

### German works councils under pressure - institutional learning as a pathway to enhance their capacities of action

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Institutional Learning as a Pathway to  
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## ***Abstract***

This paper deals with institutional challenges German works councils face currently. These challenges consist of structural economic change from industrial to service sectors accompanied by an extension of 'co-determination-free-zones', an enhanced labour force diversity beyond the image of the male blue collar worker as the 'normal employee' works councils represent, the transformation of companies into network companies splitting up established works councils, co-management in times of competitive restructuring of firms and the emergence of new postfordistic production models with ambivalent impacts on working conditions. Moreover, works councils are challenged by a partial decentralisation of collective bargaining towards the establishment level dissolving the established division of labour between works councils and trade unions. These new challenges confront works councils with risks of structural overcharge endangering their institutional stability. Institutional learning may increase the institutional capabilities and competences required to works councils in order to meet new challenges. It could focus on a critical reflection of established practises in interest representation, utilising workforce diversity as a social resource of interest representation and promote co-operation between works councils in network companies or multinationals. However, works councils are not capable of meeting new challenges self-destined, rather they still depend on a supportive infrastructure of advice and consultancy provided by trade unions. In order to offer support tailored to the needs of works councils and to overcome their crisis in respect to social legitimacy trade unions will as well have to undergo processes of institutional learning to enhance their regional capacities of action, to promote innovative ideas or social issues and to utilise the increased workforce diversity as a starting point to attract new target groups of potential union members. The recognition of workforce diversity proves to be a significant prerequisite to draw on diversity as a social resource of institutional learning by works councils and unions.

## ***1. Introduction***

In Germany works councils proved to be a stable institution of industrial relations despite their - at first glance - fragile intermediary character which rests on their legally 'implanted' orientation to balance the representation of employees' interests with taking account of the economic situation of establishments. The 'success story' of works councils has been questioned since the 1990ies when co-determination free zones in the German economy extended, especially in the expanding service economy, whilst traditional industrial sectors as works councils' strongholds were confronted with severe economic crises, plant closures, restructuring and dismissals. These trends nourished apprehensions works councils to become an 'endangered species'. Moreover, works councils' stability is at stake because of new challenges this institution has been confronted with. New challenges to works councils consist of - among others - the transformation of firms into network companies which split up and fragmentise established company structures and works councils. New challenges also embrace a partial decentralisation of collective bargaining to the establishment level. The latter had been alien to works councils' institutional configuration. Hereby, the established 'division of labour' between works councils and trade unions is altered. These new challenges foster a structural overcharge of works councils and question

their ability to cope successfully with these challenges. This institutional crisis of works councils triggers the quest for starting points to overcome the crisis. In this paper I would like to highlight processes of institutional learning as a potential starting point for works councils to meet new challenges. Taking into account that works councils will presumably not be capable of meeting these new challenges by themselves, I will also explore trade unions' prerequisites and starting points to provide a supportive infrastructure to works councils. Trade unions might not be capable of delivering a supportive infrastructure tailored to the new challenges works councils face, unless they also initialise or enhance processes of institutional learning.

This paper<sup>1</sup> consists of three larger parts and nine chapters. The first part gives an overview on works councils as a social institution of the German system of industrial relations. It covers the chapters 2 to 6. In the second chapter the main features of the German model of Industrial Relations are characterised in order to illustrate the institutional setting works councils in Germany are embedded in. In the third chapter the legal framework of co-determination with regard to the company and the establishment level will be introduced to. It also embraces an overview on works councils' legal rights and obligations. This chapter includes a brief outline of the historical development of works councils as an institution of German industrial relations. Then the construction principles of works councils as a social institution are discussed in the fourth chapter. In the fifth chapter the relationship between works councils and trade unions is focused on. The first part of this paper closes with an overview on the distribution of works councils in Germany. The second part of this paper, i.e. chapter 7, deals with new challenges to works councils since the 1990ies. It deals with the focal challenges to the institution of works councils, i.e. the sectoral change of the German economy, the increased labour force diversity of the German economy, the transformation of firms and the partial decentralisation of collective bargaining to the establishment level. Moreover, it refers to the fragility of support to works councils provided by German trade unions in times of union centralisation and financial crisis. The third part of this paper includes the eighth chapter and the final chapter. In the eighth chapter several potential starting points of institutional learning are discussed which might enable the institution of works councils to cope with new challenges. It also underscores the relevance of trade unions for a future stability of works councils. In the final chapter a summary is presented and conclusions are drawn.

## **2. *Institutional Core Features of German Industrial Relations***

New challenges to works councils and impacts on their potential institutional change are not comprehensible without reference to the German industrial relations systems works councils are embedded in. These new challenges, which will be discussed in this paper, are often interlinked with the change of German industrial relations. Therefore, the German system of industrial relations is sketched.

