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ORIGINAL ARTICLE OPEN ACCESS

Current Trends of German Codetermination by Works Councils: On Path Dependencies, Erosion and Innovation

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ABSTRACT

This article is about current developments of codetermination by works councils as a core institution of labour relations in Germany. It is argued that we can observe seven different paths of development which point into different directions, combining processes of erosion, functional change and social innovation in co-determination.

1 | Introduction

Co-determination of works councils is one of the core institutions of German industrial relations. Together with collective bargaining it forms the institutional cornerstones of the “dual system”, as which German industrial relations are often described and perceived in international comparison. This system is dual because it is based both on different legal norms—the Collective Bargaining Act and the Works Constitution Act—and on formally independent actors such as works councils and trade unions, as well as on different regulatory instruments such as collective agreements and workplace agreements. Within this framework, the arena of collective bargaining autonomy deals with the general terms of sale of labour, while the arena of co-determination or works constitution deals with the specific conditions of application of labour in the company (Müller-Jentsch 2007).

This system of industrial relations was long regarded as a model of success in comparative perspective, both because of the flexibility of its regulatory levels and because of the, at least temporary, reconciliation of comparatively good working conditions for a broad range of employees and a high competitiveness of companies on global markets. In this sense, it has been described as a central feature of coordinated market

economies (Hall and Soskice 2001). However, it is now hard to overlook the fact that the foundations of this model of industrial relations are crumbling. Only just under 40% of employees are still represented by works councils, and just under 50% are entitled to the benefits of collective agreements. The model has thus become a minority model, which still mainly relates to the manufacturing industry, large companies and the public sector.

At the same time, a variety of changes can be observed within the still existing scope of the dual system, many of which centre on the co-determination of works councils. These include tectonic shifts between the regulatory levels of collective bargaining autonomy and works constitution, new approaches to cooperation between works councils and trade unions, new forms of employee involvement and participation in works council work, shifts in the multi-level system of co-determination and, finally, the transnationalisation of co-determination. Additionally, global trends like globalisation, digitalisation, decarbonisation or demographic changes have to be dealt with at the workplace level.

Against this background, this article will take a closer look at these changes in works council co-determination. The aim is not so much to provide as comprehensive an overview on co-determination literature as possible, but rather to identify

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and stress some fundamental lines of development in German co-determination. This undertaking is based on own research already published by the author and, mainly, on other findings from literature. In view of the large number of publications on the subject these findings are presented in a selective way.

Discussing challenges and changes of works councils' codetermination has to deal with the paradox that although the legal-institutional foundations of co-determination in the form of the Works Constitution Act have endured over a long term, both the actual scope of co-determination and the practice of interest representation have changed fundamentally. With this in mind, the concepts of path dependencies and other forms of institutional change required for this discussion will first be briefly presented. Subsequently, the changes of co-determination will be analysed in more detail in seven lines of development. Finally, these developments will be discussed and evaluated based on the concepts outlined at the beginning.

2 | Path Dependencies and Institutional Change

A central approach to explaining the historical development of institutions such as German co-determination is path dependency. This concept recognises the fact that institutions—rules of the game that go hand in hand with norms, cognitive orientations and resources and in this way can both restrict and enable social action (Giddens 1984)—often reproduce themselves relatively stable in the actions of actors over longer historical phases. Institutional reproduction can be explained by three causal mechanisms (Campbell 2010). The first of these is the reference to 'increasing returns'. With regard to co-determination, from the company's perspective these can arise from the pacification of labour relations, the reduction of transaction costs through collective workplace agreements or new ideas from works councils; from the employees' perspective, the reliability of effective representation of interests and the improvement of their own negotiating position through collective strength are likely to take centre stage.

A second mechanism relates to the ingrained nature of cognitive and normative orientations. This 'taken for granted' of an institution is characterised by action scripts as well as formal and informal norms which are regarded as legitimate and expected. Because and as long as co-determination and the existence of works councils are taken for granted, there are few reasons to critically question them. Third and finally, path dependencies can be explained by institutional interdependencies and complementarities. Companies that focus on quality production for demanding markets with qualified employees and high employment stability are likely to do well with works councils that support the implementation of these strategies and also demand them when company management wants to reduce its investments in qualification, job security and technological equipment. In this situation, the institution of works councils stabilises the chosen path, just as it benefits from the fit with other institutions like the vocational training system by adhering to this path.

It is these mechanisms that can explain to a large extent the institutional stability that has been observed in the co-determination of works councils in Germany since the 1950s and into the 1990s. Developments like the increase in the effectiveness of interest representation which were observed in the 1980s (Kotthoff 1994) can certainly be reconciled with the concept of path dependency because they contributed to a strengthening of co-determination as an institution in the sense of learning processes. The prerequisite for this was that the works councils learned to actually make use of their institutional power resources, such as co-determination rights, and to develop organisational power resources together with the trade unions.

However, this interplay of resources and learning processes lost its vigour in the 1990s. It was again Kotthoff (1995) who, under the new impression of globalisation and competition between locations, spoke of regressions in terms of the effectiveness of works councils. As will be described below, the institution has lost its binding and formative power since this time. This poses a serious problem for the explanatory power of path dependency.

The explanation given by Mahoney and Thelen (2010) argues with the distribution of power and resources and their dynamics. In this view, institutions are based on historical compromises between strategically orientated—and above all collective—actors and reflect certain constellations of power and resources. At the same time, institutions create resources. In the case of co-determination, for example, these are their legitimised co-determination claims for works councils or their endowment with personnel resources that are prescribed by law.

Shifts in power and resource positions can lead to individual institutional rules being applied differently, changed or even called into question completely. This is particularly true at points where the institutional rules leave room for different interpretations and where they are difficult to enforce. Such challenges are to be expected in particular when the distribution of power resources shifts in favour of the group of actors who feel disadvantaged by the rules. In the case of co-determination, these are the companies that no longer see co-determination as a benefit, but rather as a restriction on corporate decision-making sovereignty.

