

Lesch, Hagen; Bach, Helena; Vogel, Sandra

Article

Collective Bargaining Autonomy in a Crisis of Legitimacy? An Analysis of Historical Debates

Journal of Contextual Economics – Schmollers Jahrbuch

Provided in Cooperation with:

Duncker & Humblot, Berlin

Suggested Citation: Lesch, Hagen; Bach, Helena; Vogel, Sandra (2022) : Collective Bargaining Autonomy in a Crisis of Legitimacy? An Analysis of Historical Debates, Journal of Contextual Economics – Schmollers Jahrbuch, ISSN 2568-762X, Duncker & Humblot, Berlin, Vol. 142, Iss. 1, pp. 41-66,
<https://doi.org/10.3790/schm.142.1.41>

This Version is available at:

<https://hdl.handle.net/10419/292608>

Standard-Nutzungsbedingungen:

Die Dokumente auf EconStor dürfen zu eigenen wissenschaftlichen Zwecken und zum Privatgebrauch gespeichert und kopiert werden.

Sie dürfen die Dokumente nicht für öffentliche oder kommerzielle Zwecke vervielfältigen, öffentlich ausstellen, öffentlich zugänglich machen, vertreiben oder anderweitig nutzen.

Sofern die Verfasser die Dokumente unter Open-Content-Lizenzen (insbesondere CC-Lizenzen) zur Verfügung gestellt haben sollten, gelten abweichend von diesen Nutzungsbedingungen die in der dort genannten Lizenz gewährten Nutzungsrechte.

Terms of use:

Documents in EconStor may be saved and copied for your personal and scholarly purposes.

You are not to copy documents for public or commercial purposes, to exhibit the documents publicly, to make them publicly available on the internet, or to distribute or otherwise use the documents in public.

If the documents have been made available under an Open Content Licence (especially Creative Commons Licences), you may exercise further usage rights as specified in the indicated licence.



<https://creativecommons.org/licenses/by/4.0/>

Collective Bargaining Autonomy in a Crisis of Legitimacy? An Analysis of Historical Debates

By Hagen Lesch,* Helena Bach,** and Sandra Vogel***

Abstract

In Germany, free collective bargaining was introduced after the Great War in November 1918. Tough, it has constitutional status, we can observe that the state monitors and sometimes steers the collective bargaining process. This can be explained by using the Principal Agent Model as an analytical framework. The state acts like a principal, whereas the social partners behave like agents. Whilst the state leaves the regulation of wages and working conditions to social partners, it expects their loyalty in return. In this sense, collective bargaining autonomy must legitimise itself by being useful. The analysis of historical debates since 1918 shows: If social partners fail to contribute to the economic and social policy goals of the state, the state uses various steering instruments to restore their loyalty. Overall, we can observe some learning processes and path dependence of the institutional setting. Furthermore, the state should keep in mind that future steering of collective bargaining autonomy should strengthen social partners' responsibility.

JEL Codes: J50, J53, J59, K12

Keywords: Free Collective Bargaining, Social Partners, Contract Theory, Labour Law

1. Research Question

Collective bargaining autonomy plays an integral role for the economic order of the Federal Republic of Germany. Its current institutional status, often taken for granted, only came about during a long political and historical process (Höpfner 2021, 45 ff.). From a social science perspective, autonomy in collective bargaining is an institutional arrangement between the state and social partners (Lesch 2021, 713 ff.). The state leaves the regulation of wages and working conditions to social partners but expects their loyalty in return. It should be noted that social partners are always integrated into the “objectives of society as a whole” and derive “certain tasks” from this (Weitbrecht 1969, 162, translation by authors). While a democratically elected government must consider the social welfare, social partners primarily

* German Economic Institute (IW). Konrad-Adenauer-Ufer 21, 50459 Köln, Germany. The author can be reached at lesch@iwkoeln.de.

** German Economic Institute (IW). Konrad-Adenauer-Ufer 21, 50459 Köln, Germany. The author can be reached at bach@iwkoeln.de.

*** German Economic Institute (IW). Konrad-Adenauer-Ufer 21, 50459 Köln, Germany. The author can be reached at sandra.vogel@iwkoeln.de.

pursue their members' interests. This can lead to conflicts of objectives, so that the collective bargaining autonomy is subject to constant scrutiny of its legitimacy by the state. Collective bargaining autonomy has constitutional status in Germany. Any political steering of collective bargaining must take this status into account as it is at the government's and parliament's disposal only within narrow limits. This restricts the possibilities of political interventions. Legitimacy is to be understood as usefulness from the state's point of view. Hence, the state's belief in its usefulness justifies the autonomy of collective bargaining and therefore its legitimacy (*ibid.*, 162).

State steering of collective bargaining autonomy may become necessary if social partners do not contribute to solving social and economic problems from the state's point of view. A current example is the debate on declining collective bargaining coverage. From the state's perspective, too low collective bargaining coverage undermines the institution's functioning because it leads to "precarious wages" and "blank spots" in the collective bargaining landscape (sectors not regulated by collective agreements). Whether the behaviour of social partners is perceived as useful may depend on the current expectations of politicians, the economic framework conditions or the governing coalition and their chances of being re-elected in the coming elections. Twenty years ago, for example, politicians expected social partners to contribute to reducing the then high unemployment level in Germany. Today, when employment is high, their main concern is to ensure fair pay and good working conditions for as many workers as possible through collective agreements.

These considerations raise the questions of which instruments the state can use to steer collective bargaining autonomy, whether decisions once taken lead to path dependencies, and whether learning processes can be observed over the decades. To answer this, various historical debates, raising the question how useful collective bargaining autonomy is, are analysed. The methodological basis is a heuristic approach using a "challenge-response approach," which has proven successful in the analysis of historical processes (Bach, Lesch and Vogel 2022; Fehmel 2010; Fehmel 2011; Lesch, Schneider and Vogel 2021; Müller-Jentsch 2021). To this end, the current state of research will first be reviewed (section 2). Based on this, an institutional analytical framework is derived in section 3 to identify historical debates that posed a challenge to the collective bargaining system and ultimately resulted in state control of collective bargaining autonomy. The state implements its control by using four types of steering mechanisms (legal, tripartite, political and semantic steering, see section 4). Section 5 contains conclusions that also include implications for the current debate on strengthening collective bargaining in Germany.

2. Research Overview

According to Fehmel (2011, 273), collective bargaining autonomy is an institutionalised arrangement that distributes regulatory competence between the state and social partners. Within the framework of an exchange, the state leaves the regulation of wages and other working conditions to social partners because it can thereby externalise its political legitimacy risks.¹ In return, the state bears potential follow-up costs incurred by the wage policy

¹ According to Fehmel (2011, 276), political legitimacy is essentially fed by neutrality and a commitment to the social welfare. Any direct state regulation of wage policy would be exposed to

through its social policy. This arrangement enables social partners to pursue members' interests (Fehmel 2010, 81). Since there are financial limits to this barter transaction, the state has an interest in containing the follow-up costs of this arrangement. It controls collective bargaining autonomy in order to "adapt collective bargaining autonomous action to changing economic conditions and challenges and the resulting state expectations" (Fehmel 2011, 284, translation by authors). To prove this thesis, Fehmel (2010) analyses various cases within the framework of a heuristic approach.² In the analysed cases, it does not directly scrutinise collective bargaining autonomy. Instead, state actors communicate that collective bargaining autonomy is not sufficiently functional in a given situation (Fehmel 2011, 284). The semantics chosen by the state plays a special role and Fehmel (2010, 124) identifies three different types of approaches to steer social partners' behaviour: indicative (appeals, threats), cooperative (attempt to coordinate behaviour), and an imperative (direct, immediate intervention) approach. Even if collective bargaining autonomy as such was never at stake, this process can lead to collective bargaining autonomy mutating into the "state-controlled autonomy of the associations" (Fehmel 2011, 290, translation by authors).

Lesch, Schneider and Vogel (2021) and Bach, Lesch and Vogel (2022) take up the idea of "steering episodes" and link it to considerations on the functioning of collective bargaining autonomy as postulated by Weitbrecht (1969, 33). The central thesis is that the social partner actions are viewed and evaluated by the state in the context of society as a whole. The starting point here is also a barter transaction in which the state leaves the regulation of working conditions to the social partners and expects appropriate solutions in return. It follows from this institutional arrangement that collective bargaining autonomy must legitimise itself by being functional. To this end, the state examines the "effectiveness" (*ibid.*, 162) or "usefulness" (Lesch, Schneider and Vogel 2021, 377) of collective bargaining autonomy at two levels: (i) the internal procedures, characterised by an operational conflict regulation mechanism, which ensures the internal working of collective bargaining autonomy; and (ii) the economic framework conditions, from which – depending on the preferences of the government in office – certain requirements for the social partners arise. As already explained in section 1, these requirements include the task of achieving a social balance of interests and placing collective bargaining policy in the context of the government's overall economic objectives. If these requirements are violated due to dysfunctionality in the internal relationship between the social partners or in the relationship between the social partners and the state, a state review occurs. If the review is publicly debated, the review becomes a challenge, which can lead to a state response with which the state seeks to eliminate the diagnosed dysfunctionality. Accordingly, we speak of a legitimacy debate when the dysfunctionality of collective bargaining autonomy becomes a challenge which, as a result of political or social attention, leads to a response (Lesch, Schneider and Vogel 2021, 189).³

risking violation of the neutrality principle and could result in a loss of state legitimacy. Therefore, the state does well not to interfere in collective bargaining relations.

