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Weakening codetermination? Works council reform in West Germany in the 1980s

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discussion paper

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**Weakening Codetermination?
Works Council Reform in
West Germany in the 1980s**

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Abstract

Codetermination (*Mitbestimmung*) in (West) Germany has been one of the most controversial areas of political and economic conflict. When the CDU-led coalition came to power in 1982, there was a widespread expectation that the powers and privileges enjoyed by works councils (which had been significantly extended by the outgoing coalition of Social Democrats and Liberals) would be restricted. The only significant legislative assault on the institutions of *Mitbestimmung*, however, came in the form of two relatively minor initiatives - to reform works council electoral law (*Minderheitenrechte*) and to set up representative bodies for 'middle management' within firms (*Sprecherausschüsse*). Despite strong backing from various elements within the coalition, however, these proposals, although eventually approved by Parliament, were significantly diluted in the consultative process, and in their final form have had almost no impact.

This paper examines the passage of these two proposals as a way of addressing the broader question of why 'neoliberalism' (in particular the anti-union agenda) made so little progress in West Germany during the 1980s. It rejects the common political science explanation that policy radicalism in Germany is inhibited by federalism and a culture of consensual policy-making. In its place, it suggests two factors that are responsible for frustrating radical change. Firstly, the complex bargaining between coalition partners that was required to construct a legislative majority entailed a series of trade-offs that watered down the main thrust of the two proposals. Secondly, more significantly (and from an Anglo-American perspective more surprisingly), German employers were *opposed* to the very reforms that the conservative government claimed would advantage them. This opposition can only be understood by examining the distinctive incentives and constraints facing employers in a co-ordinated production regime.

Zusammenfassung

Unter allen wirtschaftlichen und politischen Auseinandersetzungen in Deutschland wurde von jeher der Streit um die Mitbestimmung am heftigsten geführt. Als 1982 die CDU-geführte Koalition an die Macht kam, war die Erwartung weit verbreitet, daß Einfluß und Vorrechte der Betriebsräte (die noch kurz vor ihrem Ende von der sozialliberalen Koalition beträchtlich ausgeweitet worden waren) nun deutlich eingeschränkt werden würden. Doch es kam anders: Der einzige gesetzgeberische Versuch von einiger Bedeutung gegen das Regelwerk der Mitbestimmung wurde durch zwei nicht „ins Herz“ der Mitbestimmung zielende Initiativen vorgetragen: die Minderheitenrechte regelnden Bestimmungen zu den Betriebsratswahlen zu verändern und als Vertretungsorgane für das Mittelmanagement sog. Sprecherausschüsse einzuführen. Trotz großer Unterstützung von seiten der Koalition wurden diese Vorschläge, obwohl vom Parlament bereits verabschiedet, im Gesetzgebungsverfahren entscheidend abgeschwächt und hatten so im Endeffekt fast keine Wirkung mehr.

In der vorliegenden Analyse wird die parlamentarische Behandlung der beiden Vorschläge als Indikator für die prinzipiellere Frage gesehen, warum sich in der Bundesrepublik in den achtziger Jahren der Neoliberalismus (und hier vor allem dessen antigewerkschaftlicher Impetus) nur in so geringem Maße durchsetzen konnte.

Als Ergebnis wird die weitverbreitete politikwissenschaftliche Argumentation widerlegt, derzufolge durch den Föderalismus eine zu radikalen Lösungen neigende politische Kultur verhindert und stattdessen eine auf Konsens ausgerichtete Politikgestaltung praktiziert wird. Vielmehr wird auf zwei Einflußmomente verwiesen, die radikale Veränderungen verhindern:

Zum einen mußten in dem zur Sicherung der parlamentarischen Mehrheit notwendigen, komplizierten Aushandlungsprozeß zwischen den Koalitionspartnern bereits Kompromisse geschlossen werden, durch die das eigentliche Anliegen beider Initiativen bereits erheblich verwässert wurde. Als bedeutsamer aber erwies sich - und dies ist aus angelsächsischer Perspektive überaus überraschend -, daß die deutschen Unternehmen gerade die Reformen ablehnten, die die konservativliberale Regierung als in deren Interesse liegend begründet hatte. Diese ablehnende Haltung ist nur zu verstehen, wenn die spezifischen Anreize und Beschränkungen genauer in Betracht gezogen werden, denen sich die Arbeitgeber in einem koordinierten Produktionsregime gegenübersehen.

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0. Introduction

The history of codetermination in Germany testifies both to the strength of the class divide in the German industrial tradition, and to the ability of a political system to institutionalise compromise. Few issues have provoked as intense and prolonged political tussles as that of control of the workplace. Worker participation in factories (in *Arbeiterausschüsse*) was brought in during the First World War as a concession to unions in return for cooperation with the war effort. During the Weimar years, works councils were set up as subsidiary bodies of the (reformist) trade unions, largely to isolate the radical Left within the German labour movement. Their independence and activities were, however, quickly circumscribed by the intransigence of employers associations, worsening economic conditions, disintegration of the national union movement, and finally by the legislation of the National Socialists.¹ In the years of Allied occupation after the War, co-determination experienced a renaissance. In heavy industry in particular, company-level representation for workers flourished, encouraged both by the weakness of German employers after the removal or discrediting of powerful industrialists, and by the Allies' view that stronger workers' representation would prevent a recurrence of the political alliances that underpinned Nazism.

Codetermination in the Federal Republic was shaped by two laws of the early 1950s. The first, the Codetermination Act of 1951, represented a significant victory for organised labour.² The act applied exclusively to the coal and steel industry (the *Montan* industries), and required an equal number of representatives of a company's workforce and stockholders on supervisory boards of large companies ('parity codetermination').³ Despite the opposition of German industry, the Act was passed by Adenauer's Christian Democrat government, with only the 50 FDP representatives voting against. A year later, however, the unions failed to force the government to extend these terms to other industries. The 1952 Works Constitution Act stipulated that only a third of seats on supervisory boards of large (non-*Montan*) firms be reserved for

¹ See Thelen (1991), pp. 63-71. The comprehensive history of pre-World War One worker participation is Teuteberg (1961). On organised labour in the metalworking sector before 1945, a good overview can be found in Markovits (1986), pp. 179-83.

² The 1951 Act's terms merely confirmed the situation that already existed in the western sectors of occupied Germany, and which had been codified under the Allied Occupation in 1948 (Kontrollratsgesetz 22, article 75).

³ A fuller explanation of the terms of this and the 1952 Works Constitution Act is provided in Streeck (1992), pp. 138-46. German companies have both a supervisory board and a management board. On the latter, workers were entitled only to a labour director, who could not be appointed against a majority of the labour representatives on the supervisory board. In the event of deadlock on supervisory boards, an additional member (almost always a member of management) was called upon to break the tie. These two caveats eliminated the possibility that the Act could lead to a fundamental transfer of power within firms.

workers' representatives. In addition, although the act made provision for the establishment of works' councils at the plant level, two important features of the law limited the significance of this achievement. First, the rights (consultative and 'codetermining') works councils enjoyed were exactly specified, and, compared to much practice under existing federal states' laws, considerably limited.⁴ Even more importantly, employers and Christian Democrats saw the legal recognition of works councils as an opportunity to *undermine* the link between German unions and workplace representation, and so to fragment the institutions of organised labour. Works councils had no formal link to German unions, and were required by law to orient their activities to the interests of the company. Markovits goes so far as to suggest that "(t)he employers and their parliamentary allies hoped to restrict - even eliminate - labor's collective power on the shop floor by replacing the presence of unions with that of factory-minded, syndicalist and highly particularistic works councils."⁵

Despite this intention, the trade unions within the national confederation came to dominate works councils across industries and co-ordinate their demands and activities. Particularly important in this regard has been the ability of unions through labour directors to control personnel recruitment, and the full-time officials on supervisory boards who have maintained contact between the national union and local representatives. The position of trade unions within companies was further reinforced by the findings of the Biedenkopf Commission in 1970, set up by the Grand Coalition to investigate the practice of codetermination in the *Montan* industries, with a view to its extension. Biedenkopf reported that codetermination on the supervisory boards in coal and steel had resulted in compromise rather than antagonism between labour and capital - between 1964 and 1968, the 'neutral member' had never been called upon to exercise a casting vote in 72% of the companies concerned.⁶ Furthermore, the inclusion of labour representatives had not resulted in a relegation of the goals of profitability and productivity, though a greater attention to manpower questions had been a resulting benefit.

