

CHAPTER 22

CROSS-NATIONAL
VARIATION IN
REPRESENTATION
RIGHTS AND
GOVERNANCE AT
WORK

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IN its purest form, the capitalist employment relation is a relationship of subordination, in which employees have no a priori rights of participation or representation and take on the status of resources to be employed in accordance with the interests of capital. The structure of this relation should, according to neo-liberal theory, give rise to superior levels of economic performance, because employees have little choice but to accept and comply with employer objectives, and there are fewer restrictions on the exercise of employer authority. But it can serve as an underlying source of conflict and employee distrust, because the interests of those over whom authority is exercised are subordinated to, and hence always potentially sacrificed in favour of, those of capital. It can stifle

forms of employee input that are potentially conducive to both employee consent and economic performance. Finally, it is contrary to basic democratic values underpinning liberal democracies, potentially creating problems of legitimacy within the economy at large and the workplace in particular. Ultimately, it can give rise to widespread economic unrest, and this unrest can spill over into the social and political spheres.

The extent to which these problems actually become manifest, and the ways in which they do, vary in accordance with a variety of considerations, including the design of organizational governance structures and hence the extent to which the interests of capital indeed dominate, and, more generally, predominant norms and the broader institutional environment within which the parties act (Poole, 1986). But their realization, or the threat thereof, has provided perhaps the primary impetus for the formal establishment of representational rights in developed capitalist economies (see Adams, 1995).

Historically, the design and strength of these rights has varied considerably, with potentially important implications for organizational governance and ultimately for national economic and social outcomes. As a number of preceding chapters in this volume reveal, this variation has persisted and possibly even increased over the past few decades despite various pressures for economies to converge towards a neo-liberal model. As a result, there continues to be considerable cross-national diversity in both the institutional context of the employment relation and the way in which conflicts are resolved given this context.

The contribution of this chapter, therefore, is to address the reasons for this variation and why it persists in view of such pressures. We begin by briefly describing cross national differences in representational rights and in organizational governance structures associated with these rights (or lack thereof). We then address various explanations that have or can be advanced to explain this variation and why it persists. Next, based on these explanations we adopt a historical institutionalist perspective to explore the historical basis of this variation. Throughout, we focus on the United States and Germany, because they are commonly identified as exemplars of distinctive varieties of capitalism, with markedly different participation and representation rights. However, we also refer to other countries where relevant.

For the purposes of this paper, we define representational rights to include a variety of institutional systems that give employees some form of participation in managerial decision-making or corporate governance, especially works councils, representatives on supervisory boards, or union-led collective bargaining. This definition includes voluntaristic as well as legal systems of rights, provided that these systems are institutionalized through widely held normative rules and understandings as to employee representation rights (for example, the post World-War II British system). It generally excludes systems of 'direct' participation such as autonomous work teams, and indirect systems initiated and

controlled by employers, such as company unions. Although both may provide workers with meaningful opportunities for participation and representation, both also exist at the behest of the employer and are generally implemented to serve employer interests. Neither can be considered to provide workers with rights in any meaningful sense of this term. Thus, while we refer to such systems where relevant, they generally fall outside of the main purposes of this paper.

VARIATION

Although there has always been variation in representation rights at work, this variation became especially apparent in the 1950s, in reflection of different post-war 'accords' between labour and capital. Yet during the 1950s there also emerged a widespread belief that, as nations become more economically and technologically developed and integrated, their standards of living can be expected to converge, and so can their institutions and the compromises on which they are based. This convergence would be towards a pluralist model, in which employers sought to balance off competing imperatives rather than privileging the interests of capital, and in which unions and collective bargaining would serve as the primary source of participation and representation rights for workers (Kerr et al., 1960).

More recently, a new, neoliberal convergence thesis has emerged, one in which globalization has rendered international competitive forces so strong and capital so mobile that national governments and their populations have no choice but to effectively accept neoliberal reforms or risk national economic decline and possibly destitution (OECD, 1994). Under this model, unions and collective bargaining, and participatory rights in general, serve as impediments to economic growth and prosperity unless they effectively become tools of management. Where the pluralist convergence thesis suggests a shift in direction away from a 'pure capitalist' employment relation, the neo-liberal thesis suggests a shift back.

It is arguable that both of these theses contain some merit. For example, it may be argued that economic and technological development has historically tended to be associated with the adoption of representation rights in some form, even if these rights have varied considerably and have often been resisted by employers. It may also be argued that globalization pressures have had important implications not only for representation rights and organizational governance laws (see Gospel and Pendelton, 2005), but also for the way in which these rights and laws are practiced. Yet even if one attempts to give these theses their due, there can be little question that substantial variation in these laws and, more generally, the institutional

environments that support them, persists and may even have increased in recent decades (Godard, 2004a).

To illustrate, union representation remains the only system of legal workplace representation in the United States, and laws in support of it have been so badly weakened that it now accounts for only one in eight workers. Moreover, despite recent hopes that a resource based 'stakeholder' model may be emerging (Jacoby, 2005a: 10), management in the private sector remains accountable only to capital, a relationship strengthened by recent financial system reforms (Jacoby, 2005b: 49–50). In contrast, there are three systems of institutional or indirect representation in Germany, by unions, by works councils, and by representation on the supervisory boards. Although these systems are often absent in small employers and may have undergone some decline in coverage over the past decade or more (Hassel, 1999), they can be found in some combination in the large majority of medium and large workplaces, and remain central to organizational governance systems (Stettes, 2007; Ellguth and Kohaut, 2004). They are also complemented by ownership arrangements and traditions that, despite some recent reforms, are generally conducive to a partnership model (Thelen, 2004).