On this basis, Streeck and Thelen (2005) distinguish between various forms of gradual institutional change. These include the addition of new functions to existing institutions ('layering'), the replacement of old institutional models with new ones ('replacement'), the change in the environment of an institution and its associated change in meaning or function ('drift'), the transformation of the goals and functions of an institution while retaining its formal structure ('conversion'), and the loss of significance and influence of an institution ('exhaustion'). All strong forms of change, in which the character or significance of institutions changes fundamentally, are in this perspective the result of intended processes in which the defenders of an institution have lost power and resources to its critics. This applies to forms such as replacement and transformation, but also to exhaustion, if it is actively pursued.

The key role of the actors and their power resources allows institutional change to be thematised beyond the rigid concept of path dependency. However, this goes hand in hand with the need to consider the development of actor constellations over a longer period of time. Otherwise, there is a danger of deriving long-term processes from selective changes in power positions and overlooking the fact that actors can learn, develop new capacities to act or tap into and utilise new resources—and thus influence the distribution of resources in turn.

This idea will be important to understand the two very different dynamics that have become increasingly characteristic of German co-determination: on the one hand, *contrasting developments* within co-determination, i.e. strengthening in one segment and weakening in another, and on the other, the significance of *institutional innovations* as an independent form of institutional change that is not included in the typology described above. The discussion about path dependencies and other forms of institutional change forms the background for the following analysis of different lines of development in co-determination, from which seven developments—without claiming to be encompassing—are highlighted.

3 | Seven Developments in Co-Determination

3.1 | Erosion and Exhaustion

The first development is the declining spread of works councils as an institution. This development is easy to identify as exhaustion or erosion. As Figure 1 shows, the proportion of employees covered by works councils has fallen by more than 10 percentage points over the last around 20 years, from 52% in 2000 to just 41% in 2023. This trend is strongly connected with the decrease in the proportion of employees working in companies with a collective bargaining agreement, which fell by 18 percentage points during this period. As a consequence, in 2023 about 42% of the employees in Germany were neither covered by a works council nor by a collective bargaining agreement. The strong link between works councils and collective bargaining agreements is twofold: on the one hand, works councils tend to put pressure on management to join the employers' associations or to negotiate an agreement directly with the trade

unions, and, on the other hand, unions present in companies with collective bargaining agreements use to initiate works councils' elections.

However, this trend of erosion shows some serious differences when comparing sectors. It is possible to distinguish three worlds into which the German industrial relations system has split (Schroeder 2016). In the first world of the export industry and large companies, the institutions of the dual system continue to have a strong binding force. The second world is characterised by the fact that these institutions still exist to some extent or, as in the case of collective agreements, have an informal impact. In the third world, finally, the ties to these institutions are largely severed; here we can speak of a (market) liberal model of labour relations.

Figure 2 contrasts three industries—investment goods, construction and retail—to illustrate this thesis. Investment goods is an industry that represents the first world. Here, still the majority of employees is covered by collective bargaining agreements and works councils; nearly seven out of 10 employees work in an establishment with works councils. The construction industry is an example of the second world; here, collective bargaining coverage is high at just under 60%, but the proportion of companies with works councils is only 11%. Finally, retail is an example of the third world, with collective bargaining agreements covering less than one fourth of the employees and works councils only one out of 10 employees.

A key factor in the spread of works councils is the size of the company. In general, works councils are far more widespread in large companies than in smaller companies: While the proportion of works councils among employees in companies with more than 500 employees is 96%, it is only 7% in companies with five to 50 employees. In contrast, the decline in the prevalence of works councils has been greatest in the company size category between 51 and 500 employees in recent decades and was 13% higher than the average (Ellguth and Trinczek 2016). The main reasons for this are the lower prevalence of unionised employees in these companies, weaker relationships between trade unions and works councils and a lack of acceptance of works councils by management (Artus, Kraetsch, and Rößenack 2016), whereby the latter appears to be increasingly

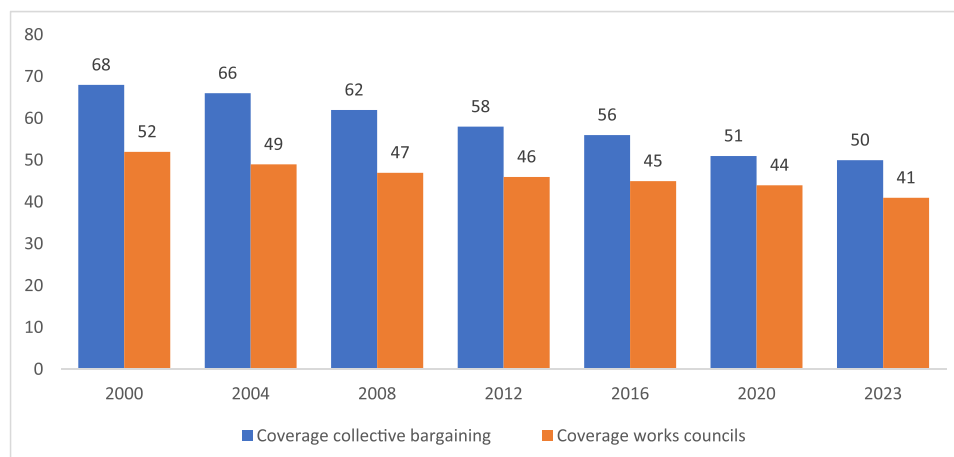


FIGURE 1 | Coverage of collective bargaining agreements and works councils by employees 2000–2023 (Hohendanner and Kohaut 2024).