² See in detail Fehmel (2010, 122 ff.). Selected cases include the Concerted Action, the revision of Section 116 of the Labour Promotion Act (*Arbeitsförderungsgesetz*, AFG), wage gap requirements as part of public job creation measures, the "Alliance for Jobs, Vocational Training and Competitiveness" and the enabling of company-based alliances for jobs by law (statutory opening clauses).

³ According to the challenge-response approach, a disruption only leads to a response when "disruptive impulses" reach public awareness and elites' agendas (Best 2007, 19).

The cases are also selected heuristically here (*ibid.*, 188 ff.): With the help of two fundamental debates and nine debates from contemporary history, different types of challenges and responses are derived. If challenges are triggered externally, the state first tries to involve the social partners in a tripartite manner (*ibid.*, 385–6). If challenges are triggered internally, state intervention only occurs when they become external challenges (for example, impairment of the social welfare through negative third-party effects in industrial disputes) or are perceived as part of an external problem (for example, in the case of unemployment or social injustice). In two fundamental debates, each of which dealt with the introduction of autonomous collective bargaining principle after the two world wars, the question arose as to the level at which wage determination should be organised (individual, company, branch or state level). These fundamental debates show that alternative institutional arrangements would have been conceivable but did not represent preferred solutions from the point of view of all actors (in the sense of a barter deal that was advantageous for all).⁴

The analysis of debates in contemporary history shows that tripartite arrangements in which concrete barter deals were to be agreed upon to solve external problems remained without lasting success (*ibid.*, 390–1). State wage policy (through state compulsory arbitration, emergency decrees, or a statutory minimum wage) may be a short-term substitute for problem-solving deficits on the part of the social partners. However, in the long term it does not promote their willingness to reach agreements autonomously. A state extension of collective bargaining coverage (via general applicability of collective agreements) did not stimulate a greater will to shape collective bargaining independently, nor did it strengthen social partners' organisational capacity. More successful were attempts to improve internal workings by adapting the rules of the game, especially when it came to avoiding negative external effects as a result of industrial disputes.

Finally, Lesch (2021) describes the institutional arrangement between the state and the social partners as a principal-agent relationship. Here, the state acts as principal, granting social partners as agents the autonomy to regulate wages and other working conditions. In the case of loyal behaviour, this relationship leads to an optimal representation structure (*ibid.*, 717–8). Endogenous (non-loyal behaviour) and exogenous influences (structural and cyclical crises) can disrupt this optimal structure. To demand the loyalty of the agents – they should take the social welfare into account and react appropriately to exogenous disturbances – the state has very concrete steering instruments, which are categorised according to the strength of the intervention (strong, medium, low) (*ibid.*, 715–6). An important result of the analysis is that it contains not only legal and tripartite steering measures, but that the effects of political strategy changes and the influence of outsider competition must also be considered.

3. State Control of Collective Bargaining Autonomy: Methodological Framework for Analysis

The structuring and deductions made in the contributions cited above are based on a rather small number of case studies. However, they are coherent and plausible. It should be crit-

⁴ Abolishing the collective bargaining autonomy would raise constitutional questions and would also not be a realistic option from an institutional theory point of view due to enormous sunk costs. A readjustment of the institutional framework can be initiated not only by the state but also by social partners themselves.

ically noted that the debates are categorised without addressing the institutional economic distinction between rules of and moves within the game. This means that there is no further questioning of whether state measures are a matter of regulatory or process policy control. Moreover, a specific classification of semantic steering (appeals, threats) is missing. Finally, the analysis of tripartite governance remains incomplete. It is true that the various tripartite attempts failed to achieve barter deals with binding agreements. What is not discussed, however, is that tripartite governance can alternatively be organised in a purely informal way, as happened, for example, with the economic summits in the course of the economic and financial crisis of 2008/2009 (Lesch, Vogel and Hellmich 2017, 14ff.). This raises the question which benefit informal coordination has as a state steering instrument.

In the following, these points of criticism will be taken up. We examine how the state steers and thereby controls collective bargaining autonomy, whether certain debates are comparable, and whether there are learning processes and path dependencies – there is also a clear parallel to the current political debate on strengthening collective bargaining in Germany. In particular, the question of what experience the state has gained with regulatory and process-political control will be examined. The basis is an analytical framework that interprets collective bargaining autonomy as a principal-agent structure and links it to the challenge-response approach. Distortions of the optimal representation structure are understood as a publicly debated challenge that entails a response (based on a rational decision-making calculus).

Figure 1 schematically illustrates the linkage of the approaches. Within the framework of the principal-agent relationship, the state, which is committed to the social welfare, leaves the regulation of working conditions to the social partners (collective bargaining autonomy) and expects their loyalty in return.⁵ For the social partners, this results in a trade-off: when maximising members' interests, they must ensure that public welfare concerns are sufficiently considered. In this case, various restrictions must be taken into account. For example, trade unions that are insider-oriented have to pay more attention to outsider interests when unemployment is high, or companies have to make more wage concessions when there is a shortage of labour. These aspects will not be dealt with further in this analysis, because the principles of state control logic are to be presented here.

This basic structure results in an equilibrium that describes an optimal representation structure. This equilibrium can now be disturbed by exogenous and endogenous events (Lesch 2021, 697 ff.). Exogenous disturbances can be cyclical downturns (recessions) or exogenous shocks with a structural impact (e.g. oil price shocks). Both types of exogenous events make adjustments to wages and collective bargaining policy necessary. Since the social partners also pursue members' interests in addition to their duty of loyalty to the state, adjustments to wages and collective bargaining policy may not be made, though changes could be deemed necessary by the government with a view to the national economy.

⁵ The assumption that the state maximises welfare is an ideal-type modelling. On the one hand, every government can have its own ideas of optimal welfare, and on the other hand, every government pursues re-election interests, so that in the short term it is more likely to cure symptoms than causes. But even with such a distinction, the government would have certain expectations of the bargaining parties' behaviour. If this is not met, it intervenes in a steering manner. Accordingly, the thesis of public interest orientation seems to be a simplifying but sufficient assumption in our modelling.

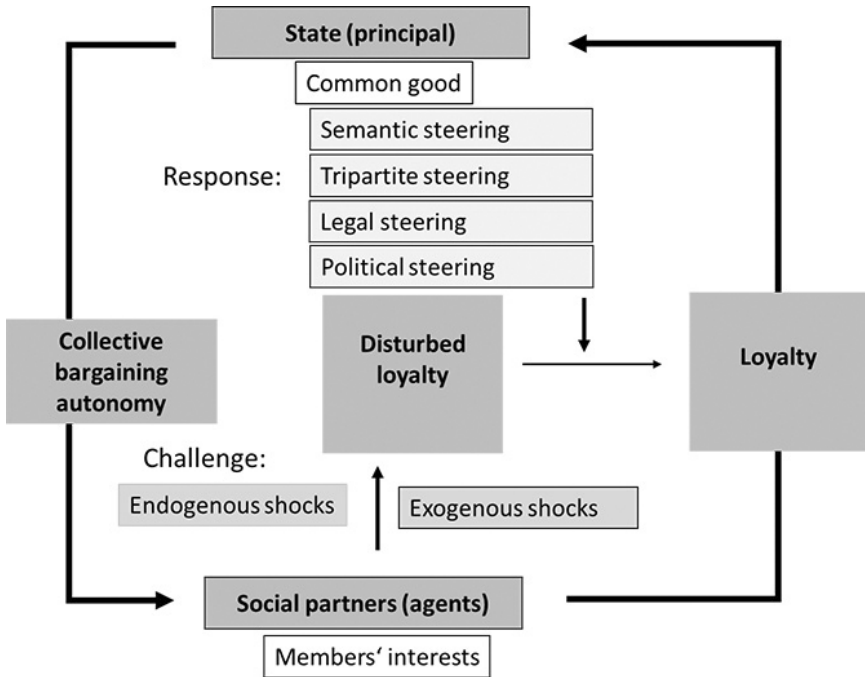


Figure 1: State and Collective Bargaining Autonomy as Principal-Agent Structure
Source: Figure based on Lesch (2021, 695)

In order to optimise the representation structure, the state uses its various steering instruments as a response (see figure 1).⁶ Semantic governance includes appeals and threats, tripartite governance aims at consultations, arrangements and agreements between actors, legal governance addresses the institutional framework, and political governance coordinates monetary, fiscal and wage policies and the resulting incentives for the responsible institutions (central bank, government, social partners).

If this is not the case, the state can steer through regulatory or process policy. Regulatory policy control starts with the institutional rules of the game in order to influence the moves of the (rational) players. Regulatory policy aims to set the right framework conditions for economic activity and maintain them (Hüther, Losch and Neubauer 2012, 7). A control becomes process policy as soon as it directly influences the moves (Pies 2002, 175). Process policy “consists of interventions in the decisions of the individual actors and thus in the market process; it pursues the goal of directly bringing about certain results” (Hüther, Losch and Neubauer 2012, 7, translation by authors).

⁶ A very far-reaching answer would be to change the system completely. High transaction costs are a reason which do not support this strategy. Historically, such systemic changes only took place in the context of changes to the political system in 1918, 1933/34 and 1949.