When the Social Democrats emerged as the dominant coalition partner in 1969, they set about planning legislation to extend codetermination. The 1972 Works Constitution Act (BetrVG 1972) replaced the 1952 Act, and expanded the rights and resources of works councils, as well as the legal obstacles barring union officials from holding office in works councils. However, while the SPD's coalition partners, the liberal FDP, were prepared to approve a strengthening of works councils, they strongly resisted, under pressure from business, the extension of the *Montan* parity formula for codetermination on supervisory boards to other industries. Although a new

⁴ "The DGB executive board passed a resolution charging that the 1952 legislation not only would annul the better regulations provided by existing state laws, in some ways it was not even as favourable as the 1920 Works Council Law" (Thelen (1991), p.75).

⁵ Markovits (1986), p.80-1.

⁶ Mitbestimmungskommission (1970), p.143.

Codetermination Act was eventually passed in 1976, it was “a compromise that lay somewhere between the coal and steel model and the one-third formula of the Works Constitution Act”.⁷ The Act may have disappointed the unions, but it succeeded in angering employers associations sufficiently to provoke a constitutional challenge to the law’s validity. After three years of protracted legal battle the Federal Constitutional Court declared the law constitutional in 1979, rejecting the argument that the combined effects of the 1972 and 1976 Acts constituted an equivalence of parity on supervisory boards. Employers continued to oppose the law, however, and used a variety of subtle strategies to reduce the impact of the 1976 Law - e.g., by legal reclassification of enterprises to reduce the total pool of companies covered. When the Social Democrats fell from power in 1982, the stage seemed set for a concerted assault on the forms and scope of codetermination in German economic life.

As expected, the CDU-led administration, pressured by both their FDP coalition partners and ‘neoliberal’ voices within the party itself, renewed the battle over works councils. But the battle of the 1980s was not about the formal standing of works councils before the law, as it had been in the 1950s and 1970s. Nor did it tackle head-on the sets of issues over which works councils had codetermining powers. Rather, the debate in the 1980s centred around two separate initiatives pertaining to the de facto monopoly of power exercised by the DGB - the main trade union confederation - within the works council system. The first of these was concerned with the protection of minority unions (and non-unionised workers) on works councils, and particularly in elections to these bodies; the second concerned the establishment of representative bodies for ‘middle management’ distinct from those covering the conventional workforce. Taken together, these legislative moves amounted to an indirect but highly significant assault on the institutional and strategic foundations of the German trade union movement. Yet the legislation that emerged from a protracted four-year struggle over these proposals was of marginal consequence to the position of the DGB, and has had little effect since its enactment in January 1989. This paper examines the process by which a fundamental threat to one of the pillars of the German industrial relations system dissipated almost entirely, and the reasons for this political retreat.

The argument put forward here rejects three hypotheses about the sources of resistance to ‘neoliberal’ policy initiatives in the West German case. The first suggests that neoliberalism was an Anglo-American phenomenon, emerging from a tradition of limited government and suspicion of highly organised social actors as ‘bearers’ of public power. In contrast, the evidence put forward here demonstrates a desire on the part of a significant portion of the government coalition to use the principle of promoting democracy within

⁷ Streeck (1992), p.148. A formal adoption of the parity model for other industries was diluted by requirements that one of the delegation of labour representatives come from middle management (*leitende Angestellte*), and that these representatives could not be appointed by unions directly.

and between unions as a way of undermining their collective unity. Secondly, the fact that the legal standing of workers and unions in Germany has not been eroded is sometimes attributed to the *extent* of social protection enjoyed by German labour. The rights of workers are so entrenched that it has simply been politically impossible to overcome the resistance of German unions. In the cases discussed here, however, the virulent opposition of German unions played little role in hindering the advance of the desired reforms. Rather, the clues to the stuttering trajectory of reform lie in the fractures within the coalitions that supported different parts of the final policy package, and with the groups which were expected to, but in fact did not, support the proposals. Thirdly, it is commonly claimed that the Madisonian design of the German political system frustrates attempts at significant reforms of whatever partisan variety. Institutions with overlapping competencies providing multiple veto points, and often constituted along consensual lines, generate too many opportunities for too many potential opponents to allow anything controversial to make its way to statute. But this argument is true only in special circumstances and certain cases. The example of reform of workplace representation in the 1980s illustrates precisely how *little* a German government can be constrained by the formal powers of rival institutions, and how significantly by tensions within its own coalition.

In place of these explanations, I argue in this paper that the attempt to reform workplace representation was transformed by two sets of factors - firstly, by the (perhaps surprising) preference of employers (in both large and small firms, across sectors) and their representative associations, that the two challenges to the representational monopoly of the DGB unions be *rebuffed*; and secondly, by the modifications to various parts of the reform package that were required as 'side-payments' to crucial political groups within the coalition in order to secure their support.

The paper first addresses the background to the two proposals in turn, and sketches the proposals put forward by the coalition government in 1984-5. Unusually, the issues excited a united opposition from both the DGB and the German employers' associations, whose views are examined in section 3. The complex political dynamics within the coalition are then examined in section 4, focusing in particular on the way in which the policy proposals were combined and then repeatedly watered down in order to appease conflicting constituencies within the coalition.

1. Challenging *Einheitsgewerkschaft*

1.1: Minority Rights in Works Councils (*Minderheitenrechte*)

According to Article 1 of the BetrVG 1972, works councils may be elected in plants with five or more permanent employees.⁸ In fact, the incidence of works councils is relatively low in small firms compared to medium- and large-sized companies, perhaps because workers in small firms stand to suffer from 'employer reprisals' if, as the Act allows, they call for and establish a representative body. The Act limited the works council's term to three years, elected by a direct vote of all the plant's permanent employees. The nomination of candidates is controlled by the various unions present in the workplace, and occasions the most significant conflicts between German unions in industrial life.

During the Second World War, the leaders of the exiled unions agreed to reconstruct the German union movement using the principles of *industrial* and *non-sectarian* organisation (the famous principle of *Einheitsgewerkschaft*). The result was the establishment between 1948 and 1950 of sixteen *Industriegewerkschaften* (industrial unions), including both blue- and white-collar workers, grouped at the national level into a politically independent federation (*Deutscher Gewerkschaftsbund*, DGB). Soon after its founding, however, the DGB's monopoly of worker representation was challenged by white-collar workers and civil servants, who demanded the reconstruction of the social democratic unions of the Weimar Republic. When the DGB refused to co-operate with these groups, they independently established a German White Collar Union (the DAG, *Deutsche Angestellten Gewerkschaft*) and a German Civil Servants Federation (the DBB, *Deutscher Beamten Bund*). Three years later, the DGB seemed to breach its commitment to partisan neutrality when its leaders publicly supported the SPD during the 1953 electoral campaign. Despite the intervention of Adenauer to prevent a split in the DGB, a small group of breakaway unionists from the Christian Democratic wing of the DGB split off to found the Christian Union Movement (the CGB, *Christliche Gewerkschaftsbewegung*⁹).

The numerical and political importance of these rival federations has always been small, though within sectors they exercise considerable leverage. The DAG accounts for about 20% of all white-collar workers in Germany, while around 45-50% of all civil servants belong to the DBB. The CGB, while organised in a federated structure that shadows the DGB sector-by-sector, has

⁸ Works councils were not permitted in firms with fewer than five employees, in the civil service (which has an independent system of employee representation), in religious organisations, and in firms which are part of the media.

