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# 1 The Study of Works Councils: Concepts and Problems

Joel Rogers and Wolfgang Streeck

This book reports the results of one of several projects pursued within the research program Working and Earning under Different Rules, led by Richard Freeman of Harvard University and the National Bureau of Economic Research.<sup>1</sup> The Working and Earning program comprised a series of comparative studies of labor market institutions, income maintenance programs, and economic performance in the United States and other major OECD nations. It aimed to answer three large questions and to make the answers available to participants in policy debates in the United States (Freeman 1989, 5):

How do the distinctive labor market institutions and income maintenance schemes of advanced OECD countries work?

Which institutions offer fruitful guides to what the United States should (should not) do to improve its competitive position and economic well-being?

What explains the divergence of labor market institutions across OECD countries?

From the program's inception, works councils have been high on its list of research concerns. There are two reasons for this.

First, traditional forms of worker *representation*—whether the centralized bargaining and “political exchange” once characteristic of European countries or the more decentralized systems of collective bargaining characteristic of North America—are under pressure. This raises anew questions about how to provide workers with institutionalized representation at the workplace. In the

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1. Other books arising from the program include Blank (1994), Card and Freeman (1993), Freeman and Katz (1995), and Lynch (1994); Freeman (1994) offers summaries of results from the different projects.

United States in particular, the continued decline of unionization—which now claims a bare 12 percent of the private sector workforce—has opened a yawning “representation gap” (Weiler 1990) that does not appear likely to be closed anytime soon by a simple revival of traditional unionism. Recognition of this gap has kindled new interest in alternative ways of providing “voice” for workers outside the traditional collective bargaining relationship. As works councils have in many countries historically provided representation to workers outside of formal collective bargaining, they provide a natural starting point to explore such alternative modes of worker representation.<sup>2</sup>

Second, councils appear capable of making an *efficiency* contribution to the performance of advanced industrial democracies, improving both individual *firm productivity* and the *effectiveness of state regulation* (economic or social) of firms. It is virtually definitive of councils, for example, that they increase and regularize consultation between management and workers. This may be thought to have several positive effects. By reducing information asymmetries between managers and workers, consultation can lead to more efficient labor contracts. By lowering the costs of information to both parties, it can facilitate adjustment to changed circumstances. By increasing trust between managers and workers, it can increase their willingness to engage in cooperative ventures, and with it increase the rewards that accrue to cooperation.<sup>3</sup> At a time when new forms of work organization—arising from the demands of shifting product markets and increased emphasis on “quality” production—place a premium on an unimpeded flow of information within firms and on cooperation among and between workers and managers, these potential effects have enormous appeal. In the United States, where the pace of adoption of advanced forms of work organization has been slow (Office of Technology Assessment 1990), that appeal is particularly pronounced.

The potential contribution of councils to effective regulation of firms is also evident. It is now well past cliché to observe that, to enhance competitive economic performance, government regulation of labor markets and working conditions needs to be “micro” as well as “macro.” However fine, the regulation of fiscal aggregates and monetary policy is insufficient, for example, to assure an adequately trained workforce, rapid technology diffusion, or dynamically optimal levels of investment in research and development. To approximate these ends, considerable coordination and cooperation within firms—as well as among firms and between private firms and the state—is required. By pro-

2. To guard against misinterpretation in this highly charged area of current debate, we emphasize that the exploration of alternatives is not tantamount to the endorsement of those alternatives, or to rejection of that which they are alternative to.

3. Among others, see Freeman (1990), Freeman and Rogers (1993), Rogers and Streeck (1994), and, especially, Freeman and Lazear (chap. 2 in this volume). Note more generally the strong conclusion reached by Blinder and colleagues following their review of productivity-enhancing compensation schemes: “Whatever compensation scheme is used, meaningful worker participation, beyond labor representation in boards of directors, enhances productivity” (Blinder 1990, vii).

viding structured means of such intrafirm coordination, the thought goes, councils might help support government "modernization" policies in these areas.

What is true of economic regulation is true as well of fair labor standards, health and safety standards, and other "social" regulation of firm behavior. Directed to a large population of heterogeneous firms, such regulation in most cases cannot be effectively enforced through a state inspectorate or an army of "private attorneys general" bringing civil claims. Some on-the-ground monitoring and enforcement mechanism, rooted in the daily operation of firms, is also desirable. Many think that works councils might be just such a mechanism.

It bears emphasis, if only for its centrality to the U.S. discussion, that the availability of such local mechanisms might reasonably be expected to improve not only regulatory enforcement but the regulation itself. In the United States, the general absence of local monitoring and enforcement capacity has encouraged "command and control" regulatory programs. These, which are functionally adapted to the state inspectorate and private attorney general modes of enforcement that do exist, are widely criticized as overly broad, inflexible, and excessively process (as against performance) oriented. Councils are commonly involved in implementing social regulation, and then in ways that appear to favor regulatory styles simultaneously more exacting on outcomes and more flexible on means than is common in the United States. Here too, then, better understanding of their operation may be instructive for U.S. policy discussions.

It is not the purpose of this book to produce actual recommendations for policy in the United States. All that research can do is clarify the issues at stake. Framed by the basic questions posed by the Working and Earning under Different Rules program, contributors to this volume aim to improve the available knowledge of: the incidence, activity, and daily operation of councils in different settings; the contribution of councils to meeting representation and efficiency concerns (both private firm efficiency and the efficiency of the state or other collective regulatory effort); the precise institutional mechanisms that account for these effects; the comparative institutional advantage of councils (relative to other mechanisms) in producing those effects; and the conditions antecedent (e.g., in industrial relations systems and public policy) to parts or all of their production.

We begin this introduction by proposing an initial definition of works councils, broad enough to accommodate the diverse experiences of advanced industrial countries, and by suggesting a working typology of councils. We then proceed to explore the relations of works councils with, in turn, unions, employers, and states, mapping the main subjects that will be dealt with in the country studies and other subsequent chapters. Finally, we explain the general approach of the research and the organization of this volume.