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<sup>1</sup> I would like to dedicate this paper to my colleagues Franca Alacevich and Andrea Bellini. Both of them offered me the opportunity to present and discuss an earlier version of this paper in the Master program European Labour Studies at the University of Florence during my stay as a visiting lecturer in March 2004. It is especially because of their great hospitality, friendship and support I enjoyed my visit to the University of Florence very much.

In general the industrial relations system of Germany reflects a corporatist model of industrial relations in industrialised market economies (cf. Visser 1996). This model consists of a collective bargaining system with a highly organised, concentrated and co-ordinated structure of interest representation. There is a tendency towards integrative bargaining between labour and capital. Integrative bargaining is rooted in shared social values between the main actors of German industrial relations, above all social partnership between labour and capital, power balancing and the widely spread belief in the so-called 'Social Market Economy'. The latter aims at meeting goals of economic competitiveness on the one hand and social balance and fairness on the other hand (cf. Müller-Jentsch 2003a: 42). The moral culture of the German industrial relations system is based on three main values (cf. Voswinkel 1999: 118):

- fair distribution of gains and burdens,
- the idea that such a distribution should be negotiated and is based on consensus,
- the idea that establishments should have a social constitution, in which employees are not alone treated as costs effecting manpower but as organisational members.

The tendency to integrative bargaining is reinforced by a high level of detailed legal regulation concerning labour conflicts and workplace relations (cf. Müller-Jentsch 1997). If labour related conflicts cannot be resolved between the social partners or management and works councils, then they are dealt with by labour courts which exist at national, regional and local levels. Judge-made law is especially of importance in matters of industrial dispute because a specific law which focuses on strikes or lockouts is not available in Germany. This juridification of the German model channels industrial conflicts and fosters a professionalisation of conflict management.

In Germany the state plays a significant role as legislator within the tripartite industrial relations system. This refers mainly to labour law, social policy and economic or industrial policy which influence the framework of German industrial relations. Compared to other states and to the former Weimar Republic a direct state-intervention in collective bargaining processes is restricted to collective bargaining in the public sector: The state - represented among others by the minister of internal affairs - negotiates directly as public employer with trade unions (cf. Keller/Henneberger 1999). Within the corporatist model the state (and its agencies) plays more or less a facilitating role or acts as 'decision broker' with regard to different interest organisations (cf. Visser 1996: 27). This specific role can be explained by representatives of different interest groups who exert influence on the state and its agencies. This role as decision broker also refers to the German state. For example, the German state acted as decision broker within the tripartite socio-economic concerted efforts initiated by the government during the 1960ies and the 1990ies. Moreover, the red-green government invited trade unions and employers' associations to join the tripartite „Alliance for Jobs, Training and Competitiveness“ in 1998 which was targeted to combat unemployment and to improve labour market conditions on the supply side. This alliance failed because unions and employers' associations were not willing to work out compromises (Jacobi 2003: 17). Besides this traditional role as decision broker the German state guarantees the functionability of the system of industrial relations by the provision of a dense network of procedural regulations which form the legal framework of industrial relations.

German industrial relations rest on two institutional pillars: free collective bargaining and works constitution. Both of them form the dual structure of interest representa-

tion. Each institutional pillar creates a political arena which embraces specific social actors and sets of legal regulation (cf. Müller-Jentsch 1997). A central legal fundament of the collective bargaining autonomy (Tarifautonomie) is the Act on Collective Agreements (1949) (Tarifvertragsgesetz). It guarantees autonomy to trade unions and single employers, i.e. large companies, as e.g. Volkswagen, or employers' associations to bargain and regulate terms and conditions of employment, such as wages, working time and other working conditions, respecting basic legal provisions (cf. Bispinck/Schulten 1999: 185; Jacobi 2003: 19). Collective bargaining is primarily based on multi-employer and industrial sector-wide (regional) agreements between trade unions and employer associations. In collective agreements minimum conditions for establishments and employees of a certain industry are laid down. If a collective agreement is settled the social partners have to fulfil their legal peace obligation during the period of time the agreement is valid. In case of a failure of negotiations and subsequent procedures of interest mediation by a neutral mediator unions and employers can utilise their exclusive right to conduct industrial disputes which covers legal strikes or defensive lockouts to settle a compromise.

