG BCE	Industriegewerkschaft Bergbau, Chemie, Energie (Industrial Union of Mining, Chemical and Energy Employees)
IG BE	Industriegewerkschaft Bergbau und Energie (Industrial Union of Mine and Energy Workers)
IG ChPK	(or IG Chemie) Industriegewerkschaft Chemie-Papier-Keramik (Industrial Union of Chemical, Paper and Ceramic Workers)
IG DruPa	Industriegewerkschaft Druck und Papier (Industrial Union of Printing and Paper Workers)
IG Medien	Industriegewerkschaft Medien (Industrial Union of Media Workers)
IG Metall	Industriegewerkschaft Metall (Industrial Union of Metalworkers)
INSM	Initiative Neue Soziale Marktwirtschaft (New Social Market Economy Initiative)
MTV	<i>Manteltarifvertrag</i> (skeleton collective bargaining agreement)
NGG	Gewerkschaft Nahrung-Genuss-Gaststätten (Union of Food, Hotel, and Restaurant Workers)
OEM	original equipment manufacturer
ÖTV	Gewerkschaft Öffentliche Dienste, Transport und Verkehr (Union of Public Services and Transportation Employees)
OT	<i>ohne Tarif</i> (no contract)
PDS	Partei des Demokratischen Sozialismus (Party of Democratic Socialism)
RTV	<i>Rahmentarifvertrag</i> (framework collective bargaining agreement)
SE	Societas Europaea (European Corporation)
SED	Sozialistische Einheitspartei Deutschlands (Socialist Unity Party)
SEIU	Service Employees International Union

SME	small and medium-size enterprise
SPD	Sozialdemokratische Partei Deutschlands (Social Democratic Party of Germany)
SPE	Societas Privata Europaea (European Private Company)
TdL	Tarifgemeinschaft deutscher Länder (Collective Bargaining Group of the German States)
TEU	Treaty on European Union
TVöD	Tarifvertrag für den öffentlichen Dienst (Collective Bargaining Agreement for the Public Service Sector)
TVG	Tarifvertragsgesetz (Collective Agreements Act)
UFO	Unabhängige Flugbegleiter Organisation (Independent Flight Attendants Organization)
USPD	Unabhängige Sozialdemokratische Partei Deutschlands (Independent Social Democratic Party of Germany)
VDA	Vereinigung der Deutschen Arbeitgeberverbände (Organization of German Employers Associations)
ver.di	Vereinte Dienstleistungsgewerkschaft (United Service Employees Union)
VMI	Verband der Metallindustrie Baden-Württemberg (Association of Baden-Württemberg Metal Industry Employers)
ZAG	Zentralarbeitsgemeinschaft der industriellen und gewerblichen Arbeitgeber und Arbeitnehmer Deutschlands (Central Work Community of German Industrial and Commercial Employers and Employees)
ZDB	Zentralverband Deutsches Baugewerbe (Central Association of the German Construction Trade)
ZVOB	Zweckverbund Ostdeutscher Bauverbände (Eastern German Construction Associations Cooperative)

# Introduction

Since the onset of the global financial crisis in late 2008 there has been a boom in positive assessments of the German economy.<sup>1</sup> Little wonder. Remarkably, Germany has managed to bring down unemployment to more than one percentage point below the *precrisis* level and to maintain a current account surplus equivalent to 5 percent of its gross domestic product. This is not the first time that Germany's stock has ridden high. German economic institutions received praise for the "economic miracle" of the late 1950s and early 1960s, the "model Germany" economy that weathered the oil shocks comparatively well during the 1970s, and the "export world champion" economy of the mid-1980s. At other times, however, academics and journalists have been bearish on Germany. High unemployment dogged the German economy for a quarter century, starting in the early 1980s. From the mid-1990s to the mid-2000s, Germany was generally dismissed as the economic "sick man" of Europe. These oscillating appraisals of the German economy raise two questions: Does the current positive assessment of German economic institutions reflect something real, or is it just another speculative bubble? And, what is it about German economic institutions that has drawn the attention of so many over the years? In this book I address these questions by examining a key pillar of the postwar German economy, namely, the industrial relations system.

The industrial relations system holds a prominent place in the German economy. It is strongest where the German economy is strongest. It is responsible for many of the distinctive features of postwar German capitalism. Industrial relations institutions extend into the boardrooms, workplaces, and government to a degree that is unimaginable in most other countries. Collective bargaining determines compensation for a substantial majority of German employees. Trends in German industrial relations, moreover, are reliably indicative of developments in the broader German economy and frequently influence industrial relations developments beyond Germany's borders. All these aspects make the German industrial relations regime an ideal focal point for developing a deeper understanding of the German economy as a whole and its international impact.

The story of postwar German industrial relations is fascinating and reflective of many broader economic, political, and social trends in postwar Germany. Immediately after the Nazi era, employers, workers, and legislators struggled—sometimes as partners and at other times as adversaries—to rebuild a viable industrial relations regime. The cautionary legacy of the demise of German democracy in the 1930s helped to keep the effort focused and constructive. Engagement led to change. Employers supported democracy without reservations for the first time and accepted the unions as equal partners. Trade unionists reached a *modus vivendi* with capitalism and in the 1960s explicitly embraced white-collar employees. These efforts paid off. From the 1950s through the 1970s, the postwar German industrial relations system flourished and served as an important component of an effective economy and a sound democracy. German trade unions and employers associations embraced “social partnership,” that is, acceptance of each other as equal partners that work together constructively to advance the economic and social well-being of German citizens.

The idyllic conjuncture did not last, however. The industrial relations system began to come under stress in the 1980s. The German domestic economy started to falter, and a shift toward individualism in German society, which began in the 1960s, produced a more challenging set of countercurrents for organized business and labor. Many employers associations and trade unions began to experience difficulties recruiting and retaining members. When German unification became a sudden reality, economic and social heterogeneity expanded greatly, amplifying the challenge collective bargaining parties faced to produce collective agreements that were viable and acceptable to all. The legal framework supporting

German industrial relations remained sound, but collective bargaining coverage shrank because of membership losses in some (but not all) employers associations.

