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Do German employers support board-level codetermination? The paradox of individual support and collective opposition

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Existing studies on employers' preferences towards institutions of class cooperation suggest that certain types of employers support these institutions because they provide economic benefits. To test this thesis, this paper examines attitudes of German employers towards board-level codetermination. It compares firms' attitudes at the individual and the collective level: individual firms' attitudes are analysed using survey data and media statements from individual executives; collective attitudes are analysed using policy statements from the national business federations. The paper finds considerable support for board-level codetermination among individual firms but continued opposition from the federations. The paper suggests that this difference arises from the federations strategically over-representing dissatisfied members. The promotion of voluntary arrangements allows the federations to campaign against board-level codetermination without alienating the satisfied members. The paper highlights the need to complement a micro-foundational analysis of preference formation with an analysis of intra-associational processes of preference aggregation.

Keywords: class, co-determination, employers, Germany, preferences, power

JEL classification: P48 political economy, J53 labor-management relations, J58 public policy

In recent years, studies in comparative political economy have drawn increasing attention to the interests of employers. Much of the scholarly debate on employers' interests centres on the question of whether, or to what extent, different groups of employers see institutions for class cooperation as being in their own economic interest (Hacker and Pierson, 2002; Swenson, 2002; Thelen, 2002; Mares, 2003; Korpi, 2006). If employers do perceive such institutions as beneficial, they may act as a force against deregulation and possibly form

cross-class alliances with labour in defence of existing institutions of class cooperation. Drawing on the Varieties of Capitalism (VoC) framework (Hall and Soskice, 2001), some argue that certain types of firms in 'coordinated market economies' will support these institutions because of the competitive advantages these institutions create (Wood, 1997, p. 26; Hall and Soskice, 2001, p. 58; Thelen, 2001, p. 76; Hancké *et al.*, 2007, p. 20; Hassel, 2007, p. 254). These employer-centered arguments question conventional power resource explanations, which highlight the importance of class conflicts for the development of institutions that regulate the economy.

Addressing this controversy, empirical research on how adaptation to institutional constraints changes employers' preferences has focused so far mainly on collective bargaining and works councils. For instance, Kathleen Thelen has shown that the relative stability of the German system of collective bargaining is explained in part by the support this system receives from employers, rather than by union strength alone (Thelen, 2001, p. 84). Similarly, Stewart Wood has shown that German employers in the 1980s opposed reforms weakening works councils (Wood, 1997, p. 26). Building on the VoC approach, he argues that employers in coordinated market economies back institutions facilitating cooperation with labour, as these institutions contribute to social peace and workforce cooperation (Wood, 2001, p. 252).

An institution that has so far received little attention in studies of employers' institutional preferences is board-level codetermination, understood here as the representation of labour on the supervisory boards of large firms.¹ Like collective bargaining and works councils, board-level codetermination facilitates cooperation between employers and employees and, for this reason, may enjoy support among employers. Studying employers' preferences towards this institution contributes to our understanding of the social foundations of support upon which the political sustainability of institutions of class cooperation rests.

The purpose of this paper is to analyse changes in the attitudes of German employers towards board-level codetermination. The paper investigates whether industrial employers in Germany have become more supportive towards board-level codetermination over time in response to positive

¹Several forms of board-level codetermination exist in Germany. The main forms are parity codetermination, where labour has one-half of the seats, applied in firms with more than 2000 employees; and one-third codetermination, where labour has one-third of the seats, applied in firms with between 500 and 2000 employees. About 3.7% of manufacturing firms have more than 500 employees. These firms employ about 40% of all employees (data for September 2009, Statistisches Bundesamt, 2010, pp. 7–8). The impact of these firms on the positions of employers' associations is, however, likely to be greater than what their number suggests, given that voting rights in the associations are linked to firm size. For an overview of the German model of codetermination, see, for instance, Addison (2009, Chapter 2), Jackson (2005) and Streeck (1984).

experiences they may have had. How have the attitudes of employers towards codetermination changed over time? Have employers converted from opponents to supporters of board-level codetermination as a result of the economic benefits they have possibly gained from the successful adjustment of their management strategies to this institution? Or, alternatively, have they remained opposed to codetermination?

The econometric literature on the economic effects of board-level codetermination is inconclusive: studies report positive as well as negative effects of board-level codetermination on aspects of company performance, such as profitability or labour productivity, whereby correlations are often only weakly significant (Kommission Mitbestimmung, 1998, pp. 11–13; Frick *et al.*, 1999, pp. 265–266; Junkes and Sadowski, 1999, pp. 56–62; Gorton and Schmid, 2004; Höpner, 2004, pp. 358–366; Fauver and Fuerst, 2006, p. 680; Kommission zur Modernisierung der deutschen Unternehmensmitbestimmung, 2006, pp. 12–19; Kraft and Ugarkovic, 2006; Addison, 2009, pp. 103–122). The ambiguity of these results limits our capacity to predict employers' preferences based on economic theory and shows the need to investigate these preferences empirically instead.

My analysis relies on a comparison of business positions at the individual and the collective level. At the individual level, the paper analyses positions of individual firms,² using survey data and statements of individual executives reported in the nationwide press. The analysis focuses on the positions of executives, rather than shareholders, as it is executives who represent the preferences of firms within their associations, shaping the latter's stance. Owner-run firms, where owners directly represent the firm, are a special case. However, many of these firms are too small to be covered by board-level codetermination and are, for this reason, not treated separately in this paper. At the collective level, the paper analyses the positions of the two national peak-level federations of industrial employers ['Bundesvereinigung der Deutschen Arbeitgeberverbände' (BDA) and 'Bundesverband der Deutschen Industrie' (BDI)] during important reform episodes that introduced or extended employees' rights to board-level codetermination.