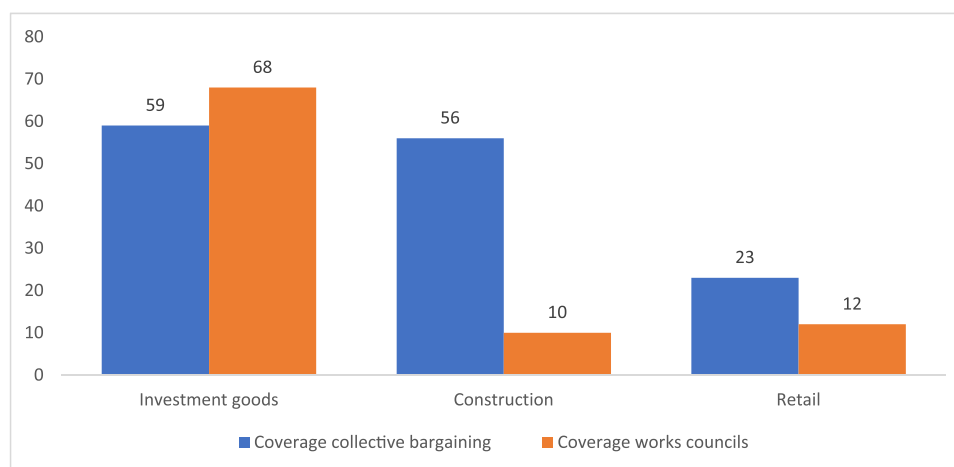


FIGURE 2 | Coverage of collective bargaining agreements and works councils by employees in selected sectors 2023 (Hohendanner and Kohaut 2024).

linked to works council avoidance strategies modelled after union-busting of US companies (Behrens and Dribbusch 2020). The trend towards a decline in co-determination thus combines new corporate orientations and strategies against co-determination and the implementation of its institutionalised rules with a growing weakness in the power and resources of trade unions as the most important supporters of works councils.

3.2 | Works Councils as Co-Managers and Strategic Co-Determination

The debate about co-management has its roots in the early 1990s (Müller-Jentsch 2007; Kotthoff 1994). At that time, two quite contradictory developments in co-determination have been observed. On the one hand, works councils in the core industrial sectors were active as promoters of team work and participative management concepts. Works councils campaigned, albeit with varying degrees of intensity and success, for the introduction of innovative team concepts based on functional integration and extended scope for participation and autonomy of the employees. On the other hand, new topics such as globalisation and whipsawing emerged, and in the political debates of that time collective labour standards were critically questioned as an obstacle to competitiveness. Companies practised new restructuring strategies in which mobility of capital, relocation of production and outsourcing of activities to other companies played a major role. Safeguarding of locations and jobs thus developed into a new core task for works councils (Dörre 2002).

In line with this situation, the concept of co-management was characterised from the outset by two contrasting emphases. According to the more offensive version, works councils developed new co-determination claims for new issues such as participative organisational concepts (Müller-Jentsch and Seitz 1998). In the defensive interpretation, on the other hand, co-management refers primarily to an “economistic” perspective of job security, but not to an extension of co-determination into new fields like work organisation (Kotthoff 1994, 54).

Since then, not least because of the growing importance of safeguarding locations and employment, defensive interpretations of co-management have become more and more prevalent (Kotthoff 1998). Rehder (2003) explicitly referred co-management to alliances to safeguard employment by concession bargaining at the workplace, which can go hand in hand with legitimisation problems for works councils (Rehder 2006). In addition, Behrens and Kädtler (2008) pointed out that the new restructuring strategies of companies are undermining co-management. This is due to the fact that the works councils' opportunities for information and participation are far weaker in the case of outsourcing or relocations abroad than in the case of the introduction of team work, which was the aim of the offensive forms of co-management.

Offensive co-management was primarily a phenomenon of co-determination in large companies. It was the resource-rich and professional works councils of these companies with high trade union density—especially in the automotive industry—that developed and demanded new concepts of work organisation together with the trade union IG Metall in the early 1990s (Bahnmüller and Salm 1996; Kuhlmann, Sperling, and Balzert 2004). At the same time, it is also these companies in which new trends in co-determination are now emerging. The works councils there reacted to the problems of co-management and developed new contours of what can be called a strategic codetermination, as can be observed in the example of the automotive company VW.

At the heart of this strategic codetermination is the extension of co-determination claims to corporate strategies. This includes issues relating to long-term personnel planning, investment strategies or location and outsourcing decisions which are more and more driven by digital or ecological transformations. This extension is based on the assessment by the works councils that codetermination can be all the more effective the earlier it is applied to corporate decisions. Ultimately, this strategy is about a more proactive form of safeguarding of jobs in an era of transformations which starts already at investments. Of course, this does not mean that works councils can actually have a say in all of these issues; it is well known that their legal rights of co-determination are the smallest in these areas. However, at

least in individual cases, such as at VW, it can be observed that works councils are more closely involved in investment planning and are able to develop and successfully negotiate their own concepts for the development of locations and jobs (Haipeter 2019).

However, this proactive strategy requires far greater resources and expertise on the part of the works councils. Works councils must be able to develop their own alternative concepts and put forward good arguments. A number of prerequisites can be identified for this: developing and adapting their own organisational structures, for example by reorganising the work of their committees; organising technical support from specialist advisors; incorporating the expertise of employees; improving the articulation within the multilevel system of codetermination; and, finally, a more active division of labour with the trade union.

Most of these points, in turn, form developments of codetermination of their own, which are discussed below. What they have in common is that they are innovative; they transform the way in which works councils act. At least with regard to the core group of strategic works councils, conversion, therefore, does not lead to a loss of importance of co-determination, but is rather the starting point for innovations and new activities of works councils.

3.3 | Decentralisation of Collective Bargaining

Safeguarding locations and employment is, at the same time, the driving force behind a third development in co-determination, opening clauses for derogations from collective bargaining agreements at the workplace level, which are associated with considerable new demands on works councils. Following Traxler (1995), this development can be called organised decentralisation.

