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**Contested Boundaries:  
Ambiguity and Creativity in the Evolution of German Codetermination**

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**CONTESTED BOUNDARIES:  
AMBIGUITY AND CREATIVITY IN THE EVOLUTION OF GERMAN  
CODETERMINATION**

**Gregory Jackson**

**ABSTRACT**

This article examines the role of ambiguity in processes of institutional change. One challenge for understanding institutional change is to overcome the rather “oversocialized” view of action within Institutional theory. Drawing upon recent work in sociology, the paper introduces a non-teleological model of action that stresses the ambiguity of institutionalized beliefs. Ambiguity is then applied to Masahiko Aoki’s concept of institutions as “summary representation” of a strategic game. Rather than institutional break down, ambiguity is associated with incremental modes of institutional change through creative reinterpretation and redeployment of old institutions for new purposes. Empirically, the paper applies these considerations to understanding the historical evolution of employee codetermination in Germany. The continuity in formal legal rules of codetermination contrasts with remarkable diversity as an organizational practice—over time, across industrial sectors and between individual firms. Codetermination illustrates how ambiguity originated in political compromise, but also how ambiguous agreement allows scope for institutional innovation. Ambiguity is thus central for understanding how codetermination was partially reproduced and partially changed over time.

...to say that it is ambiguous is to assert that its meaning is never fixed, that it must be constantly won.

“The Ethics of Ambiguity” –Simone de Beauvoir

*It was all different; that, at least, seemed sure. We still agreed — but only that she'd changed.*

“Mutability” -- W.D. Snodgrass

Institutions are commonly seen as formal and informal “rules of the game” that provide economic agents with incentives and constraints, and thereby induce stable patterns of behavior.<sup>1</sup> Institutional constraints from political, legal and social environments often lead to institutional isomorphism whereby organizations to adopt similar structures and routines (Meyer and Rowan 1977). Institutional theory has thus offered powerful explanations of why organizations have diverse responses to similar economic pressures.<sup>2</sup> Conversely, institutions may present comparative advantages for different types of activities (Hall and Gingerich 2001, Whitley 1999, Streeck 1992). These insights have laid a valuable foundation for international comparisons of business, corporate governance or industrial relations.

Institutional change has nonetheless remained a theoretical puzzle. Institutional theory itself falls into several distinct paradigms that characterize the creation, stability and change of institutions differently (Thelen 1999, Hall and Taylor 1996, Powell and DiMaggio 1991). Institutions may be seen in regulative, normative or cognitive terms. But institutional analysis generally shares an emphasis on the constraining character of institutions. To the extent that behavior is consistent with institutional rules (choice-within-constraints), institutional change seems almost inevitably to be exogenous.<sup>3</sup> Meanwhile, institutions remain resistant to change

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1 The author thanks Peter Hall, Wolfgang Streeck, Kathy Thelen, Josh Whitford and two anonymous reviewers for their insightful comments. All errors are my own.

2 In practice, institutional factors are often “added on” to baseline models of an institution-less economy to explain why reality deviates from the pure model.

3 For example, Douglas North (1990) outlines two mechanisms of institutional change: changes in relative prices and changes in preferences. Yet North treats both change in (objective) prices or (subjective) preferences as exogenous parameters.

because of increasing returns, sunk costs, complementarities between different institutions, or power differentials that make change largely path dependent (Mahoney 2000).

In this chapter, I argue that understanding institutional change requires taking seriously the ambiguity of social life. Institutions may reduce uncertainty,<sup>4</sup> but the meaning of an institution is never completely clear. Actors face institutions in ever changing situations. Institutionalized rules and expectations represent these contingencies in only general terms, and can often be interpreted in more than one way. The social boundaries and interpretations of what an institution demands or allows may remain ambiguous. Ambiguity leads actors to continually reinterpret institutional opportunities and constraints, as well as adapt and modify institutional rules. Since institutions remain an imperfect guide for action, actors may “discover” new faces of an institution over time through learning, experimentation and historical accidents. Likewise, ambiguity gives scope for contention and conflict over the meaning of an institution. Many institutions are based on political compromises whose contents are only loosely defined. Such ambiguity may help appeal to (or limited objections from) a wide range of actors *ex ante*, but requires continuous working out and renegotiation in particular local situations *ex post*.

This chapter explores the role of ambiguity and creativity in processes of institutional change both theoretically and empirically. The chapter first provides a theoretical discussion about ambiguity drawing upon recent sociological conceptions of action, and then relates ambiguity to the concept of institutions as “summary representation” of a strategic game (Aoki 2001). This concept is closely related to “typifications” where under certain conditions X, a particular type of actor Y is expected to do Z (Berger and Luckmann 1966), or generalized values that make diverse contingencies comparable across different situations and networks of actors (White 1992). While institutions coordinate expectations, ambiguity may remain that poses an interpretive gap to be filled. Actors may thus gain scope for strategic responses to institutions (Oliver 1991) that involve creative reinterpretation and redeployment for new purposes.

Next, the chapter examines the role of ambiguity in the empirical case of German codetermination. Codetermination refers to a complex set of legal and social institutions that shape employee participation in company decision making through works councils and

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<sup>4</sup> In economics, the concept of uncertainty refers to situations where the magnitude or value of an outcome is unknowable. Ambiguity refers more specifically to situations where more than one interpretation is possible. Philosophers also distinguish ambiguity from vagueness where the meaning is not clear in context.

representation in the Supervisory Boards of large firms. Since its origins in the 19<sup>th</sup> Century, codetermination survived major economic shocks, as well as social and political upheaval. But the continuity in formal legal rules contrasts with remarkable diversity as an organizational practice—over time, across industrial sectors and between individual firms.

Initially, codetermination developed through state intervention into the private social order of the firm in effort to integrate employees, but also circumvent independent unions. This political compromise resulted in a dual orientation of works councils to represent the interests of employees, but promote cooperation with management in the interests of the company. This ambiguous role left many latent alternatives that could develop in different directions. Unions first saw codetermination as a paternalistic firm based rival to industrial unionism, but later came to embrace and utilize codetermination to project union power onto the shop floor. Likewise, management opposed codetermination, but later learned to use codetermination as a means to reduce post-war labor conflicts and improve employee commitment in support of Germany's high-skill, high-quality manufacturing sector. Recently the post-war compromise is being renegotiated again in light of new capital market pressures and corporate governance reforms.

Codetermination illustrates how ambiguity originated in political compromise, but also how ambiguous agreement allows scope for institutional innovation. Actors continue to contest the various boundaries of codetermination—between public intervention and private ordering; the scope of sectors and firms and issues subject to codetermination; or the balance between cooperation and interest representation within the firm. Since ambiguity remains what codetermination is or should do, actors may pull institutions in different directions as new situations emerge. This stretching of horizons involves new sorts of strategic behavior, including conflict over how rules are to be interpreted and renegotiation over how to apply them. But rather than undergoing wholesale breakdown and replacement, codetermination has evolved in a very incremental fashion through what Thelen (2003) calls institutional “conversion.” Ambiguity is thus central for understanding how codetermination was partially reproduced and partially changed over time.