Thus, the 1990s and 2000s were decades of experimentation born out of desperation for organized labor and management alike. The unions engaged in a spate of mergers that starkly concentrated the movement in order to shore up its structural integrity. By the turn of the millennium, just two unions accounted for over two-thirds of all German union membership. Both collective bargaining parties experimented with new forms of recruiting and retaining members. Some reforms were bold. Others were incomplete and contradictory. Internecine disagreements and rivalries complicated matters. Large unions continued to lose members. Small occupational unions have increasingly challenged the large ones. The accumulation of daunting challenges has led some to wonder how long organized labor and management will remain influential.

The story is not all negative, however. Labor and management in the chemicals industry have forged an intensive social partnership manifested in scores of supplemental agreements that cover a wide range of topics well beyond collective bargaining. In the late 2000s, the metalworkers union embraced grassroots "social movement unionism," which has its origins in the United States, and began a radical reorganization. This effort has been the first to show promise in reversing membership declines. Employers associations and trade unions have managed to hold on to their leading roles in the German economy and society. They showed that they could still work together in society when they acted effectively to minimize the impact of the global financial crisis. This productive cooperation brought them renewed respect.

## **Design and Principal Findings of This Book**

Five chapters form the core of this book. They can be divided into two parts. The first part presents in two chapters the framework of the German industrial relations system, that is, the laws and the role of the state. The first chapter discusses German labor law and several state institutions that are crucial components of the industrial relations regime. The second chapter investigates Germany's distinctive system of codetermination. The second part, which consists of three chapters, analyzes the principal actors in German industrial relations: the trade unions and the employers associations. The conclusion combines the material portrayed in chapters 1 through 5 into a

comprehensive picture and then considers the future of German industrial relations.

In chapter 1, I challenge conventional wisdom in two respects. First, I call into question the assertion that defeat in the Second World War laid the groundwork for Germany's postwar economic "miracle" by clearing out the laws and interest-group bargains that were alleged to have previously constrained economic growth.<sup>2</sup> This is decidedly not the case when it comes to German economic statutes, especially industrial relations legislation. Postwar German labor law is in most respects a refurbished version of the laws of the Weimar Republic and, in some instances, the Second Empire. To the extent that the laws are different, they contain provisions that have strengthened the scope and coverage of the industrial relations regime. The German government enacted these laws by the early 1950s. Thus, a full thicket of laws was already in place before the famous German "economic miracle" took off starting in the mid-1950s, and those laws did not impede growth.

The second shibboleth concerns the importance of the German state in industrial relations. Industrial relations practitioners and politicians routinely declare collective bargaining to be autonomous of the state. Yet, a detailed examination of German labor law in chapter 1 makes plain the indispensable role of the state in buttressing the postwar German industrial relations regime. Laws, regulations, agencies, and courts unobtrusively sustain a framework highly supportive of "autonomous" collective bargaining. Ironically, union officials and employers are generally oblivious to the state's important role. German-style regulation relies on maintaining background "framework conditions" (*Rahmenbedingungen*) conducive to the state's objectives rather than remedial intervention. Unlike in most other high-income countries, the German framework has remained intact, despite considerable buffeting, particularly since the oil shocks of the 1970s. Germany's consensual form of federal democracy, which usually requires the assent of the major established parties and a large share of the states to make major legislative changes, helps account for the stability of postwar industrial relations over the years.<sup>3</sup>

Chapter 2 appraises the uniquely German system of codetermination, which gives employees some say in management decision making. Codetermination has two components: works councils, which are representative bodies of employees in the workplace, and employee representation on supervisory boards. Codetermination has made trade unions especially resilient because it anchors employee participation in the law and provides an added platform for employee influence in a company's

affairs besides collective bargaining. Employers' attitudes toward codetermination have always been ambivalent. Most praise it in public and genuinely welcome the opportunity codetermination provides for building a cooperative relationship with employees in the workplace, but some also charge that German codetermination laws are costly and infringe on property rights. Employers have always been especially critical of various forms of parity representation on supervisory boards as a violation of management rights.

Officials from employers associations and trade unions have repeatedly tried to amend codetermination legislation over the years, with occasional success. Most recently, labor spearheaded the passage of a law strengthening workplace codetermination in the early 2000s. In contrast, employers undertook a concerted effort to roll back employee representation on supervisory boards in the mid-2000s, but failed. The results of both efforts illustrate the continuing strong support for codetermination in German politics and society and the enduring resilience of these components of the statutory framework of German industrial relations.

The future of codetermination is not completely secure, however. The biggest threats come not from within Germany but from the European Union. The first is European legislation. Over the years, successive German governments, regardless of political complexion, have ensured that EU commercial laws intended to deepen the internal market do not undermine domestic codetermination. The need to make sure that new European legislation promoting economic integration does not undercut codetermination is no less pressing today. The second threat to codetermination has come from the European Court of Justice. Since the mid-2000s, the ECJ has pursued an aggressive agenda of economic liberalization that has begun to chafe against Germany's codetermination statutes. The incompatibility is likely to intensify in coming years. It is premature, however, to determine the ultimate outcome.

The first part of the book shows that the framework of the postwar German industrial relations system has remained intact and performed effectively. The principal actors—that is, the trade unions and the employers associations<sup>4</sup>—have not fared nearly as well, however. Most have lost a large portion of their memberships over the past two decades. The second part of the book explores why.

Chapter 3 opens the consideration of membership developments by undertaking a quantitative analysis of the unionization rate in postwar Germany. The book's model of union density overturns accepted explanations by introducing new variables. Previous models of unionization



in Germany focused exclusively on economic and demographic variables. Chapter 3 includes two additional factors: “social custom” and trade. The notion that social custom—that is, the social expectations and the milieu that influence an individual’s decision to join a union—has an impact on unionization has been discussed broadly in the general literature on union density, but it has never been incorporated into a quantitative model of German unionization. *Holding the Shop Together* employs an innovative measure of social custom and finds it to be the most powerful factor correlated with the German unionization rate, establishing empirically the importance of this *sociological* element in German unionization. The quantitative analysis also reveals trade as a percentage of the gross domestic product correlates *positively* with the German unionization rate, which runs counter to much of the qualitative literature on the sources of trade union decline but is consistent with Germany’s strong record as an exporter.<sup>5</sup> German unification also correlates positively with unionization, confounding conventional expectations. The results in chapter 3 are consistent with those of the first two chapters. The decline in German trade union density is not the result of a breakdown of labor law or state institutions but rather the deterioration of trade unionism as a social custom.