Works councils and management are the focal actors in the arena of works constitution. Contrary to the arena of collective bargaining strikes and lockouts are prohibited at the workplace level whereby the means of conflict resolution is restricted to peaceful negotiations and labour court proceedings (cf. Jacobi/Keller/Müller-Jentsch 1998: 190). Moreover, works councils and management may settle works agreements which include higher standards on working conditions than those agreed on in collective agreements. For instance, management and works councils settled agreements on higher wage levels compared to collective agreements in times of economic prosperity. The most important legal framework within the arena of works constitution is the Works Constitution Act (Betriebsverfassungsgesetz). It refers to workers' representation at the workplace level and guarantees a democratic election of works councils by the workforce of a company. Works councils are legally independent of unions as well as of employers.

Both of the arenas share some common features: Firstly, interest representation is based on the principle of collective representation. Unions and works councils can be characterised as institutions which represent employees and are allowed to act and decide in the name of the entire workforce or membership they represent. Employees can only exert a limited control with regard to their representatives, mainly by elections. Employers' associations represent all employers of a specific industry or - in the case of peak organisations - of the entire economy. Their representation is based on the „virtue of their strength of organisation” (ibid: 191). Secondly, employers' associations, unions and works councils can be described as so-called 'intermediary' institutions (ibid.). Such institutions have to interact simultaneously at least with two important environments. One of them consists of a more or less voluntary membership they represent, whilst the other one belongs to the spectre of institutional environments. Therefore, intermediary institutions have to take account of and adapt to both of these relevant environments and their logics of action (cf. Streeck 1987: 473). For instance, works councils are by law obliged to take account of the economic goals of an establishment or a company on the one hand, whilst they represent the interests of employees of a certain establishment. German trade unions developed to interest mediators between labour and capital. Moreover, they proved to be supporters of the industrial tradition of „social partnership“. This mediating role also counts for employers' associations with regard to their diverse membership of firms and to



trade unions. Last but not least, the German model of interest representation is characterised by relative centralisation. Centralisation refers to collective bargaining and to the co-ordination of policies of social partners at the sectoral level. Employer associations and trade unions organised themselves in highly centralised confederations. The path of centralisation resulted in a „relatively centralised bargaining system with large bargaining territories“ (Jacobi et al. 1998: 191).

With the exception of the provision of “the freedom of association”, which is integrated as well in the constitution of the German Federal Republic as well as in the Act on Collective Agreements, all legal provisions regarding the recognition of unions refer to legal decisions by judges. Jacobi (2003: 23 p.) pointed out the formal prerequisites for the recognition of unions: “They must be: (i) voluntary, with members free to join and leave; (ii) democratically structured organisations<sup>2</sup>, with leaders elected by members; (iii) associations that pursue members’ interests independent of both government and employers; (iv) strong enough to push forward their demands, both willing and capable to use strikes as a last resort for putting pressure on employers; and (v) not ad-hoc-coalitions in pursuit of short-term goals but rather, they must maintain a permanent apparatus in order to regulate labour relations by implementing collective bargaining agreements.” The judge-made law on the recognition of trade unions aims at avoiding the recognition of weak unions being dependent on employers as well as at guaranteeing access to the arena of collective bargaining (ibid: 24).

After World War II German unions opted for the principle of unitary trade unions (Einheitsprinzip) in order to overcome former political barriers and rivalries. Moreover, the former distinction of unions of different crafts and occupations was transformed by the principle of „one industry - one union“, i.e. solely one union represents the employees in an industry or establishment (Jacobi 2003: 20). This path to centralisation minimised competition among trade unions. The German Federation of Trade Unions (DGB) serves as the umbrella association of eight individual unions. The DGB’s weak power position - in comparison to its affiliated trade unions - results mainly from the umbrella association’s lack of rights to bargain collectively and to strike in industrial disputes. The financial power of the DGB is comparatively low compared to individual unions, especially the larger unions, because unionists pay their membership fees to the individual union they belong to. Therefore, the main function of the DGB consists in political representation (ibid: 21). Pace setters among German trade unions are above all the IG Metall (IGM) who organises workers in metal industries, engineering and automobile industry, then the chemical workers’ union (IGBCE) and the newly amalgamated service sector union ver.di. Especially the union of metal, engineering and automobile workers emphasised its dominant role as a pace-setter on the unions’ side in collective bargaining and as a social pioneer. The IG Metall often negotiates with its counterpart on the employer side collective pilot agreements at regional and industrial sector level, which are taken over by other social partners at the regional level in the metal industry sector. The outcomes and contents of these pilot agreements often function as a guideline for collective bargaining processes in other

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<sup>2</sup> Union democracy rests on a “delegate system with representative and executive bodies at local, regional and national levels” (Jacobi et al. 1998: 203). The national executive committee of a trade union, which is responsible for union policy implementation, is elected by members of the national trade union conference taking place in a four years term. The participation of ordinary union members is limited to elections for local union representatives and to ballots on strikes in collective bargaining disputes between unions and employers’ associations.

branches. For instance, the IG Metall underscored its predominant role as a social pioneer by the introduction of the 35-working hour-week as result of a previous successful strike. The chemical workers' union e.g. acted as social pioneer by the conclusion of an agreement with the employer association on a common, integrated remuneration scheme for blue- and white collar workers.