## 1.1 Basic Definition and Initial Typology

We define *works councils* as *institutionalized bodies for representative communication between a single employer ("management") and the employees ("workforce") of a single plant or enterprise ("workplace")*. This is a very inclusive definition, but inclusiveness is needed to cover the great variation in what have historically been considered "council" forms and functions, at different times, in different systems. The following elaborations may be offered:

1. *Works councils represent all the workers at a given workplace, irrespective of their status as union members.* Where in addition to councils there are also unions claiming to represent workers, this raises the fundamental problem of determining the relationship between councils and unions—a problem that will occupy a central position in the studies in this book.

Where unions have strong "external," territorial organizations that engage in multiemployer collective bargaining, council-union relations are part of the vertical relationship between centralized and decentralized collective action of workers and between central and local joint regulation with employers. To the extent that (in addition) unions are, or try to be, organizationally present at the workplace, the relationship is (also) a horizontal one between representation of unionized workers through workplace union branches ("locals" and "sections") and representation of all workers through councils. In the typical European case, councils are in this way enmeshed in a complex triangular relationship with what are often called the "external" and the "internal" unions.

At stake in this relationship are questions of control—of the external union and centralized collective bargaining over works councils and internal unions and over joint regulation at the workplace, and of works councils or internal unions over workplace industrial relations with the employer. External unions, where they lay claim to central control over workplace bargaining, view the relationship between works councils and union branches above all in terms of its contribution to such control. Typically, central and external control seems to require a stable division of labor between external and internal industrial relations, and especially neutralization of the latter on subjects over which the former claim jurisdiction.

At the workplace, union-council relations differ in the extent to which councils and workplace unions are structurally independent from each other. At the one extreme, as in Italy, worker and union representation may be merged in one body. At the other extreme, as in Germany, councils may be clearly differentiated structurally from unions and created and sustained not by union action or governance but by a separate, legally based "works constitution."

To the extent that union and worker representation are structurally separated, one can speak of two "channels" of representation: a "first channel" operating through unions and collective bargaining—at the workplace, centrally, or both—and a "second channel" working through councils and "industrial democracy," "collective participation," or "joint consultation" at the workplace

only. Structural separation of channels, however, does not preclude, and indeed may require, coordination between them. Organizationally, for example, works council election procedures typically favor union candidates, and especially candidates of large, "representative" unions. This enables union workplace organizations to penetrate the council system at least to some extent and to use it to promote union policies within the limits of whatever rules may govern councils as institutions.

Functionally, mature council systems provide for an elaborate division of labor between councils and unions, especially external unions. Just how functions are divided is strongly related, again, to questions of control, particularly over the wage bargain and the strike and more generally (of the external union) over the workplace. In Spain and Italy, where councils may negotiate wages and call strikes, external unions often find it difficult to make central wage bargains stick locally and to prevent local bargainers from calling strikes in pursuit of wage increases exceeding nationally negotiated rates. In Germany, by comparison, the legally institutionalized separation of channels excludes councils from wage bargaining and from calling strikes. With union workplace organizations effectively subordinated to councils, national union leadership has an effective monopoly on such functions. In return, works councils and the union workplace organizations that are involved in them are compensated with jurisdiction over a range of other, workplace-specific issues. In exercising this jurisdiction, however, their mode of operation is not through collective bargaining, but through legally based co-determination; and while they may exercise pressure, they do so not by threatening or calling a strike, but by taking the employer to mandatory arbitration or to the labor courts.

2. *Works councils represent the workforce of a specific plant or enterprise, not of an industrial sector or a territorial area.* Their counterpart is a single employer, not an employers' association. Industrywide councils, like wage councils in the United Kingdom, are thus not works councils in the sense of the definition used here.

3. *Works councils are not "company unions."*<sup>4</sup> Even as compared to a single-site, employer-dominated union, there is a distinction between works council representation of all workers in one workplace only and union representation—of union members at the workplace or of the common interests of workers across workplaces. Even "enterprise unions" in Japan, for example, tend to be affiliated to union federations covering more than one employer, weak as that affiliation may be.<sup>5</sup> By contrast, works councils are by definition single-employer institutions. And even under closed-shop company unionism,

4. We use this term in its generic international sense of "workplace-specific union." For consideration of the U.S. case, where what is traditionally meant by "company union" is approximated by what we call "paternalistic" councils below, see Rogers (chap. 13 in this volume).

5. Japanese company unions often create union-management consultation committees, kept separate from the union itself, for joint deliberation of production issues. If there were a Japanese equivalent to works councils, it would be these rather than the unions themselves.

there is usually a possibility of interunion competition, with workers joining an alternative union or management replacing the existing union with a "second" union. By contrast, works councils are by definition not voluntary associations but established institutions with a representational monopoly. Once established, workers cannot refuse to "join" them or to be represented by them. There is no exit from a works council other than changing one's place of employment.

4. Being *representative institutions*, works councils also differ from management policies encouraging individual workers to express their views and ideas, as well as from new forms of work organization introduced to increase the "involvement" of workers in their work roles through decentralization and expansion of competence and responsibility in production tasks ("group work," "quality circles," and the like). While works councils may make it easier for managements to implement work reorganization, they themselves are institutions outside the managerial line of authority (however decentralized) and differentiated from the functional organization of production. And while works councils make it easier for individual workers to speak up, as institutions of collective representation they typically aggregate the views of workers and transform them into a *common* voice of the workforce. If made at all, then, the "firm efficiency" argument for works councils is not based on their occupational competence but on their organization of representative communication between the employer and the workforce as a whole. Similarly, the "voice" argument is not identical with the argument for a decentralized work organization or for management being more accessible to individual workers.

5. *Representative communication between employers and their workforces may be of all possible kinds and may originate from either side.* Communication may be initiated and, in the limiting case, controlled by the employer, making the works council more like the "ear" than the "voice" of the workforce. At the opposite end of the continuum, it may mainly serve to express the collective interests of workers, with the employer obliged to listen. It may also involve an exchange of views and a dialogue leading to negotiations and, ultimately, agreement. Communication may or may not be on production issues, or on how better to cooperate in the pursuit of production goals and good competitive performance. It may be limited to information exchange, may entail consultation, or may end in negotiated co-decision making, or *co-determination*.<sup>6</sup>

Where council rights pertain only to *information*, managerial discretion is left largely intact, except that managements cannot avoid giving information. By contrast, *consultation* rights involve obligations for management to inform

6. Note here that whether a works council's relations with its employer are friendly or not is *not* part of our definition. Even where strikes are formally ruled out as a means of applying pressure, relations may well be highly antagonistic. And there is always the possibility, generally the case in industrial relations, that the law is not fully observed in practice.

the works council before a decision is taken, to wait for a considered response or counterproposal, and to take it into consideration when finally deciding. While this still leaves the decision to management, it may delay it. Finally, under *co-determination*, decisions can be taken by management only if they are agreed to beforehand by the council; in this sense the council can veto them, usually until the matter is resolved by an outside arbitration board.