Empirically, I find a contrast between positions at the individual and those at the collective level: individual firms tend to be more supportive of board-level codetermination than the positions of their federations suggest. Positions of individual firms are diverse, as shown in this paper, with some of them opposing board-level codetermination, others endorsing it. Yet, at the same time, the national business

²Statements by individual firms are not analysed for the historical periods because there is no theoretical reason to expect that firms would support the introduction of board-level codetermination without experiences with it.

federations continue to campaign against board-level codetermination, as they did in the past, in effect representing the views of the opponents. In short, the supportive attitude of a considerable segment of employers does not translate into support for board-level codetermination at the collective level.

Given these findings, the paper asks why the recognition of advantages by an important segment of individual firms has not translated into business federations defending board-level codetermination as an institution. To explain this puzzle, the paper suggests that, rather than merely aggregating the preferences of their members, the business federations cater to those members most dissatisfied with existing institutions. Those firms dissatisfied with board-level codetermination expect their federations to campaign against it. At the same time, proposals to turn board-level codetermination from a mandatory into a voluntary institution allow the federations to accommodate their satisfied members. The option of voluntarism allows the federation to avoid a zero-sum conflict between opponents and supporters. For this reason, individual firms' recognition of benefits does not translate into the federations defending this institution. As a result, the politics of institutional change in this field continues to be shaped by a logic of class conflict, despite support from some firms.

The paper chooses Germany because it is a *crucial case* for the debate on employers' preferences regarding institutions of class cooperation. By any account, workers in Germany have the most generous codetermination rights (Thelen and Turner, 1999, pp. 150–175; Addison, 2009, pp. 5–25). At the same time, the country is a model case for a type of market economy that successfully combines economic competitiveness and class-cooperative institutions. If employers have come to embrace board-level codetermination, this is most likely to be the case in Germany. In countries where codetermination rights are weaker, firms will have less experience with it and will therefore be less likely to support it.

The strength of its codetermination rights makes Germany a plausible case for each of the two predictions, support and opposition, as shown in the following section. The strength of codetermination rights means not only that power-distributive effects are stronger than in countries where board-level codetermination rights are weaker, but also that positive effects on competitiveness are more likely to arise. Firms may see this institution as an advantage, enhancing their competitiveness compared to firms in other countries, or, alternatively, as a disadvantage, constraining the freedom of management.

In Germany, the power-distributive effects of board-level codetermination are intensified by its interaction with works councils. Works councils represent employees' interests at the workplace, rather than at the firm level. They deal with working conditions and social policy issues, whereby many of their rights are consultative only; their veto rights are limited to specific issues of social policy and personnel policy. Moreover, works councils are obliged to cooperate

with management to the benefit of the firm (Addison, 2009, pp. 16–19). Board-level codetermination, in contrast, gives labour a say in firm-level decisions about investments and production. In practice, the competencies of works councils and board-level representatives are intertwined, in part because labour representatives on the supervisory board are often works councilors, producing an accumulation of powers (Streeck, 1984, pp. 404–409). In short, the combination of works councils and board-level codetermination grants labour greater influence than works councils alone, an effect that is in part the result of the interaction of these two institutions.

The paper is organized as follows: Section 1 elaborates the theoretical argument. Section 2 analyses the positions of employers during the introduction of board-level codetermination in the early 1950s and its extension in the 1970s. Section 3 analyses the positions of employers towards board-level codetermination today.

1. Theory: alternative perceptions of board-level codetermination

Whether executives support or oppose board-level codetermination depends on how they see the effects of this institution on the competitiveness of the firm. This section discusses two alternative logics of how firms may perceive these effects: the power-distributive logic and the competitiveness-enhancing logic (see Table 1). The paper assumes that the first one motivates opposition to board-level codetermination, while the second one motivates support. The discussion of the two logics in this section shows that there are plausible theoretical reasons for predicting either of the two positions: opposition or support. Subsequent sections of the paper study empirically the incidence of both positions—support and opposition—among employers, both at the individual level and at the collective level. After discussing these two logics, this section presents in more detail the paper's explanation for the difference in the employers' position between the

Table 1 Alternative perceptions by executives of the effects of board-level codetermination on the firm

	Perceived effects on distribution of power in labour relations within firm	Perceived effects on efficiency of production	Outcome: stance taken by executives
Power-distributive logic	Negative	Negative	Opposition
Competitiveness-enhancing logic	Negative	Positive	Support

individual and the collective level and elaborates the reasons for the federations' over-representation of those members that oppose board-level codetermination.

1.1 *Two alternative logics*

Firms may see board-level codetermination as a competitive disadvantage because power-sharing with labour limits the capacity of owners and executives to make the decisions they consider most effective in strengthening the firm's competitiveness. I call this understanding of the effects of board-level codetermination the power-distributive logic. According to this logic, the shift in the balance of power towards labour is economically inefficient, a source of inefficient allocation of resources necessitated by the need to accommodate labour. Examples of such potential inefficiencies are over-staffing or a slow-down in decision-making. These expected inefficiencies give firms subject to board-level codetermination a competitive disadvantage compared to firms in countries where codetermination rights are less pronounced. Clearly, if this view prevails among executives, they will oppose board-level codetermination. The politics of institutional change in this field will be likely to follow a conventional logic of class conflict, with employers wanting to curtail codetermination rights and labour wanting to expand them.