These two examples in many respects represent extremes. Yet within these extremes there continues to be substantial cross-national variation in representation rights and governance systems within advanced democracies. Canada, for example, has similar organizational governance systems to those of the United States, but two-and-a-half times the level of union representation. Britain also has similar governance systems, and roughly the same coverage level as Canada, yet unions appear to play a much more collaborative role, and workers also enjoy limited information sharing and consultation rights (even if largely in response to European Union directives). In Sweden, 9 in 10 workers are represented by a union, and unions play a much stronger role in the workplace, in many respects similar to that of works councils in Germany; workers also have elected representatives on company boards. Japan has relatively weak representation rights at law, with unions representing only one in five workers and appearing to serve a largely integrative function, yet corporate governance systems and norms have traditionally meant that employees are in most medium and large sized corporations considered to be major if not primary stakeholders and are able to exercise voice through consultation councils (Tackney, 2000).

Representation systems within these nations have by no means remained static. There has been some weakening of, or at least reform to, these systems and most of their counterparts within the developed world. However, these changes have been more complex than can be accounted for by the neo-liberal convergence thesis, and fundamental institutional differences remain. This raises the question not only of why nation states have been characterized by such differences in representation rights at work, but also of why these differences persist. The remainder of this chapter addresses these questions.

Understanding Variation

Cross-national variation in participation rights and the predominant organizational governance system with which these rights are associated may ultimately be viewed as the product of national choices. There is an extensive body of literature on how such choices are made and why they appear to persist over time. In an analysis of the politics of the welfare state, Olsen (2002) identifies six perspectives, all of which may be viewed as having some relevance to analysis of variation in representation rights and governance systems: structural functionalist, cultural/ideological, pluralist, power resource, instrumentalist (Marxist), and polity centred. Where a structural functionalist explanation might explain cross national differences as arising and persisting due to different functional needs within the economy, a cultural/ideological explanation would attribute them to different national values, a pluralist explanation to differences in interest group preferences and pressures, a power resource explanation to differences in the relative power of labour and capital, an instrumentalist explanation to differences in the interests of capital, and a polity centred explanation to differences in dominant state paradigms and the traditions associated with them.

Each of these explanations could likely be applied to the study of participation and representation rights. Yet although doing so might help to illustrate each, it would in the present context represent little more than an exercise in theoretical relativism and as such do little to advance our understanding of variation. In order to understand this variation, there is need of a more coherent perspective, one that combines elements of each to the extent possible yet avoids the relativist trap. The 'new institutionalism' in socio-economics and political studies and, particularly the 'varieties of capitalism' (VofC) and the historical institutionalist literature, provides a starting point for developing such a perspective.

The VofC literature is useful within the present context primarily because it points to the importance of the institutional environments, including legal systems, state structures, policies, and paradigms, business system characteristics (e.g., firm governance, training regimes, and market structures), and various understandings and expectations that support established institutional arrangements (see Godard, 2002). Under the VofC approach, in particular, these environments consist of coherent institutional configurations, in which there are complementarities between specific institutions, and in which institutions tend to be isomorphic with their broader institutional environment. By implication, this environment is likely to be hostile to institutions and institutional designs that do not 'fit,' thereby lowering their likelihood of success unless adapted accordingly.

It follows that variation in participation and representation systems may be attributed to variation in the broader institutional environments of which they are part. In this regard, the most developed formulation of the VofC thesis, as advanced

by Hall and Soskice (2001), distinguishes between 'liberal' and 'coordinated' market economies. The former, which are most exemplified by the United States, rely on highly competitive capital, labour, and product markets, and require maximum flexibility. Within this environment, there is little positive economic role for unions and participatory rights in general. They simply lack 'fit' with the broader institutional environment. The latter, which are most exemplified by Germany, rely on coordinated capital, labour, and product markets, and require high levels of cooperation or 'partnership.' Unions and participatory rights may be seen in this regard to play a critically important role, as unions coordinate labour markets and both works councils and board representation help to ensure high levels of cooperation.

Although this literature is of value for helping to understand why particular participation and representation rights might be expected to function effectively in some environments but not others, the Hall and Soskice formulation implies an unduly functionalist conception of institutional design, failing to address how it is that particular institutional configurations come about. It also assumes a purely economic rationale for institutions, thereby ignoring the role of social and political forces both in shaping institutions and in determining their apparent fit within the broader economy and society.

Historical institutionalism provides a basis for addressing these limitations. It essentially finds that institutions and configurations thereof are path dependent, moving along a historical trajectory, and that deviations from this trajectory tend to be relatively minor (e.g., Sewell, 1996; Pierson, 2004). Although there is room for agency in shaping how this trajectory unfolds and even a possibility of transformational change over time (Streeck and Thelen, 2004), most accounts of institutional change in this literature argue that agency matters most in periods of crisis, which serve as 'critical junctures' for institutional transformation (Krasner, 1988; Lehmbruch 2001; Mahoney, 2000; Pempel, 1998).

A key problem for historical institutionalist analysis has been to explain why institutions appear to be path dependent. A variety of explanations have been proposed, many of which parallel those identified by Olsen for welfare state policies (see Mahoney, 2000: 515–26). One suggests that institutions represent institutionalized power relations, and that these relations become increasingly entrenched over time, alterable only during some form of major shock or crisis (see Thelen, 1999). Another argues that institutions become self-reinforcing, perpetuated through various forms of investment and positive feedback which generally render the costs of transformation greater than the benefits (Pierson, 2000, 2004). Yet another argues that institutional reproduction occurs because it reinforces subjective orientations and beliefs about what is morally legitimate and so actors voluntarily opt for its reproduction (Mahoney, 2000: 524). A further explanation, one that is consistent with the VofC thesis (also see Mahoney, 2000: 519), is that institutions persist because they complement other institutions and, conceivably, evolve in ways that maintain this fit.