6. *Works councils may (the usual case) or may not have legal status.* In the limiting case, they may be set up unilaterally or voluntarily by the employer, with the employer retaining the option of dissolving them if they do not perform to—paternalistic—expectation. Works councils may also be created or regulated by industrial agreement between unions and employers' associations at the sectoral or national level.

Typically, however, such agreements will in some way be encouraged or supported by legislation. In fact, *most council systems are more or less strongly legally institutionalized*, with legislation playing a facilitating role even in countries like Sweden and Italy where councils are primarily union based. Legal status usually affords works councils an institutional power base independent from both union and employer.<sup>7</sup>

7. *Works council structures vary widely across and within countries.* Representation may be categorically encompassing, with all employees in a given workplace being represented by one common body, or categorically differentiated, with different councils representing different groups of employees (e.g., blue-collar vs. white-collar workers). Councils may be functionally comprehensive, in the sense that all concerns of the workforce are represented by the same body, or functionally differentiated, with different councils serving different functions (e.g., health and safety councils, training councils, and productivity councils). Councils may or may not include management; in the limiting case, the employer may preside over council meetings.<sup>8</sup> And systems vary in the structure of the resource base supporting council operation—although in general works councils are not financed out of union dues, do receive some support from the employer, and are typically entitled to such support on a basis other than the employer's free and changeable will.

8. *Works councils are not the same as worker representation on company boards of directors.* This said, councils often coexist with such representation, and in such cases are closely related to it. In the German case, for example, "economic co-determination" through workforce and union representatives on the supervisory boards of large firms became closely linked in the 1970s and 1980s to the formally separate system of "workplace co-determination" through works councils. Largely the same people serve simultaneously on both

7. Of course, that base may also be weak, or the law may only be partly observed.

8. Even the German works council system, while otherwise organized on a strict workers-only basis, incorporates one institution that does include the employer: the *Wirtschaftsausschuß* (economic committee) to which the employer must reveal confidential information on the economic condition of the enterprise.



bodies, and works councillors use the information and access they get as board members to increase their effectiveness as works councillors.

On the basis of our definition, and as a very general classification, we distinguish three ideal types of works councils:

*Paternalistic councils* are formed by employers or governments to forestall or undo unionization. Often, such councils include or are presided over by the employer. Councils of this kind are (allowed to be) representative of workers to the extent that this is necessary to prevent independent expression of worker interests.

*Consultative councils* are set up to improve communication between management and workers through exchange of information and through consultation, in order to facilitate cooperation in production and thereby enhance the competitive performance of the enterprise or plant. Unlike paternalistic councils, the main function of which is “political,” consultative councils are put in place primarily for economic purposes—in the belief that there are a range of production-related issues on which employers and workforces may cooperate to mutual benefit. While collective representation of workers is assumed to facilitate such cooperation, representation in the form of collective bargaining is seen as unable to raise the relevant issues, or as distorting them by placing them in an “adversarial” context. As a second channel of industrial relations supplementing collective bargaining, consultative councils respond to employer interests in worker “involvement” and to worker interests in the competitiveness of the firm that employs them and, perhaps, in an intrinsically rewarding utilization of their skills.

*Representative councils* are typically established through collective agreement or legislation giving the entire workforce of a plant or enterprise (again, unionized or not) some form of institutionalized voice in relation to management. Representative councils enable workers to assert distributional or general interests that the employer would not be willing to gratify for paternalistic or economic reasons alone. As a second-channel institution existing alongside unions and collective bargaining, they reflect a belief that workers have workplace-based interests that fail to be sufficiently represented by unions and collective bargaining and that require some form of worker “participation” in management in order to be realized. In this sense, the rationale for their establishment is “industrial democracy.”

While consultative councils may be seen as supplementing the functional organization of the firm, representative councils—like, in a different way, paternalistic councils—are part of a firm’s political system. Characteristically, representative councils have or claim rights, not just to information and consultation, but also to co-determination—or use other ways of intervening in the exercise of managerial prerogative, in pursuing worker interests.

Of course, ideal types rarely exist in pure form. All works councils have at least some representational function. And all, except possibly the most radical

representative councils, serve some productivist consultative purposes. Indeed, the main problem in understanding works councils is to disentangle, for different historical periods and national contexts, their often densely interwoven paternalistic, consultative, and representative functions.

## 1.2 Works Councils and Unions

Union attitudes toward works councils differ widely across countries and have often changed dramatically over time within them. Indeed, union-council relations seem to have moved through all conceivable permutations, and then often in rapid succession—with councils alternatively supported and rejected by unions for both “left” and “right” strategic reasons.

Historically, works councils have been most prominent in the industrial relations systems of continental Europe. There, craft unionism, the natural organizational site of which was the workplace itself, was early blocked or absorbed by politically oriented industrial unionism, the natural organizational site of which was the national economy and polity as a whole. The success of political industrial unionism thus bred questions unique to it: How to deal with pressures for the representation of workers employed in a specific plant or firm, as distinguished from representation of all workers in a sector or country? How to add an internal to the external union organization? How to link the two?

It should be noted that the rise of political industrial unionism was due in part to the success of *employers* in preserving managerial prerogatives inside the firm—their *Herr im Hause* status—and not letting unions enter their workplaces. Often assisted by an authoritarian state, employers forced unions to seek bases and resources of power other than those found directly in the labor process. This encouraged the politicized model of union action, organized outside the workplace, that aimed either—in its moderate version—at sectoral or national collective bargaining and “political exchange” or—in its radical version—at the wholesale overthrow of the economic-political system.