⁹ In 1959 the CGB merged with the member of a former right-wing union to form the *Christlicher Gewerkschaftsbund*.

never had a total membership exceeding 350,000. In consequence, the DGB could claim over 83% of the total unionised workforce when the CDU-FDP-CSU government came to power in 1982.¹⁰ The DGB has developed very close links to the SPD since the early 1950s, and is therefore seen by many on the 'right' as a political enemy. Indeed, the Bavarian CSU, with its own strong links to the small CGB union movement, has on occasions intimated its support for a state-sponsored promotion of the CGB as a way of weakening the DGB's strong position within the national labour movement.¹¹

As noted above, the DGB has overcome the potentially divisive effects of establishing workplace representative bodies by forging strong links between works councils and the union structures. This link is seen as a vital plank in the maintenance of solidarity across industries, and in securing the DGB's control of coordinating workers' representation in both the spheres of traditional collective bargaining at the industry level *and* the various domains of qualitative issues reserved to works councils by the BetrVG 1972. Control of works councils comes primarily through control of who gets elected to works councils, and who gets nominated to sit on the important works council committees (which in effect are the executive directors of works council affairs). The DGB's ability to control these two processes - candidate selection and committee appointments - has been secured by three factors. First, the disproportionate number of workers affiliated to DGB unions across all sectors has transferred into a DGB dominance of work council positions. Second, the relevant law governing candidate selection to works councils (section 15 of the BetrVG 1972) stipulated that candidates (or lists of candidates slated by unions) had to receive the signatures of one-tenth of the eligible workforce in order to be nominated. Given that no other federated union covered anywhere near 10% of the total workforce, this had the effect of guaranteeing that non-DGB affiliated unions would obtain limited representation on works councils in certain sectors only, and thus exaggerated the degree of dominance enjoyed by the DGB in the workforce. In the coal-mining industry, for example, about 93% of elected works councillors were members of the DGB-affiliated German Miners Union (the IGBE, or *Industriegewerkschaft für Bergbau und Energie*).¹²

Third, a number of additional rules (of dubious legality) were widely imposed by the works council election committees - run by DGB union representatives - to reinforce their dominance. Already in 1978 some examples

¹⁰ It is important to remember that well over half of the German workforce is non-unionised (59.87% in 1981), so the DGB covers around one-third of the total West German workforce. In the last four years, membership of DGB-affiliated unions has been declining slowly but steadily - in 1995 the DGB covered just under 10 million workers out of a total workforce of 34.4 million (around 29%). See "German unions confront meltdown", *The Independent* on Sunday, 28 April 1996.

¹¹ The most notable case was that of the Stoiber paper, an internal CSU document that discussed possible strategies for countering the growing radicalism within the DGB. See Deppe et. al. (1978)

¹² On the links between unions and codetermination see Streeck (1981), pp. 236 ff.

of ballot-rigging had been exposed ¹³, but during the 1984 elections these and other practices received considerable press attention and criticism, no doubt in large measure because of the political tensions produced by the metalworkers' dispute over reduced working time. A catalogue of complaints about undue DGB influence on the conduct of elections and inadequate publicity were received concerning the Mannesmann iron and steel plant in Duisburg-Huekingen. In a number of sectors, the DGB-union was accused of discouraging workers from supporting non-DGB candidates - in some cases by forbidding workers signing nominations for more than one candidate; in others by preparing forms for workers to sign withdrawing their signatures from nominations of non-DGB candidates; in still others by informal pressure from plant officials on individual workers not to sign.¹⁴ The appointment of committee representatives by works councils was also subject to manipulation. DGB majorities on the councils commonly distributed the important committee chairs and sabbatical positions (*Freistellungen*) exclusively to DGB-union representatives. As a result, works councils with 51% DGB composition could and did appoint committees run solely by their own union. At Kugelfischer's plant in Schweinfurt, for example, works council elections in 1984 gave IG Metall 18 of 33 works councils seats, 10 to the CGB and five to the DAG. All of the important sabbatical posts, however, were allocated by the DGB-majority led council to DGB members.¹⁵

Critics of the DGB, however, pointed to signs of weakening support for their member unions in the 1984 election results. In the elections for central works council positions in Siemens AG, for example, under 30% of the seats were won by IG Metall representatives, and over 60% in total by candidates with no union affiliation at all. Overall, 1984 saw the share of works council places going to non-unionised representatives exceed 25% for the first time (see Appendix 1 for historical data on the results of works council elections in the FRG). Some commentators speculated that the fate of the DGB unions might parallel that of the social democratic political movement to which it had tied itself so closely in the preceding decade.¹⁶ Protection of the rights of the so-called minority unions had been promoted by the CSU (and to a lesser extent by the FDP) for some time, but the advent of a new Christian-Liberal coalition coupled with evidence of corruption in the wake of the metalworkers' strike served to re-ignite the issue in 1984. The inevitability of legislative action was finally confirmed by the constitutional court's confirmation of a previous ruling in November 1984 that the 10% threshold requirement of signatures for candidacy was unconstitutional, as it generated a de facto DGB monopoly in

¹³ In a Daimler-Benz plant in Stuttgart, the courts ordered fresh elections after fake ballot papers were uncovered, while at Lufthansa in Frankfurt a union official was dismissed having taken the election urn home for an evening!

¹⁴ See examples in von Tiesenhausen (1984).

¹⁵ Der Spiegel (1984).

¹⁶ See von Tiesenhausen (1984).

works councils in contravention of Article 3 of the *Grundgesetz*.¹⁷ Partisan support for legislation lowering the signature threshold was thus from late 1984 supported by the imperative of constitutional necessity.

1.2: Representation for middle management (*Sprecherausschüsse für Leitende Angestellte*)

The battle over codetermination was premised on a view of a dominant cleavage in economic life between workers and owners. In many industries, however, a stratum of middle managers - employees with significant executive powers (including hiring and firing) but subordinate to higher authorities within the firm - escaped these straightforward classificatory categories. As early as 1971 the FDP in its *Freiburger Thesen* had raised the demand for middle management committees (*Sprecherausschüsse*), and in the same year the CDU introduced a bill to the Bundestag along the same lines. The 'pro-market' FDP has consistently supported the introduction of these committees on the grounds of fairness to all groups within the company. Politically, however, the advantage of the proposal lies in the possibility for setting up a rival representative body to the works council, thus undermining worker solidarity and weakening the constraints on managerial autonomy. The FDP resurrected the issue during the 1980 election, and shortly before the formation of the new coalition in October 1982 a prominent CDU Bundestag member, Wolfgang Vogt, indicated his party's support for new legislation in the near future.

One of the main arguments used in favour of such committees was an inconsistency in the social democrats' legislation of the 1970s. The 1976 Codetermination Act made provision for representatives of middle management to sit on firm supervisory boards and central company works councils - the 1972 Act, however, had not recognised this group at the plant level works councils at all. Nevertheless, *Sprecherausschüsse* were set up on a voluntary basis in about 400 firms before legislation compelling their establishment was prepared in the mid-1980s. Employers in these firms claimed that they had been very successful (though they resisted giving the committees a legal basis). The representative association of *leitende Angestellte*, the ULA, was unsurprisingly a vociferous proponent of a mandatory committee system. Jürgen Borgwardt, their head, argued that the existing works council system could not legitimately encompass middle management, as the interests, social standing and tasks of the two groups were simply too different. The ULA saw a Christian-Liberal coalition as offering an unmissable opportunity to legislate on *Sprecherausschüsse*, one which the opposition of the DGB and SPD had successfully suppressed for nearly 15 years.¹⁸ For their part, the DGB quite

¹⁷ The ruling was regarding a passage in the *Bundespersonalgesetz* concerning employees in the public sector, but as the passage was identical to that in the *BetrVG* 1972, the need for amendment was extended to the latter. For details on the ruling, see *Die Zeit* (1984).

¹⁸ See "ULA: Schutz vor einer Majorisierung", *Handelsblatt* (3 October 1985).

clearly interpreted *Sprecherausschüsse* as threats to their de facto monopoly over German workers, precisely the result that attracted the proposal to the FDP and CDU *Wirtschaftsflügel* (business wing). While conceding the distinct contractual position of middle management, DGB spokesmen were at pains to point out that in no way could *leitende Angestellte* be understood as a “third force” (*dritte Macht*) in German industrial relations, and therefore that the existing apparatus of worker representation was perfectly adequate to accommodate their grievances.

Each of the two proposals affecting works councils had its own constituency of political supporters within the governing coalition. The protection of minority groups within works councils was promoted primarily by the CSU as a means of improving the position of the Christian trade unions¹⁹; while advocating distinct factory representation for middle management had been the political hobby-horse of the FDP for a number of years prior to 1982. The pro-business wing of the CDU, meanwhile, was generally supportive of both initiatives. The same could not be said of Chancellor Kohl and Norbert Blüm, the Labour Minister. In the wake of the damaging metalworkers strike in 1984, Blüm and Kohl were anxious to avoid any showdowns with the unions. This imperative of conflict avoidance was heightened by the bitter struggle over the reform of the strike payments law that gained momentum between 1984 and 1986. It is a testament to the strong bargaining positions inside the coalition enjoyed by the two smaller parties that a reticent political elite within the CDU were forced to acknowledge the pressures for legislative reform, and risk further antagonism between the social partners and the government.