All of these explanations can be seen to contribute to our understanding of why institutional differences persist, suggesting that differences in participation and representation systems (or a lack thereof) are embedded in (and in this sense constrained by) broader institutional environments and that these environments tend to be deeply rooted and path dependent. But historical institutionalists have failed to adequately theorize the initial design or foundations of institutions. What, for example, accounts for the particular form of representation (collective bargaining) rights that came to predominate in the United States? What accounts for the more elaborate system of rights that came to predominate in Germany? To simply argue that these tend to be rooted in historical differences leaves open the question of why and how these differences initially came about.

One reading of the historical record that would be consistent with the historical institutionalist literature (and with strategic choice theory in industrial relations) suggests that participation and representation rights within developed economies have tended to become established at specific historical junctures, and that they have reflected choices of key actors made in response to unique combinations of economic, social, and political conditions. Under this explanation, for example, the adoption of the US 'Wagner model' of union representation in the 1930s can be attributed to the crisis created by the Great Depression and a belief that the provision of positive collective bargaining rights would boost worker spending power, thereby helping to regenerate the economy (Kaufman, 1996). It can also be attributed to militancy in the labour movement, particularly as reflected in the growth of industrial unionism and formation of the Congress of Industrial Organization. By comparison, the adoption of the German system of codetermination after the Second World War may be attributed to a desire to ensure dispersed economic and political power and hence help avoid a return to fascism and to foster levels of labour cooperation needed to rebuild the German economy.

Although such a reading is plausible, we believe it to be inadequate. As we demonstrate below, a more careful reading of history suggests that the representation systems selected within each country can be traced to traditions that long predate the historic junctures in which they were formally established. To an extent, they may in this respect reflect earlier historic junctures and the developments associated with them.¹ But while historic junctures may matter, we believe that representation systems and the traditions underpinning them are ultimately rooted in formative economic, social, and political conditions and developments within a nation's history and the dominant discourses associated with them. Formative conditions and discourses do not just shape institutional choices at key junctures in history, they also come to be reflected in deeply held institutional norms, or beliefs, values, and principles as to the role, rationale for, and legitimacy of established institutions (Godard, 2009). These norms essentially restrict the range over which subsequent political discourse and the institutional (re)designs that follow from it are likely to gain and maintain legitimacy, in effect institutionalizing

the implications of formative conditions and explaining long-term institutional continuity. Although they may allow considerable scope for interpretation and hence for politics (e.g., see Jackson, 2005), they therefore give rise to biases that privilege one or more institutional alternatives over others (e.g., Bachrach and Baratz, 1962; Lukes, 1974). These biases become not just structurally embedded, in the way institutions are designed and the distribution of power resources, but also cognitively embedded, in the way actors think about institutions and the ideologies around them.

Our essential argument, therefore, is that cross-national variation in representation rights reflects deeply embedded historical trajectories, and may ultimately be explained in terms of deeply held institutional norms that can be traced to formative economic, social, and political conditions and the political discourses around them. We believe that this approach offers at least three advantages. First, the concept of institutional norms addresses the problem of historical continuity or paths, while allowing for politics and hence variation along (and in some cases, deviations from) these paths. Second, it helps to account for institutional configurations or 'varieties of capitalism,' suggesting that institutional fit occurs because of underlying norms that tend to be shared across institutions.² Third, it allows us to consider the importance of history and the role of ideas in history without adopting an unduly idealist or culturalist approach, in which institutional change is simply a matter of changing minds. Within the present context, this third insight is especially useful as it provides the basis for understanding the historical and ideational roots of representation rights within individual states and why these rights continue to vary. Below, we demonstrate the value of this approach by comparing the development of institutional norms and representation rights in the United States to that of Germany.

THE CASE OF TWO NATIONS: THE UNITED STATES AND GERMANY

The differences between the representation rights found in the United States and Germany are stark. The United States is known for its highly voluntarist approach to participation, originally comprising a pluralistic notion of free collective bargaining which over time got eroded and substituted by voluntarist forms of firm-specific direct employee participation. In contrast, Germany is known for a more corporatist approach to participation and is usually regarded as the prototype of legalistic participation regimes, having achieved workers' participation in managerial decision-making through legal rights for works councils and workers'

representatives at companies' supervisory boards, as well as free collective bargaining. These differences are, as earlier suggested, in part explained by functional requirements associated with the broader institutional environments of each nation. But they also represent deeply rooted historical differences and institutional norms. This is the focus of the present section.

The United States³

The United States is characterized by a strong distinction between the political sphere, where democratic rights are viewed as of central importance, and the economic sphere, where property rights and the unfettered pursuit of 'life, liberty, and happiness' are viewed as of central importance (Kiloh, 1986: 17). This distinction has been reflected in labour and employment law. Until the early twentieth century, the dominant legal doctrine, as repeatedly affirmed in Supreme Court decisions, was one of freedom to contract, based on the assumption that workers as individuals are on equal footing with their employers, and that the absence of representation rights reflects their consent (Hattam, 1993). It therefore allowed virtually no legal basis for collective voice or representation at work. This changed in the New Deal era, when workers were provided with the right to collective bargaining. But although many proponents of this right saw it primarily as a democratic one (Dubofsky, 1994; Barenberg, 1993), it was justified primarily on the grounds that it would boost spending power and hence be good for the economy (Tomlins, 1985; Kaufman, 1996; Pope, 2002), not on the grounds that it would introduce democracy into the workplace. Since then, the ability of workers to gain even the basic representation rights associated with collective bargaining has been substantially eroded (e.g., Godard, 2003).

