

**Representation Systems and Worker Perceptions in Germany and the USA:  
Findings from a Cross-National Survey**

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The general decline of union representation in liberal market economies has led industrial relations academics to consider alternative forms of representation that may have been emerging within these economies. Particularly relevant in this respect have been management established, non-union systems, traditionally referred to as company unions (Kaufman and Taras 2000). Also relevant, however, has been a possible growth in interest associations formed by employees, particularly identity groups, as well as a perception that employers have adopted practices that displace the need for active collective representation (Piore and Safford 2006). Finally, some have even embraced German-style works councils as a possible alternative form of representation (Weiler 1990).

Complementing the concern for workplace representation has been a broader concern for both the societal consequences of work and employment and for what may be viewed as a general social anomie, borne of a disillusionment with and disengagement from political and social institutions (e.g., Putnam 2000). There has also been an emergent literature in economics on "happiness" (e.g. Layard, 2005; Oswald 1997). On the surface, this literature often seems devoid of real intellectual substance and reminds one of the song many considered to be emblematic of the 1980s, entitled "Don't Worry, Be Happy." Yet it may be part of a shift away

from the preoccupation with economic growth and performance over the past three decades and towards a concern for the quality of democracies and how traditional economic measures do or do not enhance this quality (Stiglitz et al 2009). Particularly relevant to industrial relations scholars but largely unexplored may be the nature and experience of work and whether various forms of representation and, more generally, different workplace regimes, matter not only to the nature and experience of work, but also to the quality of democracies.

Finally, there has been a growing awareness of the potential importance of national institutional environments in addressing these questions. In particular, we might expect to see important differences between the US, which is the quintessential liberal market economy, and Germany, which is the quintessential coordinated market economy. In addition to differences in systems of representation in these two countries, the USA is generally known to have employers oriented to the short-term maximization of shareholder value, while Germany is generally known to have employers adopting a longer term "stakeholder" orientation. Moreover, although there may have been some strengthening of the rights and protections afforded American workers (e.g., weakening of the "at will" doctrine, anti-discrimination laws), these are typically believed to be much weaker than in Germany. Finally, where US institutional norms are generally conducive to strong property rights and hence managerial unilateralism, German norms are more conducive to professionalism and occupational autonomy, thus creating the potential for greater "concrete freedom" on the job. Thus, these two countries have been believed to be characterized by quite different employment regimes, with the German model providing for a much higher quality of employment than its US counterpart, especially if judged by traditional western values of dignity, fairness, and justice. More important, institutional and cultural differences likely mean that the precursors of happiness and engagement also vary.

This context formed the motivation behind the Work and Happiness in America and Germany Survey (WHAGS), a random household telephone survey of 1000 American and 1000 German workers that we commissioned in the winter of 2009. This survey included questions addressing representation at work, work and human resource practices, the nature and experience of work, happiness with various aspects of life, worker engagement levels both at work and outside of it, civic virtue, and a series of worker and employer characteristics. Although the survey thus crossed a number of related disciplines, none of these disciplines provided adequate measures for the questions asked by our research. For example, the questions we sought to address about the nature and experiences of work were directed not at satisfaction, stress, or commitment, all of which have been widely researched, but rather at freedom, dignity, fairness, fraternity, and justice, many of which are either absent from or poorly operationalized in the literature. The engagement questions were designed to measure engagement as an important indicator of social wellbeing in and of itself, rather than as a means to organizational or political performance, and attempted to go beyond both the management and the political studies literature (neither of which offers very strong or convincing measures). Finally, the representation questions did not just ask about the form of representation, but also whether, for each form, representatives both consulted with members and stood up for them, in addition to questions asking about desire for various forms. For most of these questions, there was very little useful precedent in the available literature.

The present analysis presents largely descriptive findings from this survey. As the title of the paper suggests, we focus on the results from the representation questions. However, we also report descriptive findings that may be considered to be relevant to US-German differences expected to arise from differences in these systems and the broader institutional environments in which they are found.



## **I. The General Research Question: Black and White or Two Shades of Grey?**

It has been conventional to portray the USA and Germany as polar opposites. The former is viewed as the quintessential market economy and the latter as the quintessential coordinated market economy. This dichotomy involves a number of differences in the structure and operation of the economy and state policies in support of it, but representation at work is fundamental.

Workers in the USA have few if any a priori rights of participation or even consultation. Labour unions provide the only form of collective representation protected under the law, and the rights afforded them are generally limited to collective bargaining and contract administration. There is little evidence that they harm the economy, but the research does suggest that they increase labour costs and ultimately cut into employer profits. Coupled with a strong belief in property rights and hence employer prerogative and a resistance to state involvement in the economy, this means that there is a deeply ingrained employer resistance to unions and laws in support of them (or any form of representation rights), and that unions typically play a largely reactive, adversarial role. There is also little economic case to be made for such rights in a liberal market economy, where stock market financing and competitive markets mean that employers are oriented primarily to maximizing efficiency and shareholder value over the short term, regardless of the implications this could have for human "resources." In turn, firms engage in low skill, low quality production, achieving competitive advantage through low labour costs and technological prowess. Thus, although progressives succeeded in winning protections for union organizing and representation as part of the New Deal legislation of the 1930s, this legislation was immediately challenged as unconstitutional, and even though this challenge was rejected by the US Supreme Court, a combination of labour board decisions, Supreme Court rulings, and legislative changes (the Taft Hartley Act) effectively gutted it by the late 1940s. Periodic

attempts to restore this system have failed, and calls for an alternative set of representation rights -- typically in the form of works councils (e.g., Weiler, 1990) -- have largely fallen on deaf ears.