Semantic steering, which is neither a regulatory nor a procedural intervention, is possible in two ways: On the one hand, appeals are made to rationally acting actors, which usually do not bring about a change in behaviour (Pies 2002, 175). On the other hand, threats are issued that can lead to changes in behaviour if the threat is credible. The actors must – in contrast to the appeal – expect to be sanctioned if they do not change their behaviour. The threat refers to changes in the constituting and regulating principles of an institution. It is thus of a regulatory nature. The implementation of a threat as a legal measure, on the other hand, can also be of a procedural nature.⁷

Tripartite governance offers the opportunity to agree on barter transactions in order to use potentials of mutual benefits. Rules of the game, but also moves can be the subject of barter transactions (Pies 2002, 179 ff.). However, tripartite governance can also be limited to a non-binding exchange of information that makes the preferences of the actors more transparent, reduces information asymmetries and creates trust. This can enable occasion-based give and take without actors committing themselves beyond the occasion. Legal and political steering measures can also influence moves or change the rules of the game. Laws constitute an order and define a legal framework. But they can also restrict options for action and in this way intervene in market processes. The statutory minimum wage is an example of this. Political governance is based more on informal regulatory principles. A specific regulatory network of relationships (policy mix) is generated via an assignment that assigns clear objectives to the economic policy instruments.⁸ Changes in the assignment affect the price mechanism by changing the opportunity costs of a policy strategy. They are of a procedural nature (see section 4.3).⁹

The next step is to clarify which debates are relevant in terms of the challenge-response approach. Figure 2 depicts various exogenous and endogenous challenges since the year 1918, which were also followed by a response. The beginning was chosen because this was the year in which collective bargaining autonomy was first institutionalized in the Stinnes-Legien Agreement. Triggers for state intervention episodes were changes of the political system (1918, 1933/34 and 1949), economic crises (1923, 1929/30, 1966/67, 1973/74, 1979/80, 1992/93, 2001/02, 2008/09), negative third-party effects from labour disputes (1984, 2001 to 2015), distribution problems (2006 to 2014, since 2020), or declining collective bargaining coverage combined with organizational weakness of the social partners (since 2017).

We will not discuss the systemic changes further here, as they are already described in detail elsewhere (Bach, Lesch and Vogel, 2022; Lesch, Schneider and Vogel, 2021). For the present context, it is important to note that the reintroduction of collective bargaining autonomy in 1949 was a continuation of the Weimar model. This established a path depend-

⁷ Alternatively, a reward can be held out in prospect. It would have to be redeemed in case of success, whereas a threat does not have to be redeemed in case of success (Scharpf 2000, 253).

⁸ According to Koll and Watt (2018, 17) in the traditional assignment of instrument and objective, monetary policy is responsible for price stability, wage policy for employment, and fiscal policy for stabilisation.

⁹ Changes can occur because in the traditional assignment each macro policy instrument is neither self-sufficient with respect to its own objective nor neutral with respect to the objectives of the other instruments (Koll and Watt 2018, 17). There are interdependencies. In addition, there are dual roles. For example, wage policy has the role of contributing to both a high level of employment and price stability (Ott 1968). Priorities can change here.

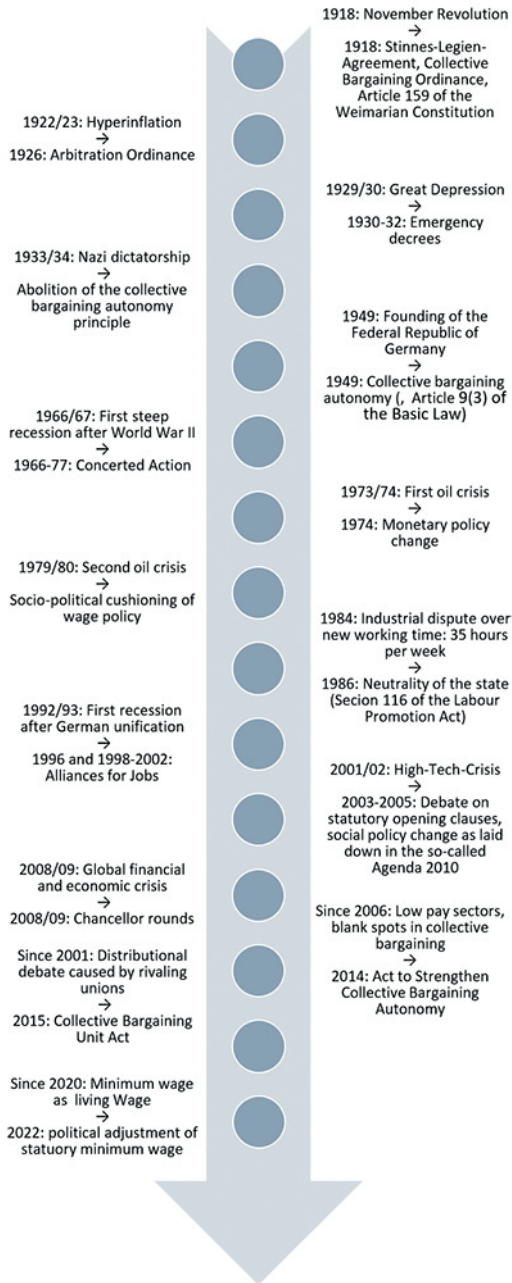


Figure 2: Challenges and Responses from 1918 until today
Source: Authors' illustration.

ency that is also noticeable in later steering episodes. We will discuss the various debates on the legitimacy of the collective bargaining autonomy below. We grouped the debates according to their classification as legal, tripartite, political, and semantic steering mechanisms.

4. Analysis of Historical Debates

4.1 Legal Steering

As early as the Weimar Republic, the state felt obliged to adjust the legal framework only a few years after the conclusion of the Stinnes-Legien Agreement of November 1918 and the adoption of Collective Bargaining Ordinance (TVO) issued shortly afterwards. On the one hand, unfavourable economic conditions were to blame, which deteriorated further during the hyperinflation that began in 1922. On the other hand, industrial disputes hampered the establishment and further expansion of the collective bargaining system. And finally, trade unions suffered from membership losses and reduced member fees. Their bargaining position was weakened by the devaluation of wage increases due to inflation. At the same time, the dispute over the eight-hour day strained the relationship between social partners (Hartwich 1967, 23 ff.; Englberger 1995, 153 ff.; Steiger 1998, 132 ff.).

Thus, endogenous and exogenous factors disrupted the optimal representation structure between the state and its social partners, becoming a challenge to which the state had to find a response. Since the state could no longer rely on the adaptability and loyalty of its social partners, it took action itself to enforce wage and collective bargaining policy committed to ensuring the social welfare. Within the framework of the Arbitration Ordinance (*Schlichtungsverordnung*, SVO) issued in 1923, the state supplemented the previously autonomous arbitration with compulsory state arbitration. The state wanted to pacify collective bargaining relations and support the spread of collective bargaining. However, the new arbitration regulation subsequently had a negative effect on the willingness of social partners to negotiate autonomously. Instead of orienting themselves more towards social welfare, trade unions and employers used state arbitration to push through their own interests against the will of the collective bargaining partner. In doing so, they increasingly relied on the mediating position of the state as compulsory arbitrator. In this way, the SVO launched a new challenge. For when the Great Depression began at the end of the 1920s and the government of the day wanted to combat the recession by improving price competitiveness, it could hardly expect social partners to show the necessary willingness to adapt and to flank this with their wage policy. In response to social partners' lack of adaptability during the recession, the Reich government enforced the desired parallel wage and price reductions with the help of the so-called emergency decrees (*Notverordnungen*, NVO). The collective bargaining autonomy was thus increasingly replaced by a state wage policy that included direct wage reductions or even modified terms of collective agreements (Hartwich 1967, 160 ff.; Steiger 1998, 149 ff.).

In the Federal Republic, too, the state resorted to legal instruments to strengthen social partners' orientation towards the social welfare. Initially, the years of the economic miracle created a framework in which social partners concentrated on distributing the annual increase in production. By the mid-1970s, a functioning social partnership had emerged, which then broke down under the global economic shocks of the mid-1970s (Fels 1988,

214). With the first deep post-war recession, a first tripartite attempt at steering followed in 1967 (see section 4.2) and a first political one with the monetarist turn of the central bank of the Federal Republic of Germany (*Deutsche Bundesbank*) in 1974 (see section 4.3). Legal adjustments did not occur until the 1980s. During this period, in addition to external problems such as rising unemployment in the wake of the two oil price shocks in 1973/74 and 1979/80, a wave of industrial disputes to enforce a 35-hour week in the printing and metal and electrical industries prompted the state to intervene (Lesch and Byrski 2016, 68–9). The new strike tactics of the German Metalworkers' Union IG Metall – organising industrial disputes only as pinpoint strikes instead of comprehensive strikes covering large areas – became a challenge.

The government saw state neutrality in industrial action at risk and responded by amending the Labour Promotion Act (AFG) (response). Through their pinpoint strikes, the unions caused a high number of lost days without unduly burdening their strike funds. This was because workers indirectly affected by the strike outside the contested bargaining area received wage replacement benefits from the Federal Labour Office, even when similar demands were also made by the unions for their working conditions (Kissel 2002, 474). To abolish this indirect support for industrial disputes and to ensure the neutrality of the Federal Labour Office, the government amended section 116 of the AFG. This removed wage replacement benefits for affected workers outside the disputed collective bargaining area if similar union demands were made for their working conditions (section 116 (3) AFG, 1986 version). Through adjusting the legal framework, the government officially aimed at maintaining its neutrality in industrial disputes. In fact, it counteracted the endogenous disturbance of a balance of power lack in industrial disputes. At the same time, it remedied exogenous disturbances of the social welfare caused by massive strike activities (Deutscher Bundestag 1986, 5).