Organised decentralisation in German industrial relations had its origins already in the 1980s, when trade unions and employers' associations started to delegate the regulation of working time flexibility to the company level, at the same time as reducing working hours. In this way, organised decentralisation is, therefore, a matter of the delegating competencies to works councils within a framework of still binding collective bargaining standards, which was possible because works councils have extensive rights of codetermination in working time issues.

From the outset, a controversy was conducted in the literature as to what consequences would be associated with the internalisation of working time. The prevailing and thoroughly sceptical view at the time was based on the assumption that the transfer of regulatory competences would lead to works councils being overburdened in company negotiations with management (Schmidt and Trinczek 1999). In other evaluations, however, this development was assessed more optimistically as an expression of the particular flexibility and adaptability of the German industrial relations system, based on a variable interplay between collective bargaining

autonomy and works constitution as the pillars of the dual system (Turner 1998).

Be it as it may, this form of organised decentralisation later was complemented by opening clauses in collective bargaining agreements on derogations from the standards of collective agreements at company level. Different from working-time flexibility, the trade unions tried to monitor and coordinate the negotiations of such derogations actively, driven by the concern to prevent an uncontrolled expansion of derogation agreements in the companies (Haipeter 2011).

In doing this, the trade unions developed new strategies in conflicts about derogations. Firstly, their focus was on member participation and organising. This was intended to open up opportunities for union members to exert influence, but also to increase the legitimacy of the process and, above all, the attractiveness of the trade unions. Participation in form of voting was planned at the two central interfaces of the negotiation process: The decision to start negotiations and the decision to accept a negotiation result. Secondly, the trade unions tried to develop a close cooperation with the works councils, as a trade union cannot negotiate derogation agreements with any prospect of success without and against the works councils. Although the union is in charge of negotiations, the works councils usually play a central role in the bargaining committees. Works councils, shop stewards and the union as leader of negotiations have to coordinate their interests and develop joint goals and strategies. In this way, these actors work far more closely together than usual in the German dual system, bringing the two pillars of the system closer together. This can be seen as an institutional innovation, a new strategic response to the drift caused by the tectonic shifts in the collective bargaining system.

3.4 | Activation of the Works Councils

The starting point for the activation of works councils by trade unions indeed was the experience of derogations from collective agreements and the growing pressure on works councils to grant concessions in the face of competition between locations and outsourcing to other companies. For this reason, trade unions—and the IG Metall in particular—focussed on strengthening resources and capabilities of works councils to face these challenges. As the most important means of achieving this goal, a new approach to trade union company policy was launched: the activation projects. The activation projects are another expression of social innovations in co-determination.

The first activation project of IG Metall, which then served as a model for later campaigns, was the “Better instead of cheaper” campaign, which was launched in the middle of the 2000s (see Haipeter 2013). The starting point here was also derogations from collective agreements; the question was how derogations could be prevented in advance or, if they were already unavoidable, how they could be negotiated with better results for the workers. The core idea was to enable works councils to develop alternatives to cost-cutting and outsourcing strategies of companies to replace cheaper solutions with better ones.

In the project, the trade union provided advice to works councils by trade union-related consultants in specific situations relating to restructuring or reorganisation. Participation also played a central role here: the advisors involved the employees as experts in their work, whether through workshops, on-site approaches or surveys. In this way, expert knowledge that was not available to management could be used to develop alternative strategies.

This idea inspired more recent trade union campaigns like “Work 2020 in NRW”. The aim here was to enable works councils, supported by advice and guidance from trade union project secretaries, to draw a map of digitalisation in the company, identify labour policy issues and problems and enter into negotiations with company management on “future agreements” in which processes for dealing with the challenges—of digitalisation and beyond—are defined (Haipeter 2020). The approach is, therefore, similar to that of the IG Metall Executive Board project “Labour and Innovation”, which was launched in 2016. Here, works councils are to be empowered in training courses to proactively influence technological change. In contrast to “Work 2020”, however, the majority of the consultation does not take place in the companies on site, but in the union’s training centres, combined with a qualification series organised by the RUB/IG Metall Joint Centre (Schäfers and Schroth 2020).

The activation projects thus aim to restructure the division of labour between works councils and the trade union. Whereas this division of labour was previously characterised by a mostly reactive orientation of the trade unions as service providers for the needs and requests of the works councils, under the auspices of the activation projects, trade unions are taking on a new role as issue setters and drivers of more active co-determination, which might also strengthen their presence in the companies. For works councils, particularly in smaller companies, this means new opportunities to improve their capabilities to act by acquiring new resources and competences. However, it should be noted that, by their very nature, activation projects initially have a limited impact in terms of their spread. However, this does not affect the claim of trade unions to take on a more active role in companies.

3.5 | Participation and Innovation

This activation is, in turn, closely linked to a fifth development in co-determination, the focus on participation and innovation and the associated involvement of employees in the activities of works councils. New legal foundations for this were created back in 2001 as part of a reform of the Works Constitution Act. Here the possibility of delegating tasks to working groups (§ 28.a WCA) and organising support from expert employees (§80 (2) WCA) was introduced. However, these options remained little utilised for a long time. The “proxy model” of interest representation practiced by works councils showed a high degree of persistence. It was not least the activation projects—and the positive experiences of the collective bargaining derogation with employee participation—that brought a new dynamic to the topic of participation and thus promoted social innovations.

A further line of development is formed by the organising initiatives of trade unions, which aim to win over employees as voters for works councils, as active interest representatives on works council committees, and, above all, as members of trade unions. Here too, employee participation plays a key role. Initiatives like those designed for organising white-collar workers in the manufacturing sector are a kind of laboratory for different forms of participation, such as joint working groups of works councils and employees or surveys made with employees. According to research findings, employees greatly appreciate to be approached by the works council as experts. As a result, works councils not only gain expertise, but also legitimacy (Haipeter 2016).