In contrast, the German constitution provides all workers with the right to union representation for purposes of collective bargaining, and there is a long history of laws supporting the right to some form of works council representation. For the past thirty years, works councils have had legal co-decision rights on virtually all matters pertaining to the management of human resources and information sharing rights on matters pertaining to financial and strategic decisions, rights that have recently been strengthened. In contrast to the USA, where demonstrated majority support is required before a union is certified, works councils only require the initial support of three workers in a given workplace provided that it has at least five employees. Finally, workers in firms with over 500 employees have representation rights on the supervisory board.

Germany's strong legal representation rights can be traced to a long history of concern for the democratic rights of workers (XXX 2009). However, they have also been argued to be consistent with the requirements of a coordinated liberal market economy. In particular, collective bargaining is at the industry level, and serves to effectively coordinate employer policies throughout a sector, particularly as they pertain to pay and benefits. Thus, they effectively eliminate the tendency to compete by minimizing labour costs, as tends to be the case in the US. Instead, German employers have traditionally been known for their high skill, high pay model of employment, one that focuses more on quality than cost. They have also been financed primarily by banks (rather than stock markets, as in the USA), which are considered to be social institutions and hence do not pressure employers to maximize shareholder value. As a result, employers have traditionally adopted more of a stakeholder model, incorporating the interests of employees as well as those of investors. Finally, the German model places a high

emphasis on occupational qualifications and autonomy, giving rise to cooperative workplace relations, in which workers are respected for their knowledge and abilities and considered to have a legitimate say in employer decision processes. Thus, they are more conducive to workplace representation, particularly in the form of works councils.

These distinctions suggest a simple "black-white" dichotomy. Where few US workers have representation rights and meet with substantial employer opposition if they attempt to attain them or succeed in doing so, the opposite is the case in Germany. Yet as with any such dichotomy, it may be over-stylized. On the one hand, a number of scholars (especially Piore and Safford 2006) have begun to argue that alternative, extra-legal representation has become increasingly widespread in the USA, in the form of either employer established non-union systems or employee membership in identity associations. They also argue that workers have come to enjoy a variety of protections at law and that, coupled with growing professionalism in management, this substitutes for rights traditionally sought by unions.

On the other hand, some argue that a growth in lower paying, lower skilled service sector jobs in Germany has been undermining the German system of representation. Moreover, German firms have increasingly come to rely on stock-market financing and have been increasingly subject to international competitive pressures, particularly within the EU. These developments have placed a number of strains on the German model, and, perhaps as a result, it has become common for authors to point to apparent declines in both bargaining and works council coverage as evidence that the German system of worker representation has been challenged (Addison, Schnabel, and Wagner 2007; Doellgast and Greer 2007; Streeck 2009).

It is thus possible that the differences between the USA and Germany are not as clear-cut as stylized depictions suggest, and that rather than representing black and white, these two

nations now represent different shades of grey. The analysis below explores the extent to which this appears to be the case.

## **II. Data Collection and Sample**

As noted above, the surveys were conducted simultaneously in late 2009. Workers were contacted through random digit dialling and included only if they were over 17 years of age, worked more than 15 hours per week, and had been with their employer for more than six months. Thus, the surveys only included workers in "regular" employment. This strategy is similar to that used by Freeman and Rogers (1999), which the present study was, loosely, designed to go beyond.

The surveys were funded from a Standard Research grant from the Social Sciences and Humanities Research Council (SSHRC), the main social sciences granting agency of the Canadian government, and conducted by professional polling firms (in the USA, Eastern Research Services; in Germany, Forsa GmbH). The surveys were designed largely to generate data for multivariate rather than descriptive analysis. But because the sampling strategy was the same in both countries, cross-sample comparisons should be valid, especially for what we label "regular" workers. Although exclusion of segments the labour force makes it difficult to establish representativeness within each country, the data would also appear to be reasonably representative of the populations sampled.

In the US sample, women comprised 50 percent of the respondents. Sixteen percent reported being union members, which is higher than the BLS estimates for the general labor force (12 percent in 2009), but is about what we would expect given the lower likelihood of union workers being laid off during an economic downturn and the sampling strategy: workers who have not worked six months yet may be in (non-union) temporary employment or, if

working in a union firm, on probation and excluded from union representation; those working less than 15 hours a week are also less likely to be union members.

In the German sample, 48 percent were female. Twenty-four percent were union members and 67 percent reported that they were covered by a collective agreement, both of which are comparable to estimates we computed from 2009 Statistisches Bundesamt data (23% density, 68% coverage; 2010). Again, we might expect some difference given the sampling strategy, but marginalized workers in Germany have stronger representation rights and so may be less likely to be excluded from union coverage than in the USA.