Though the initiatives were sponsored by different groups within the coalition, the motivations that inspired them were linked in three important ways. Firstly, they were both prompted by a perception of radicalism within the DGB movement during and after the 1984 strike. In both cases, a motivating ideal for the supporters of reform was that the DGB’s militancy had increased notably, and that such radicalism had its structural roots in an organisational monopoly over workers. Strengthening rival groups and rival institutions to those dominated by the DGB was therefore an attempt in part to engender moderation by encouraging competition between forms of worker representation. Secondly, both initiatives were motivated to some degree by the desire to weaken the position of labour in the workplace. The (largely intended) effect of setting up *Sprecherausschüsse* as well as of improving the position of minority unions within works’ councils was seen to be to weaken the ability of the DGB to speak with one voice, and so indirectly to increase the bargaining strength of management. Thirdly, and most significantly, these intentions constituted a flagrant challenge to the principle of *Einheitsgewerkschaft* that had been the foundation of the DGB’s *de facto*

¹⁹ The idea for the initiative was attributed to Franz-Josef Strauss and Edmund Stoiber of the CSU, and was an important part of Strauss’ campaigns in the Bayern regional elections. The CSU’s most prominent Bundestag advocate of ‘minority rights’ in works councils was Peter Keller.

monopoly of the German workforce. Both proposals aimed at splintering worker representation, while the proposal to strengthen minority unions' rights also aimed at injecting partisan-tinged competition between unions. The importance of *Einheitsgewerkschaft* to the architecture of German industrial relations can hardly be exaggerated. The dominance of DGB-affiliated unions has been a cornerstone of the ability of the social partners to coordinate wages and other supply-side variables within and across industries. Threats to the organisational monopoly of the DGB therefore can without excessive drama be interpreted as attacks on the characteristic mode of economic governance in (West) Germany.²⁰

²⁰ Familiar and influential characterisations of German political economy which agree on this pivotal characteristic are: Katzenstein (1987); Soskice (1991); Streeck (1992).

2. The Opposition of the Social Partners

From the announcement by the coalition in November 1984 that legislation was to be introduced to amend the BetrVG 1972 the German unions went onto the offensive. Hans Mayr, head of IG Metall, warned the coalition against “weakening the unions through policies of division and by reinforcing the position of industrialists under the pretext of protecting minorities”. His colleague, Horst Klaus, made the point more clearly - the proposal was “a declaration of war on the unions”, and clearly “part of a comprehensive anti-union strategy”.²¹ In the eyes of the unions, the proposal to strengthen minority unions was an attempt to weaken the DGB using a spurious justification of promoting internal democracy. Some union heads warned that increasing the prominence of rival groups in works councils would simply increase the leverage of radical elements²²; others saw the initiative as a way of strengthening “yellow unions”, i.e. unions closer to the interests of employers. Literature produced by IG Metall saw the idea of a middle management committee as “a sort of upper house for the firm’s nobility”.²³ The SPD quickly rallied to the support of their union allies - Jürgen Egert, regional chair of the SPD, referred to the two bills as part of a “divide and rule” strategy. As with the case of reform of strike payments, the DGB organised a nation-wide campaign of resistance, centring on days of industrial action and pressure on sympathetic Bundestag representatives on the ‘left’ of the CDU.

More surprising, however, was the opposition by West German *employer associations* to the proposals. The reasons for this opposition are worth examining in some detail. From early in the debates over possible reforms to the Works Constitution Act, employer groups made it clear that they preferred the government to keep its hand out of industrial relations within the firm. Intervention of any sort, it was argued, brought with it the likelihood of unrest, of disturbances to the order of collective bargaining within firms and within plants. German employers and their associations had resisted the extension of works councils and their powers throughout the 1970s, but in the 1980s were reluctant to support legislation to roll back these powers. How can we understand this seeming contradiction?

The answer points to the need to understand the consequences of the *coordination of capital* for the policy preferences that employers hold. German business has been able, through a variety of formal and informal organisational innovations, to sustain coordinated solutions to certain important collective action problems involved in industrial production. The ability to resolve these

²¹ Die Zeit (1984).

²² Döding and Keller (heads respectively of the food and restaurant industry union, and the textiles and clothing union) were outspoken critics of the initiative on these grounds.

²³ Horst Klaus, IG Metall board member, press conference, 25 August 1988.

problems has formed the foundation of German industry's success in manufacturing high quality exports. Yet an important component of this organisational recipe for flexible, high value-added production is the compliance of organised labour itself. The maintenance, for example, of a skilled workforce which can respond flexibly to new technology requires compliance by the unions in alternative forms of work organisation, and a commitment to costly and time-consuming skilling and re-skilling programmes throughout a lifetime of work. On the other hand, wage control within sectors is effected by a high degree of regulation through systematised wage bargaining at the industrial level. The stability of this system relies on unions' continued consent to sectoral bargaining, and to the conventions that transmit 'landmark' wage deals from one region or sector to another.

This logic has strong implications for the preferences of employers over the forms of union representation. First and foremost, a system based on organised bargaining requires that the parties to the bargain can deliver the support of those whom they claim to represent. Second, the bargain should have maximal coverage of like cases if it is to serve as a common framework for all firms within a sector. With regard to collective bargaining these goals have been served by the dual operation of law and convention - by law in that wage increases, once negotiated between the employer associations and unions, can be declared as binding on *all* workers within a sector *irrespective* of their membership in a union (*Allgemeinverbindlichkeitserklärung*); by convention in the sense that wage deals negotiated within a lead region serve as the blueprint for other regional bargains within a sector. Similar logic applies in the case of bargaining at the company and plant level. Given the fact that bargaining with the plant workforce is required by law over certain issues, it is rational for employers to ensure that the internal discipline of the works council delegation is as strong as possible - i.e. to ensure that the works council "speaks with one voice". Employers therefore have an interest in preventing divisions between unions within the workplace, both because it complicates the process of bargaining and consultation, and because fragmentation of worker representation brings with it the possibility of politicisation of works councils. This last point is important - employers have an incentive to cooperate with works councils to the extent that these bodies unite employee interests, and facilitate employee concern and responsibility for the welfare of the firm as a whole. In contrast, they have a strong interest in rejecting cooperation with works councils if the councils become the vehicles for political competition between unions. Under these circumstances, unions may see fit to 'bid' for workers' support by pursuing intransigent bargaining strategies, leading to escalating friction between management and workers. Thus, the nature of employers' support for works councils is in theory contingent on the permissible forms of worker representation within the councils themselves.

Employers' preferences regarding works councils are therefore usefully depicted as a series of *nested strategies*. Given a preference from a *tabula*

rasa, employers would almost certainly prefer that works councils were not statutorily required (though they may see the virtues in voluntary establishment in certain circumstances). Once created and invested with powers, however, employers face a choice: they can either press for the restriction of their powers (or their abolition), or they can support their continued existence. The choice of opposition will undoubtedly provoke a conflict with the unions, and the option therefore depends on a range of supplementary political considerations (such as the sympathies of the ruling government). In an economy, however, in which production strategies largely depend upon maintaining high-quality, high skill goods, flexible patterns of work organisation and a readiness to integrate new technology into manufacturing processes, the cooperation of organised labour is too important to risk severe and protracted industrial conflict.²⁴ Furthermore, works councils offer the possibility of being usefully utilised by employers to further strengthen progressive coordination between management and workers. In particular, works councils can be co-opted into firm regimes governing 'internal labour markets' that facilitate the recruitment and retention of skilled labour.

Employers in West Germany, therefore, could come to terms with the existence of these councils if they could be organised in forms that were conducive to these goals. Once works councils were accepted by employers as a permanent feature of industrial relations - an acceptance which can be dated to the loss of the appeal to the Constitutional Court in 1979 - their primary interest became one of ensuring that the character of works councils did not depart from this paradigm. Perhaps paradoxically, therefore, employers associations saw their interests lying in a rejection of the specific reform proposals of the CDU-led administration to weaken the DGB's monopoly on works council politics.

The public declarations of employers from early on in the dispute confirm this theoretical interpretation. An article on the dispute in *Die Zeit* observed shortly after the proposals were announced the curious lack of employer support for the reforms. The reason, it was argued, was that: "Businessmen are worried about industrial peace. What they would like most of all is not to disturb the Works Constitution Act, as each amendment threatens to bring unrest".²⁵ Employers clearly rejected the idea that they saw the Christian-Liberal government as an opportunity to further a "divide and rule" strategy in the workplace. Instead, "most employers ... would prefer companies and works councils with as unified a representation of interests as possible". The initiative to strengthen minority unions by lowering the threshold for signatures to candidate lists raised the likelihood of radical groups finding their way into works councils. As the employers association in the chemicals industry put it, the proposals raised the spectre of a "permanent electoral war" within works

²⁴ I am indebted to Bob Hancké for the development of this point.