Complementary and, as in the case of “Better instead of cheaper”, linked to new forms of participation by employee representatives, there are also increasing findings that works councils act as drivers and promoters of innovation (Gerlach 2012; Kriegesmann, Kley, and Kublik 2012). However, the “social dimensions of the innovation process in companies” (Schwarz-Kocher et al. 2011) are at the centre of this. Works councils—as experts of the companies and their organisation—are active concerning organisational innovations that are aimed at work organisation, work processes or working time regulations. Here they can contribute their own accumulated knowledge of their organisations, expand their skills and involve employees as experts in their work - and thus as a resource of expertise.

3.6 | Shifts in the Multi-Level System of Co-Determination

A sixth trend in the co-determination of works councils results from shifts in the multi-level system of co-determination, namely between the levels of workplaces, companies and groups. On the works council side, this multi-level system is spanned by the structure of the local works councils, central works councils and group works councils. Central works councils have to be formed if a company consists of more than two establishments with works council committees; group works councils can be formed voluntarily if a company with several subsidiaries has a group structure. These committees are usually composed of the heads—chair and deputy chair—of the local works council committees.

Unlike the organisational structures of companies, these co-determination structures are not hierarchically structured. The upper levels are responsible for issues that affect more than one establishment or company, but this is done according to the principle of delegation from below. It is true that a shift of issues and responsibilities in favour of the supra-local level was already established around 40 years ago. At that time, Rancke (1982) noted an increase in the decision-making competences of central works councils. However, this finding has become more firmly established today; the centre of codetermination in companies is increasingly shifting to “where the music is played” by management, that is, to the committees that face the decision-making levels of the employers (Wassermann 2002). This is all the more important as the level of top management

has become increasingly important in the context of globalisation, reorganisation and outsourcing or the current digital and ecological transformations, which are usually based on decisions made by the management boards.

The main tasks of the central and group works councils include coordinating the local works councils and developing common positions on the one and negotiating agreements with top management on the other hand, both with the aim of containing internal competition and the risk of playing off locations, and developing frameworks by agreements that define minimum standards for local works councils (see the example of Daimler, Hoffmann 2006). As a result, this development leads to a professionalisation of interest representation—promoted by centralising resources and bundling competencies (Behrens 2019). In this way, works councils can develop more strategic capabilities and, ideally, gain impact on company decisions on investments and personnel planning (Haipeter 2019).

This is all the more true, as supervisory board co-determination can be included as a further institutional resource for action by works councils in corporations at company level. Full parity codetermination—apart from the even stronger codetermination in the shrinking sector of steel companies—is mandatory in all joint-stock companies with more than 2,000 employees. Although here the chairman appointed by the shareholder representatives has a double vote and therefore restricts the voting power of the labour representatives, board-level codetermination offers fresh information and deep consultation on business developments or investment decisions to the latter. Works councils benefit from this directly as they make up more than half of the labour representatives on the boards. Moreover, board-level codetermination strengthens the ties between works councils and the trade unions who have seats on the boards, and it offers a direct access to the management board (Gold 2011). However, the institutional resources of board-level representation correspond strongly to the location of the headquarter and the company-level at which the board is located: they are the highest in the case of companies with headquarters in Germany and in boards located at the level of the parent company (Rosenbohm and Haipeter 2019).

At the same time, however, it should be borne in mind that the centralisation of decision-making power can result in deficits of legitimacy and participation for the works councils. Important decisions are made further away from the employees, and opportunities for participation may be reduced to less important operational issues. An alienation between works councils and employees, the latter both in their capacity as voters and as experts in the company, seems to be possible (Wassermann 2002). Some works councils have recognised this and developed measures to counteract it, including new formats for direct communication between centralised works council committees and employees (Haipeter 2019).

These shifts in the multi-level system are, on the one hand, a defensive reaction to external challenges for works councils, such as how to deal with restructuring or transformations; but at the same time they represent, on the other hand, innovative

responses to these challenges which may extend code-termination beyond the norms defined in the WCA by developing influence on strategic company decisions.

3.7 | Transnationalisation of Co-Determination

Transnationalisation, the final trend to mention here, is closely linked with the tendencies of centralisation in the multi-level system. On the one hand, transnationalisation involves the addition of more levels of participation to the national levels of co-determination from above. On the other hand, the transnational forms of interest representation can be seen as a response to the challenges that have arisen as a result of globalisation, competition between locations and corporate reorganisation.

European Works Councils are by far the most important and, above all, the only legally institutionalised form of transnational employee participation on company level (Hann, Hauptmeier, and Waddington 2017). Admittedly, participation here does not extend to the German tradition of veto and decision-making rights of works councils, but only to information and consultation rights. Research has brought to light many findings on the diversity and typologies of the development of European works councils, which - to use the distinctions made by Lecher et al. (1999)—show an extremely wide range from symbolic to participation-oriented bodies. The core indicator here is the way in which interests are aggregated and effectively represented at transnational level. However, there is much to suggest that effective European Works Councils are probably much less common than European Works Councils with merely symbolic relevance. It is no coincidence that more than half of European Works Councils complain that companies do not adequately fulfil their information and consultation obligations (De Spiegelaere, Jagodziński, and Waddington 2022).

German works councils—insofar as they are represented there—usually play a significant role in the bodies of European works councils (see Haipeter, Hertwig, and Rosenbohm 2019). This is due to the fact that they are well resourced and have a high level of expertise compared to interest representatives in other countries. In companies with German headquarters, they can use their strong co-determination rights for transnational interests, either by establishing links with central management on behalf of foreign employee representatives or by introducing transnational issues into negotiations with management themselves. However, this harbours the risk of positioning themselves as benefactors and creating power asymmetries in the European Works Council bodies without the European level being seen as a genuine added value for their own interest representation activities. If, on the other hand, German works councils represent subsidiaries, the European level of action usually means a gain in information and the ability to act for them.