### **III. Results**

The results appear in tables 1 through 8. These tables address, respectively, 1) the prevalence of alternative forms of representation in the USA, 2) evaluations of alternative forms of representation in the USA, 3) the prevalence of alternative forms of representation in Germany, in comparison to the USA, 4) evaluations of alternative forms of representation in Germany, in comparison to the USA, 5) representation gaps in the two countries, or the percentage who would like to have particular forms of representation but do not, 6) respondent evaluations in both samples of whether the absence of particular forms of representation are attributable to management opposition, 7) respondent evaluations in both samples of the relationships between their representatives and their employer, and 8) respondent confidence in the two samples in their rights at work.

***Forms of representation: the USA.*** Labour union density and coverage have been in almost continuous decline in the USA since the 1960s. However, there has been a growing literature focusing on alternative forms of representation. One such form is non-union, management established representation systems. Research by Freeman and Rogers (1999: 92-93) revealed that, as of the early 1990s, 37 percent of workers in the USA had "committees of employees that

discuss problems with management on a regular basis" in their workplaces. But these findings may now be dated, and it is not in any case clear that the question asked referred to representation systems or simply, for example, problem solving groups (also known as quality circles). Lipset and Meltz found that, as of the mid-1990s, 15 percent of non-union employees in the USA reported some form of formal non-union employee representation, and that 11 percent had non-union representatives who discussed compensation and benefits (Lipset and Meltz 2000: 226), which would appear to be contrary to section 8(a)(2) of the National Labor Relations Act (Gely, 1998). This section bans "company unions," defined as employer established labor organizations that usurp the functions of an independent union. However, this result may also now be dated.

A second form of representation identified in the literature is "identity" based groups and associations. Although these groups do not as a rule directly bargain with employers, they represent the interests of their members to employers, and might also be expected to serve as substitutes for unions, serving as advocates for stronger rights and protections for their members and helping to ensure that these rights and protections are realized, whether enshrined in law or in employer policies (Piore and Safford 2006). Although such associations have always existed in many professional occupations, various authors have begun to argue that there has been an increase in groups based on personal characteristics, including gender, race, ethnicity, sexual orientation, and others.

We asked four main questions to address the prevalence of unions, non-union representation systems, and more independent identity groups/associations (question one) in the USA. The non-union representation question was asked only of workers without union coverage, but the association question was asked of both union and non-union workers in view of the tendency for identity groups and associations to form in both sectors. Where the respondent

reported membership in an association, he/she was further asked to indicate "the main characteristic that unites members of this organization", followed by a prompt stating "this could be occupation, race, or some similar characteristic," to be read if the respondent appeared to not understand the question.<sup>1</sup> Finally, where the respondent reported a non-union, employer established association, they were also asked the extent to which this association consulted with management over wages and benefits.

Table one reports the results for the US sample. On their face, these results suggest that alternative forms of representation are widespread. Although 17 percent of respondents report union representation, 28 percent report that there is a "non-union, management established system, where worker representatives meet with management." Twenty-two percent report not only that they have such an association, but that it actively consults with management over wages and benefits. This would appear to be in contravention of the Wagner Act.

In contrast, only 15 percent report that they are "a member of another type of association to assist you with work-related matters." Of those with neither union nor non-union representation, 11 percent, representing 6 percent of the total sample, report membership in an association. As also reported in table one, 74 percent of these associations are reported to be based on occupation. Only 7 percent are reported to be based on race, ethnicity, gender, or sexual orientation. Seventeen percent are reported as "other," and it is possible that some portion of these respondents considered the gender orientation option too sensitive to answer. Nonetheless, it would appear that non-conventional associations, based on "identity groups," do not at present play much role in the US labour market, and are not filling the gap left by union decline. A similar conclusion can be reached for even occupational associations. Subsequent analysis

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<sup>1</sup> This was simply intended to reinforce the clarification that followed the original question. We did not include sexual orientation in either because we were concerned that this would be viewed as too intrusive, especially in our German sample. We did, however, include this as a response option, to be read out only if needed.

revealed that 78 percent of those reporting an occupational association also identified themselves as a member of a profession, suggesting that these are conventional associations. Thus although non-union representation systems may indeed be replacing unions, largely independent associations based on personal identity are not.

Overall, it would appear that although only one in six workers in regular employment has legal union representation, a large portion of non-union workers, amounting to one in three of the total sample has some form of extra-legal representation. This representation should not be confused with the kind of legal rights provided by unions. This is especially true of employer established systems, which typically exist at management's behest and on management's terms. Yet the latter in particular may provide workers with some leverage, especially because their failure can lead to disillusionment and even a union organizing drive (Taras and Copping 1998). Thus, they may serve as a meaningful substitute -- especially if considered to be of equivalent or greater effectiveness from the point of view of workers.

*Evaluations of Alternative Forms of Representation: the USA.* For each of the three representation questions, respondents who answered affirmatively were also asked a series of questions about the nature of the representation they were receiving. The questions differed by form of representation; because these forms differ, we had somewhat different questions we wished to explore for each. However, for all three forms, respondents were asked about the extent to which representatives "can be counted on to stand up for members, even if this means a disagreement with management" and the extent to which they "actively consult with workers about their ideas and concerns." These questions were intended to get to the heart (as efficiently as possible) of how well the ideas and concerns of workers are, from their point of view, being represented to management and hence how effective this representation can be judged to be.