Chapter 4 undertakes a broader qualitative assessment of the German trade union movement. It builds on the findings of the previous chapter by probing the strategic considerations and actions of trade union leaders in light of postwar sociological and economic trends. The record of the postwar German trade unions is one of remarkable stability and success in their first four decades. Stability did not last, however. From the mid-1990s to the early 2000s, plummeting membership figures in both eastern and western Germany triggered a reorganization of the unions of the Deutscher Gewerkschaftsbund (DGB, German Trade Union Federation) and the Deutsche Angestellten-Gewerkschaft (DAG, German White-Collar Employees Union) through a spate of mergers that was so substantial that it is best understood as the creation of a second postwar German trade union movement. The first was an industrial union movement structured by the principle that each major sector should have one (and only one) trade union. The second is a multisectoral union movement that is dominated by two mammoth organizations that span multiple sectors: Industriegewerkschaft Metall (IG Metall, Industrial Union of Metalworkers) and Vereinte Dienstleistungsgewerkschaft (*ver.di*, United Service Employees Union).

The second postwar trade union movement achieved fuller economies of scale, resulting in greater organizational stability, but most have not managed to staunch membership decline. The mergers that created the multisectoral movement may have inadvertently precipitated another phenomenon that has proved problematic for larger unions. Small occupational unions, particularly in the transportation sector, have become more prominent players in German industrial relations. Some have used their choke point positions in the economy to extract sizable wage concessions. The success of occupational unions since the latter half of the 2000s has embarrassed the leadership of the multisectoral unions because the large unions have not been able to secure comparable wage gains. The heads of the large unions also fear that the spectacular successes of the occupational unions may stoke demands to break up the multisectoral unions only a few years after they had gone to great pains to create them.

The 2000s were a particularly difficult decade for the German labor movement. A weak economy led to meager results at the bargaining table and declining real incomes. Experiments with peak-level neocorporatism in the form of the Alliance for Jobs failed to produce reforms or any tangible improvements in the labor market. German chancellor Gerhard Schröder responded to the failure of the neocorporatist Alliance for Jobs in his first term of office by largely dispensing with consultation in his second term and enacting legislation designed to liberalize the German labor market. The two largest unions—IG Metall and ver.di—tried confrontation to stave off the labor market reforms but failed. The aggressive tactics generated much rancor within the labor movement, especially between the leaders of the two giant unions and the chair of the third biggest German union, the *Industriegewerkschaft Bergbau, Chemie, Energie* (IG BCE, Industrial Union of Mining, Chemical, and Energy Employees), who preferred a more conciliatory approach. By mid-decade, IG Metall and ver.di abandoned political confrontation after it had proved ineffectual. It took a leadership change in the federal chancellery and in IG Metall for the labor movement to recover some semblance of its past standing.

The years since the 2008 global financial crisis have not been all bad for German trade unions. Ironically, formulating effective policies to address the crisis and subsequent downturn brought trade unions, employers associations, and the government together, restoring some of the collective bargaining partners' influence. At the end of the decade, the largest unions also attempted to reverse their fortunes by pursuing internal reforms. The strategies were diverse. IG BCE doubled down on the pursuit of intensive

social partnership. In contrast, IG Metall began efforts to shore up social customs supportive of union membership by borrowing the rhetoric and techniques of social movement unionism from English-speaking countries.<sup>6</sup> The metalworkers union also adopted several measures designed to strengthen the incentives and resources to recruit and to retain members, particularly at the local level. IG Metall's grassroots strategy has yielded some initial success. In 2012, union membership grew in all categories, including the all-important currently employed and youth subsegments, for the first time in decades. It is still too soon to tell whether a social union movement strategy pioneered in the decentralized and adversarial environment of US plant-level union-recognition elections can succeed over the long haul in an industrial relations system steeped in an ethos of cooperation and with a center of gravity for collective bargaining at the sectoral level. Nonetheless, IG Metall's reform effort is a demonstration of the creativity and resolve still present in the German labor movement. A few local *ver.di* officials experimented with social movement unionism as well, but the union's fragmented and frozen structure prevented local lessons from percolating upward.

Chapter 5 turns to the other side of the collective bargaining table. It starts with a brief discussion of the prewar establishment and postwar reconstruction of employers associations. It is employers associations' substantially higher density and more complete coverage of the economy rather than a high unionization rate that have given postwar German collective bargaining such broad reach in determining compensation. As a result, density trends among employers associations have been of greatest importance in determining the influence of the postwar system of German industrial relations.

Officials of employers associations tightened their influence over member firms during the 1960s by strengthening the capacity of associations to engage in industrial actions and by using lockouts frequently. Despite these steps, which curtailed the autonomy of individual firms, the associations maintained high membership densities. In the 1980s, external economic developments—namely, Europeanization, globalization, and the introduction of new manufacturing techniques such as “lean production”—challenged employers associations. Large original equipment manufacturers (OEMs) faced much stiffer competition from companies both at home and abroad. They in turn placed pressure on their suppliers by cutting prices and demanding higher quality. The impact of the transmission of this intensified economic pressure from the global to the national level varied depending on the sector. For sectors in which both the OEMs and their suppliers are

in the same employers association (e. g., mechanical engineering), the transmission of economic pressure prompted a disproportionately high share of small supplier firms to "flee" their associations, which lowered employers association density. In contrast, high and stable membership in employers associations has prevailed in sectors dominated by large firms with suppliers mostly in other sectors (e. g., chemicals). The empirical findings from the chapter also disconfirm the claim of Schmitter and Streeck that employers associations must choose between maximizing external influence and retaining membership.<sup>7</sup> The chemical industry employers associations increased influence over the member firms but retained members. The employers association in the mechanical engineering sector, in contrast, sacrificed influence and catered heavily to members, but association density in that sector declined nonetheless.