The limited representation rights and role of unions in the United States may be seen to reflect a number of formative conditions and the discourses surrounding these conditions. The United States was characterized by a history of individualist, frontier development, one in which the state played a limited role. It was initially settled by Puritans fleeing persecution in Britain and subsequently borne out of a revolt against the British state's taxation of the American colonies and refusal to provide them with democratic representation rights. These stylized conditions are commonly argued to have given rise to a number of dominant norms and values (e.g., Tocqueville, 1998 [1835]; Perlman, 1949 [1928]; Hartz, 1955; Lipset, 1963, 1964; Lipset and Meltz, 1998; Jacoby, 1991; Hutton, 2002). The United States, even more than other liberal democracies, is known for its 'possessive individualism,' its strong, Lockean conception of the sanctity of property and of ownership rights deriving from property, a belief that property and wealth are attributable to the achievements of the individual and so do not carry with them the same duties or obligations as would be the case if they derived from inherited

status (Hutton, 2002), a corresponding belief that authority deriving from property rights should not be interfered with and entails few if any obligations to either workers or society, a distrust of centralized state power and hence administrative law, an emphasis in law on freedom of contract and hence both 'free' labour and 'free' product markets, and a comparatively conservative and weak working class.

In particular, a liberal conception of society and state, derived from the writings of Hobbes and Locke, and embedded in the US constitution by its framers, have been predominant. This conception emphasizes a state–society distinction, under which the state is viewed as an instrument of society rather than a higher, ideational good and is a subject of rights and duties. As Dyson (1980) convincingly shows, this 'mechanic view' of the state goes hand in hand with an individualistic, positivist conception of society. Society is perceived as a composition of a multitude of autonomous individuals who possess and express their free will. A high value is placed on individual freedom, which is defined as being free from any superior power such as the state. The source of all law and state action is the individual, who is the only real, free, and responsible being. The rights of the individual are prior and superior to the state, whose only absolute value is the liberty of the individual.

This conception has been antithetical to any notion that workers should be provided with representation rights at work or that the state should intrude into the economic sphere in order to mandate such rights. This is not to suggest that there has been no support for democratic forms of work (see Derber, 1970).⁴ But these forms have had little chance against a dominant liberal reading that centres on the explicit separation of the 'private' economic and 'public' political spheres and which emphasizes both employer proprietary rights and the freedom of parties to establish their own contracts.

The result has been a variant of capitalism more hostile to independent workplace representation than perhaps any other. Where in Europe employers may have been subject to strong pressures to accept the passage of strong representational rights for workers or face substantial unrest and possibly socialization of their property, US employers have been notorious for the intensity with which they have resisted such rights, and union representation rights in particular. While workplace or employer level representation systems have been established by employers, they have historically tended to be management dominated and designed to supplant unions, rarely providing workers with meaningful rights. For this reason they were sharply constrained under the 1935 Wagner Act. More recently, so-called 'high performance' work practices, which in theory include autonomous (and hence participative) teams, information sharing, and financial participation have generally failed to provide workers with any meaningful say in managerial decision making (Strauss, 2006). US employers are typically not opposed to participation or even representation, provided that they serve

employer objectives, do not interfere with managerial decision prerogatives, and exist at the employer's behest. But they strongly oppose any system that does not meet these three criteria, especially where it entails legal *rights* to either participation or representation.

Within this context, labour unions have historically had little effective choice but to adopt a narrow, economistic orientation, one that minimizes challenges to employer property rights and authority and as such displays little interest in obtaining strong representation rights or reforms for workers. Although there were substantial debates and disagreements within the US labour movement throughout the nineteenth century, the combination of a conservative working class, hostile employers, a hostile legal system, and a weak state meant that, by the end of that century, dominant labour leaders had determined that they would have little chance of success unless they eschewed a strong role for the state and limited their role to the negotiation of improved terms and conditions of employment for their members through 'free' collective bargaining at the workplace and employer level. Collective bargaining subsequently came to be largely equated with the term 'industrial democracy,' and alternative forms of industrial democracy came to be largely excluded from mainstream discourse in both labour and academic/policy circles (Derber, 1970).⁵ Although collective bargaining may have offered some potential for greater control over managerial decision making (e.g., Chamberlain, 1948) and hence the attainment of real industrial democracy, it developed into a narrow, 'workplace contractualism' under which democratic goals were subordinated to the maintenance of industrial stability (e.g., Lichtenstein, 1993; Stone, 1981). In C. Wright Mills' (1948) famous phrasing, union leaders became little more than 'managers of discontent'.

The result has not only been a nation in which unions represent the only channel through which workers can obtain independent representation, but also one in which this channel has been a narrow one, limited to the terms and conditions of employment and allowing workers few if any meaningful consultation or co-decision rights. Indeed, US labour law effectively excludes such rights from the realm of collective bargaining, labelling these as 'permissive' issues over which employers are not required to bargain and unions not allowed to strike.

Even with this limited role, unions have been subject to substantial institutional biases. These have included a widespread public distrust of strong unions (despite widespread support for the right to join a union; see Bok and Dunlop, 1970: 10–12),⁶ an ineffectual labour law regime (e.g., Gould, 1993; Human Rights Watch, 2000; Godard, 2004c), and an economic environment increasingly hostile to collective bargaining (Slaughter, 2007). Part of the labour movement's problem may have been that, in the United States in particular, it substantially increases labour costs yet serves little positive function for employers (Freeman, 2007). This in turn reflects the realities of a liberal market economy and a concomitant rejection of corporatism in any form by employers and the state (see Schatz, 1993). But more

important may be the poor fit between US institutional norms and New Deal legislation providing the framework for union representation rights.