As revealed in table two, 54 percent of workers with management established representation systems rate their representation highly when it comes to consultation with members, compared to 41 percent of those with union representation. The comparable figure for whether representatives in these systems "stand up for their members" is 51 percent, which compares to 54 percent for unions. Those reporting association membership rate their association about the same as for unions when it comes to consultation with members (44 percent), but less favourably with respect to standing up for members (38 percent). Of those reporting association membership but no other form of representation, the statistics are 41 percent and 27 percent, respectively. The latter statistic suggests that, when it comes to standing up for workers, associations are more effective where some other form of representation is in place and hence more likely to serve as complements rather than alternatives to these other forms of representation. Subsequent analysis (available on request) also revealed that they may be somewhat more effective at standing up for members when there is a non-union representation system (47 percent) than when there is a union system (42 percent), and hence may serve as complements to the former to a somewhat greater extent than to the latter, making the former more effective as substitutes for the latter than otherwise.

The most noteworthy finding from table two, however, is that non-union representation systems are evaluated as favourably as unions with regard to standing up for workers, and more favourably when it comes to consultation. Thus, not only are they apparently filling the gap left by union decline (as per table one), they may also be representing workers as or more effectively -- at least from the point of view of workers themselves. Associations may also be filling some of the gap, but much less so than is the case for management established non-union systems. However, these findings should be interpreted with caution. This is especially true of evaluations of management established systems, because management is in a position to control

expectations, information, and perceptions pertaining to this form of representation. So workers with these systems may evaluate them as favourably as union workers evaluate their union representation, and they may in this respect serve as effective alternatives. But whether this means that they are performing as effectively on behalf of workers as would a certified union is another matter.

***Forms of representation: Germany vs. the USA.*** Table three reports the prevalence of alternative forms of representation in Germany and compares them with those for the USA (as also reported in table 1). Of note, German workers are only fifty percent more likely than their US counterparts to be members of a union, despite the low level of union membership among the latter. Moreover, a third of German workers in our sample are not covered by a collective agreement, which suggests that the German system is not as comprehensive in its coverage as it once was. Yet, at 67 percent, German workers are four times as likely to be covered by a collective agreement as are their US counterparts. Moreover, two thirds report works council representation, which is two and half times the portion of US workers reporting employer established systems -- traditionally viewed as the US version of works councils. Of note, only one in ten German workers are likely to be represented by an identity association, which is a third less than for the USA. However, the bases for these associations break down in the same way as for the US sample. Overall, 84 percent of German workers report some form of representation, which is more than one and a half times that for the US sample. Moreover, eight in ten have *legal* representation, which is almost five times that for the US sample.

***Evaluations of Alternative Forms of Representation: the USA vs. Germany.*** Table 4 reports worker evaluations of their forms of representation in the German sample and compares these to those of the workers in the US sample (already reported in table 2). Germans appear to evaluate their works councils and unions less favourably than do their US counterparts. Where 54 percent

of unionized Americans report that they can count on their union to a great extent and 41 percent report that they are consulted with to a great extent, only 45 percent and 31 percent of unionized German workers do, respectively. The differences are even greater for non-union representation systems and works councils. Half of American workers with a non-union representation system report that their representatives can be counted on to stand up for workers and that they are consulted to a great extent, while only a quarter and a third of German respondents with works councils do so, respectively. The only form of representation for which German workers give more positive evaluations is associations. This is particularly true with respect to consultation, with 7 in 10 German respondents who are members of an association reporting that they are consulted to a great extent, compared to only 4 in 10 of their American counterparts.

It is likely that the stronger German evaluations of their associations is due to a stronger associational structure for professionals, as one would expect in a coordinated market economy. However, the less favourable evaluations for unions and works councils is more perplexing. On their face, these results raise the possibility that representation in Germany, though much more widespread than in the United States, may be of somewhat lower quality from the point of view of workers. This could be because these institutions have been weakened by the developments of the past few decades, suggesting that the real breakdown of the German system is not just in declining coverage but rather in the quality of this coverage as well. Yet it is also possible that German workers are just more likely to take their union and works councils representatives for granted, much as citizens often take their civil rights for granted when these rights are not in question. It may also be the case that both unions and works councils are more bureaucratic and more removed from them on a day-to-day basis. Not only are they more institutionalized within the economy as a whole, levels of conflict may be lower in German workplaces, especially

because works councils and unions are able to be more proactive.<sup>2</sup> Finally responses may also reflect the “cultural pessimism” or “culture of complaining” of the German people, compared to the “naive optimism” of their American counterparts.

***Frustrated Demand for Representation: US vs. Germany.*** A further question is whether differences in legal representation rights across the two countries translate into differences in the percentage of employees, who would like some form of representation but are unable to attain it. If, for example, American workers are uninterested in obtaining representation other than the representation they already have (or do not have), then the case might be made that laws need not be strengthened in the USA. In contrast, if a significant percentage of workers in Germany express frustrated demand for representation, then there may be reason to think that the de jure rights for workers are, at least for a portion of the labour force, not what they are often assumed to be.

Table 5 reports the results for questions asking about frustrated demand.<sup>3</sup> It reveals that only one in five non-union workers in the USA would vote for a union if a ballot was held at the time of the survey, although another one in ten report that they are unsure. This result differed very little for non-union workers with and without an employer established system. In turn, two in five non-union workers without such a system reported that they would prefer such a system to union representation or no representation at all, either to some or a great extent. Thus, frustrated demand would appear to higher for employer established than for union representation. In total, three in five workers without either a union or an employer established system report that they would like to have one or both, representing thirty percent of the total sample.