In the conclusion I discuss the implications of the five substantive chapters and compare the findings to other countries. Most striking are the divergent trajectories of the principal components of the German industrial relations system. Germany's consensual politics have effectively protected the legal framework. Trade union membership is declining due in large part to domestic sociological developments. The bifurcation of membership trends among employers associations is the product of international economic integration playing out differently in individual sectors, depending on their structures. The legal framework has provided sufficient support to prevent membership decline from turning into a commensurate loss of influence. The neocorporatist components of the German state, such as the Federal Employment Agency, have helped to preserve the political influence of trade unions and employer associations. Codetermination has also served as a backbone for German industrial relations and in particular the trade unions, because it provides for employees' access, voice, and resources in firms that are guaranteed by statute rather than just union muscle. Codetermination has also intertwined labor and management to such an extent that it is far harder for employers to escape organized industrial relations in Germany than in most other countries. Still, the divergent trajectories raise questions about how much longer the postwar industrial relations system can hold together.

The social partners are not giving up, however. Both have devoted an unprecedented amount of attention and resources to membership recruitment and retention. The largest union is experimenting with US-style social movement unionism. Many employers associations are trying new types of membership, including ones that do not require participation

in collective bargaining. It is too soon to tell whether these experiments will reverse membership declines or whether these efforts to save the industrial relations system will wind up destroying it. The surge in experimentation and ongoing uncertainty are among the developments that make contemporary German industrial relations both interesting and important.

Most previous work on German industrial relations has focused on the parts of the German industrial relations system rather than the whole. Many scholars have written about the trade unions.<sup>8</sup> Others have surveyed the labor market, law, or employers associations.<sup>9</sup> This fragmentation of the scholarship is unfortunate because it has become increasingly clear that the various parts of German industrial relations can only be properly understood in context. Only a few authors have produced books on German industrial relations, but those books either predate German unification or consist of descriptive summaries designed primarily for teaching.<sup>10</sup> So, there is room for a comprehensive scholarly treatment of German industrial relations such as this one.

In this book I use multiple methods—specifically, historical institutionalism and statistical analysis—both to evaluate several existing theoretical assertions and to sketch some new causal mechanisms. I do not rely on an overarching theory of industrial relations, capitalism, or interest groups (German or otherwise), but at several junctures I do assess the two most prominent explanations for developments in German industrial relations: “erosion” and “exhaustion.”

The erosion and exhaustion arguments share an assertion that there has been a general weakening of all of the components of the German industrial relations system over the last twenty to thirty years. Advocates of the erosion argument claim that German industrial relations functioned well from the immediate postwar years into the mid-1970s because the German economy was relatively sheltered. Thereafter, a series of developments exogenous to industrial relations—the end of full employment, rising private service-sector employment, German unification, and “European integration and globalization since the mid-1980s”—all contributed to the “erosion” of the German industrial relations regime.<sup>11</sup>

Wolfgang Streeck claims in his 2009 *Re-Forming Capitalism* that German industrial relations have become “disorganized.” At one point or another in the book, Streeck loosely invokes a wide variety of explanations and mechanisms for this development. These include liberalization, the dialectic, Karl Polanyi’s double movement, and a surge in the rapaciousness of German

employers. The heart of Streeck's argument, however, comes in part 2, where he focuses on "exhaustion." Streeck references Darwin and asserts that "the mere passage of time" brings down institutions because their efficacy inevitably declines and maintenance costs rise simply because economic and social change make institutions fit less well in their environment. "Positive externalities turn negative" as a result, and institutions ultimately break down. In chapter 10, Streeck asserts that "time's up" for the institutions of the postwar German economy and, in particular, industrial relations. They are now at the point of exhaustion.<sup>12</sup>

The summary of my findings makes clear that I do not think the evidence supports either the "erosion" or "exhaustion" argument. Both obscure more than they reveal because they become black boxes that hinder investigation into the diverse trajectories and causal mechanisms behind membership change in employers associations and unions.

## **Why German Industrial Relations Matters**

Knowledge of the German industrial relations system is essential to comprehending fully many topics beyond its immediate scope. As mentioned at the outset, the German economy cannot be understood without a firm grasp of the industrial relations system. Consequently, any economic analysis of the German economy that does not reflect a solid understanding of German industrial relations is bound to miss the mark. The German economy matters, in turn, because Germany is a powerhouse exporter and a key player in world capital markets. The German economy has been repeatedly held up as a model for others to emulate.<sup>13</sup> The euro crisis, which began in 2009, is just the latest demonstration of the pivotal place of the German economy in both Europe and the world. All indications are that in the future Germany will become even more dominant in the European economy and remain important in the world economy.

Beyond economics, German trade unions and employers associations are powerful actors in German and European society. They are among the most affluent and innovative labor and management organizations in the world. Their influence extends far beyond Germany's borders. Unraveling the puzzle of why many employers associations and unions began to shrink after decades of growth and stability addresses a dilemma confronting many organizations in all affluent democracies.<sup>14</sup> Moreover, several prominent academic theories, such as collective action,<sup>15</sup> neocorporatism,<sup>16</sup> and varieties of capitalism,<sup>17</sup> use German industrial relations

either as a prominent part of a critical case or as a thinly veiled sketch model for ideal types, such as “the Rhine model” and the “coordinated market economy.” Thus, having a strong understanding of German industrial relations is essential to a wide variety of analyses, both economic and political.

## CHAPTER 1

# The Enduring Resilience of the Law and the State in German Industrial Relations

In this chapter I examine the role of law and the state in German industrial relations. This is to familiarize readers with the distinctive history and contemporary features of German labor law because they profoundly shape the reckoning of German employees and employers about what are possible and preferable policies in the field of industrial relations. I also make clear that law and the German state have been crucial in supporting and sustaining the postwar industrial relations regime.

I challenge two commonly held perceptions about labor law and the role of the state in Germany. First, some scholars have asserted that the German economy was more successful in the immediate postwar era because losing the Second World War wiped the slate clean of prewar laws and deals between interest groups and the state that hindered growth.<sup>1</sup> An examination of the facts, however, demonstrates that postwar German law and practice in most areas consist largely of borrowings from the Weimar Republic and even the Second Empire. They have been, if anything, more numerous and encompassing than in previous eras. This is certainly true for postwar industrial relations. Second, labor and management practitioners typically stress collective bargaining autonomy and underplay the important role the state plays in providing the prerequisites for that autonomy. Rather, the German state has served as a sturdy trestle supporting the postwar industrial relations regime. Contrary to the erosion and exhaustion arguments



discussed in the introduction, the foundations of the law and the state have remained as robust components of German industrial relations.