Despite attempts to sell the Wagner Act on economic grounds and to draft it in a way that defined labour rights largely in terms of individual rights and 'liberty of contract' (Woodiwiss, 1990: 162–4), it was widely considered to represent an unconstitutional intrusion of state power into economic affairs. A 1937 Supreme Court decision upholding its constitutionality was unexpected, and may have reflected in part both public pressures and President Roosevelt's threat to 'pack' the court by expanding it with his own appointees (see Pope, 2002). Even with this ruling, however, political support for labour rights pretty much died within two years (Harris, 1982: 37), and the act was substantially weakened over the ensuing decade.

The provisions necessary for the effective functioning of the Wagner Act have been so alien to US legal traditions and institutional norms that opponents have had little trouble obtaining rulings and legal reforms to hobble it (Godard, 2009). A tradition of formal democratic processes has made it possible for employers to obtain a recognition system that requires a formal campaign period and ballot, thereby providing them extensive opportunities to discourage unionization. Norms that privilege property rights over labour rights have yielded rulings that enable employers to deny unions access during a recognition campaign and to hire permanent striker replacements where a union is recognized. Norms of free speech have allowed employers to obtain substantial latitude in what they communicate to workers during a recognition campaign, even allowing them to 'predict' that the workplace will no longer be viable and hence will be closed should a union be recognized. Norms against state intervention have meant that the National Labor Relations Board (charged with enforcing the Act) has been given only weak enforcement powers, so that even where the employer may be deemed to have engaged in illegal firings, threats, or intimidation, the remedies are weak and often subject to lengthy appeal processes; board decisions to recognize a union can also be subject to lengthy appeals, delaying the start of bargaining by months and even years. Norms supporting 'free' markets and 'free' contracts have meant weak provisions in the law for good-faith bargaining, which, in combination with the right to hire permanent striker replacements, makes it relatively easy for an employer to undermine a union should it actually become recognized. The overall result is a system that can be characterized as neither 'free' nor 'fair' (Lafer, 2008).

The result has been that even the narrow conception of industrial democracy and representation rights associated with collective bargaining has largely failed, leaving the overwhelming majority of workers in the United States with no independent representation at work, and the small and shrinking minority that do have representation with little or no meaningful input to employer decision making. By the late twentieth century the very term 'industrial democracy' had been replaced by the more sanitized terms 'voice' in industrial relations circles and

'empowerment' in management circles. Where the former increasingly seems to have referred to grievance and managerial-initiated internal 'justice' systems (an exception is Budd, 2004), the latter has been employed primarily to refer to job design. In turn, the term 'employee ownership' which had initially referred to worker owned firms, came increasingly to refer to managerial controlled stock option plans, advocated as a means of enhancing economic performance but not democracy.

As of the early twenty-first century, there is substantial support for labour unions and collective bargaining within the American public, likely in reflection of norms favouring collective self-help (see n. 6). There are also continuing efforts to revitalize the US labour movement. Most noteworthy in this context has been the introduction of the Employee Free Choice Act (2006), designed to make it easier for unions to organize and obtain first agreements. So, support for limited representation rights, in the form of collective bargaining, remain. But it is still largely excluded from the dominant discourse, and political support has come to be couched largely in terms of reducing poverty and inequality rather than of introducing democratic rights. As in the 1930s, this in part reflects dominant institutional (especially legal) norms. Legal reforms needed to ensure unfettered access to union representation (including those proposed under the Employee Free Choice Act) are alien to these norms and, even if passed, would likely be soon undermined by employer groups.

The prospects for alternative forms of representation rights and democracy would seem to be even bleaker. There was some experimentation with worker cooperatives in the 1970s and 1980s (see Russell, 1988: 384–87), and some subsequent support for works councils among a few prominent IR scholars (e.g., Weiler and Mundlak, 1993; Kochan and Osterman, 1994: 204–7). But neither these nor alternative forms of representation rights at work have gained support even within academic circles. They would seem to be too alien to US institutional norms to ever stand much of a chance.

In short, the historical trajectory of the United States may have become somewhat more favourable to representation rights at work during the New Deal era, but this was only temporary and may even have been an aberration. The problem has not so much been with employer power within the political system per se as it has been with institutional norms and traditions that both support this power and enable employers to mount successful appeals to policy makers, the judiciary, and the general public. These norms can be traced to the conditions under which the United States was founded, and although they have no doubt evolved over time, this evolution has been part of a trajectory under which the institutional bias against representation rights has, if anything, been strengthened. The developments of the New Deal era suggest that these biases may not completely rule out the future attainment of enhanced rights. Yet these developments, and the subsequent undermining of the Wagner model, also

suggest that they may substantially limit both the prospects for such rights in future and the likely success of these rights should they become established.

Germany

In contrast to the United States, Germany has a long tradition of support for expanding democracy throughout all spheres of public life, including the economic arena. This tradition became the dominant paradigm of state-led social and industrial reforms during the end of the nineteenth and the beginning of the twentieth centuries (e.g. Bismarck's welfare legislation), at the very time that the meaning of industrial democracy was coming to be equated with a narrow conception of collective bargaining in the United States. Again in contrast to the United States, norms and laws favouring participation rights at work were well established by the early twentieth century (during the Weimar Republic). They were undermined during the Nazi era, the very period in which collective bargaining rights were established in the United States. But they were re-institutionalized and further expanded after World War Two, and underwent further strengthening in the 1970s and again in 2001. The German experience would, therefore, appear to be the mirror image of its US counterpart. But as for the United States, it is deeply rooted in institutional norms that may ultimately be attributed to the conditions and developments under which the German nation was formed.