In Germany business interests are represented by three different types of organisations (cf. Jacobi 2003, 25 pp.): the German Chambers of Industry and Commerce deal with a broad spectre of semi-governmental or public task on grounds of legal status and offer a variety of services to firms as their obligatory membership. Some examples may illustrate their variety of tasks: the chambers act as the body which tests the knowledge and capabilities of apprentices after having finished their apprenticeship; moreover, they are involved in political processes to develop new profiles or curricula in vocational training or formation. They also function as the body of registration for establishments, which participate in the European Eco-Management and Audit Scheme (EMAS). The umbrella association of the chambers, called German Association of Industry and Commerce, represents 82 regional chambers. The second type of business association is organised by industry at the local or regional level. It offers services to their voluntary members and represents the economic interests of firms in political or legislating processes. This especially refers to the umbrella-association, the German Industry Association. Whilst members of the latter organisation mainly represent industrial and larger firms, small and medium-sized firms are often affiliated to the Central Association of German Crafts.

Among business interest organisations the right to collective bargaining is restricted to employers' associations negotiating with trade unions sectoral and multi-employer collective agreements. Although collective bargaining in most industries is focussed on the regional level, it is embedded in strong co-ordination and process control by national employers' associations. The Confederation of German Employers' Associations (BDA) forms the umbrella organisation of employers' associations at sectoral, regional and local levels. It embraces 75 per cent of firms in the private sector according to their own provided statistical data. The BDA bears a specific resemblance with the DGB because both of the umbrella organisations do not negotiate collective agreements, but act as co-ordinators and mediators. The most important sectoral employers' association in Germany is the Federation of Employers' Associations of the Metalworking Industry which covers more than 6000 member firms with about 60 per cent of employees working in this industrial sector.

### **3. *The Legal Framework of Co-Determination***

In Germany co-determination by employees' representatives is not restricted to the plant-level, but also covers the company level and weaker forms of co-determination in self-governing bodies of social insurance institutions, in the federal agency of employment (Bundesagentur für Arbeit) and union representation in public institutions and committees (e.g. German public broadcasting companies) and in some pension funds. Moreover, employee representatives are involved in several local or regional alliances for jobs and formation (cf. Müller-Jentsch 2003a: 456). Co-determination at the company level reflects a legally institutionalised form of participation of employees' representatives in corporate decision making. Co-determination in this sense is only restricted to larger companies. Co-determination by works councils rests on the election of works councillors even in small firms with at least five employees. Works

councils are elected by the entire workforce of a company or establishment. The Works Constitution Act (BetrVG) defines the participation rights of works councils differentiating between information, consultation and co-determination. Further on co-determination at company and at establishment level will be described.

### **3.1 Co-determination at the Company Level**

Co-determination at the company level refers to a specific system of corporate governance: In larger companies the supervisory board appoints and supervises the smaller management board of a company whose main task is running the company. Members of the management board have to report regularly to the supervisory boards of joint-stock companies and limited liability companies. There are three different types of co-determination at company level, each of them embedded in a different legal framework (cf. Jacobi et al. 1998: 198 p.; Müller-Jentsch 2003: 39-44).

The first type of legal provisions is the „Coal and Steel Co-determination Act“. After World War II the German coal and steel industries were restructured by the British allied forces who introduced co-determination at company level in larger coal and steel companies. This co-determination was legally codified in 1951 by German government and parliament. It embraces all steel and coal companies with at least 1.000 employees. The legal core of the „Coal and Steel Co-determination Act“ (MontanMitbestG) consists of a full-parity representation of shareholders and employees on the supervisory board. Each side of capital and labour is represented by five members on the supervisory board. The labour side includes two representatives nominated by works councils, another two members are nominated by the union confederation after consultation with relevant trade unions and the works councils of the company. Moreover, the union confederation can nominate a fifth member who may neither be an employee of the firm nor a member of the union. The employers' side also has to nominate such a member. The idea behind is that these members of the supervisory board should represent the external public interest. Both of them do not stand alone on the supervisory board because the capital and the labour side have to agree on a neutral eleventh member. The appointed and nominated members of the supervisory board are elected by the general shareholders' meeting. Besides, the labour side on the supervisory board can utilise a veto right over the appointment of a labour director as a member of the management board. The labour director acts as a representative of the employees' interests on the management board.