I am also clearing the field here for one of my larger arguments, namely, that the forces driving membership trends for German trade unions and employers associations differ. Unionization is primarily a sociological phenomenon, whereas employers association membership is principally an economic calculation based on sectoral considerations. State support of German industrial relations is quite important, but it has been a constant; it therefore cannot be held responsible for change in the postwar era.

## German Labor Law: A Brief Overview

Germans commonly refer to the start of postwar reconstruction in May 1945 as “hour zero,” largely because of the devastating impact of the war and the wholesale scrapping of Nazi state structures. A brief review of the contents and antecedents of statutes delineating freedom of association, collective bargaining, and adjudication of workplace disputes reveals, however, that most of the components of the postwar regime are refurbished versions of prewar institutions, practices, and structures. I begin with a discussion of the freedom of association, which is the bedrock on which both the statutes and the jurisprudence for industrial relations is built. In subsequent sections, I examine the legal provisions undergirding collective bargaining, contracts, labor courts, and the regulation of industrial disputes.

### Freedom of Association

In industrial relations, freedom of association (*Koalitionsfreiheit*) means the right of employees to organize trade unions and of managers to form employers associations. This right existed formally even in Imperial Germany, though it was often difficult for employees to exercise it in practice. Most business associations and individual firms in Imperial Germany went to considerable lengths to avoid having to deal with unions. Employers frequently used ties to local police and politicians to harass unionists and to disrupt their organizations. At times the German national government also made life difficult for unionists. Under the leadership of Imperial Chancellor Prince Otto von Bismarck, the German state banned all socialist activities and organizations, including socialist trade unions, from 1878 to 1890.<sup>2</sup> Even after the expiration of the antisocialist laws, government officials at all levels in Imperial Germany frequently subjected unionists to spying, harassment, dismissal, police violence, and sensational trials before biased judges.

The famous statement of Judge Lujo Brentano summarizes the contradictory attitude of the Imperial German state toward trade unions: "Workers possess the freedom of association. If they make use of it, however, they will be punished."<sup>3</sup> In contrast, the German state did not inhibit the creation and operation of business associations during this same period. In fact, it even permitted the formation of cartels.

The First World War substantially changed the configuration of Germany's sociopolitical relations, which helped to advance the legitimization of trade unions. Once war broke out, nationalism trumped cross-national class solidarity for most workers and their organizations, despite considerable rhetoric to the contrary in socialist circles in the years leading up to the conflict. German labor backed the war effort and quickly offered to participate in a "national unity front" to maintain a "civil peace" (*Burgfrieden*) for the duration of the conflict.<sup>4</sup> Labor's initial contribution to the civil peace was a no-strike pledge. In return, employers and the government agreed to stop harassing trade unions and to cooperate with them throughout the war. The highpoint of the civil peace came on 5 December 1916. The imperial government's Third Supreme Military Command headed by Gen. Paul von Hindenburg and Gen. Erich Ludendorff enacted the Auxiliary Patriotic Service Act (*Gesetz betreffend den vaterländischen Hilfsdienst*). This act recognized unions as legal bargaining agents for workers, opened the public sector to union recruitment, and required the establishment of employee committees in medium- and large-sized workplaces. In return, labor accepted a work requirement for all able-bodied males between seventeen and sixty and a stipulation that employees gain permission from their current employer before changing jobs. Labor leaders hoped that the civil peace would permanently anchor trade unions within Germany's economy and society, but achieving this objective proved elusive.<sup>5</sup>

Germany's defeat in the First World War unleashed considerable turbulence. The kaiser abdicated on 9 November 1918, two days before Germany signed the armistice to end hostilities. On November 10, a mass gathering of Berlin workers' and soldiers' councils elected a five-person council of "people's commissars" as the new government. All of the commissars were social democrats. Three were from the larger and more moderate Social Democratic Party of Germany (*Sozialdemokratische Partei Deutschlands*, SPD), and two were from the left-wing Independent Social Democratic Party of Germany (*Unabhängige Sozialdemokratische Partei Deutschlands*, USPD). Friedrich Ebert, head of the SPD, became provisional chancellor.<sup>6</sup>

The kaiser's abdication did not induce union leaders to change their integrationist course, but it did trigger a renegotiation of labor's arrangement with German employers. The unrest of the moment and the social democratic monopoly in the new provisional government put labor in the stronger strategic position. The upsurge of radicalism prompted significant numbers of German employers to abandon their rejectionist attitude toward organized labor and to embrace the reformist trade unions as a way to save capitalism. Many established union leaders feared a full-blown socialist revolution nearly as much as did employers, because it would most likely sweep them and their organizations away along with the institutions of capitalism. Thus, a common interest in preserving the status quo served as a foundation for cooperation and compromise between German labor and management.<sup>7</sup>

On 15 November 1918, business and union leaders acted on their own to start to build a post-Imperial industrial relations system. A delegation of social democratic trade unionists led by the head of the Generalkommission der Gewerkschaften Deutschlands (General Commission of German Trade Unions), Carl Legien, and a group of prominent businesspeople led by Ruhr industrialist Hugo Stinnes signed a twelve-point pact known as the Stinnes-Legien agreement. The agreement took the form of a private contract rather than legislation because of doubts about the stability and legitimacy of the provisional German government. Most prominently, the Stinnes-Legien agreement recognized independent trade unions as the sole legitimate collective representative of employees, declared collective agreements to be inviolate, permitted the formation of works councils (*Betriebsräte*) in workplaces with more than fifty employees and instituted the eight-hour workday as a standard.<sup>8</sup>

Germany's new republican constitution, drafted in the city of Weimar in 1919, greatly improved the legal anchoring of labor's freedom of association. Article 159 of the Weimar constitution adopted much of the language of the Stinnes-Legien agreement, including the guarantee of the right of employees to form unions. Employers also remained free to create associations. The German state generally respected this freedom of association during the Weimar era, although it did not always defend trade unions and their members from hostile employer actions (e.g., the use of strikebreakers and dismissal of union activists).