Unlike its US counterpart, the modern German nation emerged not out of revolution against state power in the late eighteenth century, but rather out of an exercise in state building a century later, as Bismarck achieved the unification of the German states. Because Germany developed out of a feudal system, status and the property attaching to it were inherited rather than accumulated, contrary to the United States. Despite being the home of the Reformation, Germany also retained a strong and influential social Catholic tradition (e.g., see Lehbruch, 2001: 56–8), in contrast to the strong Calvinist tradition in the United States (Weber, 1930 [1905]). Moreover, there was no frontier 'safety valve' for discontent, as in the US, with the result that working class radicalism was more prevalent. Finally, in contrast to the United States, the state played a major role in Germany's industrial development in the late nineteenth century, establishing state owned banks to finance firms and providing the impetus for what came to be referred to as 'banker's capitalism'. Yet it also had to be mindful of power centres within the newly formed German federation, leading it to adopt a decentralized model, one in which the central government set laws and policies, but delegated their implementation and administration to member states and corporate interest associations encouraged by the state and which included a role for labour.

These conditions both gave rise to and reflected a very different system of norms and values than in the United States. In a nation where there was a scarcity of land

and strict status hierarchies, there was little support for a Lockean justification of absolute property rights or for the belief that an individual's success or failure was a reflection of his/her worth. Instead property and status were considered to carry moral obligations towards society (including workers), and ownership or control of economic enterprises did not confer the same absolute prerogatives as in the United States. Major firms and banks came to be viewed as social institutions, with concomitant obligations to society and, more narrowly, workers. There was also a much greater trust of the state and a perception that the state had an important role to play in the development and regulation of the economy, even if indirectly, through the social partners. This also came to be the case for labour unions, which have played a critical role in the German social partnership model.

These norms were embodied by a long-standing intellectual craving for extending democratic ideas to all societal areas including the economy. The distressing British experiences of the 'labour problem' during the period of 'Manchester capitalism' provided an incentive for German intellectuals and policy-makers to seek alternative routes, and the combination of the French Revolution and Enlightenment with a fragmented political, social, and religious structure encouraged them to look for alternative ideals more consistent with German traditions than those associated with Manchester capitalism (Frege, 2007).

German thinkers, such as Herder and Hegel, sought to repair the social fragmentation caused by capitalism by creating an integrated, cohesive political community in which the state is both a cultural and moral authority and an integrated system of institutions. Their conception of the modern nation state was therefore a theory of social relations in a broad sense and created a German concern for the state as a cultural and moral authority in contrast to the Anglophone positivist tradition which was leaning towards the state as a rational, mechanic, morally neutral organization. In other words, the state was conceived as an integrated system of institutions, rather than, as Hobbes and the Anglophone tradition which followed him had seen it, as an aggregation of individuals acting in consort to satisfy individual interests (Manicas, 1987: 94). This conception was linked with a concern about the enervating effects of social fragmentation on the individual, caused by a growing capitalist economy and technical rationality models of state and society (Dyson, 1980: 151), and to both the increasing labour problem (the 'social question') of early industrialization and the growing force of socialist parties and trade unions.

Although Germany was still a largely agrarian society, political elites had by the mid nineteenth century already begun to settle on the development of an encompassing coordinated political economy which contained representation rights for workers. Particularly noteworthy was the 'Berliner Centralverein,' founded in 1844 by leading industrialists and Prussian bureaucrats, which promoted industry based 'factory committees' within each town. This influenced the events of the 1848 democratic revolution and a subsequent white paper on the factory

constitution of the 'Frankfurter Paulskirche,' which was to have a new economic order at the macro, industrial, and firm levels that included national chambers of crafts where worker representatives participated, industry level worker committees, and joint committees with legal participation rights for workers at the factory level.⁷

This legislation never came to pass because parliament was dissolved and the monarchy regained control. But it clearly portended the reforms of the late nineteenth century and the German model of representation rights implemented after World War Two. It also influenced subsequent discourse supporting state intervention in the economy and the need to make economic institutions compatible with political democracy rather than viewing the economic and political spheres as separate, as in the United States (Schmoller, 1873; Bitzer, 1861: 268). For example, Gustav Schmoller, one of the leading economists of the German monarchy, argued that from a particular size onwards a firm was to be treated like a quasi-public institution and not simply a private matter. The state to him had the right to intervene in workplace relations for the benefit of the whole society. The idea was, therefore, to advocate a corporatist economic order that would fit the vision of an inclusive and encompassing state and society. Representation rights at work and within the economy in general became central to this vision.

Although these arguments were heavily criticized by employer groups and were not to be fully accepted within even the Social Democratic Party until World War One, they reinforced emergent institutional norms, resulting in a tradition of state mandated representation rights reaching far back into the nineteenth century. In contrast to the United States, where both legislation and legal doctrine remained generally hostile to labour union formation until well into the early twentieth century, workers in Germany were first provided with the right to form unions ('coalitions') in 1869 (Lehmbruch, 2001: 58). In the 1880s, the Bismarck government made provision for works committees with limited consultation rights (Teuteberg, 1961; Jackson, 2005: 150), and established a system of social insurance that allowed considerable opportunity for labour influence. They also introduced 'industrial chambers' in which unions played a major role in order to promote training needed for German industrialization. These initiatives were ultimately a compromise between the government's aim to check the threat of labour radicalism and foster economic development and the conviction of influential scholars, bureaucrats, and social democrats to promote democratic rights at work. But they reflected a long tradition of intellectual concern for such rights, and embodied institutional norms that were to become increasingly embedded within the German political economy, essentially underpinning the development of Germany's social/coordinated market economy.