## **I. Grounding Institutional Change in Pragmatic Social Action**

Institutional change presents a puzzle, in no small part, due to a rather “oversocialized” view of how institutions shape action. If institutions are coercive, normative or cognitively

taken-for-granted rules that constrain action, how may actors change their relationships to those constraints in ways that transform institutions?<sup>5</sup> Institutions coordinate individual behavior as “summary representations” (Aoki 2001) or “typifications” (Berger and Luckmann 1966) or “values” generalized across situations (White 1992). While institutions thus constrain action, substantial indeterminacy and situational ambiguity remain. However, the gap between institutional constraint and intentional action has not been sufficiently explored within institutional theory.<sup>6</sup>

Indeterminacy and ambiguity are often neglected because most social science implicitly relies on a teleological conception of action. In *The Creativity of Action*, German sociologist Hans Joas (1992) reviewed existing theories of action and demonstrates the predominance of means-ends schema for understanding of human intentionality. Here action is conceived as the pursuit of preestablished ends or preferences that remain stable from context to context. The perception of the world is given, and separate from our actions. Actions are then “chosen” by their anticipated consequences—in what might be termed “portfolio models” of the actor (Whitford 2002). The rational choice variant postulates maximizing on a fixed order of preferences, but normative models also tend to only “tinker” with this view by widening the portfolio to include social norms. Both views take ends as given preferences, norms or worldviews exogenous to the framework. The cognitive or practical model of action used recently in institutional theorizing (DiMaggio and Powell 1991) is potentially different, since action involves enacting preconceived and taken-for-granted worldviews. Routines and taken-for-granted concepts may constitute a “toolkit” for creative action. Yet even this view brackets how individuals interpret and evaluate their choices in dialogue with situations. Action is focused on the choice of appropriate means, and creative dimensions of human behavior remain unexplained.

Alternatives to a teleological view of action are not yet well developed. But pragmatist thinkers such as John Dewey and George Herbert Mead suggest important elements. Drawing

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5 Conceptualizing institutional change faces similar issues as the “duality” of structure and agency examined by Bourdieu (1990) and Giddens (1984), who focus on how actors and social structures exist in a dialectical relation of mutual influence (Sewell Jr.: 1992)

6 I am not arguing here that all institutional theory is deterministic, rather only that the indeterminate aspects of institutional contexts have not been adequately examined and integrated within institutional theory.

upon their works, Joas (1992) suggests the concept of “situation” as a basic category. Our actions do not follow predefined ends, but particular “ends-in-view” emerge concretely out of situations. Ends-in-view are based on judgments and assumptions about the type of situation and the possible actions that flow from it. Conversely, the situation itself is not a fixed, objective given. Situations are interpreted and defined in relation to our capacities for action. Starting from the situation, action follows a series of various ends-in-view that remain relatively undefined at first, but are specified through on-going reinterpretation and decisions about means. Actors test out and revise their courses of action as each end-in-view itself becomes a means for a further end-in-view. Means and ends flow in a continuous stream—the distinction between them is only an analytical and temporal one.

Pragmatism matters for institutional theory because it reminds us of the potential ambiguity of institutions. Pragmatism suggests an ongoing “reorganization and reconstitution of habits and institutions” occurs in dialogue with new and changing situations (Joas 1992: 24). Institutions are just one element of a situation, and actors pull institutions in different directions within this horizon through acts of problem solving. Institutional rules do not anticipate every contingency, and actors initially imagine only a limited set of the potential ends to which an institution can be used. No one-to-one relationship exists between an institution and its meaning in a specific situation (Friedland and Alford 1991: 255). Exploring and achieving these meanings through interpretation also opens institutions to active political contestation (Zilber 2002).

Ambiguity thus involves perceived discrepancies between a problem situation and institutionalized rules or routines. But unlike uncertainty or vagueness, ambiguity suggests institutions can take on two or more specific meanings. Such multiplicity of meanings is commonplace as institutions become part of changed situational horizons and ends-in-view. Ambiguous contexts allow scope for creative action through processes of iteration, projection and evaluation (Emirbayer and Mische 1998).<sup>7</sup> Just as well-crafted ambiguity is central for literary metaphor, it is also a powerful catalyst for creativity in social contexts. Creativity is not a mysterious leap as often implied. Rather, creativity is a bounded process that arises from practical

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<sup>7</sup> Iteration involves actors’ variable relation to past events through selective attention, recognition of types, categorization, shifting repertoires of action, and “repair” of violated expectations. Projection involves actors’ variable relation to projected future scenarios—anticipation of events, construction of narrative, hypothetical resolution to dilemmas, or experimental enactment. The practical-evaluative dimension involves actors’ variable relation to the present through the characterizing experience, deliberation, decision, and execution.

situations, but transcends them through contingency, reflexive intentionality and experimentation (Beckert 2002: 269-281). Actors may thereby reinterpret and adapt institutions to suit new purposes—what Thelen (2003) calls institutional conversion.

## **II. Ambiguity and Institutional Change**

To elaborate on the above point, I first introduce a framework for institutional analysis proposed by Masahiko Aoki (2001). This framework incorporates elements of rational/economic approaches and cognitive/sociological approaches to institutions. It also highlights institutionalization as a dynamic process of reproduction, disruption and responses to disruption (Clemens and Cook 1999).

In his game-theoretic framework, Aoki (2001: 202) defines institutions as a “compressed, commonly perceived representation of ways in which a game is played.” His definition builds from feedback mechanisms represented by the COASE box whose four elements are reconstructed in Figure I (Aoki 2001: 203-206). Subjective expectations (E) about the behavior of other actors coordinate the strategic choices of individual agents (S). This allows individuals to economize on information, while their choices are thereby constrained. As expectations are shared and serve as stable guides for strategy, collective behavior comes to confirm and reinforce such expectations about others’ strategic choices. Institutions also have consequences (CO) within a given technological and institutional environment that constrain the sets of feasible actions (A) and shape the capacities for action accumulated by actors.

For Aoki (2001: 231), institutional change “... may be identified with a situation where agents’ beliefs on the ways a game is played are altered in critical mass...In effect, understanding the process of institutional change may be tantamount to understanding the ways in which the agents revise their beliefs in a coordinated manner”. A “cognitive disequilibrium” emerges between expectations and actual outcomes. Actors question their expectations, perceive existing capacities as inadequate and seek new strategies. Disequilibrium may be triggered by consequences (CO) of environmental change such as war, financial market collapse, rising costs of the welfare state, etc. Or changed capacities for action (A) may alter strategic options. New capacities may result from learning or accumulation of power. Capacities may also be lost due to exposure to competition or generational change, thereby exhausting preconditions for past strategies. Institutional change begins as actors begin to experiment with, learn or emulate new

strategies (S). New strategies may remain marginal. But beyond a certain scale, shared beliefs (E) undergo a crisis and face competition with other beliefs.