Negative externalities from industrial action also played a decisive role in the debate on the Collective Bargaining Unity Act (TEG). After five individual trade unions merged to form the United Services Union (*Vereinte Dienstleistungsgewerkschaft, ver.di*) in 2001, the organising principle of “one company – one collective agreement” (Monopolkommission 2010, 941), which had been established over decades, was increasingly called into question. Some professional unions which had previously negotiated in collective bargaining unions demanded independent collective agreements. To establish themselves, they not only had to get employers to recognise them. They also had to legitimise themselves by achieving better working conditions than the previous bargaining unions. The means to achieve this was industrial action. The strikes of the professional unions led to the paralysis of critical infrastructure such as air or rail traffic. This was because workers with high structural power, such as train drivers or pilots, organised themselves in independent professional unions in order to obtain the highest possible bargains for their occupational group (Dribbusch 2010, 8 ff.).

Since the Federal Labour Court let the professional unions have their way and even dropped the principle of bargaining unity in its case law in 2010 (BAG 2010, 778), a political debate on enshrining bargaining unity in law began. Both exogenous and endogenous disruptions regards social partners' loyalty were addressed as a challenge to the social welfare. The exogenous dimension was formed by the extensive strike activities of the professional unions, which affected less the employer than uninvolved third parties. However, the cause

of these exogenous disturbances were endogenous problems, i.e. problems implemented in the collective bargaining system. First, as representatives of so-called functional elites, the professional unions had enormous strike power, upsetting the balance of power between unions and employers. Second, the competing unions were unwilling to regulate their rivalries autonomously and form collective bargaining unions (Lesch 2021; Schneider and Vogel 2021, 332 ff.). Notwithstanding numerous constitutional concerns, the legislature responded to this challenge in 2015 by passing the Collective Bargaining Unity Act (response). This law stipulates that, in principle, several collective agreements can be applied in a company. However, as soon as the collective agreements overlap in scope, only the collective agreement of the majority union applies. The majority union is the union with the most members in the company (Deutscher Bundestag 2015).

With these adjustments, the state intervened in the regulatory framework. However, the state's legal steering episodes also include interventions that directly target the content of collective agreements and are thus of procedural nature. Examples of this are the adoption of the Act to Strengthen the Collective Bargaining Autonomy (*Tarifautonomiestärkungsgesetz*, TASG) in 2014 and the Act to Increase the Statutory Minimum Wage (MiLoEG) in 2022.

The background to the TASG is a debate on the distribution policy related to the *Agenda 2010* and the organisational capacity of the social partners. Between the 1990s and 2014, the collective bargaining coverage of employees declined from 80 to 60 per cent in western Germany and from 73 to 46 per cent in eastern Germany (Lesch, Schneider and Vogel 2021, 313). At the same time, union density fell from 27 to 17.5 per cent (Biebeler and Lesch 2015, 711). In the course of the *Agenda 2010*, implemented between 2003 and 2005, the labour market was deregulated, and a paradigm shift took place with the abolition of unemployment assistance and the introduction of basic benefits for jobseekers (Goecke *et al.* 2010; Walwei 2017). The declining organisational capacity of social partners was thus accompanied by a growing low-wage sector (Schäfer and Schmidt 2017, 63). This development was favoured by the *Agenda 2010* reforms and was quite intentional, as it led to a significant decline in unemployment (Sinn, Geis and Holzner 2009, 23–4). However, the greater the success of labour market policy, the stronger the criticism of distribution policy became. The organisational weakness of social partners and the associated decline in collective bargaining coverage leaving blank spots in the collective bargaining landscape, combined with a low-wage sector that was considered too large, posed a new challenge for the federal government. It reacted to this by passing the TASG, in the context of which a statutory minimum wage was also introduced. While this was intended as an instrument against low wages, the other measures of the TASG were primarily concerned with extending the scope of collective agreements. By facilitating the extension of collective agreements by means of a declaration of general applicability and an extension of the Posted Workers Act (*Arbeitnehmer-Entsendegesetz*, AEntG) to all sectors, the TASG was intended to ensure that more workers benefit from collectively agreed minimum wages (Deutscher Bundestag 2014).

With the change of government in autumn 2021, the new federal government decided to adjust the statutory minimum wage (Lesch, Schneider and Schröder 2021). The Minimum Wage Commission, originally responsible for the adjustment, had adjusted the minimum wage in line with the development of collective wages. As this dynamic was found to be

insufficient by the governing coalition, it decided to suspend the regular adjustment procedure once in 2022 and to raise the minimum wage by law to 12 euros per hour from October 2022 onwards. However, this not only suspended the autonomous adjustment process by the Minimum Wage Commission, but also massively interfered with collective bargaining. According to estimates by the Federal Statistical Office, a total of 125 collective agreements were affected as of July 2022, in which 311 collective wage groups would have been displaced (BDA 2022, 127).

4.2 Tripartite Steering

During the period under study, the state repeatedly resorted to the instrument of tripartite governance to achieve its economic and social policy goals. In the 1960s, the Federal Minister of Economics, Karl Schiller (Social Democrat, SPD), was confronted with the effects of the first deep recession in the Federal Republic (Lesch, Schneider and Vogel 2021, 262). The federal government formed in 1966, consisting of the Christian Democratic Parties (CDU/CSU) and SPD, and had to find an answer quickly to the challenge of an economic recession with rising unemployment and increasing inflation. Faced with this challenge, the new federal government underwent a course shift in German economic policy. Its goal was to revive the economy and balance the national budget. In doing so, it followed Keynesian concepts (Schneider 2000, 330) in which the public sector was to act more often as a contracting authority during the recession (Beyfuss 1969, 13–4). On 10 May 1967, the Act to Promote the Stability and Growth of the Economy (*Stabilitäts- und Wachstumsgesetz*, StabG) was passed. It introduced cyclical economic guidance by the state revolving around four key indicators: stability of the price level, high employment level, adequate economic growth and external balance. The representatives of the institutions responsible for economic policy (monetary, fiscal and wage policy) were also invited to the so-called Concerted Action (Lesch, Schneider and Vogel 2021, 264–5). In addition, numerous economic policy measures were adopted in 1967 to support the economy.¹⁰

While the Concerted Action was officially only supposed to serve as a forum for information exchange and align interest positions of different actors (Schneider 2000, 332), the Federal Minister of Economics also wanted to use the tripartite meetings to commit the trade unions to a strategy of wage moderation. Specifically, wage settlements were to be oriented towards the expected productivity development and not to jeopardise the economic stimulus measures adopted by the federal government. The Concerted Action can thus be understood as a response to the first deep recession after the Second World War.

In the 1990s there were new attempts at tripartite steering. A first attempt, initiated by the trade unions, failed early on (Lesch, Schneider and Vogel 2021, 294–5). In a second attempt, initiated by the federal government, the social partners were supposed to contribute to reducing unemployment through their collective bargaining policy. Gerhard Schröder (SPD), who had been elected Federal Chancellor in 1998, called together top representatives of trade unions and employers' organisations to form an Alliance for Jobs, Vocational Training and Competitiveness in order to jointly resolve the reform backlog in German labour market and social policy (Fickinger 2005, 114–5). Unlike the Concerted Action, breaking the negative spiral of an economic downturn, inflation and a resulting unemployment,

¹⁰ Cf. Lesch, Schneider and Vogel 2021, 264; Beyfuss 1969, 13–4.

was not the main aim (Heilemann 2019, 550–1). The new Alliance for Jobs represented the response of the federal government to the structural challenges on the labour market as well as to the imbalance in public budgets and in the statutory social insurance system. The number of unemployed had risen to almost 4.4 million in 1997, which corresponded to an unemployment rate of 12.7 per cent in the same year (Lesch, Schneider and Vogel 2021, 287). However, the state was no longer in a position to cushion a collective bargaining policy that excluded too many people from the labour market – whether by granting unemployment benefits or through legal incentives for early retirement (Streeck 2001, 82 ff.). Schröder therefore wanted to persuade the social partners in tripartite rounds of talks to adopt a collective bargaining policy course that would promote employment and flank a reform course simultaneously initiated by the federal government (Ficking 2005, 113).