Nowadays only 50 German steel and coal companies with ca. 500.000 employees still exist covered by this regulation because of the decline of these industrial sectors. Nevertheless, one should not underestimate the significance this regulation exerted on the German system of industrial relations (Müller-Jentsch 2003: 42): The equal representation of shareholders and employees on the supervisory board fostered a culture of joint decision-making in this relevant industrial sector whereby efficiency and social equity were balanced after World War II. Co-determination in steel and coal industries became a nucleus of the so-called 'social partnership' in Germany, also overcoming the previous strong resistance to trade unions and an autocratic management in these industries. With the labour director a hybrid institution in the German system of industrial relations was created, because he is on the one hand supported by trade unions and on the other hand he has to take account of shareholder interests as a member of the management board. Role conflicts often are inevitable, but this dual role enables labour directors to act as peacekeepers and inter-

est mediators at company level. Moreover, the co-determination act of 1951 strengthened the power-position of works councils because of their options to influence corporate governance as members of the supervisory board.

The second type of co-determination at company level is defined by the Works Constitution Act of 1952 which provides only for a one-third representation of employees on the supervisory board in private sector companies with more than 500 employees outside the coal and steel industries. This act was opposed by the trade unions because it restricted their influence on corporate governance and their access to establishments.

In 1976 the „Co-determination Act“ was legally codified by the German government and parliament. Both of employer associations and trade unions opposed initially to the Co-determination Act. Employer associations regarded the act as an extension of representative employee participation on the supervisory board in comparison with the provisions of the Works Constitution Act of 1952. Trade unions criticised above all provisions which enabled a shareholder majority. This regulation can be described as a further step to the extension of co-determination outside of the coal and steel industries. But it departed in some significant aspects from the Coal and Steel Co-determination Act of 1951: According to the Co-determination Act the chair person of the supervisory board is appointed by the shareholder side. In case of disagreement between capital and labour sides on the supervisory board, the chair person can utilise a casting vote despite notional parity. In practise this leads to shareholder majority. Furthermore, at least one employee representative has to be elected from the ranks of the executive staff („leitende Angestellte“), i.e. staff members who exercise management functions. The personnel director obtains the same status as the other members of the management board. Members of the management board are appointed if they gain a two-thirds majority of the votes by the supervisory board. This weaker type of co-determination embraces nearly 700 large companies with more than 2.000 employees. This means that circa 20 per cent of all employees in Germany work for firms which are subject to this regulation (cf. Dombois 2001: 137; Müller-Jentsch 2003: 43). An evaluation study of the Co-determination Act carried out by the Centre for Social Research (sfs) in Dortmund in 1986 explained that the non-parity co-determination on the supervisory board at least fostered the trade unions' labour policy indirectly (Bamberg et al. 1987). For example, co-determination increased the level of information about corporate strategies and supported the interest representation of employees in cases of rationalisation processes. This support resulted from the representation of works councillors on the supervisory board. Additionally, works councillors on the supervisory board can exert influence on decision-making processes in respect both to the appointment of members of the management board and the fixation of salaries of management board members. Therefore, the conclusion can be drawn, that the co-determination act of 1976 is often utilised as a „supplementary mechanism for the works councils“ (Müller-Jentsch 2003: 44).

### **3.2 Co-determination at the Establishment Level**

The historical roots of works councils date back to the German Empire even before 1914. In a historical perspective four trajectories of works councils can be distinguished: The first historical basis of the evolution of works councils consists in a legal initiative by the Frankfurt Parliament of the later failed German revolution of 1848. This initiative intended to install plant councils, in which employers and elected employee representatives should be obliged to joint decision-making on establishment-

related issues. The initiative also included the establishment of so-called 'factory-councils' on district level, which should be elected by plant councils (Wassermann 2002).

The second trajectory of the development of works councils refers to worker councils as in-company bodies created voluntarily by patriarchal employers in order to integrate the workforce and pacify work-related conflicts at the establishment level. The establishment of worker councils was legally ensured by the „Workers Protection Act“ of 1891 which also obliged employers to set up works orders in establishments with at least 20 employees. These worker councils disposed of consultation rights in respect to in-company procedures, as e.g. in working time, breaks, behavioural norms at the workplace, penalties, and the administration of social security funds at company level (ibid: 20).

The third trajectory rests on the social movement of spontaneously formed revolutionary worker and soldier councils in 1918/19 who strived for legal acceptance. However, free trade unions as well as the social democratic and communist wings of the labour movement were sceptical of independent revolutionary worker councils.