²⁵ *Die Zeit* (1984).

councils.²⁶ A similar argument was used to reject the suggestion of introducing a proportional representation principle into the allocation of works council committee chairs and sabbatical posts - the move "could only, as the unions also argue, strengthen the competition for interest representation in the works council, generate power struggles, expand the opportunities for radical groups, and significantly impede the work of the works council."²⁷ One of the ways in which the proposal suggested that minority unions could be strengthened was to vest them with a general right to propose a slate of candidates. As the employer associations pointed out, however, this merely strengthened the individual unions' ability to compete with each other. Opposition to the middle management committees was equally strong. The great fear for the employers' associations was that these committees would compete with the *Betriebsrat* for access to the ear of management, and that agreements between employers and workers would be made more problematic by the necessity of conducting separate bargains.²⁸ The most satisfactory compromise, it was widely suggested by employers, would be to retain the possibility of setting up *Sprecherausschüsse* on a voluntary basis where desired.²⁹

²⁶ Bundesarbeitgeberverband Chemie e.V Informationsbrief, discussed in Handelsblatt (1985b).

²⁷ From Frankfurter Allgemeine (1985).

²⁸ A spokesman from a large company in Hessen commented to the taz (Tageszeitung) newspaper that the Sprecherausschuss in his company had been devoted to "making sure that the firm is at the disposal of middle management", and to maintaining symbols of their status differential, such as the privilege of holidays from employment for health treatments (Kuraufenthalte). See taz (1988).

²⁹ One of the most outspoken of German employers on these issues was Hans Schlitzberger, board member of Siemens AG.

3. Coalitions within the coalition: the faltering path of reform

Employer opposition was to prove crucial to the repudiation of the more ambitious strands of the reform package after 1985. Equally crucial, however, was the political dynamic involved in assembling the requisite coalition *within* the governing Bundestag majority for the proposals. The case is an excellent illustration of the limitations of coalition government on radical ambitions. In order to stitch together a majority for the two initial measures (regarding *Minderheitenrechte* and *Sprecherausschüsse*), the CDU-led administration was forced into a series of linkages, concessions and sweeteners that proved unsustainable. The eventual price for the passage of legislation was the subtraction of most of the neoliberal bite from the initial proposals.

As noted earlier, the 'minority union' proposal was propelled by two separate events - firstly, by the need for legislation after the Constitutional Court had invalidated the existing provision (the 10% rule); and secondly by the CSU's concern both to water down the radicalism of the DGB after the 1984 strike, and to boost the position of the Christian trade unions (CGB) after their disastrous showing in the 1984 works council elections (see appendix 1). Under pressure from the CSU, the coalition announced its proposed reform on 8 November 1984 after deliberation by a CDU-CSU *Fraktion* committee under Heimo George. Initially, the intention was to replace the requirement for 10% of the worker electorate to sign a proposal of candidacy with a nominal stipulation that candidates receive only two signatures from unions, or from "groups", within the plant. Secondly, each union represented on the *Betriebsrat* would have the right to send a non-voting member onto the electoral committee of the works council to ensure fair play. Thirdly, works council committee positions should be allocated in strict proportional representation to their shares of works council votes. These proposals were clearly designed to strengthen the position of smaller unions vis-à-vis the DGB unions, but were also deliberately hostile to independent or non-unionised *Betriebsrat* members despite their success in the recent wave of elections.³⁰ The CSU enjoyed support for these proposals within the CDU from both its business wing (*Wirtschaftsflügel*) and, to a lesser extent, from the Social Committees (CDA) with their strong links to the Catholic workers' union movement. Nevertheless, the CDU's leadership was extremely wary of taking up the cause of minority groups against the DGB unions so soon after the 1984 dispute. In addition it was clear even at this stage to figures such as Scharrenbroich, the CDA's head officer, that the unions would demand concessions on increased codetermination rights as the price for legal strengthening of minority unions.³¹

³⁰ The non-unionised vote in the elections had reached 25% in 1984 for the first time (in 1975 the equivalent vote had been 17.5%). See Appendix 1.

³¹ Frankfurter Rundschau (1984). Scharrenbroich's comments, given his sympathies towards the union movement, could be seen either as a threat or as a prediction.

The CDA was however blatantly hostile to the second proposal, to establish legally required committees representing middle management alongside the existing works councils. The FDP were aware that the proposal enjoyed little support within the coalition outside the anti-union wing of the CDU (i.e. elements of the *Mittelstandsvereinigung* and business wing). Nevertheless, the pledge to introduce *Sprecherausschüsse* was a long-standing one, and as the junior coalition partner the FDP was in a strong position to force the CDU's hand on issues of such political integrity. Faced with these two proposals from within the coalition, neither of which commanded sufficient cross-coalitional backing to survive legislative passage in their own right, the CDU Bundestag Fraktion leader, Alfred Dregger, decided to combine the issues into one package. There was some objective logic to this decision - both measures were about worker representation, and affected the same pieces of legislation.³² But the decision to combine the issues was motivated more by the necessity to engineer a political deal that could allow both proposals to succeed in the Bundestag. The deal established an explicit quid pro quo between the FDP and the coalition groups sympathetic to the Christian Unions - each was required to support the other's initiative in order to see their own succeed. Yet the twinning of the two issues, which was required in order to secure *internal* support for the reforms within the coalition, strengthened the impression that the coalition was supporting a comprehensive attack on the German union movement. Dregger's announcement therefore not only galvanised political opposition from the SPD and DGB, but equally importantly thereby exacerbated the reluctance of the CDU-leadership to support the proposals. At a meeting of the FDP and CDU *Fraktionen* at the end of November 1984, Helmut Kohl urged the parties to shelve both proposals for the time being. Norbert Blüm, the CDU Labour Minister, expressed similar reservations, commenting in December that the proposals would be the most difficult problem confronting him in the upcoming year.³³

Combining the issues also put the CDA in an awkward position. While many of its members had some sympathy with the attempt to strengthen the CGB unions, it was unthinkable that the Social Committees could support measures that were interpreted as weakening the union movement as a whole. One of the most important consequences of the legislative coupling of the *Minderheitenschutz* and *Sprecherausschüsse* issues, therefore, was to commit the CDA to seek compensatory side-payments to the unions in exchange for accepting the bills. From November 1984, a CDA commission under Müller's

³² Dregger defended his decision in precisely these terms: "Of course we know that there is opposition from sections of the unions. But I cannot accept this opposition. Because protection of minority unions concerns a democratic principle. The representation of middle management - a group not represented in the works council - concerns giving these groups their own voice as well. That is a democratic principle. I cannot ignore democratic principles just because unions or whoever else regard the setting up of middle management committees or protection of minority unions as undesirable" (Handelsblatt (1984)).

³³ Der Spiegel (1984). Blüm's links with the CDA made it even more difficult to be seen to support an 'anti-union' measure.

chairmanship devoted itself to investigating the possibility of extending codetermination rights to cover the introduction of new technology. This initiative coincided with publication of the DGB's "Action Program" in November 1984, the culmination of a four-year inquiry into the threat posed by new technology to workers' interests. The program recommended a new strategy of encouraging works councils to coordinate union technology policy goals, and to construct a viable alternative to the plans of employers to use new technology as a means of reducing employment: "Concrete alternatives to employers' rationalisation plans ... must be developed and 'carried' politically by works councils, shop steward committees, and the affected workers."³⁴

There thus soon emerged a political alliance over the issues between the DGB and the Social Committees. In public the German unions continued vehemently to reject the proposals - IG Metall Board member Horst Klaus accused the coalition of "wanting to introduce the bacteria of minorities into Betriebsräte", while Ernst Breit, head of the DGB, threatened to break off all discussion with the government if they pushed ahead with the reforms. In private, however, the unions supported the efforts of the CDA within the coalition to promote the agenda of extending codetermination in return for conceding the reforms desired by the factions within the coalition. The issues of minority union protection and middle management committees were thus linked inextricably with the agenda of expanding works council rights over the introduction of new technology. Unsurprisingly, this development further exacerbated the opposition of employers to the whole reform package - the extension of works council powers coupled with the further fragmentation of worker representation presented a doubly unattractive prospect.³⁵ The FDP found itself in a more ambiguous position. Their proposal to establish *Sprecherausschüsse* was now bound to two further issues, one of which excited indifference, the other of which (extending *Mitbestimmung*) generated deep hostility. The efforts to shore up support for the reforms were thus successful only in disrupting and dividing the very groups whose assent was needed.

