Free collective bargaining and co-determination are the two pillars of industrial relations in Germany. They can complement one another effectively in the face of major economic and social changes. However, for this process to work the participants must show a degree of co-operation that both employers and unions from Anglo-Saxon countries find incomprehensible and objectionable. Nevertheless the points of contact between the two systems are increasing and an exchange of views is overdue.

The historical roots

In the second half of the 19th Century as the trade union movement emerged along with industrialisation in a repressive and authoritarian monarchy there were two overriding goals.

- The working class together with the unions, who at that time were harassed and persecuted, could only develop in a political democracy. As a result the unions, particularly the socialist unions working closely with the socialist parties, fought for a democratic state which through its legislation would deliver freedom, equality and social justice. This basic political belief explains why the German unions after 1918, after the overthrow of the monarchy, saw the parliamentary democracy of the Weimar Republic as their state. And this is also, in the last resort, the reason for what foreign observers describe as the law-base nature or the “legalism” of German industrial relations.

In addition to political democracy but as an analogy to it the unions favoured a concept of economic democracy. This was to be established at national level, to have an institutional basis and a system of representation and was intended through legislation and state intervention to lead to the emancipation of the working class. The view of the trade unions at that time was of a “top-down” reform of society.
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but were afraid to ask

and the economy. In 1920 the unions accepted a law establishing works councils with limited rights in personnel, economic and social issues. But this was only done unwillingly, and following the pressure from the councils’ or soviets’ movement (Ratebewegung), which for a short period during and after the First World War had a major influence in Germany as elsewhere. They continued to warn, however, against the dangers of “plant egoism” and “plant syndicalism”.

The second line of development, the emergence of collective agreements, took a different course. It emerged from the misery of early industrial working conditions and the industrial struggles that accompanied it. In this case an understanding of the need to secure improvements in wages, working time and working conditions came from the “bottom up”. The advances in collective bargaining depended on the willingness of union members to take action. This was tied to specific industries and independent of the state and legislation, which left the two parties involved in the negotiation a great deal of freedom in terms of how they organised their activities. Generally collective agreements were reached for all companies in an industry in a region, so-called “area collective agreements” (Flächentarifverträge), which effectively set minimum standards and did not permit special arrangements for particular plants.

Thus co-determination and collective bargaining ran parallel and unconnected with one another. The strength of collective bargaining lay in its closeness to the concrete problems of the employees and its ability to mobilise them directly, for example in strikes. The introduction of co-determination legislation depended on the aims and relative strength of the political parties as well as on the power of capital.

Rights and their price

The existence of these two separate policy areas side by side, something that is still noticeable today, was only possible because of the development of a sensible division of labour. The law on collective bargaining gives the negotiating parties wide freedom of movement in terms of the content of negotiations and only lays down a few basic procedural rules. The law, particularly labour law and the labour courts, protects the interpretation of free collective bargaining.

The co-determination of the employees and their unions is regulated much more tightly by the legislation both in terms of procedure and to some degree in terms of content, although it is important to distinguish between different levels. The plant or workplace level is governed by the “Works Constitution Act”. (The “Personnel Representation Act” is its equivalent in the public sector.) The company level or business level is governed by the so-called “Co-determination Acts” (Coal and Steel Industry Co-determination and the Co-determination Act 1976 in private sector companies with more than 2,000 employees).

In addition there are possibilities of influence beyond the workplace and in the economy as a whole, such as in the administration of social security, the labour administration, vocational training as well as in industrial and regional policy. However, the crucial area for co-determination is certainly at plant and company level. Since the Weimar period the influence of the employers has ensured that the law places an obligation on works council members to work with the employer “in a spirit of mutual trust”. Conflict with the employer can only be resolved using legal channels, through the conciliation committees or through the courts. The works council cannot strike, thus underlining the co-operative nature of its role. Similarly at company level, co-determination is tied into the existing legal structure. The employee representatives on the supervisory board are tied to the possibilities provided by a body whose role is to oversee developments. The labour director who is normally closest to the employee representatives has the same rights but also the same duties as every other director on the board. Co-determination means more rights, but it brings with it more duties. This is the price of legal regulation.

What emerges from this apparently separate and parallel existence of free collective bargaining and co-determination is their internal links. Collective bargaining deals primarily, if necessary through strikes and lock-outs, with the disputed questions of distribution - how the money is to be divided up. This is generally done through area collective agreements, setting minimum standards about which the works councils no longer need to argue. This leaves them to concentrate on solving specific plant issues, in the vast majority of cases in co-operation with the employer. On the other hand the trade unions are freed from involvement in plant structures. Collective bargaining and co-
determination, which are linked through the policies of the unions, complement and support one another, as in both cases what is at issue is the representation of the interests of working people and their families.