World Works Councils in all known cases build on the established structures of European works councils and expand them. Accordingly, these bodies are also found exclusively in European companies. In a more recent case study on VW, it was

shown that these committees can be very effective in coordinating interests at a global level, provided that gains and losses in investment, production volume and employment are made transparent and distributed among the locations according to principles that are perceived as fair. In this case, the considerable support that employee representatives receive worldwide from the works councils' office at the company's headquarter is an important fact; this support extends to advice and training as well as to the implementation of global framework agreements with the company that set minimum standards for working conditions and the rights of interest representatives (Haipeter 2019).

All in all, the transnational expansion of co-determination is associated with contradictory developments, namely globalisation and whipsawing as a potential threat to the power of trade unions on the one hand, and the possibilities of coordinating and integrating interpretations, resources and interests as an opportunity to expand the ability of works councils to act on the other. It is these contradictions that will be discussed again in the concluding remarks.

4 | Conclusions: About Erosion and New Paths

What characterises the current developments of works councils and co-determination? One answer to this question is that there is no single path of development. Genuine path dependency in the sense of an extensive reproduction of the institution of co-determination exists at best with regard to the legal foundations of co-determination in the WCA, which has changed only marginally in the last 50 years. However, the second answer is that irrespective of this, various developments can be observed which entail partly incremental and partly fundamental changes to the functioning and practice of co-determination and which cannot be explained by the mechanisms of path dependency.

Two conclusions can be drawn from this. Firstly, there is currently a plurality of different—but certainly interconnected—lines of development in co-determination of works councils that point in different directions and combine the processes of erosion, functional change and innovation in co-determination. And secondly, these processes also point beyond the typology of incremental institutional change mentioned at the beginning. This is due to the fact that this typology does not take into account social innovations and the associated revitalisation approaches of the institution, which could point in the direction of new development paths. These conclusions will be briefly explained.

It is true that individual aspects of the seven lines of development can be captured quite well with the typology of incremental change. This applies firstly to the erosion of co-determination caused by the progressive shrinking of its coverage. It coincides with the type of exhaustion, whereby exhaustion can be explained here by the fact that co-determination is often unable to gain a foothold in new companies and that companies seek to avoid setting up works councils. This indicates both a loss of the institution's cognitive

and normative binding power for companies and employees and a relative increase in the power of companies, which can fend off the establishment of works councils without having to fear stronger resistance. However, this erosion is not taking place evenly, as large companies in industry and services have proven to be stable centres of co-determination. Therefore, the result of the erosion so far has not been a widespread decline in co-determination, but rather a dualisation or segmentation of the economy into a co-determined and a non-co-determined sector.

In the co-determined area, in turn, there are further incremental changes with sometimes fundamental cumulative effects. These include the conversion generated by organised decentralisation in the collective bargaining system. This form of decentralisation of collective bargaining creates tectonic shifts in the dual system of labour regulation, which provide works councils with new tasks—an enrichment of functions in the sense of a drift—but which at the same time put growing pressure on works councils. One consequence of these developments was the conversion of works councils' policy towards safeguarding of employment and locations, a process that was primarily caused by the centralised decisions of relocation and outsourcing by company management.

So far, the developments in works councils' co-determination can be summarised using the typology of institutional change, a change that can be explained primarily by the growing room for manoeuvre of companies and the associated increase in their power. Other developments, however, go beyond the categories of this typology because they are characterised by innovations in co-determination.

These include, firstly, new forms of closer cooperation between trade unions and works councils in negotiations on derogations from collective bargaining agreements, in the context of which these players were able to develop joint negotiation strategies and, in some cases, expand the works councils' co-determination claims. With respect to the activation of works councils, it was also the trade unions that developed new approaches that provided new forms of support and skills acquisition for works councils.

At the same time, again with the support of the trade unions, works councils rely less on traditional proxy politics and more on employee participation, both to strengthen legitimacy among voters and to strengthen competence by utilising the expert knowledge of employees. This is an important resource works councils can mobilise. Another important new resource is the professionalisation effect associated with the increasing centralisation within the multilevel structure of codetermination. These developments These developments form the basis for the works councils in large companies to develop strategic orientations and to expand their influence on strategic company decisions. Finally, the transnationalisation of co-determination expands the scope for action of works councils to include the aspect of transnational coordination of interpretations, interests and strategies in dealing with relocations or outsourcing.

These developments das up to a paradoxical picture—the weakening of the institution of co-determination on the one and

the strengthening of the works councils in their remaining core, especially in larger companies, on the other hand. There is little path-dependency about this if one assumes that the stability of the legal norms of co-determination should also be associated with stable scripts of action and increasing returns on them. Rather, erosion indicates that many smaller companies no longer view co-determination as a positive-sum game in this sense. At the same time, this can be seen as a sign that the institutional complementarities of the German coordinated market economy, in which co-determination was woven into the fabric for a long time, are weakening. Companies are taking new contextual conditions such as globalisation, financialisation or the organisational weakness of trade unions as an opportunity to shake off or avoid co-determination.

At the same time, however, co-determination actors, particularly in large companies, have evidently succeeded in developing innovative responses to the new challenges, despite shifts in the balance of power in favour of the companies, which are associated with new resources and capabilities, which in turn can strengthen their position in the relationships with management. This innovative twist can only be understood by focussing on the actors and their ability to find creative solutions that are not completely predetermined by the institutional framework and the distribution of resources. At the same time, the openness of the processes makes it difficult to forecast the further developments of co-determination. At present, it is not possible to say whether sooner or later the erosion processes will also affect the remaining core areas of co-determination in large companies, nor whether the innovative approaches to interest representation policy that can be observed there will instead be strengthened and spread further, or whether other approaches will perhaps be developed in the future on the basis of current experience that are not yet foreseeable. This openness, in turn, marks a general limit to the explanatory power of institutionalist theories and underlines the importance of complementary, action-oriented approaches that emphasise the constructive and innovative dimension of social action—the further elaboration of which, however, is beyond the scope of this article.