An alternative understanding of the effects of board-level codetermination is the competitiveness-enhancing logic. According to this logic, board-level codetermination constitutes a source of greater competitiveness. These positive effects on competitiveness derive from the potential of board-level codetermination to pacify labour. Labour conflicts can hold up production and decrease productivity, in particular where labour is well organized, as is the case in many large firms in Germany. By facilitating negotiated compromises, board-level codetermination may help to prevent or solve such conflicts. Executives may also see it as fostering employees' motivation and loyalty to the firm and as improving internal communication, thereby reducing the likelihood of conflicts. In other words, executives may see advantages in terms of efficiency that outweigh the disadvantages, resulting in a perceived net gain in competitiveness. If this logic prevails among executives, we may expect the formation of cross-class alliances in defence of board-level codetermination, as the firms that follow this logic will form a political alliance with unions to defend this institution against its opponents.

This support for board-level codetermination among executives is made more likely by institutional lock-in effects. Board-level codetermination creates an institutionalized balance of power between shareholders and employees, which makes management and shareholders dependent on the consent of labour. Once board-level codetermination rules are in place, executives and shareholders need to seek consensus with labour on major issues of production, even if employees

in the firm are weakly organized. This dependence of executives on labour representatives for the approval of important decisions, including decisions about their own job contracts and salaries, provides incentives for cooperation. In short, once mandatory board-level codetermination is in place it is likely to silence its critics at the firm level, locking in executives on a path of cooperation with labour.

These lock-in effects may lead to a genuine shift of preferences in line with a competitiveness-enhancing logic. If executives manage to turn board-level codetermination into an effective form of co-management with labour, they may come to genuinely see this institution as a competitive advantage. However, even if labour relations remain adversarial, the interest of executives in not fuelling labour conflicts further provides an incentive for them not to articulate their opposition in public. Therefore, once board-level codetermination is in place, individual executives are likely to refrain from criticizing it, either for genuine or for strategic reasons. Thus, an absence of vocal opposition from individual firms does not necessarily imply that a competitiveness-enhancing logic is at work.

The two logics described here show that there are plausible theoretical reasons for both predictions: support and opposition. Because of a lack of access to company-internal deliberations, we cannot *observe* which of these two logics prevails within specific firms. However, we can *infer* the extent to which German firms genuinely see board-level codetermination as a competitive advantage from the results of anonymous survey data. This is the strategy I use in this paper (see Section 3.2).

1.2 *The paradox*

This study finds that the two logics have a different weight at the individual and at the collective level. For exactly the reasons suggested by the power-distributive logic, employers historically opposed the introduction and extension of board-level codetermination (see Section 2). Over time, however, some firms have come to endorse board-level codetermination, while others remain opposed, suggesting a co-existence of both logics. Many firms, mainly big export-oriented firms in manufacturing, developed cooperative practices of board-level codetermination, which helped them to achieve goals that would have been more difficult to achieve otherwise. Other firms, primarily in the service economy, have found it difficult to develop cooperative practices and tend to restrict the influence of labour representatives or to evade the jurisdiction of board-level codetermination³ (Section 3).

³One way of evading the jurisdiction of codetermination rules is for a company to register under foreign law, a possibility created by the European Court of Justice. So far, this option is used primarily by service sector firms but is rarely used by manufacturing firms (Sick and Pütz, 2011, p. 37).

At the same time, the national business federations (BDA and BDI) continue to campaign against board-level codetermination, as they did in the past, in effect representing the views of their dissatisfied members. While the ideological conflicts that motivated employers' opposition to codetermination in the post-war period (Section 2) have disappeared, the federations have upheld their opposition. What have changed are the arguments they use against board-level codetermination, rather than their opposition as such. In the post-war period, they presented codetermination as a piecemeal path to socialism; today they present it as a competitive disadvantage in a global market for investment capital. In short, the associations have not followed the conversion of an important segment of their members to pragmatic cooperation.

The inconsistency appears to result from an over-representation of dissatisfied firms by the federations. The federations' positions are not an unweighted aggregation of members' preferences but are instead catered to strategically important segments of members. Two considerations make the dissatisfied members more important. First, while satisfied firms may practice board-level codetermination on a voluntary basis, assuming shareholders allow, dissatisfied firms have no way to reduce participation rights. As a result, the federations will be under greater pressure from their dissatisfied members. They will urge their federations to fight for a lowering of codetermination requirements, since such a lowering can only be achieved at the political level. Second, the federations can accommodate their satisfied members with proposals that combine a lowering of legal requirements and more scope for voluntary arrangements. As long as voluntary practices of board-level codetermination remain viable, the satisfied firms will be indifferent, rather than opposed, to campaigns for dismantling mandatory rules for codetermination.

Voluntary provisions may even be preferable to mandatory ones for those firms that see board-level codetermination as an advantage. If lawmakers dismantle codetermination rights, interested firms can grant labour a greater say informally, albeit within the constraints of what shareholders and the laws allow. Such voluntary arrangements may be more effective in fostering the goodwill and productivity of the workforce. Moreover, executives may be able to use the granting of these voluntary arrangements to wrest concessions on other issues from their workforce. In addition, firms that follow the competitiveness-enhancing logic do not benefit from a standardization of codetermination rules across the economy, as this may reduce the competitive advantages they derive from a cooperative practice of board-level codetermination. For these reasons, they will not object to cuts in codetermination rights, even if they do not intend to exploit them. As a result, as long as legislation does not rule out voluntary arrangements, satisfied members will not object to their federations' campaigns against board-level codetermination.