**From parallel development to a dynamic tension**

The relationships, which are presented here in a simplified form, are not static. In the Weimar period particular weight was laid on what was called “co-determination beyond the workplace”, in other words exercising influence at national and industry level. After the Second World War it was the co-determination at company level in the coal and steel industries which was central for a long period. And since the 1970s, with increasing rationalisation, the introduction of new technologies and other forms of work organisation, it is co-determination at plant level which has grown in importance. Collective bargaining has experienced a similar transition. Whereas until well into the 1960s it concentrated on pay issues, after that it was about humanisation and the content of work and, above all in the 1980s, working time, although here its closeness to workplace problems, grouped together under the heading of flexibility, became increasingly important.

But collective bargaining and co-determination are not just flexible in themselves in being able to take on board and shape changed economic and social realities. They are also intertwined. New solutions are often tried out in plant deals reached between the employer and the works council within the co-determination framework. If they prove successful they are then taken up by the collective bargaining parties (the unions and the employers' associations) and secured in collective agreements, often at area level. Equally the collective bargaining parties can sometimes play a pioneer role in finding solution, which are then implemented at plant level in line with the specific conditions there. Examples here are the “Alliances for Jobs” on plant level or the introduction of time banking.

The system in its totality, and this is its strength, permits rapid feedback and linkage between the plant, the industry and the whole of the economy because at each level there is an institutional basis for systematic and professionally competent negotiations. Even unwilling employers can only escape the legal obligation to co-operate to a limited extent. Problems are dealt with where they occur, with a stabilising effect both socially and economically. There is no big bust-up.

But even with all its elasticity the whole system cannot be turned upside down. This is what would happen if collective bargaining were shifted to plant level, something some employers would like. Conflicts over income division could then no longer be decided above plant level using the final weapon of industrial action, because the works council is not permitted to strike. At the same time the works council would lose what is currently its strength, dealing with issues on a co-operative basis, if major conflicts were transferred to the plant level. A further consequence would be that the unions would lose not just their collective bargaining power but also the responsibility that comes with it, a scenario that no one who is interested in social stability, economic efficiency and peace in society could wish for.

**The arguments of those who oppose co-operation**

This two channel or dual German system of industrial relations still appears strange to Anglo-Saxon thinking. Unions in countries which have only known collective bargaining as a way of regulating industrial relations do not want to accept that the employee representatives at plant level can act in a way which, at least formally, is independent of the unions. If the works councils perform effectively, could they not make unions superfluous? And if the majority of works council members are good trade unionists, as many Germans say, why is there a need for a special Works Constitution Act? And why does not the free market introduce co-determination and participation of its own accord, if, as again so many Germans claim, a company’s efficiency and its capacity for innovation can be improved by everybody working together (“stakeholder value”)?

As a result employers and trade unionists in Anglo-Saxon countries often, although for different reasons, continue to oppose co-operative elements in the system of industrial relations. They think in terms of conflict and opposing power groupings, which crystallise in collective bargaining from industry to plant level, whereby one side thinks it can only win at the cost of the other. But even American authors like Thomas Kochan express doubts as to whether a system which excludes co-operation and which operates with low levels of mutual trust can in future fashion a world where what counts is innovation, motivation and qualification.

So therefore it is no accident that even in the USA and the UK there are companies that operate with new forms of work organisation, work groups, teamwork or particular forms of human resource management. New realities emerge from actual practice but without changing the core of the system of collective bargaining. However, in academic as well as in trade union discussion some thinking goes further considering the possibility of writing into collective agreements the sort of plant level tasks, which German works councils undertake. Finally European Works Council members, including those in countries where such a system was previously unknown, are starting to gather experience, even if so far they only deal with information and consultation. German history shows that institutional innovations require a long learning process before they stabilise.

**European learning processes**

Even as late as the 1980s German trade unionists had not recognised the connection between co-determination and collective bargaining. This attitude, which is explained by the long years of growth and full employment, led them to see almost exclusively the co-operative elements of the system and to view co-determination as something which could be exported and introduced in other countries.