In any case, having established itself as such, political unionism did not typically deploy its newly gained power to reverse the outcome of the battle over union presence at the workplace that it had lost in its formative period. In fact, political unionism came to hold deep suspicions about workplace organization and representation. These were regarded as a potential base for the assertion of the particularistic and economistic interests of workers—at odds with the objective of mobilizing broad, political, class-based solidarity across the boundaries of individual plants, enterprises, or, for that matter, occupations. Therefore, where remnants of craft unionism had survived employers’ attacks, political unionism usually did its best to undo and absorb them in its more encompassing organizations.

There are two versions of the suspicion in which political industrial unionism holds workplace representation. For moderate unions trading wage and other restraints for political concessions on social welfare, employment, fiscal,

and other policies, the workplace is a zone of potential *wildcat militancy*—excessive demands, unauthorized strikes, and overshooting settlements (“wage drift”)—especially in prosperous firms. For militant unions engaged in political class struggle, the enterprise is a sphere of potential *wildcat cooperation* with the employer—workers acting on their narrow interest in the health and profitability of “their” firm and disregarding the interests of the working class as a whole.<sup>9</sup>

Industrial unions’ typical fear of workplace-based particularism opened the possibility, and often indeed produced the reality, of an unlikely compromise between employers interested in protecting managerial prerogative and political unions keen on establishing a universalistic, class-based interpretation of worker interests. If on nothing else, employers wanting the freedom to run “their” workplace as they saw fit and unions seeking to build class solidarity for dealing with employers politically or abolishing them altogether could agree on neutralizing the workplace as a site of conflict—on avoiding workplace negotiations by recognizing each other as interlocutors at the industrial or national level and on helping each other prevent independent organization of worker interests at the workplace. It is this “negative convergence” of interests that has long been in the background of the politics of workplace representation in continental European industrial relations.

Of course, the problem with a peace formula like this was always that, as much as the neutralization of the workplace may have corresponded to both sides’ first preference, it was bound to be unstable, making the resulting truce a permanently uneasy one. For unions, centralized and politicized as they may be, neutralization of the workplace inevitably means an *organization gap*, making it hard for them to recruit members, collect dues, and mobilize support for industrywide or national collective action. For employers, an unrepresented workforce may give rise to a *consultation gap*, precluding potentially productive representative communication between management and workers. For workers themselves, centralized unionism and collective bargaining may leave a *representation gap* regarding workplace-specific interests that cannot be adequately served at the industrial or national level.

Neutralization of the workplace thus creates an institutional vacuum that demands to be filled and that poses powerful temptations to invade it: for unions, to set up externally controlled workplace union sections; for employers, to organize consultative councils to improve productive performance or

9. Note that while the two problems may seem to be mutually exclusive opposites, the typical social democratic union faces them both in that it has to mobilize for conflict as well as accept compromise, making it as vulnerable to insurgent cooperation as to insurgent militancy. Instructive here is the use of the term “syndicalism” in the language of a union like IG Metall, the industrial union of German metalworkers. “Syndicalism” denotes any “plant-egoistic,” workplace-specific articulation of interests in conflict with industrial union policy—be it (“militant”) demands for higher wages and better conditions than negotiated at the industrial level or cooperation with the employer in contradiction of union policy. Conflictual or cooperative, syndicalism is the worst offense an IG Metall workplace leader can commit.

paternalistic councils to prevent union penetration or independent workplace organization; for workers, to form representative councils, cooperate with employer-controlled councils, or demand union workplace organizations; and for all of them, to invent and explore ever new strategies, alliances, trade-offs, compromises, and institutional hybrids to fill the vacuum. It is in this context that works councils have again and again surfaced in the industrial relations systems of continental Europe—as a way to fill the void left at the workplace by the always tenuous compromise between centralized political unionism and managerial prerogative.

Councils also emerged in the Anglo-American world of early, persistent, and hegemonic craft unionism. Here they were typically promoted by employers looking for interlocutors on behalf of their workforces that were more identified with the enterprise that employed them than with their occupation or with workers as a class. Unions, as a consequence, came to regard councils as instruments of employers designed to undermine them, and since they had been there first, they strongly preferred collective bargaining over any (other) form of “industrial democracy.”<sup>10</sup> To the extent that defeating employers’ works council initiatives required organizational effort and personal sacrifice, the experience of the struggle had a lasting impact on unions’ attitudes toward councils in those countries and defined works councils ideologically in a way that long ruled out any accommodation with them.

In the politicized industrial relations systems of continental Europe, the matter was considerably more complicated, and ultimately generative of the broad variety of dual structures of workplace representation, and complex configurations of external unions, internal unions, and works councils, that one observes today. Emerging industrial unions often encountered council systems that had historically preceded them, either shop stewards in the craft union tradition or paternalistic councils set up by employers as a preventative measure against unionization.<sup>11</sup> Where this was the case, industrial unions had to absorb or abolish the councils in order to establish themselves as the principal representatives of worker interests. This happened, for example, in the German metal-working industry before 1914, where the socialist union had to find ways of integrating existing workplace representatives (often referred to as *Vertrauen-*

10. This history is not without ambiguity, however. In discussions in the United States in the 1920s, near the high point of the “American plan” of company unions, some observers sympathetic to unions (and even some unions themselves) looked more favorably on councils as a way of assuring at least some measure of representation in nonunionized settings and of providing unions with a foothold for organizing. A fascinating analysis, showing the openness of the U.S. discussion, is provided by Douglas (1921).

11. Councils had also been an early demand of workers. In Germany, the liberal Paulskirche Constitution of 1848, which never took effect, provided for legally regulated council representation of workers at the workplace. The difference from England in this respect is remarkable; in addition to the obvious differences in trade union strength, it seems to reflect different “cultural” perceptions of the firm: what in England appeared, and appears, to be a “nexus of contracts” was in Germany from early on regarded as an *institution*.

*sleute*) in its growing organization. The price for such integration was acceptance of some form of internal union organization, which however became increasingly closely tied into the external union. Other battles had to be fought with paternalistic, employer-dominated councils. Councils also emerged in other countries at the time, with some, for example in Italy, being established by employers and unions together to provide for orderly internal governance of large industrial workplaces.