The explanation I put forward in this paper differs from VoC-derived explanations of employers' preferences. According to those explanations, in coordinated market economies, like Germany, some types of employers defend institutions for class cooperation. Because these employers have over time adjusted their production strategies to benefit from cooperation, they have become dependent on institutions facilitating cooperation (Hall and Soskice, 2001, pp. 50–51; Thelen, 2001, pp. 101–102; Wood, 2001, pp. 250–252; Hassel, 2007, p. 254). As a result, cross-class alliances will shape the politics of institutional change, as those firms that see existing institutions as an advantage align with labour and are, thereby, in conflict with other firms that see these institutions as a disadvantage (Hall and Soskice, 2001, p. 58).

The argument made in this paper shares with the VoC-derived perspective the assumption that firms will adjust their production strategies to institutional constraints and, by doing so, may manage to turn constraints into assets (cf. also Streeck, 1992, p. 160). However, the argument in this paper challenges the assumption that individual firms' successful adjustment to institutional constraints leads them to support the maintenance of these constraints politically. While some might predict that the diversity of employers' preferences will result in the formation of cross-class alliances, the analysis in this paper shows how the business federations manage to prevent such internal splits by accommodating both sides. Thereby, the explanation offered in this paper offers a way to combine conflict-oriented and efficiency-oriented theoretical perspectives on institutional change. Taking into account the resourceful ways in which the federations manage to reconcile different preferences, we can explain why a logic of class conflict continues to prevail at the political level, even though many individual firms have long ago moved away from it. Section 2 traces the development of employer attitudes towards board-level codetermination in the post-war period before turning to employer attitudes towards codetermination today in Section 3.

2. Employers and the introduction of board-level codetermination

German employers adamantly opposed the institutionalization of board-level codetermination in the early post-war period. In 1947, the British occupation authority mandated board-level codetermination in UK-controlled heavy industry firms with a view to weakening the political and economic power of the Nazi-affiliated industrialists in this sector (Herrigel, 2004, pp. 363–376; Van Hook, 2004, pp. 250–253). The subsequent legislation of board-level codetermination in 1951–1952 resulted from a political compromise, engineered by Chancellor Adenauer, in which the unions effectively abandoned their demands for the collectivization of key industries (Thum, 1982; Berghahn, 1985, pp. 202–243; Müller, 1987).

Implementing this negotiated compromise, the national parliament passed two laws introducing two types of mandatory board-level codetermination: parity codetermination and one-third codetermination. The first type applied to heavy industry and required firms to give labour one-half of the seats in the supervisory board (parity), plus the right to veto the appointment of the firm's labour director (*Montan Codetermination Law*). The second type applied to firms outside heavy industry with more than 500 employees and required firms to give one-third of the supervisory board seats to labour representatives (*Works Constitution Law*). In addition, this law also reinstated the right of workers to establish works councils, a right that had first been legally established in 1919. Employers consented to the reinstatement of works councils, but opposed board-level codetermination.

The business federations' reasons for opposing board-level codetermination are in line with the power-distributive logic: they saw board-level codetermination as part of a political programme to radically shift the balance of power to labour and to undermine property rights. They perceived board-level codetermination as socialism in disguise, as part of a piecemeal strategy of shifting control over industry to labour. They feared that board-level codetermination would prepare the ground for a gradual collectivization of industry and the infiltration of industrial leadership by unionists, who would try to use their influence to steer the overall economy in a coordinated way (BDA, 1953, pp. 247–248, 268; BDI, 1953, p. 28). They were reluctant to participate in negotiations with unions but in the end gave in under the threat of a nationwide strike and pressure from Adenauer (Thum, 1982, pp. 71–97; Markovits, 1986, p. 78).

After a period of relative calm, the conflict over board-level codetermination re-emerged in the late 1960s. The unions were unwilling to accept one-third codetermination and called for the extension of parity codetermination to the rest of the economy. In 1976, after a protracted political conflict that pitched the two governing parties, the Social Democrats and the business-friendly FDP, against each other, parliament passed a law that extended parity codetermination to all firms with more than 2000 employees. As a concession to both the FDP and employers, the law did, however, include several qualifications intended to ensure a majority for shareholders. The most important of these provisions allowed the chair of the supervisory board, who could be elected unilaterally by shareholders, to cast two votes if necessary to break a tie. As a result, shareholders can exercise a one-vote majority (*sub-parity codetermination*).

Employers opposed this extension of codetermination. In 1977, they filed a constitutional complaint against the new law, arguing that it violated private property rights protected by the constitution (Wiedemann, 1980). Using the slogan 'market economy or union state', the employer associations campaigned against what they perceived as an excessive concentration of power in the

hands of the unions, a concentration that was partly the result of the 1976 law (Markovits, 1986, p. 125). In 1979, the Federal Constitutional Court decided against the complaint and upheld the law on the grounds that the constitution 'does not prescribe or guarantee a particular economic order' (Wiedemann, 1980, p. 90).