Both attempts (Concerted Action and Alliance for Jobs) failed in the attempt to commit the unions to a strategy of wage moderation in the longer term. In 1967 and 1968 the unions – despite internal debates – pursued a moderate course in their agreements, but they were not able to justify this course to their membership for long due to rapid economic recovery (Schneider 2000, 350). Against the background of rising company profits and an improved economic situation, there was a first wave of “wildcat strikes” as early as 1969, followed by a second wave at the beginning of the 1970s.¹¹ The course of wage moderation advocated by government and employer representatives in the Concerted Action led for the trade unions “to a loss of confidence in parts of the membership and the workforce” (*ibid.*, 350), which they could not accept. After the differences between employers’ and trade union representatives had become irreconcilable, the German Trade Union Confederation (DGB) withdrew from the Concerted Action in the mid-1970s.¹²

Schröder’s tripartite coordination attempts during the Alliance for Jobs led to a similar result. Between 1999 and 2002, representatives of the federal government, the unions and employer organisations conferred in a total of eight top-level talks. In the first half of 1999 the social partners agreed that their collective bargaining policy should contribute to reducing unemployment by using “productivity increases ... primarily to promote employment” (Bispinck and Schulten 1999, 871). However, the Alliance for Jobs failed to resolve how exactly productivity gains could be used in that manner. While the employers’ side wanted to use productivity gains to reduce labour costs and again sought a policy of wage restraint, IG Metall, on the other hand, advocated using productivity gains to redistribute work (Streeck 2001, 96–7). In 2000, the alliance partners were still able to reach a compromise on the upcoming wage round. However, this was no longer possible for the 2002 wage round. As in the 1960s, IG Metall did not want to make its wage policy the subject of permanent barter deals, the results of which did not benefit its members (Lesch, Schneider and Vogel 2021, 300–1). The lack of consensus in the Alliance for Jobs became a new challenge. In early March 2003, Gerhard Schröder officially declared the Alliance for Jobs a failure. Schröder’s announcement that the federal government would now implement reforms on its own can be classified as a new response (Ficking 2005, 337). Schröder then revealed

¹¹ Wildcat strikes refer to the phenomenon of workers spontaneously going on strike without union support. At the end of the 1960s, wildcat strikers were able to push through wage increases in a wide variety of industries in a short time – even though union-negotiated collective agreements had not yet expired (Schneider 2000, 349 ff.).

¹² Some employer organisations had filed suit against the Co-Determination Act passed in 1976, which the unions had long insisted on introducing (Schneider 2000, 349).

the main features of his reform agenda in a speech to the Bundestag on March 14, 2003 (see section 4.4).

The next attempt at tripartite steering followed only a couple of years later: In the second half of 2008, it became apparent that the collapse of the U.S. financial and real estate markets would also affect German financial institutions on a larger scale (Lesch, Vogel and Hellmich 2017, 2ff.). In view of the systemic risk posed by a banking sector collapse, the Bundestag and Bundesrat passed various laws in October 2008 aimed at stabilizing the German financial market.¹³ Nevertheless, the financial market crisis spilled over into the German real economy. Export-strong industries were particularly affected (*ibid.*, 3). In response to the spreading recession, the German government adopted two rescue packages in November 2008 and January 2009 and sought talks with employer and trade union representatives in various formats (Zagelmeyer 2010, 5–6). Particularly outstanding were the two economic summits hosted by Chancellor Angela Merkel (CDU) on December 14, 2008, and April 22, 2009.

Unlike the Concerted Action or the Alliance for Jobs, the economic summits did not trigger a major debate on social partners' wage policy course. This was undoubtedly because, following the insolvency of the U.S. bank Lehmann Brothers, major trade unions such as IG Metall came to realise that the global crisis would affect Germany as a business location to a far greater extent than they had previously assumed. Whereas IG Metall had started the collective bargaining round in September 2008 with a wage demand of 8 percent for a term of 12 months, in mid-November it agreed to a significantly lower wage increase in the pilot agreement in Baden-Württemberg – 4.2 percent payable in two stages within 16 months plus one-off payments (Bispinck and WSI-Tarifarchiv 2009, 31–2).

While the social partners in the metal and electrical industries were able to agree on appropriate wage settlements on their own, the German government nevertheless used the summits to obtain their assessments of economic developments and possible steps out of the crisis. Trade union and employer representatives shared the view that the crisis was a matter of cyclical weakness and not structural dislocation. The harmful effects on the labour market could therefore be cushioned by generous use of short-time work (Lesch, Vogel, and Hellmich 2017, 16 and 18). The German government took up these assessments and initially extended the maximum period of entitlement to cyclical short time working benefits from 12 to 18 months (from January 1, 2009). The second rescue package extended the entitlement period to the statutory maximum of 24 months. In addition, employers' social security contributions for their employees on short-time work were reduced from 100 to 50 percent.¹⁴

With the improved short-time work rules, the federal government thus created an incentive for companies not to lay off their workers. Like in the late 1960s, the government's goal was to avoid sharply rising unemployment figures. To achieve this, it was also prepared to make high transfer payments in the form of a short time working allowance. Since it was mainly the export industries in Germany that were affected by the recession and the downturn was seen as a temporary phenomenon, the federal government achieved its goal. Many

¹³ These include the Financial Market Stabilization Act, Act on the Establishment of the Financial Market Stabilization Fund, and the Act on the Acceleration and Simplification of the Acquisition of Shares and Risk Positions of Financial Sector Enterprises (cf. Lesch, Vogel and Hellmich 2017, 4–5).

¹⁴ Employers who provided their employees with further training during short-time work could even be reimbursed for up to 100 percent of their social security contributions.

companies tried to keep their skilled workers for the coming upswing. Instead of making redundancies, overtime and hours on working time accounts were first reduced, minus hours built up and short-time work registered (Bellmann, Gerner, and Upward 2012, 30). Social partners in the largest industry, the metal and electrical industry, supported this course of labour hoarding. In the 2010 collective bargaining round, IG Metall not only waived a concrete wage demand, it also signed a collective agreement that further reduced the costs of short-time work and opened up additional room for manoeuvre for companies bound by collective agreements. The collective agreement allowed companies that had exhausted the legal maximum period of 24 months of short-time work to reduce the weekly working hours of their employees to 26 hours per week. In return, they had to grant partial wage compensation. The agreement was valid until the end of June 2012 (Bispinck and WSI-Tarifarchiv 2011, 18). While the state had provided an answer to the threat of mass unemployment by extending the period of eligibility for short time working allowances in 2008 and 2009, the parties to the collective agreements flanked the federal government's employment policy course in these years with their collective agreements. Ultimately, a non-binding exchange of information created trust, resulting in a kind of informal exchange. In this respect, tripartite steering that is occasion-related and limited to situational action has proven its worth.

4.3 Political Steering

The political steering episodes include the monetarist turn (Scharpf 1987, 168 ff.) of the German central bank (*Deutsche Bundesbank*) after the strong inflationary impulses of 1973/74 as well as the abandoned socio-political alimentation of the collective bargaining policy within the framework of the *Agenda 2010*. While the central bank is not a state but an autonomous actor, it receives its autonomy from the state and its actions were decisively determined by state decisions on exchange rate policy after the Second World War. It was only with the transition to floating exchange rates after the collapse of the Bretton Woods system¹⁵ in 1973 that the central bank gained control over the money supply and thus became autonomous in its monetary policy (Scharrer 1998, 320).¹⁶ After becoming autonomous, it decided to take a monetarist turn, which had a considerable impact on wage and collective bargaining policy.¹⁷ In addition to the changed exchange rate regime, the central bank faced a variety of challenges in 1973/74: At the turn of the year 1973/74 there was a drastic increase in oil prices, which called into question the central banks' aim of reducing the inflation rate. At the same time, wage demands were made in collective bargaining rounds which were supposed to keep workers free from any adjustment (SVR 1974, 122). Employers did not offer much resistance to these demands because they trusted they would be able to pass the costs on to consumers. Both sides (unions and employers) assumed that monetary policy would give way. The social partners believed that the central bank would stand idly by and watch a further acceleration of inflation after the oil price increase (Scharrer 1998, 321). They ignored warnings from the central bank, and subsequently

¹⁵ Cf. on the Bretton Woods system: Deutsche Bundesbank 2016, 34 ff.

¹⁶ Similarly, Scharpf 1987, 169.

¹⁷ However, the Federal Chancellor Helmut Schmidt publicly supported the central bank's paradigm shift (Scharpf 1987, 170). Therefore, the monetarist turn can be interpreted as a (governmental) political steering episode.

average wage earnings rose by 13 per cent in 1974, after consumer prices rose by 7.1 per cent in 1973 and 6.9 per cent in 1974.

Since the central bank was unwilling to accept a further rise in inflation, a stabilization crisis was unavoidable. A wage-price spiral ensued, which could only be broken by shock therapy (Scharrer 1998, 321). In response to rampant inflation in 1973/74 and to prevent such crises in the future, the central bank decided to publicly announce a quantitative money supply target (Neumann 1998, 326; Scharrer 1998, 321; Spahn 2017, 431). This signalled to the relevant actors that they would bear responsibility for undesirable economic developments as soon as they breached the set target. From then on, wage policy had to take into account that the “employment problem cannot be solved with the help of an expansionary monetary policy” (SVR 1974, 120).¹⁸ By announcing a money supply target, the central bank burdened the government and, above all, the trade unions with the adjustment efforts required to successfully coordinate the different policy areas (Scharpf 1987, 175–6). Finally, the social partners were disciplined by a stabilization recession (Scharrer 1998, 322).

The change in the distribution of roles did not originate with the state, but with the central bank. However, it was a direct consequence of the change in the exchange rate regime. The monetary policy’s stability objective could no longer be hampered by exchange rate targets or the obligation to intervene in the foreign exchange market. This resulted in a change in the wage policy regulatory framework. This change has persisted to the present day, but a similar stabilization crisis followed the reunification of the two Germanies.