It was the dramatic growth in rationalisation, job cut backs and
competitive pressures together with the advance of a neo-liberal market philosophy after 1989 which made it clear how essential it was to have strong trade unions and members who could be mobilised. In the German system, as elsewhere, it is normally only after proving a capability for conflict, that it is possible to have influence as a partner for co-operation. And for this free collective bargaining is key point of reference. This is the common basis for both systems of industrial relations.

In any discussion about similarities and differences each side must try to understand the specific circumstances of the other. Only on this basis is it possible to learn from one another. There are several arguments in favour of this common process of discussion:

- We are living in a rapidly changing world. The slogans are globalisation and international competition, new management and capital strategies, new production systems and forms of work organisation, the reorganisation and reduction of the welfare state. How are problems of work and employment be solved? And how must the existing institutions, including co-determination and collective bargaining be restructured in order that the interests of employees can be actively involved in this process of economic change?

- Second, international competition means that there are increasingly points of contact between different national industrial relations systems, as when Daimler and Chrysler merge to form a single business, or when the Deutsche Bank, Telekom or Siemens co-operate or ally themselves with partners in other countries. In such cases representatives of the employees and their trade unions need to communicate with one another to decide how they want to deal with the consequences for those affected and to find concrete solutions to the problems. The pre-condition for this is a high level of information and consultation.

### New challenges

Currently Germany faces two challenges which for the foreseeable future will be of overwhelming importance. In a situation of continuing mass unemployment how can the problems of work and employment be solved? And how must the existing institutions, including co-determination and collective bargaining be restructured in order that the interests of employees can be actively involved in this process of economic change?

In responding to these developments, co-determination and collective bargaining have for years been undergoing fundamental change. For Anglo-Saxon observers it is perhaps interesting to note that despite all the problems the significance of a legally regulated system of co-determination...
has never been seriously questioned. In particular the arrangements for works councils at the workplace together with co-determination at company level mean that there are possibilities of obtaining information, obligations to co-operate and rights to participate which permit a relatively stable and professional system of employee representation. This representation is broadly acceptable to employees, and representatives are increasingly involved in reorganisation, as this is the only way that employment can be actively safeguarded.

In this works councils have tried out a wide variety of methods, particularly in the area of working time developments, which, however, have always been linked to increasing flexibility in the way people are employed. In return they have, in the most favourable cases, got employers to agree not to introduce redundancies for a specific period of time. This role requires works council members to be highly skilled in their negotiations with the employer. At the same time they have to develop new forms of co-operation with the workforce, because, as a result of internal restructuring, a wide range of systems of direct participation, particularly group work, have grown up. In this way the formal representative and institutionally based co-determination has got a new participative dimension, even where the employer simply tries to use it as an instrument to raise efficiency.

However, all these developments are only possible where there are works councils and that is generally only in medium and large-sized companies. But as the number of small enterprises, which have the biggest growth in employment, increases, a dangerous “co-determination free zone” is beginning to emerge. Half of all German employees are in this area in which the unions are particularly weak and where there may not even be collective agreements.

Innovative answers

Developments in collective bargaining have been second only to the issues of work and employment in influencing co-determination, despite the fact that for so many years the two ran side by side completely separate from one another. Under the slogan “workplace-level bargaining” German unions have in a long and painful process allowed what were previously uniform arrangements in area collective agreements to be adapted to the specific circumstances of individual plants. The details of this “opening up” of the agreements have to be settled between the employer and the works council. This increasing flexibility in collective bargaining policy, leaving the precise details to be worked out at plant level, is probably the most far-reaching innovation in industrial relations in Germany in recent years. In safeguarding jobs and developing employment strategies industrial relations have gained a longer term perspective, which is closely linked to company strategy, and which has an equal impact on jobs, where plants are sited, systems of production and investment. Reaching deals in this way can no longer be fitted in to the traditional definitions of conflict and co-operation. It is a new development, which is both linked to specific interests and participative, and which by its very nature requires ever-increasing management skills.

As it is obvious that markets, companies and the two parties to collective bargaining cannot alone combat unemployment effectively, the “red-green” German government, the unions, and, somewhat hesitantly, the employers have backed an “Alliance for Jobs”. In the long term this is intended to create more employment through a co-operation of private companies and public policy. There is government financial support for cutting back youth unemployment, for reducing the on-costs of employing people, which in Germany are particularly high, and for encouraging more employment in the service sector. As such measures must also be implemented within companies, co-determination and collective bargaining policy will have to extend their area of operations. If they both continue to adapt to economic and social change then there is still a good chance that this process can be influenced in the interests of the employees.