During the First World War, mainstream European unions collaborated with their national governments in the war effort, achieving lasting gains in legal and political recognition at the price of growing opposition from their members. As external unions appeared to lose control over the shop floor, governments tried to help them close the widening representation gap by promoting various kinds of councils designed to give workforces narrowly circumscribed participation rights. Typically, however, it was the growing radical opposition to the war and to the meanwhile more or less established official unions that drew the support of the workers in the factories of the war economy. Especially after the Russian Revolution of 1917, which by its own Bolshevik description had been a self-consciously councilist (*soviet*) revolution, governments and unions in many European countries found themselves confronted by a revolutionary movement of “workers’ councils” which saw itself as the basis of a new social order: a “producer democracy” based on direct worker self-government without employers, states, and, not least, trade unions.

In the immediate postwar period, mainstream unions and social democratic parties often joined forces with the remnants of the old regimes, in particular the army, to suppress the “syndicalist” councils—only to see the return of paternalistic councils a few years later or, as in Italy and Germany, to be done away themselves by their short-time allies, together with the liberal democracy whose victory over the syndicalist council project they had helped bring about.

A special development took place in Germany and was intensely watched elsewhere in Europe. Having broken the political backbone of the syndicalist council movement, the Social Democrats, led by the eminent labor lawyer Hugo Sinzheimer, institutionalized the defeated “workers’ councils” (*Arbeiter-räte*) as “works councils” (*Betriebsräte*) in the 1920 Weimar Constitution and the *Betriebsrätegesetz*, thereby laying the cornerstone for what later became the German Works Constitution (*Arbeitsverfassung*). Works councils, to be elected by all workers regardless of union membership, were given legal rights and responsibilities with respect to both representation of workers at the workplace and consultation and cooperation with management. In addition, they were made legally responsible for supervising the implementation of industrywide collective agreements and public legislation applicable to their workplace. Finally, they were barred from calling strikes, with wage bargaining explicitly reserved for the unions and employers’ associations.

Sinzheimer’s *Arbeitsverfassung* was an early attempt to address the problem of a potential representation gap at the workplace under centralized industrial

relations, and to fill that gap in a way compatible with both industrial unionism and parliamentary democracy. It also took into account the demonstrated intensity of the demand of German workers for workplace representation—be it radical, cooperative, or both. The legislation of 1920 was to make it possible for unions and works councils to coexist with and benefit from each other, incorporating the councils in unionism in the same way that it incorporated the unions in the new democratic system—by granting them constitutionalized rights to self-governance while at the same time firmly establishing the primacy of the more encompassing over the more specific order. While councils were to be in charge of the workplace-related interests of workers, unions were to represent their general interests. While councils were to look after the productivist cooperative interests of workers as producers, unions were left free to represent the distributional conflictual interests of workers as consumers and citizens. Union control over the strike and the industrial agreement assured the precedence of general over special interests, and of pluralist conflict over productivist cooperation.

The legislation of 1920 was only the beginning of a long evolution, one never without tension. By the mid-1920s, many of the onetime “left” councils again behaved “right” (and often, for that matter, “yellow”). At the same time, the memory of the more ambitious demands of the postwar council movement lingered in German unions’ project of economic democracy (*Wirtschaftsdemokratie*). In it, councils, either of workers alone or of workers and employers, were to be the principal agents of economic decision making. Operating both at the workplace and at the sectoral and national levels, their powers would extend to investment decisions and the setting of prices. With economic democracy aborted by the Nazis, Sinzheimer’s design came to fruition only after 1945, when the less demanding “co-determination”—itself conceived as a “third way” between socialism and full-fledged capitalism—became the German unions’ main strategic objective. Under co-determination, works councils gradually turned into the local infrastructure of a flexible system of shared, quasi-public, centralized governance of the employment contract.

The German case, precisely because it underwent so many twists and turns, impressively illustrates the ineradicable *ambivalence of unions toward works councils*. As is evident not only from this case but from others in continental Europe, councils may be all kinds of things to unions: employer-sponsored union substitutes, as well as vehicles of union recognition and union access to the workplace; radical syndicalist opposition to unionism and collective bargaining, as well as easily controlled internal representatives of the external union; agents of particularistic collaboration with the employer, as well as of particularistic militancy; supports for centralized bargaining, as well as vehicles of decentralization. As a result, depending on the circumstances, unions have preferred or accepted a vast variety of configurations at the workplace: from total absence of any organization at all, to more or less externally controlled workplace union sections, to works councils based on union rights, col-

lective agreement, or special legislation—with or without rights to co-management.

### 1.3 Works Councils and Employers

Employers have been just as ambivalent as unions toward councils. Their overriding concern in workplace industrial relations has always been to protect their freedom to manage as they see fit. But employers are often also interested in their workers' cooperating with them, above and beyond the call of contractual duty, in a common pursuit of productivity, competitiveness, and profitability. To the extent that institutionalized consultation with workforce representatives may contribute to such cooperation, employers have eschewed the consultation gap in an unorganized workplace and have often inclined toward supporting some kind of council structure.

The problem is that such structure, once in place, may be hard to sterilize politically. While originally intended to be no more than consultative bodies, councils may be captured by workers seeking not just consultation on production matters, but a chance for articulating distributional interests different from the employer's. Councils may also be used by external forces, such as unions, as an entryway into the workplace, where they may insert themselves between employer and workforce. Institutional structures created to increase acceptance of managerial decisions may thus ultimately enable workers to contest such decisions, or to demand participation in them. For employers, the improved opportunities councils offer for collective communication may thus come at too high a price.

It is this dilemma—the danger that institutionalized consultation, set up to increase productivity, may undermine the managerial control that is the traditional means of increasing productivity—that explains why historically the attitudes of employers toward councils have been as diverse as those of unions. At various times and places, employers have promoted councils on their own and then abolished them when they became too independent—sometimes, as with syndicalist councils, in alliance with governments and unions. They have urged governments to introduce councils by legislation where unions threatened to penetrate the workplace. And where unions had already penetrated, they have tried to turn union workplace organizations into works councils, to get antiunion candidates elected in works council elections, to get unionized works councillors to carry the conflict between workplace-specific and general worker interests into the union itself, to isolate councils from the influence of external, full-time union officials, to break up unitary structures of workplace representation by introducing separate councils for white-collar or managerial employees, and to help external unions gain control over too independent councils—in ever changing alliances with workplace leaders, external unions, and governments of different political compositions.