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Data Availability Statement

The data that support the findings of this study are available from the corresponding author upon reasonable request.

References

Artus, I., C. Kraetsch, and S. Röbenack. 2016. “Betriebsratsgründungen. Typische Phasen, Varianten Und Probleme.” *WSI-Mitteilungen* 69, no. 3: 183–191. <https://doi.org/10.5771/0342-300X-2016-3-183>.

Bahn Müller, R., and R. Salm. 1996. *Intelligenter, nicht härter arbeiten? Gruppenarbeit und betriebliche Gestaltungspolitik*. Hanburg: VSA.

Behrens, M., and H. Dribbusch. 2020. “Umkämpfte Mitbestimmung: Ergebnisse Der Dritten WSI-Befragung Zur Be- Und Verhinderung Von Betriebsratswahlen.” *WSI-Mitteilungen* 73, no. 4: 286–294. <https://doi.org/10.5771/0342-300X-2020-4-286>.

Behrens, M., and J. Kädtler. 2008. “Betriebliche Restrukturierung Und Partizipation. Wie Viel Teilhabe Erlauben Unterschiedliche Rationalisierungsansätze?” *Industrielle Beziehungen* 15, no. 1: 76–100.

Behrens, M. 2019. “Zentralisierung der Mitbestimmung? Betriebsratsarbeit in Betrieb, Unternehmen und Konzern.” In *Vernetzt und verbunden - Koordinationsprobleme im Mehrebenensystem der Arbeitnehmervertretung*, edited by T. Haipeter, M. Hertwig, and S. Rosenbohm, 11–32. Wiesbaden: Springer. https://doi.org/10.1007/978-3-658-22309-0_2.

Campbell, J. L. 2010. “Institutional Reproduction and Change.” In *The Oxford Handbook of Comparative Institutional Analysis*, edited by G. Morgan, J. L. Campbell, C. Crouch, O. K. Pedersen, and R. Whitley, 87–116. Oxford: Oxford University Press. <https://doi.org/10.1093/oxfordhb/9780199233762.003.0005>.

Dörre, K. 2002. *Kampf um Beteiligung. Arbeit, Partizipation und industrielle Beziehungen im flexiblen Kapitalismus*. Wiesbaden: VS-Verlag.

Ellguth, P., and R. Trinczek. 2016. “Erosion der betrieblichen Mitbestimmung - welche Rolle spielt der Strukturwandel?” *WSI-Mitteilungen* 69 no. 3: 172–182.

Gerlach, F. 2012. *Innovation und Mitbestimmung. Empirische Untersuchungen und Literaturstudien*. Düsseldorf: Hans-Böckler-Stiftung.

Giddens, A. 1984. *The Constitution of Society. Outline of the Theory of Structuration*. Cambridge: Cambridge University Press.

Gold, M. 2011. “Taken on Board: An Evaluation of the Influence of Employee Board-Level Representatives on Company Decision-Making Across Europe.” *European Journal of Industrial Relations* 17, no. 1: 41–56. <https://doi.org/10.1177/0959680110392276>.

Haipeter, T. 2011. “‘Unbound’ Employers’ Associations and Derogations: Erosion and Renewal of Collective Bargaining in the German Metalworking Industry.” *Industrial Relations Journal* 42, no. 2: 174–194. <https://doi.org/10.1111/j.1468-2338.2011.00615.x>.

Haipeter, T. 2013. “Union Renewal and Business Strategies - Strategic Codetermination of Works Councils and the Campaign ‘Better Not Cheaper’ of the German Metalworkers’ Union.” *International Business Research* 6, no. 3: 40–57.

Haipeter, T. 2016. “The Interests of White-Collar Workers and Their Representation in the German Manufacturing Sector: New Initiatives, Opportunity Structures, Framing and Resources.” *Industrial Relations Journal* 47, no. 4: 304–321.

Haipeter, T. 2019. *Interessenvertretung bei Volkswagen. Neue Konturen einer strategischen Mitbestimmung*. Hamburg: VSA-Verl.

Haipeter, T. 2020. “Digitalisation, Unions and Participation: the German Case of ‘Industry 4.0.’” *Industrial Relations Journal* 51, no. 3: 242–260. <https://doi.org/10.1111/irj.12291>.

Haipeter, T., M. Hertwig, and S. Rosenbohm. 2019. “Employee Representation in Multinational Companies.” In *The Articulation of Interests in Multilevel Action Fields*. Cham: Palgrave Macmillan. <https://doi.org/10.1007/978-3-319-97559-7>.

Hall, P. A., and D. Soskice. 2001. “Introduction.” In *Varieties of Capitalism: The Institutional Foundations of Comparative Advantage*, edited by P. A. Hall and D. Soskice, 1–71. Oxford: Oxford University Press.

Hann, D., M. Hauptmeier, and J. Waddington. 2017. “European Works Councils After Two Decades.” *European Journal of Industrial Relations* 23, no. 3: 209–224. <https://doi.org/10.1177/0959680117715190>.