These rights were strengthened after World War One. A central committee consisting of leading representatives of labour and employers and established to coordinate the transition to a peace time economy agreed a first treaty encouraging

union recognition and promoting 'social partnership'. Co-determination rights of workers were included in the constitution of the Weimar Republic (1919), and a works council law enacted in 1920 included participation rights of works councillors in the supervisory boards. Although these arrangements were undermined during the Nazi era, they were again re-established and further strengthened after the Second World War—in part to promote democratic institutions as bulwarks against political use of the economy and capitalist firms that had marked the Nazi era. The right to union representation was enshrined in the German constitution, and workers were provided not only with the right to works councils, but also to substantial representation on supervisory boards. Within the macro-economy, unions developed an important role not only in coordinating and regulating wage settlements, but also in the dual training system considered to be central to the German model.

Within this context, employers have had little real alternative but to accept extensive representation rights for workers, and, given their largely positive role within a coordinated market economy, much less incentive than in the United States to resist these rights. As in virtually all capitalist economies they have generally not supported legislation strengthening these rights (see Adams, 1995). Yet they have had neither the power nor the inclination to successfully fight against them at either the state or the workplace levels. Instead they have generally accepted and learned to work with employee representatives, so much so that there is now considerable normative support for worker representation rights within the employer community. This is especially true for works councils (Jacobi et al., 1998: 213; Freeman and Rogers, 1993: 51–55), which were strengthened in 2001 in response to the recommendations of a joint labour–employer commission. There has been some recent pressure to weaken supervisory board representation in order to strengthen accountability to the demands of capital, and there have been some cases of overt union avoidance, although these cases remain the exception rather than the rule.

This context has also meant that labour unions have enjoyed a considerable amount of power and influence, especially in comparison to their US counterparts. Although initially anti-capitalist, leading socialist unions came by the late 1880s to adopt a reformist platform, in response to reformist changes in the Social Democratic Party (e.g. from the Bernstein wing) and possibly also in response to various accommodations by the Bismarck government. Since then, the history of the German labour movement has been pretty much the mirror image of its US counterpart. With the exception of the 1930s and early to mid 1940s (the high point of the US labour movement and low-point of its German counterpart), its role in the economy has steadily grown. Not only is it responsible for the negotiation of collective agreements covering two thirds of German workers (OECD, 2004) it also continues to play a vital role as a 'social partner' in both the establishment and the implementation of social and economic policies.

Harsh economic conditions following German reunification placed considerable pressure on traditional bargaining arrangements throughout the 1990s, resulting in some decentralization. Union economic and political power would also appear to have declined in recent years as employers and the state have attempted to adopt market based reforms (Bosch et al., 2005). Yet although the German system has been weakened, the institutions of codetermination have remained largely intact (e.g., Thelen, 2000; Frege, 2003). Indeed, the 2001 reforms to works council laws were introduced in part to make it easier to form works councils in small workplaces, in the belief that bureaucratic hurdles rather than a lack of demand represent the primary explanation for declining works council coverage.

In sum, the historical trajectory of Germany has generally been a positive one with regard to workplace representation rights, even if there may have been some weakening of the exercise of these rights over the past decade. The German system has no doubt been intended in part to placate workers and to diffuse the power of working class institutions, which have historically been both more radical and more powerful than their US counterparts. It has also been consistent with the model of an 'enabling state', in which the social partners play a critical role, and with a coordinated market economy, within which worker and labour union consent is more critical. Yet it also reflects the more deeply held institutional norms emergent in the nineteenth century and a response to broader legitimation problems underlying labour radicalism. These norms have historically become embedded within and largely explain the strong representation and governance rights of workers within the German model. Property rights and the interests of capital have been much less dominant than in the United States, allowing much greater 'space' for labour rights and interests. They have also meant that economic democracy has played a much greater role and won much greater acceptance than in the United States.⁸ Thus, representation rights have remained strongly entrenched despite pressures associated with globalization and are likely to remain so in future. Indeed, any recent weakening may be temporary, subject to reversal as the German economy strengthens.

BEYOND THE UNITED STATES AND GERMANY?

This chapter has focused on the differences between the United States and Germany. These two nations are viewed as representative of distinctive varieties of capitalism, and they have very different representation rights and institutional

norms that account for these differences. Yet we believe that the approach we have adopted can be fruitfully applied to other nations as well, including those associated with the same varieties of capitalism.

For example, Britain is regularly identified as a liberal market economy, has intellectual traditions similar to those of the United States, and may be seen to have adopted a similar conception of the state. Yet its monarchical and feudal tradition, coupled with a more socially conscious religious tradition (i.e., the Church of England), have given rise to substantially different institutional norms. The British concept of democracy has historically been one in which the landed classes were to remain dominant within the political sphere, but which also included a feudal concern for the well-being of the lower classes and deeply rooted norms of fairness and legal equality that may ultimately be traced back to the Magna Carta in the thirteenth century. This concept was paralleled in the economic sphere, where the authority of owners was largely unquestioned, but where owners were also expected to adopt a more paternalistic, organic view of their responsibilities than their US counterparts (Jacoby, 1991).

In part in reflection of these norms, British employers have historically been expected to voluntarily recognize unions and have generally conformed to this expectation. Thus, there is a strong tradition of legal voluntarism, under which the state has relied only on 'informal' pressures rather than law to ensure that employers 'play by rules' (Davies and Freedland, 1983; Adams, 1994). Moreover, although the formal role of unions has traditionally been limited to industry level bargaining over a relatively narrow range of economic issues, there has also been a tradition of strong shop steward representation and 'mutuality' in the workplace.