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<sup>2</sup> The analogy might be to having a strong police service and low crime rates. Citizens as a result are less likely to be affected by crime and less likely to have anything to do with the police. So when asked about their interactions with the police service they will have a generally neutral response.

<sup>3</sup> We did not ask demand for an identity association, because many would not be clear as to what we were asking about -- especially if they did not have a specific identity we could ask about.

These findings are generally consistent with the findings of Freeman and Rogers from their 1994 survey of American workers (Freeman and Rogers 1999: 140-148), who found greater support for non-union forms of representation than for unions, and a high demand for representation in *some* form, with three in four workers indicating a desire for representation. A 2001 Hart survey also found that three in four workers would vote either for a union or a non-union association or both (Freeman 2007: 9). But both of these studies included workers who already had some form of representation, and who are more likely to favour such representation (especially in the case of union workers), while our statistic does not.

Where our results differ most from previous studies, however, is with respect to the frustrated demand for unions. One poll placed this at one half of non-union workers as of 2004, which is slightly more than double our finding (Freeman 2007). One possibility is that our sample includes only regular workers, and there is some Canadian evidence suggesting that there may be more frustrated demand for unionization among workers with less than 20 hours per week than for their counterparts in the 20 to 30 hour range (Godard 2010). Another is that the one half figure is an anomaly: most other studies have found the figure to be closer to one in three, which is closer to our results, especially given our finding of 9 percent who are undecided. Yet another is that the propensity to vote for a union varies over time -- as borne out by polls of propensity (see Freeman 2007: 6) and by studies of union membership growth trends. In 2004, economic times were good yet workers in the bottom two thirds of the income distribution were enjoying none of the gains, which are the perfect conditions for enhanced union demand (Ashenfelter and Pencavel 1969). In 2009, economic times were very bad, unions had been made scapegoats for the economic difficulties of the preceding year (especially in the automobile sector), union workers had become targeted for resentment because of their (perceived) privileged pay and benefits status, and unions found themselves having to give major

concessions. Notably, approval for unions actually dropped to 50 percent from almost 70 percent in 2004). So it is likely that these explanations account for our lower estimate.<sup>4</sup> Nonetheless, our findings suggest, if taken at face value, that a strengthening of labour laws may not, indeed, make much difference to union growth at the present point in history.

The results for Germany suggest that, in fact, there are higher levels of frustrated demand for both works councils and collective agreement coverage in that country than there is for unions in the USA. A third of respondents without a collective agreement would like to be covered by one, while three in ten without a works council would like to have one. This finding should be placed in perspective. The high levels of coverage of both of these forms of representation means that, of the total sample, only one in ten workers expresses frustrated demand for either. Subsequent analysis revealed that, among the 20 percent of workers in the sample with neither form of representation, close to half would like one or both forms. Thus, only one in ten German workers would like one or both forms of representation but have neither. This is far lower than for the US sample.

***Explaining the Gaps: are Employers the Problem?*** In the USA, low levels of union coverage and the representation gap between those who would like to have a union and those that actually have one, are in the final instance typically blamed on the opposition of employers coupled with their to take advantage of weak labour laws to convince workers that a union is not in their interests and to undermine an organizing drive should it occur. A 2005 Hart poll found that only one in five American workers believed that employers used specific anti-union tactics in the event of an organizing drive, but that half agreed that employers generally oppose unions and try to convince employees not to vote no (Freeman 2007: 9). There is also substantial evidence of employer anti-unionism. In contrast, it is generally assumed that German employers do not

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<sup>4</sup> We ran estimates that excluding workers in supervisory positions, but this made little difference.

express opposition to either works council or union representation, both because of national traditions and because these institutions can and do serve the positive functions identified earlier. Yet both of these depictions may be oversimplified. On the one hand, there may be many US employers who would be relatively tolerant of a union organizing drive but never face one due to positive HRM practices and so do not "show up" in studies documenting employer opposition. On the other hand, strains on the German system in recent years may have meant that employer opposition has become a factor, as signified by an increase in workplaces that are not covered a collective agreement and/or do not have works council representation. This may be especially true of collective bargaining coverage, which is generally determined by the employer and so might *ipso facto* be attributed to employer opposition. But it may also be true for works councils, particularly if they have been having to play a more adversarial role in reflection of these strains.

It would appear that, in the US, employer opposition may indeed be less important than commonly assumed. As revealed in table 6, only one in five non-union respondents in the US sample attribute the absence of union representation to employer opposition. It is possible that this simply reflects the low percentage who would vote for a union. Specifically, workers who do not perceive the need for a union are less likely to have negative perceptions of their employer and more likely to attribute their non-union status to their own choice and the choices of their coworkers.<sup>5</sup> However, we observed a correlation of only .26 between propensity to vote for a union and perceived employer opposition, so this explanation is only a partial one. Yet we also observed a correlation of only .23 between a measure of traditional/good HR practices and perceived employer opposition, suggesting that the "good HRM" explanation may also be only a partial one. It is possible that, with union density so low, the thought of organizing a union just

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<sup>5</sup> For example, using a Canadian sample of 750 workers, workers with a propensity to vote for a union were also more likely to expect retribution in the event of an organizing drive (Godard, 2010 - CHECK).

never enters the minds of most workers, and so employer opposition is not considered. But whatever the case, this opposition is generally not seen by non-union workers to be a major reason for why they do not have a union.