A narrow reading of the COASE box might equate a given objective set of consequences and capacities with a given institutional equilibrium. The term “equilibrium” seems to denote a discrete and stable state, whereas change occurs through the breakdown of one equilibrium and replacement with another. However, Aoki (2001: 243) cautions against drawing too stark a contrast between periods of stability and transition. Aoki stresses a subjective notion of games wherein institutions are a focal point around which a range of behavior emerges. Here expectations (E) involve both shared cognition and private beliefs. Consequences (CO) are not objectively known, but only inferred by actors and may therefore be unintended. Capacities for action (A) are only a subset of all technologically feasible actions based on active repertoires. And strategies (S) are based on incomplete information that may be revised through information gathering. While these features appear as exogenous and fixed in the short-term, they must be considered variable in the long run because they can be incrementally altered through the operation of the institution itself (Greif 2004). Unintended consequences accumulate, repertoires for action evolve, and new information leads to strategic experiments that challenge institutionalized expectations.

When seen in action-theoretic terms, institutions represent situations in a summary form that must remain loose enough to be transposable across situations, but specific enough to allow actors to mobilize efforts of control in enforcing an institution (White 1992). Institutions often remain ambiguous. More than one set of behaviors may be consistent with an institution. One strong implication is that institutionalization is not a discrete state, but a matter of degree (Jepperson 1991). In the extreme, Erving Goffman (1961) used the metaphor of a “total institution” where all situations are governed by an institution and action is only possible “backstage” through deviations in the performance of fixed roles. But while some institutions may be rigidly prescriptive (actors “must” follow a certain rule), others may establish more limited boundaries of what is not possible (actors “must not” do something), and others may provide only loose models around which actors engage in substantial improvisation (Crawford and Ostrom 1995). Allowing for the ambiguous nature of “summary representations” within the COASE framework helps us understand how institutional change may occur through incremental modification, rather than breakdown and replacement of equilibrium outcomes.

*Reinterpretation and Conversion (E & S):* Within the COASE framework, expectations or values (E) coordinate strategic choices (S). Institutions rest on expectations and values about how actors behave in a range of situations. Yet different degrees of ambiguity confront actors as they attempt to enact institutionalized behaviors or pursue new ends-in-view at the boundaries of institutions. Ambiguity arises as situational contexts shift and create questions about how expectations apply to a particular situation or whether a strategy is actually consistent with expected norms or values. Such ambiguity may remain local and without any impact on the institution.

However, ambiguity may also become more global to an institution as a result of repeated collisions or tensions among different “faces” of an institution. While institutions are defined as “shared beliefs” or “common understandings,” Aoki (2001: 202) also mentions how “the variety of meanings attached to an established institution by agents in different roles may be identified as ideologies”. Conflict is often built into institutions. Interpretation is not merely a technical issue, but involves a micro-politics where underlying conflicts of interest may lead to contention across different groups. If institutions are capable of being understood in more than one way, gaps between institutionalized expectation (e.g. rule or value) and strategic action must be filled by creative interpretation, application and enactment. Actors must test out different courses of action, and these may lead to the mutability or reinterpretation of an institution (Clemens and Cook 1999: 448) or the conversion of institutions to new ends and purposes (Thelen 2003). The implications of ambiguity will be briefly discussed in relation to the consequences of institutional interdependence (CO) and the capacities of actors (A).

*Reconfiguration (CO):* A non-teleological perspective implies that action has multiple effects that are hard to estimate *ex ante*. Institutions gain autonomy to the degree that contingencies and consequences can be externalized from the action context across a boundary of two institutional domains. But any institution exists within a complex environment of where the consequences (CO) of one institution constitute the environment for another institution to different degrees.<sup>8</sup> Recent work uses the concept of institutional complementarities to describe re-enforcing properties, where one institution becomes more viable give the presence of a

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<sup>8</sup> As Sewell (1992: 16) argues, “... a theory of change cannot be built into a theory of structure unless we adopt a far more multiple, contingent, and fractured conception of society—and of structure. What is needed is... to show how the ordinary operations of structures can generate transformations.”

corresponding institution elsewhere (Aoki 2001, Hall and Soskice 2001, Milgrom and Roberts 1995). But what may be a functional in one domain may lead to dysfunction in another. Institutional tensions may arise that destabilize or disrupt the reproduction of another institution. Institutions often embody conflicting principles of rationality, as stressed within Weberian sociology (Lepsius 1990, Sewell 1992: 16-19). Of course, contradictory principles may sometimes serve to balance inherent weaknesses, such as institutionalized power sharing between property rights and employee codetermination (Dahrendorf's "institutionalized class conflict"), majority rule and constitutional rule of law, or free markets and product regulation.

We can refer to changing relationships between different institutions generally as institutional reconfiguration.<sup>9</sup> The concepts of "unintended fit" between institutions (Aoki 1997) or "unintended consequences" reflect the mutual adjustment of institutions as an ongoing processes needed to reduce ambiguities, debug frictions and establish satisfactory performance. Institutional tensions may provoke modification, adaptation and repair of an institution. But often tensions exert strong contradictory pressures that lead political actors or organizations to deal with institutional dilemmas by dealing with one "face" of the problem at a time, while exacerbating another "face" whose consequences will have to dealt with later in time—sometimes beyond the lifetime of those actors. These all represent potential endogenous dynamics for institutional change.

*Changing capacities for action (A)* may produce institutional change even under broadly stable institutional rules. Stark (2001) uses the term "ambiguous assets" to describe how existing resources may be used to new ends. Likewise, cognitive schemas may be transposed to new situations. Institutions also vest power that becomes a means to new ends. The incorporation of new groups into an institution may thus introduce new capacities for action unforeseen when the institution was created (Thelen 2003). Finally, emergent processes such as experimentation, learning and emulation may all lead to new organizational or individual capacities (Levitt and March 1988). While capacities are often seen as skills and resources, a broader discussion might also include values as a capacity for institutionalizing behavior. Values arise in experiences of

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<sup>9</sup> Aoki discusses reconfiguration through geographic integration or segmentation of domains (e.g. protectionism, internationalization, etc.), or where organizations strategically integrate or decouple different domains (e.g. outsourcing, vertical integration, etc.)

self-formation and self-transcendence that lead to enduring modifications of the self—both through positive and negative experiences (Joas 1997). While non-economic value commitments may become important elements of economic institutions, their instrumentalization in service of utilitarian aims may erode those very values. Here the experiential basis of those value commitments fails to be reproduced, and cannot be reproduced on the basis on rational utilitarian calculation alone.