- Hoffmann, A. 2006. "The Construction of Solidarity in a German Central Works Council: Implications for European Works Councils." Dissertation, Warwick. http://wrap.warwick.ac.uk/58483/1/WRAP_THESIS_Hoffmann_2006.pdf.
- Hohendanner, C., and S. Kohaut. 2024. "Tarifbindung Und Betriebliche Interessenvertretung: Ergebnisse Aus Dem IAB-Betriebspanel 2023." *WSI-Mitteilungen* 77, no. 4: 289–295. <https://doi.org/10.5771/0342-300X-2024-4-289>.
- Kotthoff, H. 1994. "Betriebsräte und Bürgerstatus." In *Wandel und Kontinuität der Mitbestimmung*. München/Mering: Hampp.
- Kotthoff, H. 1995. "Betriebsräte Und Betriebliche Reorganisation." *Arbeit* 4, no. 4: 425–447. <https://doi.org/10.1515/arbeit-1995-0406>.
- Kotthoff, H. 1998. "Mitbestimmung in Zeiten Interessenpolitischer Rückschritte. Betriebsräte Zwischen Beteiligungsofferten Und Gnadenlosem Kostensenkungsdiktat." *Industrielle Beziehungen* 5, no. 1: 76–100.
- Kriegesmann, B., T. Kley, and S. Kublik. 2012. *Mitbestimmung als Innovationstreiber. Bestandsaufnahme, Konzepte und Handlungsperspektiven*. Berlin: Edition Sigma.
- Kuhlmann, M., H. J. Sperling, and S. Balzert. 2004. *Konzepte Innovativer Arbeitspolitik. Good-Practice-Beispiele aus dem Maschinenbau, der Automobil-, Elektro- und Chemischen Industrie*. Berlin: Sigma.
- Lecher, W., K.-P. Weiner, S. Rüb, and H.-W. Platzer. 1999. *Europäische Betriebsräte - Perspektiven ihrer Entwicklung und Vernetzung. Eine Studie zur Europäisierung der Arbeitsbeziehungen*. Baden-Baden: Nomos.
- Mahoney, J., and K. Thelen. 2010. "A Theory of Gradual Institutional Change." In *Explaining Institutional Change: Ambiguity, Agency and Power*, edited by J. Mahoney and K. Thelen, 1–37. New York: Cambridge University Press. <https://doi.org/10.1017/CBO9780511806414.003>.
- Müller-Jentsch, W. 2007. *Strukturwandel der Industriellen Beziehungen. Industrial Citizenship zwischen Markt und Regulierung*. Wiesbaden: Springer.
- Müller-Jentsch, W., and B. Seitz. 1998. "Betriebsräte Gewinnen Konturen. Ergebnisse Einer Betriebsräte-Befragung Im Maschinenbau." *Industrielle Beziehungen* 5: 361–387.
- Ranke, F. 1982. *Betriebsverfassung und Unternehmenswirklichkeit. Eine Analyse von Organisation und Formen der Betrieblichen Arbeitnehmer-mitbestimmung in der Praxis von Großunternehmen und Konzernen*. Opladen: Westdeutscher Verlag.
- Rehder, B. 2003. *Betriebliche Bündnisse für Arbeit in Deutschland. Mitbestimmung und Flächentarif im Wandel*. Frankfurt/New York: Campus.
- Rehder, B. 2006. "Legitimitätsdefizite Des Co-Managements/Missing Legitimacy: Betriebliche Bündnisse Für Arbeit Als Konfliktfeld Zwischen Arbeitnehmern Und Betrieblicher Interessenvertretung/Company Pacts for Employment and Competitiveness as an Issue of Conflict Among Works Councils and Employees." *Zeitschrift für Soziologie* 35, no. 3: 227–242. <https://doi.org/10.1515/zfsoz-2006-0304>.
- Rosenbohm, S., and T. Haipeter. 2019. "German Board-Level Employee Representation in Multinational Companies: Patterns of Transnational Articulation." *European Journal of Industrial Relations* 25, no. 3: 219–232. <https://doi.org/10.1177/0959680119830558>.
- Schäfers, K., and J. Schroth. 2020. *Industrie 4.0 im Sinne der Beschäftigten*. Berlin: Friedrich-Ebert-Stiftung. <library.fes.de/pdf-files/iez/16841-20201123.pdf>.
- Schmidt, R., and R. Trinczek. 1999. "Der Betriebsrat als Akteur der industriellen Beziehungen." In *Konfliktpartnerschaft. Akteure und Institutionen der Industriellen Beziehungen*, edited by W. Müller-Jentsch, 103–128. München, Mering: Hampp.
- Schroeder, W. 2016. "Konfliktpartnerschaft – Still Alive. Veränderter Konfliktmodus in Der Verarbeitenden Industrie." *Industrielle Beziehungen* 23, no. 3: 374–392. <https://doi.org/10.1688/IndB-2016-03-Schroeder>.
- Schwarz-Kocher, M., E. Kirner, J. Dispan, et al. 2011. *Interessenvertretungen im Innovationsprozess. Der Einfluss von Mitbestimmung und Beschäftigtenbeteiligung auf Betriebliche Innovationen*. Berlin: Edition Sigma.
- De Spiegelaere, S., R. Jagodziński, and J. Waddington. 2022. "European Works Councils: Contested and Still in the Making." Brussels: ETUI. www.etui.org/publications/european-works-councils-contested-and-still-making.
- Streeck, W., and K. Thelen. 2005. "Introduction: Institutional Change in Advanced Political Economies." In *Beyond Continuity: Institutional Change in Advanced Political Economies*, edited by W. Streeck and K. Thelen, 1–39. New York: Oxford University Press. <https://doi.org/10.1093/oso/9780199280452.001.0001>.
- Traxler, F. 1995. "Farewell to Labour Market Associations? Organized Versus Disorganized Decentralisation as a Map for Industrial Relations." In *Organized Industrial Relations in Europe: What Future*, edited by C. Crouch and F. Traxler, 3–20. Aldershot, Brookfield: Avebury.
- Turner, L. 1998. *Fighting for Partnership. Labor and Politics in Unified Germany*. Ithaca/London: Cornell University Press.
- Wassermann, W. 2002. *Die Betriebsräte. Akteure für Demokratie in der Arbeitswelt*. Münster: Westfälisches Dampfboot.