The fourth historical trajectory is linked with German trade unions and their interest to establish a union representation at the establishment-level (Schmidt/Trinczek 1999: 104). Until World War I access to the establishment-level was blocked to trade unions by legal provisions and by internal disputes among the dispersed German trade union movement.

These different historical trajectories moulded interdependently in the legal codification of the so-called „Works Council Act“ of 1920 initiated by a social-democratic government during the Weimar Republic. The Works Councils Act laid the fundamentals of today's employee representation at establishment level. Works councils were more or less a compromise between business friendly worker councils and revolutionary worker councils. On the one hand the rights of works councils compared to business friendly worker councils were extended. On the other hand - compared to revolutionary councils - the revolutionary edge was cut off by the legal obligation of works councils to take account of the economic situation of an establishment. Therefore, the conclusion can be drawn that works councils turned out to be a hybrid institution, which did neither meet the expectations of the social movement of revolutionary workers' and soldiers' councils nor the trade unions' nor the employer associations' interests. Indeed, the works councils act conveyed the interest of the state to balance different social interests and to eschew class struggle between labour and capital (Schmidt/Trinczek 1991: 104-105). Trade unions intended to functionalise works councils to focus on the control and supervision of legal provisions and the implementation of collective bargaining agreements at the establishment level. Employers did not object to the informal influence of trade unions on works councils despite their overall rejection of the Works Council Act. They regarded the union influence as a kind of "taming of the tigers" which could decrease the affiliation of works councils to revolutionary soldier or worker councils (cf. Müller-Jentsch 2003a: 461).

The Works Councils Act of 1920 embraced private and public establishments with at least 20 employees. In smaller plants - instead of a works council - a works spokesman could be elected by employees. The act did not provide co-determination rights to works councils but rights of consultation in social matters, as e.g. agreements on wages, works orders and the administration of pensions. In personnel affairs works councils were allowed to exercise weaker veto- and consultation rights. For example, employers had to involve works councils in order to prevent social hardship related to

dismissals or rationalisation. In respect to economic affairs works councils only obtained rights of information and consultation, such as to claim information about the economic situation of an establishment (cf. Wassermann 2002). This overview of works councils' rights illustrates that their range of action still prevails in regulations on works councils in the Federal Republic of Germany. Moreover, the works councils act of 1920 paved the way for nowadays dual structure of interest representation in German industrial relations by the delegation of collective agreements solely to trade unions and employer associations.

The works councils act of 1920 can be regarded as a significant step to transform a more or less feudal structure of establishments characterised by a strong military like and hierarchical organisation and nearly unlimited power of employers. Insofar it opened up a perspective of industrial citizenship based on joint decision-making by employers and works councils. Notwithstanding, this first legal institutionalisation of works councils was rather weak in terms of today's works councils: Meetings of works councils and of the entire workforce had to take place during the free time of employees. The works councils act did not include a legal demand of exemption for works councillors within larger establishments. Works councillors' tenure of office was limited to one year which complicated a continuous interest representation of employees. Furthermore, the election of works councils was rendered by competition among a variety of candidate lists each of them affiliated to another trade union (Wassermann 2002: 17-18). The national socialists abolished the works councils act after seizure of power by the introduction of a new law called „Act on the order of national labour“ in 1934.

After World War II the institution of works councils was reintroduced by the Works Constitution Act of 1952 which referred to all private sector firms with at least five employees. The act stated that works councils were to be elected independently from trade unions and employers. German employer associations accepted the works constitution act promoted by a conservative-led multi-party government, whilst trade unions at first opposed to it because of the restriction of co-determination on the supervisory boards of large companies and its limited coverage solely on private firms. Furthermore, they criticised the limited trade union access to establishments. However, trade unions adopted a pragmatic strategy, which rested on two pillars: Firstly, they invested in advice and training capacities for the recruitment of works councillors in order to secure trade union influence indirectly in establishments via unionised works councils. The second pillar was based on the development of a group-structure of union representatives (*gewerkschaftliche Vertrauensleute*) at the establishment level which focused on two different ends: One the one hand these union representatives were meant to support the interest representation by works councils. On the other hand they should also direct the works councils' orientation of action towards issues promoted by trade unions, therefore strengthening the influence of trade unions on works councils (Müller-Jentsch 2003: 45).

The reform of the Works Constitutions Act in 1972, introduced by the first socialdemocratic-liberal government, was especially opposed to by employers because it introduced a broader spectrum of participation rights to works councils. However, this strengthened position of works councils legally codified an existing in-company practise in respect to workaday experience with the Works Constitution Act of 1952 at the establishment level, above all in larger companies.