The arguments employers at that time used against board-level codetermination differed from those of the early post-war period. The argument that board-level codetermination would prepare the ground for the collectivization of industry had lost its traction after unions and social democrats had officially abandoned their socialization goals in their respective Düsseldorf (1963) and Bad Godesberg (1959) platforms. Instead, employers now argued that board-level codetermination led to an excessive concentration of power in the hands of the unions and constituted an obstacle to efficient business administration. The then president of the employer federation BDA argued in 1966 at a meeting of the American Chamber of Commerce in Germany:

We did not think that the Supervisory Board lends itself to a composition of heterogeneous groups. Management of a company has to be responsible to the owners and it cannot be effective... if important decisions can be subject to compromises between groups which have very different interests... you cannot manage an industrial undertaking effectively by applying democratic principles. (Balke, 1966, pp. 10–11, 13, English in original)

In short, the employer federations opposed the introduction and extension of board-level codetermination for the reasons suggested by the power-distributive logic. During the 1950s, employers viewed board-level codetermination as an incrementalist strategy of collectivization; in the 1970s, they viewed it as an obstacle to efficient management and as an excessive boost to the unions' power resources. Over time, though, the successful adjustment of management strategies may have enabled firms to turn board-level codetermination from a liability into an asset. This adjustment may have turned employers from opponents into supporters of this institution. I turn to this issue in the following section.

3. German employers and board-level codetermination today (ca. 1997–2007)

How do employers perceive codetermination today? Have they come to abandon their earlier opposition, possibly as a product of changing production strategies? The empirical evidence shows a contrast between the positions of individual firms and those of the associations. A considerable number of individual executives

tend to take a positive stance towards codetermination, while the business federations continue to campaign against it, as this section shows.

To analyse individual executives' positions, the paper draws on quantitative survey data and statements by individual executives reported in the media. Both types of sources have specific drawbacks. As mentioned earlier, executives may have opportunistic motives for praising board-level codetermination. Survey data allow us to avoid the problem of opportunistic answers, as there is no reason for respondents to answer anonymous surveys in an opportunistic way. Their drawback is that the closed-ended questions used in the available surveys provide no information on the motives behind the positions taken. Media statements, while possibly being opportunistic, provide more in-depth insights into the motives for support. Combining both sources allows us to minimize the drawbacks of each.

3.1 *The positions of the federations today*

The business federations (BDA and BDI) continue to call for codetermination rights to be curtailed. In 2006, an expert commission mandated by the government (*Biedenkopf-Kommission II*) evaluated the economic effects of codetermination. Overall, the findings of the experts were cautiously positive (*Kommission zur Modernisierung der deutschen Unternehmensmitbestimmung*, 2006, pp. 14–15). Still, the two business federations rejected the report and presented a dissenting statement that pointed out the disadvantages of board-level codetermination (*Kommission zur Modernisierung der deutschen Unternehmensmitbestimmung*, 2006, p. 57). They argued that a 'large number of firms... see co-determination as a competitive disadvantage for Germany'. They argued, in particular, that codetermination slowed down decision-making and that 'in cross-border mergers... co-determination is often seen as an obstacle by the firms involved' (BDI and BDA, 2006, p. 1; cf. also Henkel, 1999, p. 146). Even though the arguments differ compared to earlier periods, the basic positions remain unchanged.

In November 2004, a joint committee set up by the two federations presented a proposal to cut codetermination rights. According to this proposal, firms and their staff should be able to choose between three different models: parity codetermination, one-third codetermination and voluntary consultation between management and workforce. One-third codetermination should become the default option if management and workforce are unable to reach an accord (BDA and BDI, 2004, pp. 36–41; see also Rademaker *et al.*, 2004, p. 1). If implemented, the proposal would effectively dismantle parity codetermination as a legal right. At present, all firms with more than 2000 employees need to have parity codetermination; firms with 500 to 2000 employees need to have

one-third codetermination. The proposal reflects the diversity of individual firms' experiences: some firms consider board-level codetermination as an advantage, others as a disadvantage, as Section 3.2 shows. In effect, the proposal would make one-third codetermination the rule and limit parity codetermination to firms that voluntarily agree to it. In short, the evidence suggests that the positions of the business federations today continue to be shaped by an interest in restricting the power of labour representatives, rather than by an interest in defending competitive advantages created by codetermination.

3.2 Surveys of individual firms

The associations' critical stance contrasts with praise for codetermination from individual firms. According to a survey⁴ of executives from the large firms that make up the DAX-100 stock market index ($n = 66$) conducted in 1997, 29% of the respondents support, or tend to support, the abolition of board-level codetermination; 71% oppose, or tend to oppose, its abolition (Glaum, 1998, p. 23). Support for board-level codetermination also exists among some shareholders. According to a survey of German private investors conducted by the polling institute TNS Emnid on behalf of *manager magazin*, 63% of respondents did not want board-level codetermination rights to be curtailed (Papendick, 2004).

A survey in 2006 by the employer-sponsored Cologne Institute for Economic Research and the Institute for Law and Finance at the University of Frankfurt found lower levels of support for board-level codetermination among executives. According to this survey, 34% of the executives of firms subject to parity codetermination tend to see it as an advantage, 38% as a disadvantage ($n = 81$). Support is greater among firms subject to one-third codetermination: 57% tend to see it as an advantage, 19% as a disadvantage⁵ ($n = 62$) (Institut der deutschen Wirtschaft Köln, 2006, p. 2; Stettes, 2007, p. 8).