Here, too, political steering was ostensibly based on a conflict between monetary and wage policy. In fact, as in the 1970s, the state was involved in the background. For it was a government decision to convert eastern German wages at a ratio of 1:1 (*Ost-Mark to D-Mark*) in the course of the German-German monetary, economic and social reunion. By setting this exchange rate target, the German government created the breeding ground for the unions’ strategy of bringing eastern German wages into line with western German levels as quickly as possible without taking productivity differences into account (challenge). The central bank felt compelled to stop the wage-price spiral by adopting a more restrictive monetary policy in response.

Ultimately, the central bank succeeded in credibly institutionalizing its commitment to the price stability objective. The option of absorbing wage-induced unemployment through loose monetary policy was eliminated (Lesch 2021, 723). However, the state’s social policy provided another policy area that social partners could instrumentalize for their purposes without a clear role assignment of economic policy responsibility (Streeck 2001, 83). The consequences of an employment neglecting collective bargaining policy were mitigated, among other things, by a reduction in the collectively agreed working week. But above all, the social partners were “largely relieved of employment considerations” (*ibid.*, 88, translation by authors) by the statutory promotion of collectively agreed partial retirement models and generous support payments to the unemployed.

The unions’ attempt to solve labour market problems by redistributing work (via shorter weekly and lifetime working hours) led to another challenge: Germany had one of the highest inactivity rates among OECD countries in the late 1990s (*ibid.*, 91). Moreover, this ap-

¹⁸ This change signaled to the social partners that monetary policy would not solve employment problems caused by their collective bargaining policy (SVR 1974, 134–5).

proach encountered financial restrictions. The labour market crisis became a “major cause of the [...] financial crisis of the welfare state” (Heinze, Schmidt and Strünck 1999, 31, translation by authors). Non-wage labour costs rose, putting a strain on international competitiveness and jeopardizing the preservation of profitable, well-paid industrial jobs. The red-green federal government that came into office in 1998 chose various responses to loosen the encrusted labour market structures: First, it tried to solve the employment problems with the help of an Alliance for Jobs (see section 4.2). After the attempt to incorporate the social partners into a macroeconomic strategy had failed, Federal Chancellor Gerhard Schröder threatened to introduce statutory opening clauses in his March 2003 government declaration (see section 4.4). In addition, he also announced a radical social policy change in the wake of *Agenda 2010*. This paradigm shift led not only to changes in the legal framework but also in the institutional arrangement itself. Collective bargaining autonomy was no longer an arrangement in which the state assumed the follow-up costs of social partners’ adopted wage policies.

In both political steering episodes, there was an awareness, at least among the acting political elites (central bank and government), that a lack of social welfare orientation presented a challenge that required government steering as a response. The rules of the game were changed by a clearer assignment of economic policy goals and instruments. With monetary policy no longer pursuing employment goals and the state scaling back on cushioning unemployment with social policy measures, combatting unemployment primarily became the social partners’ task. Since opportunistic behaviour was now directly sanctioned – the state no longer acted as a “banker of last resort” (Streck 2001, 98) – social partners were forced to adjust their moves.

4.4 Semantic Steering

Politicians regularly appealed to social partners during collective bargaining rounds in the past who rejected appeals with equal regularity. Such appeals had no effect on collective bargaining and did not trigger a serious debate on collective bargaining autonomy. Since they do not constitute a state response in the sense defined here, they will also not be analysed further.¹⁹ The situation is different with the political threat made in 2003 to introduce statutory opening clauses and thus change the institutional structure of wage determination.

The background to this was the failed attempt by the ‘red-green’ federal government to combat high and structurally entrenched unemployment with the help of an Alliance for Jobs (see section 4.3). The phenomenon of hysteresis in the labour market had existed since the early 1980s without the social partners having made an effective contribution to reducing it. The trade unions in particular called for a redistribution of labour via a collective re-

¹⁹ A prominent example is the collective bargaining round in the public sector at the beginning of 1974. The appeal by Federal Chancellor Willy Brandt that a double-digit agreement must be ruled out this time was seen by Heinz Kluncker, negotiator on the side of the unions, as a provocation that could be interpreted as an attack on collective bargaining autonomy. After a lengthy labour dispute, a deal of more than 12 percent was finally reached (Scharpf 1987, 166). A current example showing the non-binding nature of appeals is an interview by the Federal Minister of Labour and Social Affairs, Hubertus Heil, in May 2022, in which the minister emphasizes that employees have “a right to appropriate wage increases,” while also conceding that as Federal Minister of Labour he will, however, “not interfere in collective bargaining” (Heil 2022).

duction of working hours. After German reunification, they became entangled in the goal of raising eastern German wages to western German levels as quickly as possible. This endogenous problem was exacerbated by the organisational weakness on the part of trade unions and employers which led to a decline in collective bargaining coverage. At the same time, there was a proliferation of “wild” decentralisation, i.e. companies that did not withdraw from employer organisations but deviated from the provisions of the sectoral collective agreement through company alliances, sometimes without a legal basis. As the social partners seemed unwilling or unable to solve these challenges, Federal Chancellor Gerhard Schröder threatened the German Bundestag with legal opening clauses. The chancellor announced that if partners did not make collective agreements more flexible, the state would do it (Deutscher Bundestag 2003, 2487).

The threat worked. In the biggest German industry, the metal and electrical industry, social partners concluded the so-called *Pforzheim Agreement* in 2004. It simplified and legalised deviations from the sectoral collective agreement in individual companies. In this way, social partners demonstrated their ability to act. The government did not have to realize its threat (Lesch, Schneider and Vogel 2021, 311f).

The semantic steering was a second response by the federal government after the tripartite strategy had failed. While it was successful in terms of its employment goal, it initiated a new, distribution-policy debate. The reason was that now the growing low-wage sector was perceived as a problem.

5. Lessons for the Current Debate

Table 1 summarises the different steering episodes once again and structures them according to the type of intervention. Federal Chancellor Schröder’s threat to introduce legal opening clauses has proved to be an effective form of semantic steering – unlike the appeals which were not analysed further here. If it had been implemented, it would have led to legal steering that would have changed the rules of the wage-setting process. However, such procedural intervention was no longer necessary, as the social partners adjusted their moves. With this change in behaviour, this threat had the effect of regulatory intervention.

While the economic summits in the wake of the economic and financial crisis 2008/09 were rather informal in character, the Concerted Action and the two job alliances of the 1990s were about trying to reach binding agreements by making political barter deals. However, in none of the three alliances, relevant actors could agree to binding wage guidelines on a permanent basis. Nonetheless, there was at least temporary voluntary wage restraint on the part of the trade unions during the Concerted Action and during the job alliance and the bargaining round of 2000. Together with the experience from the economic summits 2008/09, it can be concluded that tripartite formats can be successful if they take place on an ad hoc basis, are based on voluntariness, create trust, and actors do not derive expectations for future action from the temporary measures. In such a framework, social partners adapted their moves voluntarily, i.e. without being restricted in their alternative actions by changing the rules of the game.

Table 1: State Control According to Steering and Intervention Types

Steering type \ Intervention type	Semantic	Tripartite	Political	Legal
Regulatory-policy control	Threat of introducing statutory opening clauses (2003)	Concerted Action (1967-1977); Alliance for Jobs (1998-2003); Economic Summits (2008/09)		§ 116 Labour Promotion Act (AfG, 1984); Collective Bargaining Unity Act (TEG, 2015)
Process-policy control			Monetarist turn (1974); “Agenda 2010” (2003-2005)	Arbitration Ordinance (SVO, 1923); Emergency decrees (NVO, 1930-1932); Act to Strengthen the Collective Bargaining Autonomy (TASG, 2014); General Minimum Wage Act (MiLoG, 2014); Act to Increase the Statutory Minimum Wage (MiLoEG, 2022)

Source: Authors’ compilation

Political steering, on the other hand, changed the rules of the game and thus had a procedural effect. The monetarist turn and the *Agenda 2010* forced social partners to take on more responsibility for employment policy. An important learning process was that wage policy assignment (in the sense of committing wage policy to the goal of employment stability) must be flanked not only by monetary but also by fiscal policy.

In terms of legal steering, there were not only regulatory interventions based on the legal framework for industrial action (section 116 AfG and TEG), but also procedural interventions (arbitration and emergency decrees, minimum wage legislation). Striking about these is that they were undertaken in the context of a poorly functioning collective bargaining partnership. The interventions in the Weimar Republic contributed to the further erosion of collective bargaining relations. State wage policy established itself not as a complement to collective bargaining, but as a substitute. The most recent interventions through the minimum wage legislation (2022) do not yet allow such a conclusion.²⁰ The political target of a minimum wage of 12 euros shows, however, that the statutory minimum wage is not intend-

²⁰ An evaluation of collective bargaining before and after the introduction of the minimum wage concluded that the introduction of the statutory minimum wage in 2015 did not reduce social partners’ willingness to reach agreements (Bispinck *et al.* 2020). However, the politically decided increase to 12 euros intervenes more strongly in collective bargaining.

ed to be purely complementary. The federal government is pursuing purely income policy goals. This objective can prejudice collective agreements or even damage the incentive to negotiate collective agreements in areas affected by the minimum wage. This would not be in line with collective bargaining autonomy in the sense of the Basic Law, “the spaces for [...] individual responsibility and social partnership become ever narrower in this way” (Creutzburg 2022, translation by authors). A strengthening of collective bargaining commitment or the organisational capacity of the parties to collective agreements is also not to be expected.