German governments and parliaments played an important role as interest mediator in the process of institutionalisation of works councils. They directed the institution of

works councils towards a „consensus- based agenda“ (Müller-Jentsch 2003: 46). This meant that employers as well as trade unions had to make concessions in respect to their specific interests to works councils. The legally codified balanced agenda of works councils is a prerequisite for its high stability as an institution of German industrial relations. In the Federal Republic of Germany works councils are legally independent of employers and trade unions. They are elected democratically by the entire workforce for four years tenure of office (Jacobi et al. 1998: 211). The number of works councillors in a firm varies with the number of employees. In companies with 200 and more employees a limited number of elected works councillors are allowed to act as full-time employees' representatives. In large companies works councils have their own offices and staff at disposal (cf. Jacobi et al. 1998: 211 p.; Müller-Jentsch 2003a: 465). As an interest representation of the workforce works councils are not bound to any instructions of their voters but have to comply with the legal framework. They are obliged to carry out quarterly works meetings for all employees to report about works council activities. The works constitution act and other acts on co-determination guarantee the existence of works councils as a legal institution. Therefore, elected works councils are legally protected against any possible initiatives of trade unions or employers which might intend to abolish them.

### **3.3 Works Councils' Rights and Obligations**

The works constitution act can be characterised as the primary legal framework of works councils in which their legal rights and obligations are fixed. According to this act works councils are obliged to co-operate with employers on grounds of mutual trust. Moreover, their action is bound to take account of the economic situation of an establishment. Works councils are not allowed to share commercial secrets with the workforce. Generally, works councils are prohibited to negotiate conflicting matters which are regulated in collective bargaining processes. This exclusion underscores the co-operative 'lay-out' of works councils fixed in the Works Constitution Act (Dombois 2001: 139). Last but not least, works councils as well as employers have to comply with the so-called peace-obligation, i.e. strikes and lock-outs as means of industrial disputes are prohibited at establishment level.

The works constitution act provides participation rights for works councils. In general, a distinction can be made in legal rights of co-determination, consultation and information. Rights of co-determination imply a joint decision-making between employers and works councils. The latter can at least claim a veto-right in decision-making processes. Consultation requires an active involvement of works councils which enables them to expound their perspectives on certain problems or decisions made by management. Works councils' information rights oblige management to inform them about business activities or on a specified range of issues. These rights relate to different matters, i.e. in-company social policy, personnel issues and economic or financial matters (cf. Müller-Jentsch 2003: 47-48; Jacobi et al. 1998: 210-211). Works councils have at their disposal strong participation rights on social matters. For example, they can utilise co-determination rights in respect to the in-company social policy which embraces different matters, such as the introduction of new payment methods, performance-related pay, principles of remuneration, regulation of overtime- and short-time-working, and the implementation of new technologies designed to monitor employees' performance. Compared to social matters the rights of works councils are weaker on personnel issues. Co-determination rights refer to personal matters, as e.g. dismissals and guidelines for recruitment and transfer. In respect to

individual staff movements works councils can also exercise veto rights, e.g. with regard to the transfer, dismissal and grading of employees. In matters of personnel planning, changes in the work process, jobs and work environment the rights of works councils are limited to information and consultation rights. Works councils can only utilise co-determination rights on changes of the work process, if these changes contradict to the established scientific findings of labour studies and are a special burden for employees, as e.g. in cases of higher psychological or physical stress related to new forms of work organisation.

The more processes of economic decision-making are tackled the weaker are the rights of works councils. Therefore, works councils have only information rights at their disposal on financial or economic matters. According to the works constitution act the employer is obliged to inform work councils fully and in good time about the financial or economic situation of the establishment and about planned changes which may contradict to employees' interests. In in-company workaday situations works councils often deliberately do not exercise their strong rights of co-determination in exchange for the extension of their influence on matters in which they obtain only weaker legal rights (Müller-Jentsch 2003: 48). In sum, this combination of rights and obligations fosters the development of a „workplace bargaining culture based on co-operation and consensus“ (Dombois 2001: 139).

### *3.3.1 Compromise by Works Agreements*

Works councils obtain the right to settle works agreements (Betriebsvereinbarungen) with the management of a company. The range of issues to be settled excludes matters which are regulated within the framework of collective agreements unless collective agreements include opening clauses which permit complementary works agreements (Jacobi 2003: 29). Works agreements are contracts between employer and works councils at plant level in which quasi-legal norms which refer to the content, the beginning and the termination of the employer-employee-relationship, in-company related issues as well as matters in respect to the works constitution are settled. Works agreements may either rest on compromise between employer and works council as a result of negotiations or on arbitral award by the in-company settlement-board being valid for the entire workforce of an establishment. Works agreements may include norms or contents which improve working and employment conditions beyond the employment contract concluded between a single employee and an employer. However, the principle of advantage (Günstigkeitsprinzip) is linked with employment contracts. This means that employment contracts may include agreements from which an employee benefits more than from agreements fixed in works agreements. Works agreements have to comply with superior levels of legal norms, such as legal acts, employees' rights or collective agreements.