The lower levels of support found in this survey may have resulted from the organizers framing the survey as a contribution to political debates about reforming board-level codetermination. A cover letter by the presidents of the two business federations, Dieter Hundt (BDA) and Jürgen R. Thumann (BDI), accompanied the questionnaire, which was sent to the CEOs of about 2500 firms subject to board-level codetermination. Referring to the then ongoing work of the Biedenkopf commission mentioned earlier, the two presidents

⁴The auditing firm C&L Deutsche Revision (Coopers & Lybrand) commissioned this study.

⁵For both questions, the remainder did not answer this question. The possible answers were very positive, rather positive, rather negative, very negative. The percentages reported group together the categories 'very' and 'rather'. The question asked how firms see board-level codetermination 'all in all'.

asked the CEOs to assist the federations' work by providing their views on board-level codetermination (as reported in *Kommission zur Modernisierung der deutschen Unternehmensmitbestimmung*, 2006, pp. 16–17). Given the apparent intention of the survey to bolster the federations' positions, an over-representation of dissatisfied firms seems likely, as executives of satisfied firms are more likely not to have bothered answering the questionnaire.

The survey had a response rate of about 8%,⁶ and of the responding firms, about 30% did not answer the question reported here (Stettes, 2007, p. 8). The low response rate may indicate that most firms tend to be indifferent about board-level codetermination or, alternatively, that they attach little importance to the federations' campaigns against it. In short, the way this survey was conducted may have biased its results in favour of dissatisfied firms, but even so, the findings and response rate still appear inconsistent with the hypothesis that a majority of firms has a keen interest in dismantling parity codetermination.

Results of surveys of medium-sized firms show little concern with the issue of board-level codetermination. In 2005, a survey asked executives of medium-sized firms⁷ which factors they consider to have a negative impact on their firm ($n = 373$). Eighteen per cent of the respondents mentioned external union representatives; 15% mentioned works councils. As a comparison, 82% mentioned high non-wage labour costs, and 84% mentioned bureaucracy (Müller, 2005, p. 196). It needs to be noted, though, that none of the firms surveyed were subject to parity codetermination because it applies only to firms with more than 2000 employees. The firms surveyed were either subject to one-third codetermination or not subject to board-level codetermination at all, depending on their size. Still, the survey shows that medium-sized firms do not generally see one-third codetermination as a major problem.

The surveys indicate that individual firms are much more content with board-level codetermination than the positions of their federations would suggest. The surveys' findings differ considerably, with the percentage of respondents that express consent to board-level codetermination ranging from 34 to 71%. However, none of the surveys found an overall majority against board-level codetermination. These findings provide evidence that some employers genuinely support board-level codetermination.

⁶The organizers contacted 2498 firms: 216 firms responded, of which 17 firms (8%) were covered by 'Montan Codetermination', 82 firms (39%) by one-third codetermination and 117 firms (54%) by (sub-)parity codetermination (Stettes, 2007, p. 4).

⁷The survey defines medium-sized firms as firms with an annual turnover of at least one million Euros and less than 2000 employees. The *Institute Media Markt Analysen*, Frankfurt, conducted the survey in 2005 on behalf of the employer-sponsored, pro-market think tank *Initiative Neue Soziale Marktwirtschaft* and the *manager magazin*.

3.3 Statements by individual executives

Statements by some individual executives tend to confirm the finding of support at the individual firm level. When, in November 2004, BDI president Michael Rogowski called board-level codetermination an ‘error of history’, DaimlerChrysler CEO Jürgen Schrempp responded with ostentatious praise for board-level codetermination. Schrempp, known otherwise as a staunch advocate of shareholder value orientation, pointed out that in his company he had positive experiences with board-level codetermination (see the following newspaper reports: Beise, 2004, p. 2; *Der Spiegel*, 2004; Köster, 2004, p. 9; Maier and Reinking, 2004, p. 7). He argued, ‘It is wrong for a supervisory board to hide behind the argument that codetermination makes certain decisions impossible’ (Köster, 2004, p. 9). Critical commentators pointed out that Schrempp had his contract as CEO of DaimlerChrysler extended with the support of labour representatives at a time when share values of the company had plummeted (Grasslin, 2005, p. 4; Wulff, 2005, p. 13; Paul, 2006, p. 16). Therefore, maintaining the goodwill of the labour representatives may have been one motive for his praise of board-level codetermination.

Other executives endorsed Schrempp’s view. The head of Porsche, Wendelin Wiedeking, pointed out that ‘at Porsche, [board-level codetermination] always worked well for us’ (Maier and Reinking, 2004, p. 7). A representative of the insurance group Allianz said, ‘We do not challenge the principle of the [codetermined] supervisory board. Rather, the discussion should focus on questions of efficiency and professional competence’ (Rademaker *et al.*, 2004, p. 1). Hans-Peter Pfaffenholz from the engineering firm ABB noted that without board-level codetermination, job cuts in his firm would have been more difficult to implement (Viering, 2004, p. 23). Similarly, Berthold Leibinger, CEO of the machine building firm Trumpf, pointed out that open discussions in the supervisory board made it easier for his firm to implement difficult measures (Köster, 2004, p. 9). Remarkably, all of these statements come from firms subject to parity codetermination, rather than one-third codetermination.