Amid this variation and flux, however, there have been definite periods during which employers and unions agreed on councils of a certain kind and were jointly capable of assigning them a place in a common industrial relations system. One such period in Western Europe came immediately after World War II. At that time, employers had lost the capacity to support authoritarian alternatives to liberal democracy, just as communist and syndicalist tendencies among labor movements were more or less effectively suppressed by the American presence. Unlike the interwar period, there was no doubt that industrial relations in reconstructed Europe would be both labor inclusive and moderate—with employers recognizing unions and unions by and large accepting the role of employers. The pressing need for economic reconstruction, moreover, virtually forced unions and employers to work together in pursuit of economic improvement.

In this situation, unions and employers in most Western European countries agreed on supplementing centralized collective bargaining with workplace-based bodies for joint consultation. These consultative councils were insulated from distributive conflict and dedicated to improving economic performance; their power to negotiate local agreements, if recognized at all, was carefully circumscribed. Again, postwar consultative councils were in some measure a concession by labor to employers; they reflected union acceptance of the employer's right to manage, in exchange for employer acceptance of centralized collective bargaining. But they also responded to union needs for neutralizing the workplace as a condition for a centralized, universalistic, and egalitarian union policy.

Postwar consultative councils came in many different forms, depending on the specific political situation and the institutional traditions of their respective countries. Some council systems were created by national collective agreement between unions and employers—raising, and differently answering, the question of whether nonunionized workers were allowed to vote in elections or serve on councils. In other countries, councils were legally based, and some were equipped with incipient rights to co-determination that served as a reminder of continuing union doubts about unlimited managerial prerogative even in centralized industrial relations systems. These differences, as will be seen, were important in how council systems evolved later. But the commonalities are also of interest—the consensual recognition in many countries, in a situation of economic hardship, of a need for joint collective consultation at the workplace through special institutions that were not involved in the inevitable distributional conflict between employers and workers and that provided for productive cooperation within the broader context of that conflict.

Still, the contradictions and dilemmas of councils remained and were soon to surface again, for employers no less than for unions. For the former, even consultative councils raised the puzzling problems summarized in Alan Flanders's paradoxical observation that to retain control over the workplace, man-



agement might have to share it with the workers.<sup>12</sup> To be safe from encroachment on their power to manage, employers preferred councils to remain voluntary arrangements controlled unilaterally by themselves—neither legislated nor prescribed or regulated by collective bargaining. Legislation was welcome only insofar as it imposed legal limitations on councils—especially by subjecting them to a “peace obligation,” requiring them to cooperate with the employer in good faith, and limiting their relations with unions—while similar obligations for employers, in particular those that might have detracted from their right to manage, were fiercely resisted and could be imposed by governments only in exceptional circumstances.

With the notable exception of the most strongly legally based council system—Germany’s—consultative councils generally fell into disuse in Western European countries in the 1950s and 1960s. Of the many reasons for this, one surely was the general insistence by employers that councils only be consulted at their discretion, as they saw fit in the unrestricted exercise of their managerial rights. This was bound to result in a “trust gap” among workers who came to believe, in the absence of enforceable management obligations to consult or inform, that management turned to councils only if doing so served its own interests. Unions in particular came to regard councils at best as a management tool, and at worst as a device to cultivate company patriotism at their expense. Employers, for their part, expected councils not only to yield economic benefits but also to keep unionization at bay, without however allowing them to perform meaningful representative functions. As a result, both sides became disappointed and lost interest, and joint consultation systems gradually dried up, with industrial relations becoming increasingly identified with conflictual collective bargaining. For the unions this was just as well until the late 1960s when a wave of spontaneous worker unrest reminded them, too, of the dangers of a representation gap at the workplace.

Employer preferences for voluntarism—for works councils limited to receiving information without obligation for management to wait for their response, and certainly for consultation over co-determination: overinstitutionalized, obligatory sharing of management control—were not necessarily modified by the experience of the attrition of postwar joint council systems. Nor do they seem to have been diluted by the easily available observation that even legally based works councils such as the German ones, with a strong union connection and significant capacity to interfere with managerial decision making, may be compatible with high economic performance in competitive markets and may even outright contribute to it. While the limited capacity to promote confidence in voluntary information and consultation practices motivated exclusively by economic expediency or the employer’s unilateral goodwill is one thing—making workers hedge against management defection in pursuit of short-term economic benefits—the fear of a loss in discretion and

12. Among other places, see Flanders (1975).

“flexibility” that is associated with more institutionalized representation is quite another. The history of works councils in postwar Western Europe demonstrates that, left to their own devices, employers find it exceedingly hard to resolve this dilemma.

One way in which employers have historically responded to the quandaries of representative collective representation is by trying to avoid it altogether and instead to base social relations at the workplace on nonrepresentative, one-to-one communication with individual employees. This approach, which reaches back at least as far as the “human relations” school of the 1930s, seems to have been rediscovered on a broad scale in the 1980s, when it came to be referred to as “human resource management.” Recent interest among employers in re-individualizing the employment relationship seems to reflect both a growing economic payoff of improved communication between management and labor at the workplace and traditional management concerns about the unwelcome side effects of collective representation. Individualized human resource management seems to have progressed most where postwar consultative councils had faded away in the absence of a supportive legal framework, and where unions were either too hostile to serve as a conduit for workplace cooperation or too weak to defeat employer attempts to exclude them from a socially reconstructed workplace. Although human resource management is itself likely to be beset with dilemmas and contradictions—and probably with the same ones as its predecessors—its appearance does seem to pose problems even for strong unions and well-established works councils, which are hard pressed to find ways of establishing a role for themselves in the new methods of personnel management.

Human resource management may be seen as an attempt by employers to take the social organization of the workplace in their own hands. The strategy seeks simultaneously to avoid the political risks of a disorganized and thus potentially radical workforce, the economic costs of deficient communication, and the expense of relying on a potentially adversarial representative intermediary. There may, however, be economic, social, and political conditions under which management unilateralism, even in this most sophisticated of forms, fails to accomplish its objectives. Today, with the larger questions of capitalism, socialism, and democracy more or less settled, there are indications in many European countries of a possible renaissance of councils as a workplace-based infrastructure of productive cooperation alongside institutionalized conflict. According to some of the country studies in this volume, competitive market pressures for cooperation and consensus at the point of production may have become so strong that employers, for lack of a better alternative, may now be willing to accept representative institutional arrangements of labor-management cooperation, even if they involve a unionized works council making the joint pursuit of mutual economic advantage conditional on shared control over managerial decisions.