In the German sample, only one in four workers without collective bargaining coverage attribute it to employer opposition, even though it is employers and not employees who normally determine coverage. This could be explained in a number of ways. For example, it is likely that a portion of respondents (e.g., managers, professionals) falls outside of collective agreement coverage, even though there may be one in their workplace. It is also possible that another portion of respondents is in a job for which there is no industry agreement and their employers see no need for one -- in other words, these respondents may fall through the cracks. Finally, in some cases, German workers may opt not to be covered -- a possibility which we included in the response options for the German sample even though it is not clear whether this is legal. However, only eight percent without collective agreement coverage stated that the main reason was that they did not wish it (available on request).

Also somewhat surprising in view of the relatively high level of frustrated demand is the remarkably low percentage of German workers without works council coverage who attribute this to employer opposition (3 percent). This suggests that the desire for a works council among those who express such a desire tends to be too weak for them to expend the time or resources necessary to act on it. This is especially likely in small workplaces, where there may be extensive informal and direct consultation and where the establishment of a works council may simply not be worth the effort. Not surprisingly, it is just these workplaces in which works councils are least established. Indeed, we found a strong correlation (.55) between workplace size and works council coverage.

*Relations with Employers.* One of the great criticisms of the US system of labour law and collective bargaining is that it is unduly acrimonious. There are historical reasons for conflictual relations between unions and management, but some argue that it is actually worsened by a system of labour law that seems to be premised on the assumption of such relations. Moreover, the requirement that a majority of workers must support having a union, coupled with lengthy organizing "campaigns" during which employers are able to engage in a variety of anti-union tactics, virtually ensures that this assumption is borne out in a great many cases. To make matters worse, unions find themselves with few substantive rights once certified, and are as a result largely in a reactive position.

In Germany, however, things are supposed to be different. As noted above works councils are perceived to have a largely integrative function, and given occupational structure and traditions of the German labour force, coupled with the stronger quality orientation of employers, they add value to the employer. Research confirming this has been mixed in its results (Addison et al 2004; Addison, Schank, Schnabel, and Wagner 2007). But there is little evidence of employer resistance to works councils, and our table six results appear to be consistent with this. One reason is that most distributive issues have traditionally been handled through industry level bargaining. Because this bargaining is at the industry level, it effectively takes wages out of competition and serves a coordinating function across employers. Thus even distributive conflict has been limited in Germany, as evidenced by a much lower level of strike activity than in liberal market economies, including the USA. Yet as noted above, there have been a number of strains on the German system in recent years, as employers have increasingly sought flexibility at the level of the workplace, so that works councils have now become more involved in bargaining over traditionally distributive issues. Thus the panglossian view that many have had of German industrial relations may not hold to the extent that it once may have.

Table seven reports the perceptions of workers as to the relations between these institutions and their employers. The format of the questions differed somewhat across the two samples, so any comparisons should be made with caution. Yet the results suggest that the stereotypical acrimony that many associate with the US system may not be justified. Only 15 percent of respondents perceive the relation negatively, while four in ten perceive it to be positive to a great extent. Another four in ten perceive it as positive to some extent. In view of the structure of the US system, and the role of unions within it, we might expect a "mature" relation to be one that fits this latter, middle category. Yet in addition to the limited number of poor relationships, the finding that four in ten report harmonious relations is something of a surprise.

It is possible that weak union power, coupled with often struggling employers, have combined to weaken the adversarial role of unions in many workplaces. To explore this possibility, we examined the correlation between employee perceptions of the union-management relation and a variable in our data set addressing respondent perceptions of employer finances. It was only .07. However we found a substantially stronger correlation between these perceptions (.25) and job insecurity.

A further possibility is that there has been some increase in "mutual gains" relationships. We also found some support for this. Perceptions of union-management relations bore a relatively strong correlation (.29) with an index of high performance practices and an even stronger one (.32) with a global index of HRM practices. So there is possible that there has been some transformation of US industrial relations. But even if so, the low level of union coverage in our sample suggests that it has reached only about one in fifteen American workers in regular jobs.

The table 7 results also suggest that German workers have relatively lukewarm assessments have of the relationship between union representatives and management. Only one in three workers rate this relationship as good, which suggests (despite different response categories) that union-management relations may be no better and possibly worse than in the USA. It is likely, however, that this reflects the distance between workers and the level at which bargaining takes place, with the result that many workers are unfamiliar with the quality of the relationship and thus perceive it to be neither good nor bad. Indeed, of the workers we have included in this category, 13 percent responded that they were "not sure".<sup>6</sup>

Finally, eight out of ten German respondents with a works council rated the relationship between management and their works council representatives as "good," and none rated it as "bad." One in five answered that it was neither good nor bad, which could reflect the strains we referred to above. But even if so, it would not appear that these strains are particularly widespread or serious enough to give rise to bad relations.

***Confidence in Rights at Work: the USA and Germany.*** Although representation at work is an important element of democracy in and of itself, the extent to which workers are confident in their rights at work is possibly the most important "test" of differences in national industrial relations systems. This confidence may derive from the belief that one can depend on representatives to stand-up for him/her in the event that he/she is unfairly treated or his/her rights are violated. But it can also derive from the broader legal system and ultimately institutional environment.