According to a qualitative survey conducted by *Financial Times Deutschland*, a considerable number of other firms also take a positive stance on board-level codetermination. Among them are Volkswagen, the sportswear maker Adidas, the tourism group TUI, the national postal service Deutsche Post and the formerly state-owned telecommunication service provider Deutsche Telekom. Among the firms criticizing codetermination were Commerzbank and software vendor SAP. Remarkably, a considerable number of firms refused to comment on the issue of codetermination, among them Altana, BASF and Bayer (chemical industry); EON and RWE (public utility) and BMW (car manufacturing) (Rademaker *et al.*, 2004, p. 1). Kurt Bock, CFO of BASF, is one of few executives who

publicly criticized board-level codetermination: he called it a competitive disadvantage on international financial markets (Bock, 2005, p. 10), an argument also emphasized by the federations.

To be sure, we do not know the extent to which these media statements by individual executives and firms represent the German business community at large. Supporters of board-level codetermination are likely to be over-represented in the media statements. The reason for this is that, as mentioned earlier, executives may have opportunistic motives for praising board-level codetermination, as this may help them foster the goodwill of labour. Satisfied executives will praise board-level codetermination; dissatisfied executives will remain silent because they do not want to fuel latent or open conflicts with their labour representatives, on whom they depend for important decisions. Nevertheless, in combination with the results of the anonymous survey data, the statements allow us to infer that a considerable measure of genuine support for board-level codetermination exists among executives.

For obvious reasons, individual executives rarely acknowledge opportunistic motives. However, some statements by anonymous representatives and the associations support the view that the opponents of board-level codetermination within business rely on the associations rather than on their own initiative to voice their views. According to one anonymous informant speaking to a journalist, managers articulate their criticism mainly in private:

In private, executive board and supervisory board members often talk very critically about codetermination. They do not do so in public, as they depend on the union representatives in the supervisory boards. (quoted in Heller, 2004, p. 11, translation by author)

Another manager, also speaking anonymously, responded that ‘no one dares to!’ when asked by a journalist why there is so little criticism of codetermination among executives. After all, he said, the supervisory board members also decide about such issues as dismissals, salaries and redundancy payments of board members (Schmergal, 2004, p. 7).

Similarly, a joint report by BDA and BDI about the effects of codetermination argued that strategic considerations motivate executives to hide their opposition:

[t]hese far-reaching . . . ‘spheres of influence’ [of labor representatives] lead to companies and executive boards rarely voicing criticism in public. The commission is aware of cases where the critical engagement of individual board members with the topic of codetermination led . . . to employee representatives threatening [them] with consequences with regard to . . . the extension of the [board member’s] job contract. (BDA and BDI, 2004, p. 5, translation by author)

Such opportunistic motives are likely to produce a bias towards positive views in public statements. Yet, the findings in the anonymous survey data show that opportunism is not the main motive for executives' support for board-level codetermination, as the anonymity allows us to preclude opportunism as a source of support. In short, despite some indications of opportunism, a considerable share of German firms appears to genuinely see board-level codetermination as a competitive advantage.

3.4 *Positions of business representatives in expert commissions*

The gap between supportive stances by individual executives and critical stances by the federations also appears in business responses to the reports of two expert commissions on the economic effects of board-level codetermination: the first one mandated in 1998 by the Bertelsmann Foundation and the union-sponsored Hans Böckler Foundation; the second one, mentioned earlier, mandated in 2005 by the red-green government headed by Gerhard Schröder. Both commissions arrived at cautiously positive findings on the economic effects of board-level codetermination and were thus similar in their overall thrust (*Kommission Mitbestimmung*, 1998, pp. 11–13; *Kommission zur Modernisierung der deutschen Unternehmensmitbestimmung*, 2006, pp. 12–19).

Both commissions involved employer and union representatives working alongside academic experts. However, on the business side, the 1998 commission included mainly individual executives; the 2006 commission included the presidents of the BDA (Dieter Hundt), the BDI (Jürgen Thumann) and the International Chamber of Commerce in Germany (Manfred Gentz).⁸ The business representatives in the 1998 commission endorsed the thrust of the report's findings (*Streeck and Kluge*, 1999, pp. 26–27); the representatives in the 2006 commission declined to endorse the experts' report (*Kommission zur Modernisierung der deutschen Unternehmensmitbestimmung*, 2006, p. 8). The business executives in the 1998 commission came, inter alia, from car manufacturing (Volkswagen), machine building (Müller Weingarten), heavy industry (Thyssen, Dillinger Hüttenwerke), chemical industry (Agfa Gevaert, BASF), furniture making (Flötotto) and the public utility sector (VEW). Service sector firms, which are likely to oppose board-level codetermination, were not represented in the 1998 commission. The different responses by business representatives to these reports provide further evidence of a gap between individual

⁸For the full list of members of the 1998 commission, see *Streeck and Kluge* (1999, pp. 255–256); for the 2006 commission see *Kommission zur Modernisierung der deutschen Unternehmensmitbestimmung* (2006, pp. 5–6).

and collective positions: an important segment of individual firms supports board-level codetermination; the federations campaign against it.

3.5 *How can the paradox of individual support and collective opposition be explained?*

The contrast between individual support and collective opposition appears to reflect the selective influence of opponents and supporters on the federations' stances. Dissatisfied firms are overrepresented at the collective level, but underrepresented in the media statements, while the survey data are likely to give a realistic picture of the distribution of stances. Firms' experiences with board-level codetermination are diverse: some firms managed to turn codetermination into a competitive advantage; others did not (Kommission Mitbestimmung, 1998, p. 96; Raabe, 2011, pp. 333–342). The contrast results from the greater influence of discontented firms on the positions taken by the federations. Discontented firms are more likely to pressure their federations to be active on this issue, while at the same time they are less likely to express their discontent in public. At the same time, satisfied firms do not oppose the federations' campaigns as long as voluntary forms of codetermination are either made or remain viable.