As a result the construction of a viable reform package quickly became subject to a "lowest common denominator" effect. It was easy for groups to obstruct the original intentions of the various proponents as a price for continued support of the reform as a whole. In the case of the *Minderheitenschutz* reform supported primarily by the CSU, the first concession concerned the percentage of signatures required for the nomination of candidates. As noted earlier, the Constitutional Court's ruling of 1984 had required that the number of signatures required to support a candidate's

³⁴ IG Metall (1984), p.9. See also IG Metall's industrial survey on the introduction of new technology (IG Metall (1983)).

³⁵ Otto Esser, President of the BDA, expressed these and other reservations forcefully at a one-day conference of trade unionists from the textile industry in Konstanz on 26 June 1985.

nomination for election be lowered from the existing threshold of 10% of the *Betriebsrat* electorate. Strauss and his CSU colleagues clearly wanted a 3% hurdle in its place, as the CGB unions whom they supported could claim in total about 3% of the German workforce as members.³⁶ Initially the coalition's bill of March 1985 supported this threshold. But the CDU-CSU Bundestag working group under Müller rejected this suggestion in favour of a 5% hurdle, and sided with the employers contention that a lower threshold would succeed only in opening the doors of works councils to disruptive radicals.³⁷ To mollify the CSU, a compromise solution was proposed according to which 'recognised unions' within the firm would possess a right to nominate union-backed candidates subject only to the submission of *two* supporting signatures. While the employers agreed to this suggestion with great reluctance, they were more intransigent on the more important question of allocating committee chairs and sabbaticals on the basis of strict proportional representation between union groups. Little headway was made in constructing a viable compromise on this issue before October 1985.

Similar tensions plagued the FDP's proposals to ground middle management committees. In the form advocated by groups such as the *Verband angestellter Akademiker und leitender Angestellter der chemischen Industrie* (VAA), the proposed middle management committees would enjoy a number of rights 'paralleling' those of the *Betriebsräte*, primarily concerning consultation over economic and business plans affecting middle management's interests. More controversially, however, the proposal foresaw that management and *Sprecherausschüsse* could negotiate 'guideline agreements' (*Richtlinien*) separate from the agreements covering the rest of the workforce. In the eyes of employers and unionists alike, this suggestion ran counter to the VAA and ULA's claim that the *Sprecherausschüsse* in no way threatened or curtailed the powers of existing bodies of worker representation.³⁸ Two areas of particular controversy thus emerged from the intra-coalition negotiations in the first half of 1985. First, the definition of precisely who the *leitende Angestellte*

³⁶ The 3% hurdle suggestion was thus termed the "Lex CGB", and was a response to the atrocious performance of the CGB unions in the 1984 election round. Between 1981 and 1984 their share of Betriebsrat seats dropped from 3.7% to 0.8%. These seats were lost predominantly to independent (*nicht organisiert*) candidates. See the data in Appendix 1.

³⁷ One academic commentator backed up this point about the dangers of radicalism with an anecdote from Weimar Germany: "In the Weimar period, works council candidate lists needed only three signatures.... This requirement was extremely easy to fulfil. It offered radicals a great opportunity, one which was recognised straight away and exploited capably. As a result the unholy alliance of Joseph Goebbels and Walter Ulbricht was able to establish itself in works councils; works councils fell under the control of the leaders of the SA and Communist Front." (from Herschel 1985)

³⁸ For the views of these pressure groups, see Handelsblatt 1985a, 1985c. The Federal Labour Court had hitherto contended that existing legislation gave the Betriebsrat a duty to cater to the interests of so-called "third parties", such as *leitende Angestellte* (middle managements). Middle management groups argued that the distinctive tasks and tenure position of *leitende Angestellte* required separate legal recognition (individually and as a collective entity within the firm).

were seen by employers and the CDA as a central question. Their strategy was to push for a definition with multiple criteria so as to reduce the total number of workers who would qualify as *leitende Angestellte* and thus minimise the significance of their representation independent of conventional works councils. Secondly, there was a fierce battle over the scope of rights and powers to be enjoyed by *Sprecherausschüsse*. Employers were prepared to accept that the committees should be able to make agreements concerning the specific terms of employment of those 'workers' whom they represented (particularly if the coverage could be a limited one). But the nightmare scenario was a law that required employers to make two separate agreements - one with works councils, the other with *Sprecherausschüsse* - over general issues of worker welfare, firm restructuring, etc. Under these circumstances, disagreement *between* the two bodies of worker representation would pose an additional obstruction to those already implied by the need to reach an agreement with the workforce as a whole. Resistance of the BDA to this more expansive role of *Sprecherausschüsse* provoked public fissures in the governing coalition in June 1985, particularly after the details of the bill were announced by the FDP.

By the summer of 1985, therefore, the momentum for reform had nearly collapsed. The FDP were unhappy with the resistance to their proposals, and were reluctant to support the broad package of reforms if the terms involved watering down the status of *Sprecherausschüsse*. The CSU meanwhile found support for the "Lex CGB" hard to come by anywhere. And on both issues, an alliance between the pro-business *Wirtschaftsflügel* and the Social Committees (CDA) of the CDU proved to be the crucial obstacle to change. The resulting stalemate was, however, precisely what the CDU leadership (in particular, Helmut Kohl and Norbert Blüm) desired. Preoccupied with other more pressing issues - the fallout over the strike payments law reform, and retrenchment of welfare payments - Kohl was keen to dampen the demands for an unnecessary reform which could only exacerbate existing tensions. He was thus perfectly ready to see progress on the bills halted by the intransigence of groups within the coalition. In July Kohl publicly distanced himself from the reforms, referring to them as the business of the *Fraktionen* in the Bundestag and not his concern. Norbert Blüm backed the *quid pro quo* of concessions over expansion of codetermination rights in the introduction of new technology in return for approval of the proposed reforms. In backing this proposal, Blüm was clearly hoping that this 'overloading' of the reforms, while pleasing the CDA and trade unions alike, would effectively kill the reform altogether.

When the Müller commission presented its recommendations on this issue in August 1985, the reaction of employers associations was one of dismay. Müller not only recommended that Betriebsräte be involved in the planning stages of all decisions to change the company's production technology, but most controversially that works councils should be entitled to codetermining rights when management decisions lead to results that "contradict the results of manpower science". In other words, the broadening of

codetermination was envisaged as a punishment for managers' failure to pursue strategies recommended by the conclusions of academic inquiry. Employers resistance to the reforms was unsurprisingly strengthened by Müller's proposals. The issue finally brought the reform process to a halt. On 5 September the government asked the CDU and FDP *Fraktionen* to approve expanded *Mitbestimmung* proposals to add to the suggested amendments to the Works Constitution Act. The *Fraktionen* however refused, insisting that works councils should at the most be given additional *advisory* rather than *codetermination* rights. With CDA backing, however, the Müller commission returned in October with proposals for extending codetermination, much to the delight of German trade unions. Having reached a clear impasse, and with a fierce battle over strike payments reform looming, the CDU government decided to shelve the proposals indefinitely.

The proposals were resuscitated in April 1986 after considerable pressure from the CSU and FDP. In the year before the election, the CDU was clearly pressed to demonstrate the pay-off to its governing partners of a continuing commitment to the coalition. But the tensions between the proposals remained as strong as before. There was a clear split within the government over the wisdom of expanding *Mitbestimmung* as a sweetener to the CDA and trade unions. Yet without this sweetener, proceeding with the reforms to the Works Constitution Act would incite a repeat of the political war with the trade unions over paragraph 116, and seriously endanger the CDU-led coalition's electoral chances. Primarily in order to stall further, the CDU-controlled Bundestag 'Labour' committee set up a day of expert hearings on April 23. Only a week before the hearings, however, senior CDU officials seemed to indicate that the proposals had been dropped again. Albrecht, the CDU President of Niedersachsen, who faced an important regional election in May, was reported to have told leading DGB officials that no amendments of the Works Constitution Act would be attempted before the next general election; while Matthias Wissman, a business affairs spokesman in the CDU Bundestag Fraktion, said that the reforms were no longer feasible because they attempted to legislate too many incompatible proposals. Wissman was articulating what had been clear for over a year - within a month of the expert hearings in Bonn, the government announced that the reforms were to be postponed for the second time. FDP leaders were furious, and accused the CDU of attempting to placate union objections as a pre-election tactic.