Freedom of association soon came to an end after Adolf Hitler rose to power in January 1933. His National Socialist government did permit trade unionists to hold their traditional May Day celebration in 1933, but the

motivation was by no means benign. The Nazis used the demonstrations to identify union activists. On the following day, autonomous union representation came to an abrupt end. Nazi officials conducted a massive nationwide sweep, arresting thousands of trade unionists and shutting down all independent labor organizations. In the place of unions, the Nazis set up the subservient Deutsche Arbeitsfront (DAF, German Labor Front).<sup>9</sup> Nazis were far less confrontational with business associations, but they dissolved them nonetheless in 1934, replacing them with the Reichsgruppe Industrie, which had compulsory membership and a subservient relationship with the Nazi state.

After the Second World War, Western occupying powers gradually restored freedom of association, but it was ultimately up to Germans themselves to decide how such freedom should be structured in a postwar republic. From the summer of 1948 to the spring of 1949, a constitutional convention consisting of representatives elected by the parliaments of the western German states (*Länder*) met to draft a provisional constitution, which they called the Basic Law (*Grundgesetz*). Article 9, section 3 of the Basic Law does not use the word "union" (*Gewerkschaft*), but it explicitly declares: "The right to form associations to safeguard and improve working and economic conditions shall be guaranteed to everyone and to all occupations." This expansive language, which includes all public-sector employees as well as white-collar employees with supervisory duties, exceeds the rights granted in many other countries (e.g., the United States). It should be noted that the general language of article 9, section 3 also gives firms full freedom to form employers associations. The only restriction in the realm of industrial relations is a ban on company-dominated unions. Courts have ruled that company unions deny employees a genuine right to freedom of association.<sup>10</sup>

Mindful of the compulsory nature of most Nazi organizations, court rulings have also interpreted article 9, section 3 of the Basic Law to protect the freedom *not* to be forced to belong to an organization, which in German legal parlance is called "negative freedom of association" (*negative Koalitionsfreiheit*). The doctrine of negative freedom of association forbids compulsory union membership (i.e., a "closed shop" or a "union shop") as a condition of employment, which is permissible in many English-speaking countries. Since the 1960s, court rulings have forbidden collective bargaining agreements that give some benefits to union members only, concluding that these amount to indirect pressure on employees to join a union. This interpretation of article 9, section 3 has deprived unions of a means

to neutralize a significant free-rider problem that has deprived them of members and dues.<sup>11</sup> Still, the Basic Law contains the strongest language protecting the rights of both employees and employers to organize ever found in any German constitution.

### Collective Bargaining and Contracts

Whereas freedom of association simply guarantees the right of unions and employers associations to exist, a collective bargaining regime goes one step further. It establishes the ground rules for negotiations between employers and trade unions, and—in instances when talks fail—industrial conflict. German jurisprudence has built out the concept of “collective bargaining autonomy” (*Tarifautonomie*) as a predicate of the freedom of association. Collective bargaining autonomy at its foundation should not be equated with the absence of state involvement. The state does provide substantial support for collective bargaining “without, however, involving itself in the substantive issues dealt with around the bargaining table.”<sup>12</sup> To draw an analogy, the role of the German state in industrial relations is like that of a fish bowl. The state’s role in defining and sustaining the contours of a highly constructed realm of industrial relations is crucial, but it is in the background and often not immediately apparent to actors and observers alike. If it were withdrawn, however, the state’s full significance would become immediately apparent to all, just as fish would immediately notice the disappearance of their bowl. The state’s supporting role in industrial relations is consistent with postwar Germany’s general approach to regulation, which has been to create underlying “framework conditions” (*Rahmenbedingungen*) that tilt the playing field for economic decision making in a constructive direction, but then let private parties interact without interference.<sup>13</sup>

The German state did not always provide supportive framework conditions for collective bargaining. Before the First World War, collective bargaining was a precarious endeavor. Although Imperial Germany had a series of laws regulating working conditions, it had no industrial relations legislation. Collective agreements fell uneasily into the category of private contracts concluded by collective actors. Since cartels were legal in the Second Empire, there was no foundation in law to attack collective bargaining agreements as a restraint of trade, which was a common antiunion tactic in English-speaking countries at the time. Instead, judicial opinions varied widely. Some judges found collective bargaining

agreements to be illegal, but others did not. A few judges even ruled that collective agreements were binding on all employees, including non-union members.<sup>14</sup>

The 1916 Auxiliary Patriotic Service Act ended the legal ambiguity surrounding collective bargaining agreements by definitively establishing their legitimacy, but it was only in the immediate post-Imperial years that the German state adopted specific legal ground rules for collective bargaining. The Collective Agreements Order (Tarifvertragsordnung, TVO) of 23 December 1918 laid the procedural foundation for collective bargaining in interwar Germany. The TVO had an unusual pedigree. Large portions of the order (which is quite short) came directly out of the Stinnes-Legien agreement that labor and management had crafted on their own six weeks earlier. The short-lived provisional German assembly passed it. The German government, working under the Weimar constitution, absorbed the TVO into German law. The new collective bargaining regime shifted most negotiations out of the workplace and into the hands of employers associations and the trade unions negotiating regionally for individual sectors, which helped to professionalize them and to reduce workplace-level conflict. It quickly took root and proved successful when it was used, but external circumstances reduced its application.<sup>15</sup>

The great inflation of 1923 compelled the German government to introduce a system of binding state arbitration as an option for settling labor disputes. This option gave the labor ministry the power to set compensation unilaterally, so long as the collective bargaining parties had agreed to submit themselves to it after negotiations had reached an impasse. During the mid-1920s, unions frequently resorted to state arbitration, taking advantage of a sympathetic labor ministry to achieve better contract results than could have been attained without intervention. Autonomous collective bargaining atrophied as a result. In 1928, poor economic conditions led the labor ministry to begin imposing settlements far less favorable to employees. In subsequent years, when economic conditions went from bad to worse as a result of the Great Depression, state arbitration awards became even more meager. The unions still used the arbitration regime, albeit reluctantly, because soaring unemployment undercut their capacity to wage successful strikes. In 1931, Chancellor Heinrich Brüning scrapped state arbitration. The horrendous unemployment of the time completely undercut union bargaining power, and real wages plummeted. When the Nazis came to power in 1933, they eliminated collective bargaining altogether when they wiped out autonomous trade unions.<sup>16</sup>