Firms that are content with the existing rules are likely to be indifferent, rather than opposed, to campaigns against these rules. They can often use voluntary provisions to offer labour participation rights that go beyond the legally required minimum. Such voluntary concessions are likely to be appreciated by employees and can therefore help a firm to cultivate further the goodwill of its workforce. Equally important, firms may be able to use them to wrest concessions from labour on other issues. One example of such a voluntary extension of codetermination rights is the '76 plus' provision applied by ThyssenKrupp. Following the merger of these two firms, the new holding company dropped out of the jurisdiction of the Montan Codetermination Law of 1951 and became subject to the weaker provisions of the Codetermination Law of 1976. As part of a negotiated compromise, the new firm continues to apply some of the provisions of the Montan Codetermination Law voluntarily (Schäfer and Girndt, 1999, p. 49; Bontrup, 2002, p. 12). Firms wishing to go beyond formal requirements thus have some informal ways of doing so, although these ways are limited by the veto power of shareholders (cf. also Höpner and Müllenborn, 2010, pp. 13–19 for further examples of informal extensions to company codetermination).

The proposal of the business federations to allow firms to choose between different models of employee participation (cf. Section 3.1) reflects the diversity of their members' preferences. This proposal allows those firms satisfied with parity codetermination to continue practicing it, while dismantling any legal obligation towards it. Therefore, if implemented, this model would turn parity

codetermination into a voluntary institution, practiced only by those firms where it works well, while allowing others to fall back on one-third codetermination.

4. Implications for the study of institutional change

The findings of this study have implications for our understanding of the politics of institutional change. Inspired by the VoC framework, some argue that employers' preferences are a source of institutional stability (Thelen, 2001, pp. 101–102; Hall, 2007, p. 63; Hancké *et al.*, 2007, p. 9; Hassel, 2007, p. 254). According to one view, once firms have adjusted their production strategies to institutions of class cooperation, they realize they cannot do without them. As a result, they will fight for the survival of institutions whose initial adoption they may have opposed, defending them against neo-liberal reformers. Moreover, this view implies a split within the business community, pitching those firms that have successfully adjusted to institutional constraints against those that have not. As a result, politics will be shaped by cross-class alliances that try to defend existing institutions.

The findings in this paper show that at the level of individual firms there is some evidence in favour of a VoC-inspired, competitiveness-based explanation of institutional preferences. However, these supportive preferences do not translate into politics. The option of voluntary arrangements in part explains the contrast. While those firms that dislike board-level codetermination have a clear interest in the dismantling of its mandatory character, those firms that like it are not dependent on its mandatory character. If shareholders permit, they may practice it voluntarily. At present, such voluntary extensions of board-level codetermination exist only to a limited extent (Höpner and Müllenborn, 2010, pp. 13–19). Nevertheless, if mandatory codetermination were curtailed, those firms that cherish codetermination could go on practicing it. Such voluntary forms of board-level codetermination are likely to be more effective in promoting employee motivation and productivity. Moreover, the option of their withdrawal can also serve as a tool to wrest concessions from labour on other issues, such as wages or working time. The option of voluntary arrangements explains why an awareness by a segment of individual firms of what they gain from institutions of class cooperation is consistent with collective opposition to these institutions.

The findings in this paper suggest that the option of voluntarism is crucial to understanding why support for board-level codetermination by individual firms does not translate into collective support. A qualification is necessary, though: the empirical analysis in this paper does not allow us to decide if those firms that see board-level codetermination as an advantage are indifferent towards the federations' campaigns or if they indeed support them. Assuming they see a voluntary institution as superior to a mandatory one, they may endorse the federations'

campaigns in the same way as the dissatisfied members. Further research is necessary to answer this question. However, either way, there is no theoretical reason for expecting that the federations would defend board-level codetermination if voluntary arrangements were viable.

5. Conclusions

This paper has analysed the development of German employers' attitudes towards board-level codetermination since its introduction in the late 1940s. The findings of the study show that, over time, a considerable number of firms have come to endorse board-level codetermination, while the federations continue to campaign against it. The explanation put forward in this paper brings together theoretical predictions about employers' preferences from the power resource and the VoC-inspired perspectives by showing that each of them explains a different piece of the evidence. A strategic over-representation of dissatisfied firms and the option of voluntary arrangements help to explain why different positions prevail at different levels of organization. Proposals for voluntary arrangements allow the business federations to continue to campaign against mandatory board-level codetermination, in effect expressing the views of their dissatisfied members without alienating the satisfied ones.

The paper thus points to the continued importance of power-distributive conflicts in explaining institutional change, even in a system where a considerable segment of business recognizes the competitive advantages of institutions of class cooperation. Competitive advantages of institutions of class cooperation may help to explain the economic success of the German model, but they do not explain its political sustainability. The political sustainability of board-level codetermination continues to rest on the balance of power among actors and political conflict, rather than on a political consensus created by competitive advantages.

While this paper has shown the differential importance of the competitiveness-enhancing logic and the power-distributive logic at the individual and the collective level, further research is needed to investigate the internal processes of preference aggregation and decision-making. Further research might also test the incidence of voluntarism and strategic over-representation of dissatisfied firms in other policy fields.

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