In sum, ambiguity plays an important role in understanding how institutions may be reproduced in varied ways. Ambiguity implies an interpretative gap between situations and institutions. But unlike the breakdown implied by “cognitive disequilibrium,” ambiguity stresses the potential scope for creative reinterpretation and innovative deployment of institutions for new ends-in-view. The COASE framework points to different sources of ambiguity. Ambiguity may be local and situational, but may also result from reinterpretation through diverse ideological lenses or contention over institutionalized compromises. Ambiguity may also result from efforts to adjust institutions to changed consequences of its institutional environment, resulting in a reconfiguration across different institutional domains. And changing capacities may lead to reinterpretation of institutions in light of changed values or new resources for action. Whether such variation leads to “institutional change” depends on a critical mass.<sup>10</sup>

### **III. Institutional Change: The Case of Codetermination in Germany**

This section turns to an empirical examination of ambiguity in the case of German codetermination. German codetermination displays remarkable continuities since the 19<sup>th</sup> Century. Yet the stability of legal rules contrasts with its diversity as a social institution that has co-evolved with shifts in ideas, power relationships and coalition building among company stakeholders (Jackson 2001). This section presents only a brief historical sketch to highlight some theoretical themes.

Codetermination rests on a contradictory imperative. Works councils should represent the interests of employees, while pursuing peaceful cooperation with management in the interests of the firm. This duality has made codetermination a highly ambiguous, but remarkably adaptable institution. The balance between representation and cooperation has undergone shifts in response to new economic demands and socio-political circumstances. New constellations of actors

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<sup>10</sup> The question of defining thresholds to conceptualize institutional emergence or deinstitutionalization remains beyond the scope of this chapter.

emerged, and led to contention and reinterpretation of codetermination. As shall be discussed below, the history of codetermination can thus be divided into several distinct phases as a repressive paternalistic institution, a platform of revolutionary socialism, an element of political democratization and social partnership, and a style of co-management shaping how German firms adapt to international capital market pressures (See Figure II).

*Political Origins of Ambiguity* (Imperial and Weimar Germany). The idea of ‘codetermination’ (*Mitbestimmung*) arose in the mid-19<sup>th</sup> Century having complex roots in Christian, socialist, and romantic philosophies, as well as the notion of parity (*Parität*) and economic democracy (Teuteberg 1961, 1981). Codetermination represented a socially integrative alternative to revolution or socialism, but had different meanings to different people. Employees framed codetermination as a demand for “industrial citizenship” often analogous to constitutional rights in politics. Employers saw it as a paternalistic practice that used employee representation in company welfare schemes as a way to foster employee loyalty.

An increasingly nonliberal German state (Lehmbruch 2001) used codetermination as a strategy of intervention to co-opt labor with the goal of circumventing unions and dampening political support for socialism. Following the 1889 coal mining strike and the rise of the Social Democrats in the 1890 *Reichstag* elections, commercial code reforms gave workers’ committees limited consultation rights in 1891. Following another strike in 1905, the state required the work rules of the mines to have consent from a workers committee (Weisbrod 1989).<sup>11</sup> These committees restricted employer prerogatives, but also circumvented independent labor unions. Councils gained little acceptance among management, who clung to autocratic and paternalist models of authority captured by the phrase Herr im Haus (Braun et al. 1992: 193-198). Unions likewise retained an ambivalent stance.

During World War I, wartime “industrial truce” integrated the Social Democrats and labor unions into national politics (Feldman 1966). Employee mobility was restricted within war-related industries, and the state scrambled to maintain order in industrial production. The Patrial Auxiliary Service Law of 1916 mandated elected workers’ committees that held rights for consultation regarding the “demands, wishes and complaints of the work force with regard to the

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<sup>11</sup> Coal mining was important in developing a model for codetermination, because the legacy of direct state control over the mines made employment relations a concern of the public interest (Berg: 1984, Fischer: 1974, 142).

factory, wage and other employment conditions and the social welfare policy of the firm” (Teuteberg 1961: 511). The controversial law gave councils more power than anticipated because the War Ministry was directly involved with the mediation of disputes. To avoid binding decisions by the state, employers sought co-operation with councils.

Following the war, conflicting views of codetermination existed. Employers saw councils as a temporary wartime institution, whereas union demanded for their extension. Here the changing political circumstances help put works councils on a new footing—specifically, the revolutionary council movement and political democracy of the Weimar state. The new state sought to limit the revolutionary council movement by institutionalizing a less radical version. Codetermination was a right anchored in the Weimar constitution and the Works Councils Law (*Betriebsrätegesetz*) passed in 1920. The law mandated the formation of works councils with parity representation of blue- and white-collar employees in all establishments with over 20 employees. The supplementary law passed in 1922 allowed the works council to also send two employee representatives to the Supervisory Board.

The law contained many features of contemporary codetermination: the obligation toward peaceful cooperation of the works council in the interests of the firm, the separation of collective bargaining from the activities of works councils, and codecision rights in personnel affairs of the firm. The works council had a “dual” role in representing the independent interests of workers while supporting the business interests of the employer (Fuerstenberg 1958). Unions made sure that works councils did not engage in collective bargaining, while employers sought the obligation to cooperation. From the mid-1920s, works councils spread to around half of all plants with over 50 employees (Plumpe 1992). Yet despite their new footing, works councils remained a somewhat weak institution. A seminal article by Kurt Brigl-Matthiass (1926) documents the highly ambiguous social context of Weimar works councils which faced contradictory pressures from three conflicting “faces” of codetermination—as representatives of rank-and-file employees, as part of the broader labor movement alongside political parties and industry-wide unions, and in their legal relationship of cooperation with management.

First, works councils faced strong pressures to respond to the material interests of rank and file workers due to election rules, short terms in office and close social contact. To maintain legitimacy, works councilors were pressured to take even “irrational” demands of employees to the management. Conflictual tactics were often employed to demonstrate independence from

management, even when cooperation with management was clearly needed. These shop floor pressures also created tension with unions. The “opportunistic” rules negotiated with shop floor management to gain small benefits within the system often contradicted the broader political and solidaristic goals of unions. The position of works councils is much more dependent on the economic situation of the firm than industrial unions, and made councils more likely to cooperate with management. Unions consequently remained ambivalent toward works councils, which they saw as a possible source of “syndicalism” that would undermine union discipline and capacity for multi-employer collective bargaining.

Second, works councils remained part of the political labor movement aimed at transforming the political and economic order. Many councilors were members of socialist political parties, and often the large works councils were factionalized along party lines. Councils spread socialist political propaganda within the company, and sometimes attempted to restrict management authority in the name of socialist workers’ democracy. Where works councils become more politicized, their focus moved away from the pragmatic goals of shaping working conditions and created a wide gap with the business concerns of management.