To the extent that this is indeed the case, there may today be a broad if silent

movement in the industrial relations of advanced capitalist countries toward a new productivist covenant between capital and labor. Again, this appears in a rich variety of empirical manifestations—not always easily discernible, and inevitably beset with ambiguities, paradoxes, dilemmas, contradictions, and tensions that make it inherently precarious and dependent on constant renewal and reinforcement.

#### 1.4 Works Councils and the State

In many European countries, liberal democracy was introduced only against the violent resistance of radical syndicalist council movements. The worker councils of World War I saw themselves as the foundation of a decentralized, direct-democratic *producer democracy* that had no need for a “state”—that is, for territorially based political rule with parties, parliaments, and bureaucracies alienated from the organization of material production.

Nowhere, of course, did syndicalist projects come close to realization. They were opposed not only by the old and new ruling classes but also by mainstream unions and social democratic parties, as well as communists.<sup>13</sup> Once firmly established after 1945, however, European liberal democracies could afford to treat works councils as one element among others of a new social order of production, and as part of a preferably self-governing system of industrial relations within which organized workers and employers were given broad freedom to regulate their affairs on their own.

With workers and unions strong enough to insist on free collective bargaining as an essential element of the “postwar settlement” between capital and labor, governments and legal systems tried to stay out of industrial relations, as much as possible devolving to those immediately concerned the governance of a subject as politically explosive as the employment contract. The extent to which industrial relations came to be founded on “voluntarism” differed between countries, in line with national traditions and specific political circumstances, although the tendency for governments to minimize their direct involvement was universal. But it also differed for types of institutions—with workplace representation, and particularly works councils, more likely everywhere to be legally regulated or constituted than, for example, union organization or collective bargaining.

State intervention in workplace representation may amount to as much as full-scale legislative introduction of a second channel of industrial relations, as in Germany, or to as little as the minimalist prescriptions found in Italian or Swedish law. In all countries, however, workplace representation has a tendency to be less voluntaristically based than other industrial relations institutions. This is most likely the case because it touches on so many fundamental

13. Exemplary here was the policy of the Communists in the USSR itself, who immediately after 1917 subjected the Russian *soviets* to the iron rule of the Bolshevik party.

issues—from the exercise of property rights to the rights of workers to free association—that finding an acceptable solution for them may be too difficult for unions and employers acting on their own without support of formal law, and too important to the public order to be treated as a private affair.

For example, governments may be drawn into regulating workplace representation because of its effects on nonunionized workers, making it even less amenable than centralized wage bargaining to being construed as a bilateral matter between unions and employers. Also, employers may seek legal protection against worker or union interference with their right to manage, while unions may call for legislation against employers refusing to allow them onto their premises or, as in Sweden in the early 1970s, to agree to union-based “industrial democracy.” And governments themselves may regard it as in the public interest to deploy legislation to help employers, workers, and unions, not only to insulate the workplace from distributive conflict but to institutionalize it as a site for productive cooperation.

In keeping with their general inclination to avoid direct entanglement in industrial relations, governments often prefer to wait for unions and employers’ associations to regulate workplace representation by industrial agreement, or they pass no more than framework legislation to be filled out by supplementary collective bargaining at the enterprise or more typically national level. But even where unions and employers are able to agree on a structure of workplace representation, they may ask governments to pass their understanding into formal law—to make it binding on all workplaces in a country or sector regardless of membership in unions or employers’ associations, or to strengthen the positive effects of representation on cooperation by providing them with legal backing. And governments may threaten to legislate if the “social parties” do not strike an acceptable agreement between themselves. In this way, governments may not just expedite but may even direct the negotiation of these parties, producing a result that is *de facto* far less “voluntaristic” than it looks.

If the terms of workplace-based representation are more likely to find legal expression, moreover, they are not often revised. Legislatures tend to stay away from the existing law, regardless of changes in political majorities or economic and organizational conditions. And rather than trying to accommodate new problems with new legislation, governments prefer to let the parties at the workplace make adjustments in practice, or to wait for legal innovation to come from the courts. This is so even in such countries as Germany, where the use of law in industrial relations is widely accepted. There, the Works Constitution Act of 1951 was revised once, in 1972, and has since remained basically unchanged—in spite of the change of government in the early 1980s to the Christian Democrats and regardless of the country’s unification in 1990.

The extraordinary stability of the law on workplace representation reflects the technical complexities of the subject and the political sensitivity of reopening the political bargain underlying it, as well as the need of the parties to industrial relations for steadiness and predictability of the institutional condi-

tions in which they interact. Together these factors seem to make works council legislation similar to constitutional law even where it is not, as in Germany, referred to as such.

Among the subjects of, direct and indirect, legal intervention in workplace representation, and in works council systems in particular, are:

1. *Creation of councils:* Typically works councils are not mandatory. Even the German Works Constitution Act requires a minimal initiative from workers or unions for a council to be set up, probably as a measure of perceived need and spontaneous support. Legal thresholds for council formation are, however, very low. Unions tend to be given special procedural privileges, and employers have no right to object, nor can they demand that an established council be rescinded.

2. *Election procedures:* Most countries regulate in law the voting procedure, the nomination of union and nonunion candidates, and the lengths of terms of council office, although in Italy all of these are left to the unions to determine unilaterally, and in Sweden most of them are. Unions are usually given certain privileges in nominating candidates, even where the procedure is not strictly union based, and large, “representative” unions with many votes tend to be advantaged in the allocation of council seats—reflecting a shared interest among unions, employers, and government in limiting the influence of “splinter groups.”

3. *Council resources:* Universally, employers must defray the costs of councils. Typically, the number of paid hours council members can spend on their position is regulated in legislation, as are other rights of councils and their members—for example, to office facilities, training, and special employment protection. Legislation on these matters exists even in countries, like Italy, with otherwise highly voluntaristic council systems, presumably because a sufficient resource base is so essential for councils that it cannot be left to the discretion of employers. Nowhere do councils have to collect dues from workers, as unlike unions councils are not voluntary associations. Council resources are legally kept apart from union resources, although unions are everywhere more or less marginally, and more or less legally, subsidized by councils—and, less frequently, council activities may be subsidized by unions. In most countries, finally, unions, councils, or both may negotiate additional resources for councils above and beyond what the law prescribes.