The expansion of collective bargaining coverage sought by the TASG through easing rules on extending collective agreements generally and inclusion of all sectors into the AEntG also represent procedural interventions. A company that is not bound by collective agreements is prohibited from applying an employment contract that falls short of collectively agreed standards as part of the extension of collective agreements – be it through the revised rules of the TASG or the AEntG. These revisions did not only change the rules of the game, but also prevent certain moves (such as paying below collectively agreed standards). In this way, the federal government wants to strengthen collective bargaining coverage without addressing the actual cause – social partners’ organisational weakness (Lesch, Schneider and Vogel 2021, 392).

The new governing coalition of the SPD, the Greens (*Bündnis 90/Die Grünen*) and the Liberals (FDP), which came into office in 2021, aims to strengthen collective bargaining. To this end, the federal government wants to make public procurement dependent on compliance with a representative collective agreement in the respective sector (SPD, *Bündnis 90/Die Grünen* and FDP 2021, 71). This regulation amounts to the same problem as the measures taken in the TASG. It extends collective bargaining coverage but does not strengthen the organisational capacity of social partners. Even if the planned Act on Compliance with Collectively Agreed Standards leads to previously collectively bargaining-free enterprises applying collective agreements to obtain public contracts, it will not create an additional incentive for companies to join an employer organisation at the same time. The company can still apply its own regulations that deviate from the sectoral collective agreement for contracts from the private sector. The incentive for workers to join a union is likely to be reduced. The unorganised workers receive the collectively agreed wages anyway – as in the case of extensions via TASG or AEntG. Why should they pay union dues for that?

Thus, the new federal government continues to doctor the symptoms of social partners’ organisational weakness without taking targeted measures to fight its causes. Such measures could mainly consist of addressing free riders’ behaviour. Those who are paid collectively agreed wages but are not union members could pay a solidarity contribution. This approach seeks to remove disincentives by no longer rewarding free riding. On the company side, policy should create more “experimental space.” However, this should not be done through dispositive collective bargaining legislation, but rather by allowing companies to undergo collective bargaining on a trial basis. If a company joins an employer organisation under the current law, it can leave again. However, it remains bound to the collective agreements that the employer organisation has concluded so far (the so-called “after-effect” or *Nachwirkung*). This reduces the incentive to join an employer organisation.

The debate on designing the minimum wage as a “Living Wage” (Lesch, Schneider and Schröder 2021) took place in the course of the politically imposed minimum wage adjustment to 12 euros per hour starting from October 2022. We expect that this will not remain the last episode of state wage policy as a paradigm shift took place: a process has been set up in which the state must intervene as soon as the minimum wage moves away from the level of a living wage. Currently, a minimum wage of 12 euros roughly corresponds to a living wage. If the Minimum Wage Commission sticks to its previous adjustment procedure of a lagging adjustment of the minimum wage to the general wage dynamics and if the effective wages rise more strongly than the standard wages in the next few years, the minimum wage will fall behind the living wage. The state will therefore have to intervene again in an unplanned way. In addition, with the social policy orientation of a minimum wage now undertaken, the federal government is not only intervening in the wage structure and thus in the systematics of wage formation. It also calls into question the logic of the system. Through the new socio-political requirement of the statutory minimum wage, social partners must decide whether the collective wage is primarily a socio-political instrument or whether it should reward work performance.

The analysis of historical debates shows that state steering of collective bargaining autonomy is not a new phenomenon but began immediately after the Stinnes-Legien Agreement. Over the decades, the state repeatedly had to find answers to exogenous and endogenous challenges in order to promote what it sees as an optimal representation structure by its social partners. A significant path dependence can be observed: On the one hand, this is reflected in the fact that collective bargaining autonomy was reintroduced in 1949 despite its first failed attempt. On the other hand, it can be seen in the fact that state steering since 1949 has no longer aimed at a fundamental system change. This is undoubtedly a learning process from the Weimar experience. There, collective bargaining autonomy was so undermined by state compulsory arbitration and emergency decree policies that the will of social partners to reach agreement on their own was lost. The current political efforts to increase collective bargaining coverage can be seen as evidence that politicians certainly want to strengthen collective bargaining autonomy as an institutional arrangement. However, the increasingly observable interventions in process policy also give cause for concern regards a revival of state wage policy with the potential consequences for collective bargaining autonomy hardly being reflected at present.

Hopefully, policymakers will learn from the consequences of process management during the Weimar Republic or the last decades when it comes to their management of collective bargaining autonomy today. Historical experience shows that it is difficult to achieve a social welfare orientation of social partners through a state wage policy or tripartite approaches. A differentiated approach combining certain types of governance has been more successful. A combination of threat, growing outsider competition and less state alienation of social partners’ misbehaviour has proved particularly effective (Lesch 2021, 726). State steering of collective bargaining autonomy should therefore always strengthen social partners’ responsibility. The Concerted Action against Price Pressure convened in summer 2022 will show whether the federal government takes these lessons into account.

References

- Bach, H., H. Lesch, and S. Vogel. 2022. *Die Legitimität der Tarifautonomie in Deutschland. Wirtschaftspolitische Lehren aus historischen Debatten von 1918 bis heute*. IW-Analyse No. 148, German Economic Institute Cologne.
- BAG – Bundesarbeitsgericht. 2010. “Beschluss vom 23.06.2010, 10 AS 2/10.” *Neue Zeitschrift für Arbeitsrecht* 27 (13): 728.
- BDA – Bundesvereinigung der Deutschen Arbeitgeberverbände. 2022. “Verletzung der Tarifautonomie verhindern. Schriftliche Stellungnahme zur Anhörung des Ausschusses für Arbeit und Soziales vom 16. Mai 2022.” In *Zusammenstellung der schriftlichen Stellungnahmen, Ausschussdrucksache 20 (11)91*, edited by Deutscher Bundestag – Ausschuss für Arbeit und Soziales, 124–39. Berlin: Deutscher Bundestag.
- Bellmann, L., H.-D. Gerner, and R. Upward. 2012. *The response of German establishments to the 2008–2009 economic crisis*. OECD Social, Employment and Migration Working Papers No. 137. Paris, OECD Publishing.
- Best, H. 2007. “Der Challenge-Response-Ansatz als forschungsleitende Perspektive für die Transformationsforschung.” In *Herausforderung – Akteur – Reaktion. Diskontinuierlicher sozialer Wandel aus theoretischer und empirischer Perspektive*, edited by D. d. Nève, M. Reiser, and K.-U. Schnapp, 11–23. Baden-Baden: Nomos.
- Beyfuss, J. 1969. “Die Neue Wirtschaftspolitik – Konzeption und Kritik.” *Beiträge des deutschen Industrieinstituts* 7 (3): 5–31.
- Biebeler, H. and H. Lesch. 2015. “Organisationsdefizite der deutschen Gewerkschaften.” *Wirtschaftsdienst* 95 (10): 710–5.
- Bispinck, R., H. Dribbusch, C. Kestermann, H. Lesch, M. Lübker, H. Schneider, C. Schröder, T. Schulten, and S. Vogel. 2020. *Entwicklung des Tarifgeschehens vor und nach der Einführung des gesetzlichen Mindestlohns*. BMAS Forschungsbericht No. 562, Bundesministerium für Arbeit und Soziales.
- Bispinck, R. and T. Schulten. 1999. “Tarifpolitik und Bündnis für Arbeit.” *WSI-Mitteilungen* 52 (12): 870–84.
- Bispinck, R. and WSI-Tarifarchiv. 2009. “Tarifpolitischer Jahresbericht 2008: Tarifpolitik in der Finanzkrise.” Accessed May 31, 2022. https://www.boeckler.de/fpdf/HBS-004325/p_ta_jb_2008.pdf.
- Bispinck, R. and WSI-Tarifarchiv. 2011. “Tarifpolitischer Jahresbericht 2010: Beschäftigungssicherung und gedämpfte Lohnentwicklung.” Accessed May 31, 2022. https://www.wsi.de/fpdf/HBS-004909/p_ta_jb_2010.pdf.
- Creutzburg, D. 2022. “Lohnpolitik ohne Prinzipien.” *Frankfurter Allgemeine Zeitung*, June 1, 2022: 1.
- Deutsche Bundesbank. 2016. *Die Deutsche Bundesbank. Notenbank für Deutschland*. Frankfurt a. M.: Deutsche Bundesbank.
- Deutscher Bundestag. 1986. “Gesetzesentwurf der Bundesregierung, Entwurf eines Gesetzes zur Sicherung der Neutralität der Bundesanstalt für Arbeit bei Arbeitskämpfen.” In *BT-Drucksache 10/4989*, edited by Deutscher Bundestag. Bonn: Deutscher Bundestag.
- Deutscher Bundestag. 2003. “Stenografischer Bericht. 32. Sitzung. Plenarprotokoll No. 15/32.” Accessed May 31, 2022. <https://dserver.bundestag.de/btp/15/15032.pdf>.
- Deutscher Bundestag. 2014. “Entwurf eines Gesetzes zur Stärkung der Tarifautonomie (Tarifautonomiestärkungsgesetz) der Bundesregierung.” In *BT-Drucksache 18/1558*, edited by Deutscher Bundestag. Berlin: Deutscher Bundestag.