Trade union agendas also played an important role in coordinating works council demands across firms—for example, opposition to overtime in order to realize the 8 hour work day. Unions also provided auxiliary support through economic and legal advice. Such linkages with trade unions were crucial in giving works councils a greater capacity for independence from management. Despite increasing educational opportunities for the working classes through *Volkshochschulen* and popular publications, lack of education greatly limited the capacity of works councils given their insufficient knowledge to make informed judgments about business and legal matters.

Third, the internal and external relations of works councils influenced the capacity of works councils to make credible commitments in cooperating with company management. Employers had politically opposed the Works Council Law, but their experiences with the councils were mixed (Plumpe 1992: 43-55). Political turmoil and the rise of social democracy made labor the single reliable bargaining power. Some employers learned to use the works council as an instrument of constructive communication within the firm. Works councils served as a vent for employee unrest and helped renew the legitimacy of management following the breakdown of authority following the war. Lesser industrial conflict came at the price of

increased negotiations and smaller conflicts on a daily basis. Elsewhere, steel firms and employers' associations continued strong opposition, particularly to board representation, and sought to discourage cooperative relations between firms and works councils.

Codetermination thus developed through a state strategy to co-opt labor in the absence of political democracy. But codetermination built on a wide array of cultural frames and was interpreted by key actors through the lens of very divergent values: company loyalty, the firm as family or community, or codetermination as negotiation among independent parties. The emerging institution remained ideologically charged and its role highly ambiguous. During Weimar, the growing independence of the labor movement did not lead to the end of codetermination, but its reinterpretation. Works councils were liberated from their paternalist origins, but many of their internal and external contradictions were sharpened. Shop floor constituents, unions, and management all pulled works councils in different directions. Works councils remained based on very uneasy compromises, rather than consensus about their legitimate role. Codetermination resulted in a wide diversity of practices spanning from pragmatic cooperation to extreme distrust. This social experiment was then interrupted as the Nazi regime eliminated organized labor and reorganized councils as new 'councils of trust' based on the notion of organic relations between firm and employees as part of a coerced national community.

*Democratization and Social Partnership (1945-1960s).* After the Nazi period, codetermination reemerged during postwar democratization. Codetermination found new political legitimacy by being reinterpreted in light of Nazism and post-war reconstruction. While key actors continued to have different visions of codetermination, codetermination stood in a somewhat less ambiguous relationship to the existing social and economic order. The door was opened to substantial institutional innovation beyond the legacies of pre-war codetermination.

The first councils arose spontaneously during the immediate aftermath of the war. Their activities concerned the immediate reconstruction and reopening of production plants, as well as housing and rationing of food. Employers did not oppose council efforts to assist in the immediate aftermath of the war. Labor was sometimes able to gain representation in the Supervisory Board and elect a labor director to the management board. Many council members were anti-fascist or communist party members who created personal continuities with the Weimar works councils, influencing their early capabilities and ideological bents.

Meanwhile, employers contemplated how to deal with the councils in the absence of legal norms. The 1920 works council law was an important reference point and signified the maximum scope of rights (Mueller 1987: 76-85). A variety of models emerged in practice, particularly concerning board representation. Unions were cautious in taking a stance. After 12 years of illegality, German unions scrambled to rebuild themselves. They could not easily return to their political program of the Weimar era, although concepts such as ‘democratization of the economy’ or ‘codetermination’ reappeared. Socialism played a continued role, but was supplemented by a broader aim to prevent the political abuse of economic power in war-related industries. Union thus had an ambiguous set of positions, aiming to both transform the existing economic order and participate in the existing order through codetermination. This ambiguity itself helped the left achieve consensus by speaking in general terms to its various factions, while allowing a wide range of policies to be legitimated *ex post*.

The Allies intervened to encourage works councils in the coal and steel industry through the Control Council Law (KRG) in 1946. Due to differing positions among the Allied authorities, the law only vaguely defined rights and duties. Ambiguities were later worked out by negotiated agreements. Rights were substantially expanded in firms with strong union presence, while weaker firms fell behind the standard of the 1920 law. A key question was how to interpret the KRG Paragraph 22 (Mueller 1987: 94-101). Unions sought a legal guarantee for boardroom representation and participation in economic affairs. However, employers saw this interpretation as too broad, since the law did not specify limits. Many employers opposed council demands for representation within the supervisory and management boards. Employers associations feared that generous agreements at particular firms might set precedents that would place unwanted pressure to expand codetermination rights. While the unions also supported uniform legal rights in principle, strategically they hoped firm-level agreements would create facts that positively affected legal developments.

Meanwhile, a separate solution developed in the iron and steel industry. In August 1946, the Allies took direct control of the sector through the North German Iron and Steel Control (NGISC). The Allies planned to break-up the industry into some 30 new firms to avoid the concentration of economic power among industrialists (who had supported the Nazis) in this militarily important industry. NGISC faced the issue of membership in the Supervisory Boards in these newly created companies. Here the British authorities sought to employee representation

into the boards as a balance of power in the absence of a functioning German state and given the mistrust of industrialists. Some employers supported these practices by entering into pragmatic alliances with the works councils in an effort to stall plans for further dismantling or socialization of industry.

These practices later influenced national legislation. In 1950, the West German state was established and firms again fell under German corporate law, which provided no codetermination rights. The metalworkers' union called for a strike in 1951, leading to the involvement of Chancellor Adenauer in brokering Law on Codetermination in the Mining and Iron and Steel Industries (*Montanmitbestimmung*). The law mandated the parity model of Supervisory Board within the coal and steel industries. Even here, however, the boundaries of the *Montan* model remained sharply contested (Teuteberg 1981: 58-60). In 1953, legal conflicts about the application to holding companies erupted. The 1958 "Luedenscheid Agreement" used private works agreements to contractually preserve codetermination rights where independent companies were reintegrated into parent companies. And in 1967 and 1971, laws were passed that aimed to prevent the defection of particular firms from the *Montan* model. Meanwhile, other sectors followed a weaker model as unions proved unable to realize their demands due to opposition by the liberal coalition partner (Freie Demokratische Partei, FDP) and employers. The 1952 Works Constitution Act mandated only one-third of Supervisory Board seats for labor, more limited rights for works councils and no provisions for a labor director in the management board.

Despite the success of the *Montan* model, employees interpreted this institution in diverse ways (Popitz et al. 1957: 156-163). Interviews of steel workers from the 1950s show a high degree of indifference and resignation toward codetermination—few practical effects were perceived and workers remained skeptical about the development of durable codetermination as the post-war crisis receded. Furthermore, socialist workers rejected codetermination as a detrimental compromise. Only about one-third of workers reported a positive evaluation of codetermination. These workers perceived codetermination in pragmatic terms, but did relate participation in the workplace to greater societal and political democracy. Their values were closely related to their experiences in the post-war reconstruction of factories (p.177). More so than political ideologies or agendas, this collective memory was decisive for establishing the legitimacy of codetermination for this generation.