4. *Relations between councils and unions:* Where councils are not legally defined as union bodies, the law typically sets unions and councils apart while at the same time establishing relations between them. Legislation on the latter is usually highly contested, involving such touchy issues as the right of councils to use union assistance (if necessary, against employer objections) and the right of unions, especially full-time union officials, to have access to councils (even over either council or employer objections). Other subjects of legal regulation may include the training of council members in union schools, the rights

or obligations of councils to consult with external unions before making major decisions, the participation of full-time union officials in council negotiations with the employer, the performance of union functions by council members, and again, the access of unions to council resources. In some systems, unions may have a legal right to initiate recall procedures against councils neglecting their duties, including the duty to cooperate in good faith with industrial unions and carry out the industrial agreement.

5. *Council rights and obligations:* National systems differ perhaps most widely in the extent to which rights and obligations of works councils are detailed in formal law—compare, for example, the German Works Constitution Act to the Italian Statuto dei Lavoratori. The matter is politically highly sensitive as it pertains to both the functional differentiation between unions and councils and the extent to which councils may infringe on managerial prerogative and, ultimately, property rights. Functional differentiation as well as co-determination require law, either legislation or, less likely, binding industrial agreements, and the more there is to be of them, the more law there will tend to be. To the extent that council rights are legally different from union rights and councils are formally independent of unions as organizations, rights are likely to be accompanied by obligations—for example, rights to information accompanied by obligations to preserve confidentiality, and rights to consultation and co-determination accompanied by obligations to observe industrial peace and to cooperate with the employer in good faith. Balancing the rights and obligations of councils is an exceedingly difficult task for legislation to accomplish, and therefore not easily taken on. Employers that violate council rights are typically subject to legal sanction, but so may be councils that fail to perform their obligations.

Some types of works councils, such as health and safety councils, may be set up by law directly and prescriptively in the context of regulatory legislation when governments need reliable instruments to enforce rules regulating employer behavior at the workplace. Tied to enabling legislation with particular goals, councils emerging in this context are functionally specialized and narrowly circumscribed in their jurisdiction. They may, however, accumulate tasks, or later be merged with similar bodies, or be chartered for other legislation, to realize administrative economies.

6. *Dispute resolution:* Where the law refuses councils recourse to the strike, it may compensate them with alternative means of power to exercise their rights and counterbalance the employer's powers of decision making. Typically, councils have legal standing to seek redress in courts if their rights are infringed on. Where councils have rights to co-determination and may use them to veto employer decisions, the law must in addition provide for efficient mechanisms to break a possible impasse—for example, arbitration committees with the power to make binding awards.

Both management and labor have at different times and in different circumstances called on government to regulate workplace representation to suit their

special interests. Often legislative intervention was not much more than the imposition of one side's political will on the other, or at best the formalization of a compromise between the two that merely reflected a momentary balance of power. But a more creative role for public policy also seems possible, one that uses the state's unique capacity for authoritative institutional design to increase the certainty, and thereby expand the range, of mutually beneficial cooperation at the workplace. The way governments have done this is by introducing into the relations between the immediate participants externally enforceable obligations that make the continuation of cooperative behavior less sensitive to short-term fluctuations in goodwill or self-interest. Deployed in this way, formal law becomes a productive resource in its own right. By injecting a nonvoluntary, public dimension into arrangements otherwise prone to instabilities arising from defection, it stabilizes cooperative practices against defensive expectations of such defection. It is this potential contribution of legal-political intervention to long-term cooperation that would seem to be the most intriguing aspect of the role of the state in workplace representation today.

### **1.5 Method of Research and Organization of the Volume**

This book surveys the recent experience with works councils in Europe and North America, with special attention to possible lessons from Europe for the discussion in the United States on alternative or supplementary forms of workplace representation. The present chapter has introduced the book's main concepts, explored the politics and institutional characteristics of works councils in relation to unions, employers, and governments, and outlined the history of works councils in Europe. The next chapter, which completes the introductory part of this volume, attempts to model the basic economics of works councils. It shows why councils may be expected to contribute to good economic performance.

Apart from the United Kingdom and Ireland, works councils are an established feature of the industrial relations systems of most Western European countries, and have increasingly become so in recent years. Part II of this book is therefore devoted to Europe, in particular to the economically advanced democracies of Western Europe, using them as a research site in an attempt to find general insights into the nature of works councils. There are six country chapters, each reviewing the history and present state of councils in a particular Western European country (chaps. 3 to 8), a chapter on supranational works councils in the European Community (chap. 9), and one on councils in Poland, an Eastern European country in transition to a market economy (chap. 10). The sequence of country chapters begins with Germany (chap. 3) and the Netherlands (chap. 4), two countries where works councils operate on a strong legal base. This is followed by a consideration of France (chap. 5) and Spain (chap. 6), two countries that have weaker, though also legally based, councils func-

tioning in an environment of declining politicized multiunionism. Chapters 7 and 8 deal with Sweden and Italy, where councils are not prescribed in law but have developed out of cooperative relations between employers and strong unions. Part II concludes with a synopsis and synthesis of the European country studies (chap. 11).

The Western European country chapters loosely follow a common format. They all focus on the postwar period, and especially on developments in the past two decades of increased competition and intense economic restructuring. Each chapter describes the structure of its country's works council system, its organizational and legal base, the rights and obligations vested in it, its relations with unions, employers, and governments, and especially its impact on and response to economic change.

Understanding the subtleties of the institutional politics of work councils requires extensive description of institutional structures and political conditions, of the surrounding industrial relations systems, and of councils' historical development. Due to the low number of cases and limited cross-national comparability, most of the information used for comparison must be qualitative, including that bearing on councils' economic effects. Rather than applying rigorous statistical analysis, which is impossible and always will be, the discussion relies on the identification of parallel developments and common trends and is more concerned with understanding the range of possible variations and options than with developing deterministic causal propositions.

Part III deals with North America. Chapter 12 looks at joint health and safety councils in Canada, as an example of a council-like structure in a North American country. Chapter 13 recounts the story of futile attempts in the United States to institute union-independent workforce representation, places the United States in comparative perspective, and explores the implications of the Western European experience for current policy debates about labor law reform.

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