Whatever the objections of the FDP, both parties were totally dependent on maintaining an alliance with the CDU if they were to exert any influence at the national level. After the 1987 election, the coalition's legislative majority was strengthened, and the reforms were once more returned to the bargaining table by the two smaller parties. This time, however, a *further* issue became entangled with those of protecting minority unions in works councils (*Minderheitenschutz*), grounding middle management committees (*Sprecherausschüsse*), and expanding codetermination rights over introducing new technology. The extension of the special terms governing codetermination

in the *Montan* industries (coal and steel) was due to expire at the end of 1988. While some elements within the FDP wanted the 'parity' *Montan* codetermination formula to be rescinded, there was little serious contemplation that the terms would not be renewed.³⁹ CDU *Fraktion* heads decided to introduce all four proposals affecting the "works constitution" in one package (the *Montan-paket*), and were determined to rid their hands of the reforms once and for all. Once again, there was logic to the decision to combine the issues - not only did they pertain to the same economic realm and legislation, but both the renewal of *Montan* terms and amending the electoral rights of minority unions were required (the first by the expiration of previous legislation, the second by the constitutional court). Part of the motivation of the Kohl government was the hope that the force of necessity would help overcome the continuing divisions within the coalition.

Appendix 2 sets out the configuration of support and opposition for the four elements of the *Montan-Paket* in May 1988. Each of the four key actors within the coalition who had strong preferences concerning the content of the reforms was in a dual position - all actors were strong backers and strong opponents of at least one of the four proposals. The CDU leadership, in a series of consultations with their coalition partners and with the Social Committees of their own party, faced two strategic options, which can be labelled a 'high-content' and 'low-content' compromise. A high-content compromise would have consisted of an agreement that *all* proposals be combined into one package. In the event, however, each group cared more about blocking the proposals of its "partners" than pushing through the strongest version of its own. Thus, the FDP *Fraktion* was prepared to concede ground on the issue of *Sprecherausschüsse* (particularly their constituents and powers) in return for maintaining the autonomy of managers by vetoing the stronger version of the plan to expand *Mitbestimmung*. The CDA, meanwhile, allowed the codetermination provisions over new technology to be restricted in return for concessions by the FDP over *Sprecherausschüsse* and by the CSU over allocation of works council committee positions using the *Proporzprinzip* (proportional representation).

As a result of this complex web of concessions, each of the three main proposals eventually passed through the Bundestag - on 1 December 1988 - in

³⁹ In the early 1950s codetermination in the *Montan* industries was established by two pieces of legislation (see above). The special status of the industry remained intact in the subsequent 30 years, but industrial restructuring from the mid-1970s onwards complicated the distinctions between *Montan* and non-*Montan* industries. Rationalisation and horizontal integration, particularly in the Nordrhein-Westfalen area, produced a number of holding companies which were headed by a Konzernobergesellschaft, and contained *Montan* firms as parts of a more diverse production profile. A new law was required in order to clarify the conditions under which employees in such companies were entitled to *Montan* codetermination rights, which were significantly more advantageous to unions than in other industries. The firms affected in this way were Thyssen, Salzgitter, Mannesmann and Klöckner. For an overview of the strategies of reconstruction in the *Montan* industry, see Vitols (1993).

significantly limited forms. The signature quota for elections to works councils was reduced to 5% rather than 3% (as demanded by the CSU); each union represented in the firm, however, was vested with a right to nominate official candidates (*Vorschlagsrecht*), and was entitled to a representative for automatic inclusion on the Betriebsrat's electoral committee. Most significantly of all, however, proportional representation was required to distribute positions on works council committees, but only among all groups that received *over 25% of the total vote*. This important concession to employers' and CDA pressure effectively preserved the DGB monopoly over works council committee work, and of the influential chairs and sabbatical positions in works council business. What remained of the initial proposal to democratise works council politics was little more than mere legislative compliance with the Constitutional court's requirement for lowering of the threshold for candidacy.

The second proposal, to establish middle management committees or *Sprecherausschüsse*, was similarly weakened. The FDP had urged the coalition to accept that the committees could not only make binding agreements with management concerning the *leitende Angestellte*, but also that they should possess a power of veto over deals between the Betriebsrat and management. In late October 1988 the coalition, again under heavy pressure from both the 'pro-employers' and 'pro-labour' wings of the CDU, rejected this suggestion as an unwarranted attack on the powers of the Betriebsrat, replacing the right to veto with a right merely to be notified. Restricting the powers of the *Sprecherausschüsse* was coupled with a restricted definition of those workers who could be classified as middle managers. The law expressed three definitional criteria⁴⁰, but provided that in the event of doubt, the individual must receive over DM 111,000 per year to qualify as a middle manager. This was a sizeable limitation of the pool of workers whom the FDP had wanted to be counted as middle managers, and hence limited the extent to which the committees could splinter the representation of the workforce inside companies.

The price that the CDA paid for its successful opposition to the first two proposals, however, was to lose the extension of codetermination rights over the introduction of new technology. Although known to be sympathetic to the move, Blüm maintained during the final reading of the codetermination bill on December 1st 1988 that to give the Betriebsrat powers over decisions concerning production and technology would be to "turn the works constitution on its head". The Betriebsrat, he suggested, was not a "co-entrepreneur", but a representative of worker interests. What remained from the work of the Müller commission was the extension of consultative and notifiatory rights on plans to introduce new technology, but no more.

⁴⁰ Individuals were *leitende Angestellte* if: a) they had been classified as such at the last Betriebsrat election, or b) they belonged to a management group within the firm, or c) they received an annual salary. More generally, the law suggested that middle managers were those employees who, as a rule, made decisions free from the directions of others.

4. Conclusion: Employers interests and coalition politics

How much of a difference have the reforms made to economic governance in (West) Germany? Appendix 1 (a and b) shows the results of works council elections, across all industries, between 1975 and 1994. Despite the lowering of the signature threshold in 1989, and the provisions for strengthening the right of minority unions to nominate their own listed candidates, the DGB unions recorded their *highest* total vote in works council elections since passage of the 1972 legislation. Other union confederations, whom the legislation had been intended to strengthen, continued to fare poorly after 1989, while the non-unionised representatives maintained their share of around 25% of the vote. These trends were the same, if not magnified still further, in the distribution of works council chairmanships, shown in Appendix 1b. Examining election results in the strongest and largest industrial sector, the metalworking sector, confirms this picture (see table 1 below). IG-Metall's share of Betriebsrat seats has remained hovering around the 81-82% mark consistently since 1957, and the reforms of the Kohl administration have had no discernible effect on the relative shares of the non-DGB unions.

Table 1: Results of works council votes in the metalworking sector since 1957 (as % of total vote)

	IG-Metall reps.	DAG reps.	CGM reps.	Unorganised reps.
1957	81.7	-	-	13.5
1959	81.6	4.3	0.4	13.7
1961	82.2	4.4	0.5	12.9
1963	82.1	4.0	0.8	13.1
1965	82.6	3.6	0.9	12.9
1968	82.6	3.4	0.6	13.4
1972	81.3	2.6	0.4	15.7
1975	83.3	2.3	0.5	13.9
1978	84.5	2.0	0.6	12.7
1981	83.1	1.9	0.5	14.3
1984	83.3	1.9	0.6	14.0
1987	82.4	1.7	0.5	15.2

[January 1st 1989: Works council reforms (including *Minderheitenschutz*) come into force]

1990	81.5	1.6	0.6	16.3
1994	81.1	1.3	0.4	17.3

Source: I.G. Metall (1995), p. 5.

In short, the codetermination reforms have had no detrimental impact on the strength of the main German trade union movement, the DGB, and thus have not undermined the principle of *Einheitsgewerkschaft*. The establishment of *Sprecherausschüsse* has also had a minimal effect on negotiations within firms - with the exception of the narrow set of issues which solely concerns middle management, the works council has remained the main venue for management-worker consultations and bargaining.⁴¹

The mildness of the impact of the reforms contrasts strongly with the intensity of discussion and political debate that preceded Parliament's assent in December 1988. Why was so much political effort devoted towards a legislative package that proved to be of so little consequence? The account given here suggests that the attempt to weaken the solidarity of union representation in the workplace was one spearheaded by groups within the ruling coalition, but *opposed* not only by unions themselves, but also by *employers* and their associations. This opposition, clearly and consistently articulated before and during the negotiations over the various proposals, contradicts the presumed interest of employers in weakening organised labour, and can only be understood in the light of the characteristic patterns of organisation and incentives in German industrial production. Works councils can serve an important co-ordinating function in maintaining flexible production amenable to technological innovation, but in order to do this they must retain internally a unified representation of worker interests. Opposing the reforms to codetermination was thus tantamount to defending one of the key mechanisms of *private governance* in the face of a politically motivated attack on the labour movement.