After the war, it took several years to reassemble a collective bargaining regime. The legislative components were once again put into place by a provisional government. On 9 April 1949, the assembly of the three united economic zones of western Germany passed the Tarifvertragsgesetz (TVG, Collective Agreements Act). The postwar German government subsequently adopted it as federal law. Just as in many other instances during the postwar reconstruction of Germany, the lawmakers decided to adhere very closely to the old law when drafting the new one. As a result, the structure, language, and even the name of the 1949 Collective Agreements Act echo the 1918 Collective Agreements Order. One portion of the Weimar collective bargaining regime was pointedly dropped, however. The Allies banned binding state arbitration under article 2, section 1 of Control Council Law 35 because of the bad experience with the practice during the Weimar Republic. The new Federal Republic of Germany followed suit.<sup>17</sup>

The Collective Agreements Act is short. It has only 1,600 words in the original German. Article 1 defines a collective agreement as a written contract that regulates the rights and duties of the collective bargaining parties concerning the “content, conclusion and termination of employment relations.” Article 2 states that collective agreements are legally binding and only employers associations, individual employers, and trade unions are eligible to make collective agreements (*tariffähig*). Germans call a contract between a union and an employers association that covers all member firms of the association a “regionwide” collective bargaining agreement (*Flächentarifvertrag*). A regionwide agreement has been the most common contractual arrangement in German industrial relations. A regionwide agreement is binding on all employers association and union members in the sector and district specified in the contract. There is nothing like a regionwide collective bargaining agreement in English-speaking countries. The closest thing is pattern bargaining. Both pattern bargaining and regionwide bargaining have the same objective—that is, the elimination of competition on the basis of wage costs among firms in the same sector—but pattern bargaining is organized around firms rather than regions.

The typical sector has a set of regionwide districts for the purposes of collective bargaining. The number of districts varies from sector to sector, depending on the specific profile of that sector (e.g., the size of firms and regional concentrations of production facilities). Most sectors have between eight and twelve districts. For each sector, formal negotiations to produce a new set of regionwide agreements take place separately in

the individual regional districts. In practice, however, the union leadership typically picks one district to serve as the "pilot." The lead negotiations take place in the pilot district, and, if talks break down, strikes normally occur there too. Union officials are strategic in selecting the district where a strike can be most effective economically and where the rank and file are motivated and capable.

Both the union and the employers associations in individual sectors generally prefer that all the other districts copy the results reached in the pilot district with little or no change, in order to avoid one region gaining a cost advantage over the others. The union and the confederation of employers associations for each sector have mechanisms designed to facilitate the spread of the pilot agreement to the other districts. The procedure for ratifying a regional contract within most unions typically includes approval by the union's national collective bargaining committee as a step, which makes rogue ratification of a regional contract impossible. The means of achieving nationwide uniformity on the employers' side of the table differ in several respects from those of the unions, reflecting crucial dissimilarities between employers associations and trade unions.

Employers associations are not mass organizations, their members are firms rather than individuals, and their membership typically numbers only in the hundreds or low thousands for each district within a sector. As a result, employers associations rely far more heavily than unions on direct and informal means, such as e-mail and telephone calls, to gain a sense of membership preferences. Reaching consensus has frequently proved to be much harder for employers. The greater difficulty is not surprising. Employers association membership is far more heterogeneous than that of trade unions. Member firms range from small shops to multinational enterprises. Some members are bitter rivals; others are linked along supply chains or engaged in joint ventures. In practice, the leadership of the national confederation for each sector takes a principal role in setting and executing the strategy for each collective bargaining round, but it does so only after extensive consultations with key members, both large and small. Since the 1990s, the national bodies of employers associations in many sectors have strengthened coordination by assembling a national collective bargaining advisory group with representatives from leading regional associations in the sector and requiring the national sectoral organization to be on hand during negotiations in pilot districts. The purpose of these groups is to improve communication and buy-in and to decrease the likelihood that member firms will balk at a compromise reached at the bargaining table.<sup>18</sup>



It should be noted that, in some sectors, the union and the national confederation of employers associations have tolerated differences in regional agreements. In most instances, the differences have been too small to produce significant regional divergences in labor costs. There are two prominent exceptions, however. First, in 1973, IG Metall's regional district in Baden-Württemberg agreed to a pilot framework agreement with the North Württemberg-North Baden mechanical engineering employers association that tightly regulated assembly line work and gave employees expansive break times.<sup>19</sup> No other regional employers association adopted this pilot framework agreement, which put Baden-Württemberg employers at a cost disadvantage vis-à-vis their competitors elsewhere in Germany until this agreement was replaced with a new one in the mid-2000s. Second, since German unification, the compensation agreements for eastern Germany in most sectors have set rates lower than those for the western regions.

TVG article 3 stipulates that all members of unions and employers associations remain bound by any regionwide collective agreement reached when they were members for the duration of those contracts even if they subsequently quit the organization. Firms cannot immediately escape the requirements of a collective agreement simply by leaving an association. This provision enhances the power of collective agreements and augments the stability of the organizations that sign them, in particular, employers associations.

Uniformity in collective agreements does not extend beyond the sectoral level. Labor market conditions differ too greatly from sector to sector, and the institutional architecture of German industrial relations is too fragmented along sectoral lines to facilitate the coordination of collective bargaining across the whole economy. Still, collective bargaining results in some sectors do affect outcomes in others. Each year the settlement achieved by one of the stronger unions (usually the metalworkers) sets the unofficial benchmark for all of the others.

The most common alternative to a regionwide collective agreement used in German industrial relations today is a single-firm contract (*Firmentarifvertrag*), which is often called a "house" agreement. The number of single-firm agreements has grown over the last thirty years, but they are still of secondary importance. In 2007, they only set compensation for 8 percent of all employees in western Germany and 13 percent in eastern Germany. Most house agreements only deviate from regionwide collective agreements at the margins.<sup>20</sup>

Whereas labor and management in most countries rely on a single contract to cover all aspects of their relationship, multiple specialized contracts are the norm in Germany. The social partners use three specialized accords: the compensation collective bargaining agreement (*Entgelttarifvertrag*, ETV, often just referred to as a *Tarifvertrag* or collective bargaining agreement); the framework collective bargaining agreement (*Rahmentarifvertrag*, RTV); and the skeleton collective bargaining agreement (*Manteltarifvertrag*, MTV).