These traditions were substantially weakened during the Thatcher/Major era. But the level of overt employer resistance to unions remained low, and labour law reforms passed in 1999 have been designed to restore them, providing for state imposed recognition, but only as a last resort (Wood and Godard, 1999). Moreover, the government has recently enacted mild consultation and information sharing laws. Although these are primarily in response to EU directives, they are largely consistent with the British tradition of mutuality, and so may prove to be sufficiently consistent with British institutional norms to function effectively. They would, in any case, never receive the light of day in the United States.

A further example is Canada, which has a number of institutional and historical similarities to the United States. But it was not borne of a revolution, and has a much stronger institutional tradition of elite rule and paternalism, including a stronger traditional role for the state in its economic development (Lipset, 1963). This has translated into norms supporting greater state involvement and acceptance of administrative law on the one hand, and a greater concern for industrial order and stability on the other, both of which may be seen to account for

Canada's 'stronger' system of labour laws regulating union recognition and collective bargaining and ultimately union coverage levels that, although low by European standards, are almost two-and-a-half times those of the United States (Godard, 2002, 2007).

As a final example, one might argue that legal representation rights in Sweden are somewhat weaker at the workplace and employer levels than is the case in Germany. Formal works councils are not mandated by law, and supervisory board representation is more limited. But workplaces are highly participative and democratic. This is reflected not only in work design (e.g., see EPOC, 1997), but also in the tendency to have much more developed joint decision bodies in the workplace; these typically have high levels of union involvement and bear little resemblance to their management initiated counterparts in the United States (Kjellberg, 1998: 105). One might argue that this can ultimately be explained by strong social democratic traditions dating back as far as the fifteenth and sixteenth centuries, when serfs were given the right to own property and provided with the right to elect representatives in parliament (Olsen, 1994).

Each of these examples is undoubtedly over-simplified, especially as they do not take into account important historical conflicts and compromises. But we believe that they help to underscore the basic message of this chapter. Cross-national variation in representation rights, both historically and at present, reflects deeply embedded institutional norms and discourses that can be traced to formative economic, social, and political conditions. These norms and discourses apply not just to representation rights, but to broader institutional configurations. Although they are by no means static and may contain substantial ambiguity (and adaptability), they tend to limit or bias institutional trajectories in ways that enable us to understand not only why representation rights vary, but also why this continues to be the case in the face of global economic and technological developments.

A basic implication is that attempts to prescribe or alter representation rights are not likely to succeed unless they take into account not just the broader institutional environments within which these rights are (or are not) embedded, but also historically rooted institutional norms and traditions. This is a pessimistic message for those who seek to substantially improve representation rights in some nations (e.g., the United States), but an optimistic one for those who worry that globalization will wash these rights away in other nations (e.g., Germany). This does not mean that the former should stop trying or that the latter should stop worrying. Institutional norms do not represent immutable laws, and the biases to which they give rise do not preclude change. But any attempt to explain variation in, or prescribe changes to, representation rights is likely to be unsuccessful if it is not informed by them.

NOTES

The authors thank Roy Adams for his comments on an earlier draft of this chapter.

1. In the United States, for example, some identify the adoption of a narrow, economic form of unionism in the 1880s as a historic juncture; the same could be said of the adoption of Bismarck's reforms and of the German labour movement's shift to reformism in the 1880s.
2. This is not to suggest that these norms are *necessarily* consistent; much of the scope for politics may be due not only to the ambiguity of specific norms but also to contradictions between them, which can also spill over into institutional designs and even various forms of conflict. Yet these tend to be worked out over time, through various compromises and accords. It is beyond the present purpose to address these processes, though it would be interesting to explore if there might be some sort of Marxian dialectic between the development of norms and 'real' (i.e., material) economic and social conditions.
3. For a more complete development of many of the arguments in this section, see Godard, 2007a.
4. Throughout much of the nineteenth century, there was some support in the United States for producer cooperatives and communitarian societies emphasizing the virtues of cooperation (see Derber, 1970: 37; Perlman, 1949 [1928]: 188–90). But this support did not envision a role for the state in establishing democratic rights at work. Nor did it suggest that such rights should trump property rights. To the contrary, these alternatives were to be based on a model in which authority would continue to derive entirely from property rights. There were subsequent attempts by socialist and religious reformists, in the first two decades of the twentieth century, to argue that this should not be the case, and that the same democratic rights applicable in the political sphere should also extend to the economic sphere (Derber, 1970: 141–61). They met with little success.
5. They did continue to form part of the discourse of the 'left' for a few decades into the twentieth century, primarily among socialists and social Catholics (see Derber, 1970: 141–62), but both were largely excluded from mainstream labour academic, or political thought.
6. This apparent contradiction may also be explained by institutional norms. The lack of reliance on the state has meant a tradition of collective self help, which unions may be seen to epitomize—provided that they operate as 'grass roots' organizations and do not rely unduly on state support or coercion or threaten traditional employer prerogatives.
7. Worker committees were viewed as central to the attainment of this goal. These committees would have equal proportions of employer and worker members and would not only influence internal workplace relations, but also create savings banks for members, provide subsidized housing and education for workers, control child labour, and organizing arbitration for workplace conflicts. An underlying purpose was to avoid Protestant notions of 'self-help' and charity dominant in the United States and Britain in favour of positive rights of equality and co-determination (Schmidt, 1845).
8. Of note, data from the 2001–2 World Values Survey (Inglehart et al., 2004) reveal that only a third of Germans would follow a command from their employer without asking for an explanation, compared to two-thirds of Americans.

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