The *Montan* sectors also proved to be highly innovative in applying the rules in ways that influenced the further development of codetermination. The formal legal rights stronger, and management and labor were also able to develop new capacities through dense social networks. These social networks outside the firm were important in promoting learning effects, stabilizing expectations, and generating new organizational capacities. On the management side, a working group developed among the personnel department staff from various establishments and enterprises. This group had 25 to 30 members meeting twice a month, plus convening with the union for two days a year. The union also became progressively less hostile to works councils and promoted them as an “extended arm” of unionism within the factory. Specifically, unions provided extensive legal and educational services to works council members, helping to upgrade their competence on economic issues. The regional office of the IG Metall also played an important role as the sources of nominations for labor directors. As the industry faced crisis and decline in the 1970s, this strong local culture of cooperation proved to be the source of extremely innovative employment adjustment policies that relied on a strong co-management role of works councils in negotiating new practices. Many negotiated rights were incorporated in later national legislation.

*Diffusion and Consolidation in the 1970s and 1980s.* As the post-war generation began to retire, a new younger generation began to emerge as shop stewards and union activists in the late 1960s. These stewards challenged the practices of the works councils in attempt to ‘risk more democracy’ within the economic sphere. Unlike works councils, local union branches and shop stewards had no obligation to uphold cooperation with management. Old conflicts reemerged as to whether the labor movement was limited to industrial relations or a society-wide political movement. These challenges from below coincided with peak employment in the German steel industry during 1974 and subsequent period of declining employment.

Meanwhile, sharply contested reforms in 1972 under the Social Democratic Party formalized new rights for works councils (Thelen 1991), and a 1976 revision widened Supervisory Board representation, although it remained weaker than the coal and steel model. Substantial gaps remained between legal principles and organizational practices, leaving substantial ambiguity and heterogeneity across firms. Unions had to struggle at the shop floor level to implement the works council law. A landmark study by Kotthoff (1994) compared the same group of 55 firms in 1974/75 and 1989/90, and examined the continuity and change in the role of works councils.

Striking evidence was that 53% of the firms having deficient interest representation in 1975 had moved toward to a more effective and cooperative pattern by 1990. Consequently, the proportion of firms with effective interest representation increased from one-third to two-thirds.

Even more revealing are the patterns of change. The largest change was among firms having works councils under control of a paternalistic management. Here, 12 of the 16 firms developed more autonomous and effective works councils. By contrast, “isolated” works councils were reproduced in 6 of 9 firms. Here, authoritarian styles of management remained unchanged. In only 2 cases were works councils able to develop greater influence, but through aggressive opposition rather than cooperative negotiation. Kotthoff also points out interesting dynamics at firms with effective works councils in 1975. One typical pattern was a period of stagnation and growing irrelevance of works councils, followed by a revitalization that crystallized around economic crisis and changes of management or works council personnel. But the most common pattern among larger firms was the consolidation of codetermination based on close informal cooperation. Cooperation depends strongly on the personal relationships between the labor director and the head of the works council. Whereas the dual role of the works councils as employee representative and as co-manager is ambiguous, it is continuously renegotiated in a very thick local context of inter-personal trust.

The patterns of change show that codetermination, as a formal legal institution, depends closely on how it is socially embedded within patterns of social exchange (e.g. paternalism). This social context is where the ambiguities of the legal doctrine are interpreted and worked out in practice terms. As Kottoff notes:

‘...the patriarchic and paternalistic forms of social order within the factory, which are so common in Germany, were a key prerequisite for transforming conflicts over industrial citizenship into a form of cooperation oriented by the notion of `codetermination`...In factories with more instrumental forms of social order, conflict did not lead to such cooperation, but to spirals of distrust and continuous confrontation.’ (Kotthoff 1994: 180 own translation GJ).

Once established, the stability of codetermination also shows how the ambiguity of an institution may support the stability of that institution in the face of external change. Works councils were able to shield themselves from internal challenges and factionalism among the employees, but

also avoid co-optation by the management that would render it ineffective. Strong personal authority and reputation of the works councilors can help legitimate tough management decisions among employees, but management must honor this also making real concessions. The ambiguous ‘dual’ mandate gives important flexibility for compromise, but social capital must first be built up to give actors capacities for informal social exchange.

The same importance of social embeddedness applies to the labor director (*Arbeitsdirektor*), particularly union-appointed directors in *Montan* industries. The labor director also has a dual task in representing management, while maintaining the trust of the union and works council. However, if the director favors labor and thereby becomes weak within the board, works councils will not perceive the director as a credible and trustworthy bargaining partner. The complexity of this social milieu places great demands on social skill. Works councilors often point out big differences in the individual qualities of labor directors. Thus, strong labor directors and strong works councils reinforce each other in a positive-sum manner, but each side paradoxically depends on the other side not giving into all their demands. These checks and balances represent a greater social capacity for problem solving.

The diverse patterns of codetermination exist in apparent contention with the fact that codetermination is nearly universally considered to be a stable institution in Germany. Works councils remain unrivaled as the means of interest representation within the firm, and enjoy a high rate of diffusion. But their institutionalization is fraught with challenges. As works councils were recognized by employers and accumulated competence in economic affairs, codetermination took on many new functions and underwent substantial professionalization. Works councils became less deeply embedded within the lifeworld of employees (e.g. lesser input legitimacy), but gained importance in economic governance and the management of employment adjustment (e.g. higher output legitimacy)—particularly in industries such as mining and steel, which were strongholds of labor but underwent massive technical rationalization.

*The Ambiguity of Codetermination and Institutional Change.* In sum, codetermination was fraught with substantial ambiguity from its early days. During different periods, codetermination was deployed to legitimate or enable a very wide range of actions. Codetermination subsequently developed many different “faces” as it was pulled in different directions—both in political and economic terms. Politically, codetermination was a compromise, resulting from particular state strategies to repress organized labor, employer strategies to

maintain a paternalistic authority, and employee strategies to democratize the workplace and establish rights of industrial citizenship. Works councils emerged having a “dual” mandate to represent the interests of employees and cooperate in the interests of the firm.

Over time, works councils became increasingly cooperation as codetermination took on a growing scope of economic and regulatory functions. However, this required reducing a tension existed between the broader agenda of German industrial unions and the firm-specific interests of core employees. These tensions were held in check during the 1970s and 1980s, as unions developed capacities to support works councils as a useful extension of their collective aims. Independent unions also strengthened the internal bargaining power of works councils and employee representatives to the Supervisory board. However, as well shall see, corporate governance reforms since the mid-1990s have swung the pendulum back toward greater tensions given the greater risks and rewards for firms facing capital market pressures.