In the USA, the "at will" doctrine, coupled with minimal restrictions on the exercise of employer authority, has meant that workers have traditionally had few a priori rights at work.

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<sup>6</sup> Union officials are also often heavily involved in works councils, but as work councils representatives, and the question about works council representatives was asked prior to the one about union representatives, so it is not likely that respondent answers were confusing the two. Indeed, in view of the results for works councils, one would expect this to enhance the likelihood of positive assessments.

Union representation has served as the primary means to the attainment of fairness rights, yet unions now cover only a small portion of the labour force. However, there has in recent years been a number of authors have begun to argue that rights associated with labor unions have been rendered superfluous by a new regime of substantive employment rights specified in law, judicial rulings, and administrative rulings. This possibility has been perhaps most strongly advanced by Piore and Safford (2006: 301-302), who argue these began to develop in the early 1960s, when Title VII of the Civil Rights Act was passed. Since then, protections against discriminatory practices have been extended to a variety of groups and minorities. There has also been legislation mandating family leave and advance notice of layoffs, limits imposed on the doctrine of employment-at-will, and a proliferation of employment legislation at the state and local level (e.g., living wage laws). According to Piore and Safford, employers have in response generated standard personnel policies and practices and developed a new strategy centred on private arbitration procedures. To the extent that they are right, we would expect workers to have much greater confidence in their rights than the traditional depiction of the US employment regime would suggest.

In Germany, there has never been an at-will doctrine, and workers have traditionally enjoyed strong protections through their works councils and unions. They also have strong a priori rights under the law. This has been especially true with regard to job security, but it has also applied to the provision of due process and of various protections against unfair or discriminatory treatment. Even where workers do not have representation at work or choose not to rely on their representatives, they can turn to a labour court in the event that their rights are violated. There has been some weakening in recent years of job security rights, yet overall worker rights remain strong. The question is thus not whether workers have rights, but rather whether they have sufficient confidence in their institutions to ensure that they are enforced.

As revealed in table 8, workers in the US sample express relatively high levels of confidence in their rights, with a third to a half agreeing strongly with statements about each of the six rights in this table, and another quarter agreeing somewhat. They are most confident about co-workers being able to do something if they are denied pay or bonus money or bullied, and least confident about job security and unjust dismissal. Nonetheless, even in the case of the latter, a majority expresses confidence. These results suggest that, indeed, the employment relation is not as authoritarian and arbitrary as the traditional stereotype suggest, at least for a significant portion of the US labour force. Although there has been some evidence that US workers are simply unaware of just how poor their rights are (Freeman and Rogers 1999), this result provides some support for the Piore and Safford argument.

As expected, however, German workers appear to be substantially more confident on all but one (denial of pay or bonus money) of the issues in table 8. This is especially true with regard to the percentages strongly agreeing that they could count on various rights. Yet a significant portion also expressed either some or outright doubt. Most striking is the one in three respondents who were either neutral or in disagreement with statements about being able to do something of a co-worker was unjustly dismissed or if one was denied pay or bonus money. One possibility is that workers are not fully aware of their rights (the opposite of the USA) and/or are not confident in their ability to enforce them. Both may be especially likely for workers without representation, because works councils and unions can be expected to provide "institutional backup" to the law, informing workers of their rights and helping to enforce them. To explore whether this might be true, we examined the correlations between each of the rights perception items and each form of representation (available on request). The correlations were strongest for works councils, ranging from .20 to .25. However, the correlations with collective agreement coverage were also statistically significant, ranging from .12 to .16.

It is also somewhat perplexing that German workers are less confident than their American counterparts when it comes to doing something if denied pay or bonus money. This difference is not great, but a t-test revealed it to be statistically significant ( $p=.001$ ). It may be that employers in the US worry more about the consequences for morale should they short-change an employee, and that employees have come to trust employers to make things right should there be a problem. This may be especially so if American workers are more reliant on bonuses, which we found to be the case in our sample. We found stronger correlations between traditional HRM practices and perceptions of recourse over a pay problem in the US sample (.46, vs. .26 in the German sample), suggesting that the establishment of a professional HR regime may be as or more important than are institutions.

#### **IV. Discussion and Conclusions.**

A stereotypical view has been that, when it comes to representation and rights at work, the USA and Germany are polar opposites. The results reported in this paper suggest that this black-and-white view is not supported. They reveal that, although union coverage is low (17 percent), a half of regular workers in the United States sample have some form of representation at work and that they evaluate this representation as or more favourably than their German counterparts. They also reveal that the level of frustrated demand is relatively low (especially for unions), that employers are not seen as an obstacle to union representation except by a small minority of workers, and that the relations between unions and their employers are not as adversarial as typically portrayed. Furthermore, they also reveal a substantial confidence in rights at work. Yet German workers unquestionably continue to do better overall. Although there is some frustrated demand for both collective bargaining coverage and works councils in Germany, employer opposition would not appear to be a problem, as reflected by high levels of coverage, and although there may be some opposition to collective bargaining coverage, employers are

perceived to be highly receptive to works councils. Coupled with stronger employment laws, this means that German workers are not only far more likely to have representation, they are also more confident about their rights at work. Germans tend to be diffident, however, about the performance of their institutions and their confidence in their rights, though higher than in the US, is not as high as one would expect given the German system.