Employers associations pressed their case independently, but also in transient political alliances with a number of groups within the coalition - with the FDP over the new technology issue, with the CDA over the establishment of *Sprecherausschüsse*, and with the CDU's *Wirtschaftsflügel* over all three main issues. The fragmentation of interests within the coalition was the second factor that 'disarmed' the proposals. Divisions between groups comprising the Christian-Liberal coalition government enabled the CDU leadership first to delay a commitment to pursuing the reforms, and second to use the groups' reluctance to embrace each other's proposals to dilute the substance of the reforms. The clear preference of the leadership throughout the negotiations was for a legislative reform package that would offend as few electoral groups as possible. Complexities involved in coalition bargaining are usually interpreted as objective obstacles to the ability of elites to propel change. In this case, however, it is the CDU leadership that found itself in the position of applying the brakes on the more radical demands of groups within the coalition, as well as skilfully playing off these groups against each other. In this sense,

⁴¹ See Richardi (1991), Martens (1988).

the dictates of coalition bargaining *enabled* the CDU leadership to pursue a moderating strategy in the face of radical demands.

The case of reforming codetermination in the 1980s exemplifies a number of interesting structural features about the configuration of interests in the German political economy. First, the reforms were quite clearly an attempt by groups within the coalition to weaken the monopoly of the DGB in works councils, and thus indirectly to undermine both the representational authority of works councils and the cherished principle of *Einheitsgewerkschaft*.⁴² It is clearly untenable to maintain that there was no sizeable support for weakening German unions during and prior to the 1980s. Secondly, however, the groups supporting this attack were not supported by the majority party leadership in the coalition. Chancellor Kohl and Norbert Blüm resisted radical reforms *not* because of ideological opposition - their sympathies were clearly mixed - but because of the electoral (and reputational) liability that the reforms would incur, both among potential voters and among existing constituents and organisations under the coalition's umbrella. Unlike the case of the UK under Mrs. Thatcher, it was not possible in West Germany to concentrate the costs of policies recommended on economic or ideological grounds (i.e. to deregulate the German labour market, increase management autonomy, etc.) on groups which could be clearly identified as 'opponents'. This is in large part because of the strong link that exists between the CDU and the German union movement, through the institutional link provided by the Social Committees.

Thirdly, the case confirms the view that the interests and political strategies of employers are central to an understanding of the feasibility of governments' attempts to reform economic governance structures. Employers and their representative associations, united in their scepticism of the value of reforms that were supposedly to their advantage, managed to water down each of the proposals to which they objected, largely as a result of alliances struck with groups within the ruling coalition. In addition, however, the case also confirms the suspicion that it is erroneous to presume an affinity of interests between employers and conservative parties in government. Undermining the strength of unions and of works councils was a priority for the FDP, the 'neoliberal wing' of the CDU, and the CSU, but *not* of the German employers confederation, who

⁴² Even the reasonably conservative Frankfurter Rundschau observed with some regret that the reforms amounted to such an assault on German unions: "The disputed change to the Works Constitution Act is not in essence about protecting minority groups or improving democracy, rather quite the opposite. The workers, clearly the weaker group in the case of confrontation with the employers, will be fragmented by the law: the competition between unions will lead to paralysis and blockage. The representation of workers would have to take place in a committee bringing together (party) political interests from right to left, from employer-friendly groups to revolutionary groups. These plans are - more directly even than the disputed reforms to paragraph 116 of the Work Promotion Act - a further landmark in the remodelling of the Republic." (Frankfurter Rundschau, 1986)

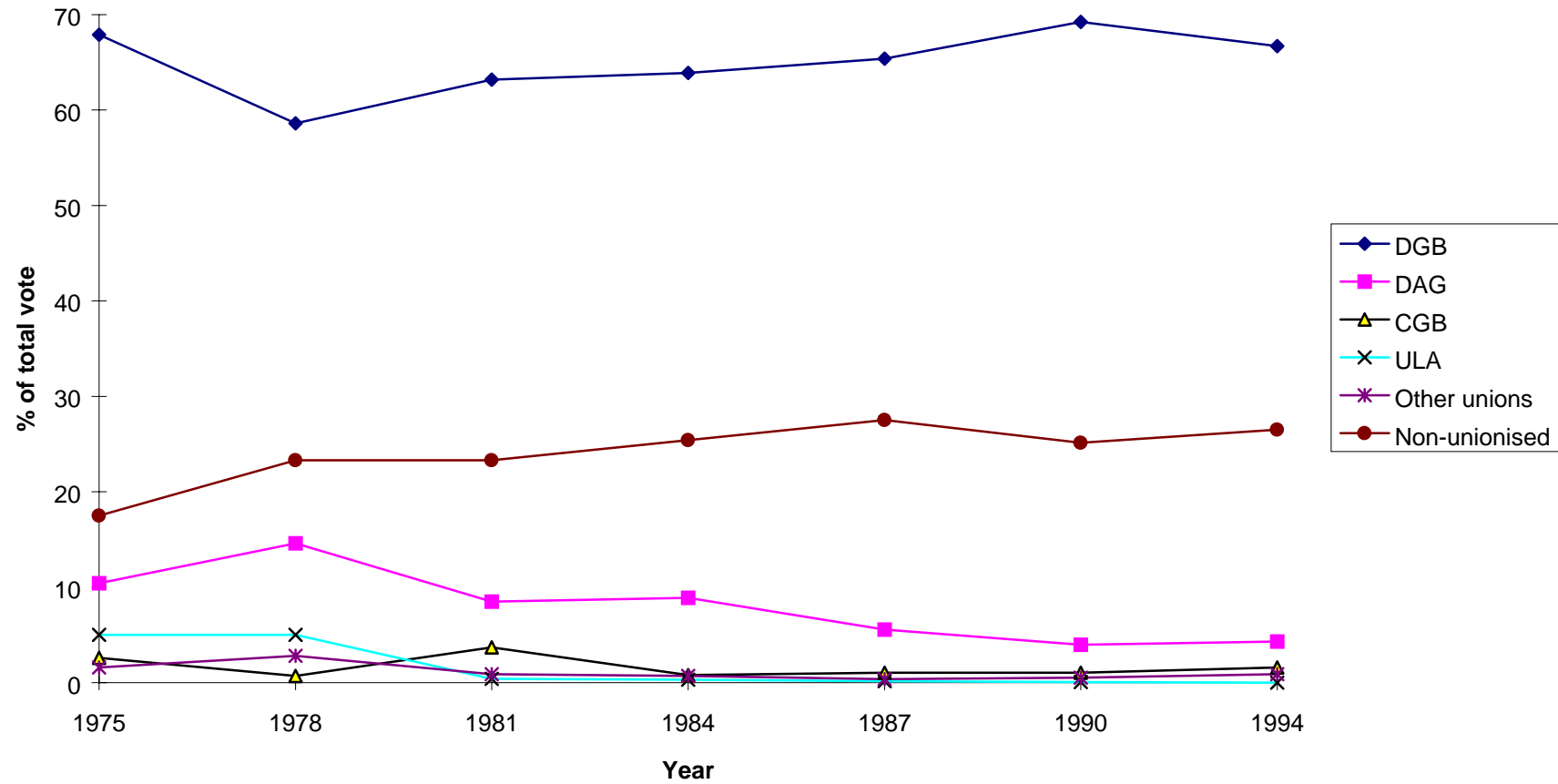
complained consistently that the reforms were motivated by political rather than economic considerations. Only by appreciating this difference in interests, and their source, can we understand the paradox that the greatest constraint on reforms that were designed to advance the interests of firms and managers was provided by employers themselves.

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Appendix 1a: Works Council Election Results in West Germany from 1975-1994 (% of votes per Union confederation)



Appendix 1b

(soon to come...)

	Social Committees (CDA)	CSU	FDP	CDU leadership	Employers
(1) Minority Union Protection (Minderheitenschutz)	Some support, but opposed when issues 1 and 2 combined by CDU Fraktion	Strongly supported	Supported - prepared to support as a concession for issue 2	Reluctant	Strongly opposed
(2) Middle management committees (Sprecherausschüsse)	Strongly opposed	Prepared to support as a concession for issue 1	Strongly supported	Reluctant	Strongly opposed
(3) Codetermination over introduction of new technology	Strongly supported	Strongly opposed	Strongly opposed	Prepared to support as a concession	Strongly opposed

Appendix 2: Distribution of support and opposition for codetermination reforms among key groups (1985-8)