Ironically, the very ambiguity of codetermination *ex ante* seems to have allowed flexibility in adaptation to new circumstances *ex post*. Codetermination cannot be equated with a specific set of strategic ends or outcomes, but rather a long series of ends-in-view interpreted through a particular shared (albeit ambiguous and contested) set of values. Over time codetermination was put to new purposes—“institutional conversion.” And only by transforming itself in this way was codetermination sustained as an institution. Change often involved reconfiguration in light of new institutional and economic environments—such as the emergence of political democracy, industrial unionism, or the internationalization of capital markets. Learning new capacities for action among local networks of actors were important in filling the large gap between codetermination as legal doctrine and an economically beneficial institution of workplace and corporate governance that could be imitated more broadly. For example, innovative norms and practices diffused from coal and steel firms to the rest of the German corporate economy.

The evolution of codetermination suggests institutional change that falls short of crisis or collapse. Codetermination has never given rise to a uniform set of organizational practices. Many local variations or “styles” of codetermination developed as broad ambiguous institutionalized values were worked out in different local contexts. But this variation in local practices influenced the path of institutional change as synchronic variations unfolded diachronically.

#### **IV. Codetermination under Shareholder Value: Change since the 1990s**

The discussion of the post-war era showed that codetermination was no longer seen as an instrument for transforming the economic system into a mixture of capitalist and socialist elements (*Wirtschaftsdemokratie*). Unions accepted that codetermination operates in firms whose goal is to generate cash flows and earnings. Codetermination came to be interpreted and legitimate itself not only in terms of values of democracy and social inclusion, but increasingly as an efficient model for organizing employment relationships. In terms of its dual mandate, an evolution took place from cooperation to representation, and back to a qualitatively new form of cooperation where both sides see themselves more as partners than as opponents in class confrontation. The scope of codetermination thus moved beyond its legal foundations in social and personal issues to include a wider scope of economic issues that blur boundaries between management functions and codetermination. The 1998 report of the Codetermination Commission (Mitbestimmung 1998) documents the high degree of legitimacy and positive effects of codetermination on social integration and economic cooperation.<sup>12</sup>

While the story of codetermination often ends here, recent trends show that codetermination has continued to change. Since the late 1980s, German capital markets have undergone substantial liberalization and these prompted substantial reforms in corporate governance since the mid-1990s (see the chapter by Deeg in this volume). These trends include the weakening of traditional bank monitoring, growth in new institutional investors, expansion of equity-based finance and the opening of the market for corporate control (Jackson 2003). Changes in corporate governance institutions have strong implications for codetermination, and have led to growing tensions and institutional reconfiguration.

Historically, codetermination evolved as an element of “organized capitalism” alongside a dense network between banks and large industrial firms. German banks, family owners or inter-firm holdings all represented patient capital that could live with codetermination as long as it delivered cooperation and quality production in the long-run, even if decision making and employment adjustment were slower and more costly. But new types of investors face more

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<sup>12</sup> This section does not discuss the issue of institutional transfer of codetermination to East Germany following German unification. Nor do I discuss legal reforms in areas such as environmental regulation and discrimination confronted works councils with new tasks and led to a further expansion of their activities.

short-term pressures. Institutional investors focus more exclusively on financial returns, rather than underwriting inter-firm cooperation. In addition, regulatory changes have strengthened shareholder rights and promoted greater transparency and disclosure in decision-making. Reforms have also enabled greater capital market-orientation by removing past restrictions on managerial stock options, share buy-backs, share swaps and other uses of equity. This pattern of reform fits well to the concept of institutional layering (see Introduction), since legislation has not sought to directly reform Supervisory Board codetermination but enable boards to engage in new behaviors or follow new social norms embodied in voluntary codes of conduct rather than law.

As a result, many large corporations have adopted new strategies to promote shareholder-value. As a criterion of business rationality, shareholder value runs contrary to the normative legitimacy of participation rights and sharing of organizational rents that characterize codetermined firms. That is, their logics appear incompatible, at least in principle. The symbolic claims for shareholder primacy have rarely been used as a direct challenge to codetermination given the legal anchoring of codetermination rights. However, the implications of shareholder value for business strategy confront codetermination with new economic problems that typically provoke conflicts:

- focus on core competencies creates conflicts with employees over the definition of core business units and strategies of growth by diversification used to stabilize employment. Divestment from noncore units raises issues of finding good buyers who honor existing employment agreements.
- Ending cross-subsidization of business units and establishing equity-oriented performance targets create conflicts over performance criteria, profitability hurdles, time horizons, and disciplining poorly performing units. Greater independence of business units may weaken solidarity among employees being more directly exposed to market risks and rewards.
- Performance-oriented pay raises issues of balancing individual and group incentives, defining performance criteria, and the risks of contingent pay. Managerial stock options provoked controversy over income inequality and short-termism.
- Increased disclosure and market-oriented accounting may conflict with buffering risks through internal reserves and favor higher distribution of profits to shareholders. However, improving investor information may also increase transparency for employee representatives.

Several recent studies document the role of codetermination under shareholder-value (Hoepner and Jackson 2001, Hoepner 2001, Hoepner 2003, Jackson et al. 2004). In many ways strong ambiguities exist between codetermination and shareholder value that have left much leeway for mutual adjustment in practice. Works councils may retain their basis of power through continued cooperation with management, while minimizing the negative impact on core employees (Kotthoff 1998). Cooperative works councils may promote a relatively enlightened or incremental and long-term approach to corporate restructuring that helps curtail excessive short-term pressures. But these continuities also bring change. Managers are using this cooperation to new ends and thereby modifying the functions of codetermination in light of capital market pressures and changing boundaries of firms.

For example, corporate restructuring during the 1990s resulted in a modest redistribution of corporate wealth from employees to shareholders (Beyer and Hassel 2002). Shareholder value strategies favor lower rates of internal growth and declining employment, while raising targeted return on investment. Management negotiated adjustment by maintaining but modifying commitments to core employees, while allowing the core of stable employment to shrink. This compromise resulted in the increased use of negotiated employment adjustment and benevolent methods such as natural fluctuation, early retirement, part time work, etc.<sup>13</sup> Works councils have become active in negotiating site pacts to preserve high value-added production (Rehder 2001). But in order to assure investment in core plants, works councils grant cost-cutting concessions: lower social standards, the elimination of premium wages above collective bargaining rates or cuts in bonuses for overtime and shift work. Employment alliances are also made through concessions on wages or working hours in exchange for employment guarantees. Work may also be redistributed through reduced or flexible working time, or made cheaper by reducing company premiums above collective rates. Thus, while works councils retain a strong role, the boundaries of codetermination itself are shrinking.