These results require further exploration, especially because they may be conditioned by differences in expectations and by broader cultural differences which could shape how respondents in each country perceive and evaluate their institutions and their employers. But on their surface, they suggest that the United States is not entirely "black" and Germany is not entirely "white". Instead, the two nations may be thought of as representing two shades of grey. The German shade is substantially lighter than the US shade, but conventional portrayals of these two nations may at best be oversimplified.

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**Table 1**  
**Prevalence of Alternative Forms of Representation**

**USA**

% members of a union	16
% covered by a collective agreement	17
% of respondents covered by "a non-union, management established system, where worker representatives meet with management"	28
% of non-union respondents with mgmt established system that actively consults with management over wages and benefits (to some or a great extent)	22
% member of another type of association to assist with work-related matters.	15
main characteristic that unites members of association:	
% occupation	74
% race, ethnicity, gender, sexual orientation	7
% religion	1
% other	17
% represented only by an association	6
% with at least one form of representation	51

**Table 2**  
**Evaluations of Alternative Forms of Representation**

**USA**

	To a great extent	To some extent	Very little if at all
<b>Evaluations of unions</b> (if represented by one):			
Union representatives can be counted on to stand up for workers, even if this means a disagreement with management.	54	30	16
Union representatives actively consult with workers about their ideas or concerns	41	36	23
<b>Evaluations of management established, non-union rep. systems</b> (if represented by one):			
Non-union representatives can be counted on to stand up for workers, even if this means a disagreement with management.	51	33	17
Non-union representatives actively consult with workers about their ideas or concerns	54	35	11
<b>Evaluations of independent employee associations</b> (if represented by one):			
This association can be counted on to stand up for workers, even if this means a disagreement with management.	38	30	32
This association organization actively consults with workers about their ideas or concerns	44	43	13

**Table 3**  
**Prevalence of Alternative Forms of Representation**

**USA & Germany**

	USA	Germ.
% members of a union	16	24
% covered by a collective agreement	17	67
% covered by "a non-union, management established system, where worker reps meet with management (US only)	28	--
% covered by a works council (Germany only)	--	68
% member of another type of association to assist with work-related matters.	15	11
main characteristic that unites members of association:		
% occupation	74	68
% race, ethnicity, gender, sexual orientation	7	7
% religion	1	6
% other	17	20
% represented only by an association	6	4
% with at least one form of representation	57	84

**Table 4**  
**Evaluations of Alternative Forms of Representation**

**USA vs. Germany**

	To a great extent	To some extent	Very little if at all
	US/Germ	US/Germ	US/Germ
<b>Evaluations of unions</b> (if represented by one):			
Union representatives can be counted on to stand up for workers, even if this means a disagreement with management.	54 / 45	30 / 33	16 / 22
Union representatives actively consult with workers about their ideas or concerns	41 / 31	36 / 56	23 / 13
<b>Evaluations of management established, non-union rep. systems / works councils</b> (if represented by one):			
Non-union / works council reps can be counted on to stand up for workers, even if this means a disagreement with management.	51 / 27	33 / 45	17 / 28
Non-union / works council reps actively consult with workers about their ideas or concerns	54 / 37	35 / 43	11 / 20
<b>Evaluations of independent employee associations</b> (if represented by one):			
This association can be counted on to stand up for workers, even if this means a disagreement with management.	38 / 42	30 / 36	32 / 22
This association organization actively consults with workers about their ideas or concerns	44 / 71	43 / 24	13 / 5

**Table 5**  
**Representation Gaps**

	Yes	No	Not sure
<b>USA:</b> % who would vote for a union (if not currently represented by one).	22	70	9
<b>Germany:</b> % who would like to be covered by a collective agreement (if not at present)	33	62	6
% who would like a works council (if they do not already)	30	59	2
<b>USA:</b> Extent to which would prefer a non-union rep. system rather than a union or no rep. at all (if no rep. at present).	great extent 14	some extent 28	not at all 58

**Table 6**  
**Explaining the Gaps: Employer Opposition?**

	yes	no	not sure
<b>USA:</b> no union rep due to employer opposition (a great or some extent)	21	68	11
<b>Germany:</b> no coll. agreement due to employer opposition (vs. none in industry or do not want)	26	48	26
no works council due to employer opposition	3	83	15

**Table 7**  
**Relations With Employers**

	good/great extent	neither/some extent	bad / not at all
<b>USA:</b> union reps. (extent to which positive reln. management)	43	40	15
<b>Germany:</b> union reps. (good vs. bad reln. with management)	32	46	9
WC reps. (good vs. bad reln. with management)	81	19	0

**Table 8**  
**Confidence in Rights at Work**

	agree strongly	agree somewhat	neutral or disagree
	US/Germ	US/Germ	US/Germ
due process (able to get formal hearing with representation if unfairly treated)	46 / 61	23 / 13	32 / 26
job security (protections make layoff of permanent employees unlikely)	30 / 54	22 / 23	48 / 22
it is likely something could be done if:			
co-worker unjustly dismissed	31 / 42	27 / 12	42 / 36
female co-worker discriminated against	46 / 63	20 / 20	34 / 18
co-worker bullied by a manager	49 / 58	27 / 25	25 / 17
co-worker denied pay or bonus money to which entitled	52 / 47	25 / 21	23 / 32