The ETV is the most prominent of the three types of contracts. It sets pay and benefit rates. The media, central bankers, investors worldwide, public officials, and rank-and-file members of both trade unions and employers associations pay most attention to ETVs because they have the most immediate effect on pay and hence labor costs. ETVs are negotiated more frequently than any other type of contract. The duration of a typical ETV is one year, though variance from this norm is not unusual. Longer ETVs are most often the product of a more comprehensive agreement to phase in a new benefit (e.g., weekly working-time reduction), hard times, or the desire to provide more certainty for employers regarding future labor costs. Sometimes union negotiators ask for a thirteen- or fourteen-month contract so that the total wage increase over the life of the agreement is bigger than it would be for a twelve-month accord. This enables union officials to present a percentage increase to their members that is nominally closer to the initial union demand than a twelve-month agreement would allow. ETVs very rarely extend to three years in length, which is the typical duration of a US collective agreement. At times, when economic conditions have been especially unpredictable, the bargaining parties have agreed to ETVs as short as eight or nine months, but this is also quite rare.<sup>21</sup>

The second type of German contract, the framework agreement, defines the job classifications and compensation structure within individual sectors. Jobs are defined by the tasks involved, educational requirements, and experience. Often, the classifications can be quite general, so that the thousands of firms using the same classification scheme can easily adapt them to their specific needs. RTVs are extremely technical and notoriously complex. They are nonetheless quite important because they establish the underlying framework for how work gets done and how one is paid for doing it. They also establish the relative importance of education, work duties, and experience in determining compensation.

In most instances, decades pass before the collective bargaining parties renegotiate framework agreements. The long intervals between negotiations

are problematic because as framework agreements age, the occupational specifications they contain grow increasingly out of date. Old agreements have contained occupations that no longer exist (e.g., computer-card key punchers) and failed to provide guidance regarding the duties and pay for whole new classes of employees (e.g., webmasters) and work practices (e.g., group and home work). When the gap between an RTV and actual practice becomes too great, labor and management find that they can no longer put off a more comprehensive revision of the RTV. The collective bargaining parties wrote their first RTVs in the late 1940s and early 1950s. Most sectors in Germany drafted completely new RTVs during the 1960s. The microprocessing revolution of the 1980s prompted the production of a third generation of RTVs approximately a decade later.

Historically, private-sector RTVs had five to eight blue-collar wage groups, within which pay was pegged to either piece rates or hourly work, and three to five white-collar salary groups. Starting in the 1990s, individual sectors have increasingly adopted a single set of job classifications that cover all their employees, be they blue- or white-collar workers. The transition has occurred because automation has made blue- and white-collar work less distinct, class difference has become less salient in post-war German society, and simpler job classification schemes provide more flexibility and are cheaper and easier to manage. Contemporary RTVs typically have five to eight job categories for all employees based on tasks, technical knowledge, and experience. They provide for pay in the form of a monthly salary for all, but employees still receive a premium for doing overtime and extra work.

An analogous transformation occurred in the public sector. The public sector used the Federal Collective Agreement for Public Employees (Bundes-Angestellten-Tarif, BAT) as a framework agreement from 1961 to the mid-2000s. The BAT was a relic from a bygone era of paternalism and bureaucratic complexity. The BAT had over 16,000 attributes to determine compensation. The most important were age, seniority, and family size. Job performance was *not* an attribute. The result was a complex and arbitrary pay determination that did not reward the best performers.

After years of talks, negotiators completed a new framework agreement called the Tarifvertrag für den öffentlichen Dienst (TVöD, Collective Bargaining Agreement for the Public Service Sector) in 2005. The TVöD is a significant departure from the BAT. It eliminates the old demographic categories for wage determination, sets a new lower baseline category (to enable the public sector to bring down costs to the level of private-sector firms providing similar services), and makes

performance central to pay, which is a revolution in the German public service sector. The bargaining parties were both satisfied with the TVöD, but the agreement has not been popular with some of the union rank and file, particularly those who no longer receive the supplemental payments specified in the old contract.

The third type of contract, the MTV or skeleton collective agreement, regulates the remaining terms and conditions of employment not covered by an ETV or RTV. MTVs include such things as weekly working time, overtime, maternity leave, sick pay, bonuses, vacation benefits, and severance provisions. Most MTVs consist of a main body followed by a series of independent contracts addressing particular items (e.g., vacation time and pay) attached as appendices. As a rule, an MTV is long and contains very general language because hundreds of firms use them. Managers and works councilors in individual enterprises apply broad provisions of an MTV to meet their specific needs. The parties to collective bargaining typically renegotiate at least some portion of an MTV every three to five years. Besides these three types of contracts, many collective bargaining parties have created special contracts to address particular concerns in several sectors. The most common special contracts provide for employee stock ownership, further education, layoff protection, and supplemental retirement.

This constellation of complementary collective agreements is complex, to be sure, but it does provide for more flexibility than is immediately apparent. After all, contracts differ significantly from sector to sector. The nested arrangement of contracts permits bargaining parties to focus on different aspects of industrial relations incrementally as need arises. The contracts are also meant to set minimum standards. TVG article 4 contains the so-called favorableness principle (*Günstigkeitsprinzip*) that allows management to *improve* compensation unilaterally above the rates spelled out in a regionwide collective agreement but not to undercut it. Firms may pay more if they wish, and many do so in order to remain competitive within a tight local labor market, to reduce turnover, or to attract the best employees. Employers and works councils may also negotiate a "workplace agreement" (*Betriebsvereinbarung*), which would supplement a collective agreement, in order to codify understandings regarding extra compensation that are specific to a workplace. An agreement with a works council does not fall under the protection of the TVG because works councils are not eligible to be a party to a collective agreement as defined by article 2 of the act. Agreements to provide workplace compensation *below* the contractually specified minima are also permitted, but *only* if the collective bargaining parties both agree.