The restructuring of business portfolios also plays into otherwise latent rank-and-file pressures on works councils. While employees may prefer a solidaristic policy of diversification to maintain employment, they often ‘discover’ new interests as business units face very different fortunes. Core employees may prefer a stronger core business, rather than continued support for

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<sup>13</sup> Here tools developed to manage industrial decline in the *Montan* sectors are being redeployed to new ends of greater shareholder orientation.

ailing business that are less central economically. For example, at *Mannesmann* before the hostile takeover, both employee representatives and shareholders pressed the management into planning hive-offs of several major divisions. Traditional machine tools employees wanted to secure more investment, rather than cross-subsidizing expansion into new areas. Meanwhile, telecommunications employees preferred separation to avoid the conglomerate discount of their share price that made acquisitions expensive and increased the danger of a hostile takeover. Here capital market orientation and codetermination are hardly irreconcilable opposites.

Likewise, the introduction of variable performance-related pay also has an ambiguous relation to existing institutions. Works councils have become increasingly used to negotiate variable pay programs. These schemes have been implemented in conformity with sectoral collective agreements—either being paid “on top” of the collective agreement or under special firm-level collective agreements. But this issue has raised substantial debate. Collective agreements function increasingly as framework regulations, while the formation of the remuneration scheme is left to the company level in consultation with works councils. Such variable components threaten the notion of industry-wide collectively agreed wages or at least lowers the portion of income regulated by collective bargaining. Moreover, greater scope is given to works councils to negotiate over wages—thereby blurring the traditional division of labor between unions and works councils.

Consequently, the relationship between works councils and unions is again becoming more tenuous. Codetermination increasingly supports the micro goals of employees, and their firm-specific interests rather than wider goals of working class solidarity, e.g. principles such as equal pay for equal work. Because the interests of employees as producers in a particular firm are more heterogeneous than class interests (Streeck 1992), the heterogeneity of interests inside unions increases and has also led to a changing forms of collective agreements—the use of corridors and opting-out clauses, etc. Likewise, codetermination as a politically guaranteed legal right is becoming more private and contractual. For example, the rights of works councils are becoming increasingly contractualized (Jackson 2003) as corporations have set up “working groups of works councils” to adapt to new organizational structures through negotiated rules, rather than using legally-based options such as the *Konzernbetriebsräte*.

The current success of codetermination belies a potential danger. While codetermination continues to provide a number of beneficial economic functions, the legitimacy of an institution

cannot rest of functionality alone. Codetermination originated in deep-seated political values, as well as formative experiences of the post-war generation in rebuilding German industry. These value commitments were refreshed during the political climate of the late 1960s and early 1970s where the meaning and boundaries of democracy were again tested by collective action. As codetermination becomes an increasingly professionalized domain of co-management, it is less clearly grounded in broader societal value commitments. In short, by successfully “managing” workplace conflicts, codetermination may itself erode the preconditions necessary for its own reproduction in the longer term. For example, works councils were often created in new economy firms only after they announced their closure as the IT Bubble collapsed in 2000 or 2001. After winding up these firms, the councils then disappeared. Likewise, the internationalization of corporations themselves poses serious challenges. German unions are unlikely to have the capacities to broaden codetermination and represent corporate workforces overseas. The developments in the European legal context reflect these difficulties of exporting German codetermination. Again the boundaries and interpretations of the institution continue to be challenged.

## **V. Conclusion**

This chapter has argued that understanding institutional change requires us to rethink the action-theoretic foundations of institutional theory. Institutions are a product of human actions, but are also collective phenomena that confront particular individuals as an external and objective “social fact” that form part of their situational context. Rather than debate the merits of rational/utilitarian, normative or cognitive approaches to institutions, I have argued that the debate should be more focused on the creative aspects of action related to a non-teleological understanding of human intentionality (Joas 1992).

Specifically, I have stressed the importance of situational ambiguity in allowing scope for creativity within institutionalized contexts. Ambiguity is not a competing explanation of institutional change on the same level as interests, norms or ideas. Rather, ambiguity is an element that can be applied to all these models to develop more realistic theoretical applications. To show its implications, the concept of ambiguity was applied to the COASE framework developed by Aoki (2001) in order to better interpret processes of variable reproduction or incremental bounded innovation of institutions.

These concepts were then applied to the case of German codetermination. Codetermination exemplifies how ambiguity may lead to variation in organizational practices in ways that engender change over time. The mutability of codetermination, in fact, rests on its ambiguous dual mandate or what we might see as two “faces” of codetermination—limiting managerial authority and upholding cooperation in the interests of the firm. Throughout its history, codetermination has been pulled in different directions within this horizon without ever leaving it entirely. Codetermination survived a number of macro-social crises, but was reinterpreted in light of these new experiences and by a changing constellation of key actors. Rather than undergoing collapse and replacement by a new institution, the “working out” of ambiguous relationships led codetermination to gradually evolve into an institution very different from its 19<sup>th</sup> Century origins.

Empirically, I have highlighted the contentious nature of how institutions are interpreted over time. Even once basic values and principles of codetermination were institutionalized, contention persisted about the social boundaries of these very same institutional norms—the economic sectors, firms and range of managerial issues to which codetermination might be applied. This synchronic variation also led to diachronic changes over time. Capacities generated and accumulated on small local scales were slowly institutionalized more widely. Whereas cooperation was initially rare, the capacities for cooperation were gradually learned and diffused, while also undergoing substantial modification during this process. Had it not done so, the importance of codetermination for the German economy would have never been so large. Now the social partners again face the challenge of adapting codetermination to new capital market pressures or face its erosion.

Whether or not we see such historical episodes as discontinuity or continuity depends on the analytical problem at hand. But dramatic ruptures may look less dramatic over time, while small modifications may accumulate in ways that we see only later. The overriding lesson is to recall the dialectical manner in which institutional reproduction and change condition one another (Seo and Creed 2002) in a continuously changing world where actors are creative and situations often ambiguous.

**Figure I A Subjective Game Model of Institutionalization**

	<b>Exogenous</b>	<b>Endogenous</b>
<b>Micro (individual) dimension</b>	(A) Capacities as active repertoires	(S) Strategies as best-response choice
<b>Macro (collective) dimension</b>	(CO) Consequences through inference rules	(E) Expectations as private beliefs
	(I) Institutions as shared beliefs	

*Source:* Adapted from Aoki 2001.

**Figure II Codetermination as an Institution: A Schematic Overview**

	<b>Imperial Germany</b>	<b>Weimar</b>	<b>Post-War</b>	<b>1990s</b>
<b>Codetermination</b>	Coercive Paternalism	Contested authority	Social Partnership	Co-Management
<b>State</b>	Repression, co-optation	Democratization	Further Democratization	Regime Competition
<b>Management</b>	Herr-im-Haus, paternalism	Resistance.	Increasing recognition of labor	Challenge of shareholder-value paradigm
<b>Unions</b>	Weak	Fear of syndicalism	Political demand, Enabling codetermination as a long arm of unions	Framework agreements, decentralization
<b>Employees</b>	Struggle for political citizenship	Political revolution, individual interests	Experience of reconstruction, quality of life issues	Individualization

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