- Deutscher Bundestag. 2015. "Gesetzesentwurf der Bundesregierung, Entwurf eines Gesetzes zur Tarifeinheit (Tarifeinheitgesetz)". In *BT-Drucksache 18/4062*, edited by Deutscher Bundestag. Berlin: Deutscher Bundestag.
- Dribbusch, H. 2010. *Tarifkonkurrenz als gewerkschaftspolitische Herausforderung: Ein Beitrag zur Debatte um die Tarifeinheit*. WSI-Diskussionspapier No. 172, Hans-Böckler-Stiftung, Wirtschafts- und Sozialwissenschaftliches Institut.
- Englberger, J. 1995. *Tarifautonomie im Deutschen Reich. Entwicklungen des Tarifvertragswesens in Deutschland von 1870/71 bis 1945*. Berlin: Duncker & Humblot.
- Fehmel, T. 2010. *Konflikte um den Konfliktrahmen – Die Steuerung der Tarifautonomie*. Wiesbaden: VS Verlag für Sozialwissenschaften.
- Fehmel, T. 2011. "Institutioneller Wandel durch semantische Kontinuität: Die bruchlose Transformation der Tarifautonomie." In *Nach dem Strukturbruch? Kontinuität und Wandel von Arbeitsbeziehungen und Arbeitswelt(en) seit den 1970er-Jahren*, edited by K. Andresen, U. Bitzegeio, and J. Mittag, 267–91. Bonn: J. H. Dietz.
- Fels, G. 1988. "Tarifautonomie und Arbeitsmarkt." In *Wirtschaftspolitik zwischen ökonomischer und politischer Rationalität*, edited by M. E. Streit. Wiesbaden: Gabler.
- Fickinger, N. 2005. *Der verschenkte Konsens. Das Bündnis für Arbeit, Ausbildung und Wettbewerbsfähigkeit 1998 – 2002*. Wiesbaden: VS Verlag für Sozialwissenschaften.
- Goecke, H., J. Pimpertz, H. Schäfer, and C. Schröder. 2010. *Zehn Jahre Agenda 2010. Eine empirische Bestandsaufnahme ihrer Wirkungen*. IW-Policy Paper No. 7, German Economic Institute Cologne.
- Hartwich, H.-H. 1967. *Arbeitsmarkt, Verbände und Staat 1918 – 1933*. Berlin: De Gruyter.
- Heil, H. 2022. "Mit Klimageld sozialen Ausgleich schaffen." Interview *Berliner Morgenpost*, May 28, 2022.
- Heilemann, U. 2019. "Rezession in der Bundesrepublik Deutschland von 1966 bis 2012". *Wirtschaftsdienst* 99 (8): 546–51.
- Heinze, R. G., J. Schmid, and C. Strünck. 1999. *Vom Wohlfahrtsstaat zum Wettbewerbsstaat. Arbeitsmarkt- und Sozialpolitik in den 90er Jahren*. Opladen: Leske + Budrich.
- Höpfner, C. 2021. "Die Legitimation der Tarifautonomie." In *Tarifautonomie und Tarifgeltung. Zur Legitimation und Legitimität der Tarifautonomie im Wandel der Zeit*, edited by Gesamtmetall – Gesamtverband der Arbeitgeberverbände der Metall- und Elektro-Industrie e.V., 45–178. Berlin: Duncker & Humblot.
- Hüther, M., Losch, M. and B. Neubauer 2012. *Ordnungspolitischer Bericht 2012 des Aktionsrats Marktwirtschaft. Teil 1: Ordnungspolitische Grundlagen*. Munich: Vereinigung der Bayerischen Wirtschaft.
- Kissel, O. R. 2002. *Arbeitskampfrecht: Ein Leitfaden*. Munich: C. H. Beck.
- Koll, W. and A. Watt. 2018. *Convergence and stability in the Euro Area through effective macroeconomic policy coordination*, IMK-Study No. 61e, Hans-Böckler-Foundation Düsseldorf.
- Lesch, H. 2021. "Staat und Tarifautonomie: Eine institutionentheoretische Analyse." *Sozialer Fortschritt* 70 (12): 709–28.
- Lesch, H., and D. Byrski. 2016. *Flächentarifvertrag und Tarifpartnerschaft in Deutschland: Ein historischer Rückblick*. IW-Analyse No. 107, German Economic Institute Cologne.
- Lesch, H., H. Schneider, and C. Schröder. 2021. "Anpassungsverfahren beim gesetzlichen Mindestlohn: Argumente gegen eine politische Lohnfindung." *List Forum für Wirtschafts- und Finanzpolitik* 47 (2-4): 193–217.

- Lesch, H., H. Schneider, and S. Vogel. 2021. "Die Legitimität der Tarifautonomie." In *Tarifautonomie und Tarifgeltung. Zur Legitimation und Legitimität der Tarifautonomie im Wandel der Zeit*, edited by Gesamtmetall – Gesamtverband der Arbeitgeberverbände der Metall- und Elektro-Industrie e.V., 179–392. Berlin: Duncker & Humblot.
- Lesch, H., S. Vogel, and P. Hellmich. 2017. *The State and Social Partners Working Together: Germany's Response to the Global Financial and Economic Crisis*. International Labour Office, Governance and Tripartism Department.
- Monopolkommission. 2010. "Mehr Wettbewerb, wenig Ausnahmen." XVIII. Hauptgutachten, In *BT-Drucksache 17/2600* as of July 22, 2010.
- Müller-Jentsch, W. 2021. "Nach sieben Jahrzehnten: Konfliktpartnerschaft auf dem Prüfstand." *Sozialer Fortschritt* 70 (12): 698–707.
- Neumann, M. J. M. 1998. "50 Jahre D-Mark. Das Vermächtnis der D-Mark für den Euro." *Wirtschaftsdienst* 78 (6): 322–6.
- Ott, A. E. 1968. *Leitlinien für die branchenmäßige Lohnfindung. Ein Beitrag zur Lohnpolitik*. Schriftenreihe der Wirtschaftsvereinigung Eisen- und Stahlindustrie zur Wirtschafts- und Industriepolitik No. 10. Düsseldorf: Verlag Stahleisen GmbH.
- Pies, I. 2002. "Wie (dys-)funktional sind Arbeitgeberverbände und Arbeitnehmerverbände? Zur ordnungspolitischen Analyse des Korporatismus organisierter Interessengruppen in der Demokratie." In *Arbeitsmärkte und soziale Sicherungssysteme unter Reformdruck*, edited by T. Apolte, and U. Vollmer, 174–98. Stuttgart: De Gruyter.
- Schäfer, H. and J. Schmidt. 2017. "Einmal unten – immer unten? Empirische Befunde zur Lohn- und Einkommensmobilität in Deutschland." *IW-Trends* 44 (1): 59–75.
- Scharpf, F. W. 1987. *Sozialdemokratische Krisenpolitik in Europa*. Frankfurt a. M.: Campus Verlag.
- Scharpf, F. W. 2020. *Interaktionsformen: Akteurszentrierter Institutionalismus in der Politikforschung*. Opladen: Leske + Budrich.
- Scharrer, H.-E. 1998. "50 Jahre D-Mark. Vom Besatzungskind zum europäischen Stabilitätsanker." *Wirtschaftsdienst* 78 (6): 319–22.
- Schneider, M. 2000. *Eine kleine Geschichte der Gewerkschaften. Ihre Entwicklung in Deutschland von den Anfängen bis heute*. Ulm: J. H. Dietz.
- Sinn, H.-W., W. Geis, and C. Holzner. 2009. "Die Agenda 2010 und die Armutsgefährdung." *Ifo Schnelldienst* 62 (17): 23–7.
- SPD, Bündnis 90/Die Grünen, and FDP. 2021. "Mehr Fortschritt wagen. Bündnis für Freiheit, Gerechtigkeit und Nachhaltigkeit, Koalitionsvertrag 2021–2025". Accessed May 25, 2022. https://www.fdp.de/sites/default/files/2021-11/Koalitionsvertrag%202021-2025_0.pdf.
- Steiger, K. 1998. *Kooperation, Konfrontation, Untergang. Das Weimarer Tarif- und Schlichtungswesen während der Weltwirtschaftskrise und seine Vorbedingungen*. Stuttgart: Franz Steiner Verlag.
- Streeck, W. 2001. "Tarifautonomie und Politik – Von der Konzertierte Aktion zum Bündnis für Arbeit." In *Die deutschen Arbeitsbeziehungen am Anfang des 21. Jahrhunderts. Eine Bestandsaufnahme*, edited by Gesamtverband der metallindustriellen Arbeitgeberverbände, 76–102. Cologne: Max Planck Institute For The Study of Societies.
- SVR – Sachverständigenrat zur Begutachtung der gesamtwirtschaftlichen Entwicklung. 1974. *Vollbeschäftigung für Morgen*. Jahresgutachten 1974/75. Stuttgart: Kohlhammer.
- Walwei, U. 2017. "Agenda 2010 und Arbeitsmarkt: Eine Bilanz." *Aus Politik und Zeitgeschichte* 67 (26): 25–33.

- Weitbrecht, H. 1969. *Effektivität und Legitimität der Tarifautonomie. Eine soziologische Untersuchung am Beispiel der deutschen Metallindustrie*. Berlin: Duncker & Humblot.
- Zagelmeyer, S. 2010. *Company-level bargaining in times of crisis: The case of Germany*. ILO Working Paper No. 9, International Labour Office, Industrial and Employment Relations Department.