### *3.3.2 Conflict Resolution at the Establishment Level*

Compromise is often attained informally between employers and works councils in processes of social exchange. If both parties cannot agree on a disputed issue informally, an agreement can be concluded by a formal works agreement. Sometimes conflicts between the two parties even cannot be solved by a works agreement. Then a procedural solution on the basis of mediation is attainable. In this case an in-company settlement board is constituted as a mutual collective body by employer and works council. Settlement boards mainly deal with procedural conflicts on ways



to shape working conditions. The settlement board consists equally of members of the employers' side and of works councillors. Both sides have to agree on an independent chairperson who is often a labour judge. Decisions on the settlement board can only be attained by majority vote. If an agreement between the two parties fails, decisions are made by the labour judge. Trying to convince the independent member of the board, both sides have to gain the acceptance of the chairperson. In this situation a strong force to compromise can be exercised by the independent board member to resolve the conflict (see Müller-Jentsch 1997: 291 pp.). The settlement board and its procedures enhance the pressure both on employers and works council to compromise. Generally four different functions of a settlement board can be distinguished (ibid: 292-293): Firstly, the in-company parties may utilise the settlement board as an alibi in order to communicate a compromise in a better way towards the workforce. Secondly, the settlement board may function as conflict mediation in case of different interpretations of collective agreements and their in-company implementation, as e.g. in cases of working time reduction. Thirdly, a settlement board can reflect the power play between employer and works council. Finally, a settlement board enables both sides to solve a disputed matter, which could not be agreed on in previous negotiations and to which both parties paid high attention to.

In Germany settlement boards are rarely set up, which hints at the consensual and co-operative work culture in many establishments. Nevertheless, there seem to be differences in the way works councillors in West and East Germany deal with settlement boards. An empirical study carried out by the SOFI Göttingen illustrates that East German works councillors utilise settlement boards more pragmatically than their colleagues in West-Germany. The latter view settlement boards more or less as an ultima ratio of in-company conflict resolution whilst East German works councillors more often establish settlement boards as a means to conflict resolution without regarding them as a potential further step of conflict escalation (Kädtler et al. 1997: 172 pp.).

Finally, works councils and employers can appeal to labour courts to settle legal disputes. Labour courts deal with legal disputes between employers and single employees related to the employment contract, conflicts between employers and works councils on matters of the works constitution, disputes between trade unions and employer associations in respect to matters of collective bargaining or the validity of a collective agreement.

#### **4. *The Institutional Configuration of Works Councils***

German works councils can be characterised by a specific institutional configuration, which rests on the one hand on their legal framework and on the other hand on the way they interpret and act according to expectations and social norms affiliated with their role as works councillors. Hermann Kotthoff (1995: 430 pp.) distinguishes four formative principles of the institutional configuration in respect to German works councils:

##### **The Principle of Co-operation**

According to the German Works Constitution Act works councils represent the labour force of an entire company or establishment and their unity. This representative function is not limited to its legal core, but refers also to the lifeworld or work culture of employees in a certain company or establishment. Contrary to the corporate culture concept, the work culture approach underscores „a lifeworld understanding of organisations, according to which the culture of an organisation is produced and re-produced through the ongoing, interpretative action of its members. It is produced within the work process, it is plainly „work culture“ (Nagler et al. 1999: 4). In this view the dominant values and norms that govern the interaction of organisational members are produced and re-produced by the members themselves and relate to a specific enterprise, department, division of a company or to a certain status group. Work cultures are more influenced by habitual everyday interactions among organisational members than by corporate policies laid down in the official „corporate identity“. According to this lifeworld understanding of organisations the organisational culture and its different work cultures are expressed in the way, members „interpret and evaluate the responsibilities and requirements they are expected to fulfil, and how they translate these into behaviour“ (ibid). The lifeworld or work culture of employees also contains a set of expectations and perceptions of fairness and everyday morality. The culture of an organisation therefore is to be understood as a form of processing that is manifested in established ‘sets’ of perception and action.

Works councils represent the lifeworld or work culture of employees. Their specific task consists in safeguarding the recognition of their lifeworld, their standards and traditions in processes of economic goal attainment. According to Kotthoff works councils act in this case as a ‘good shepherd’ to protect employees and their lifeworld. Moreover, works councils as representatives of the entire labour force are mediators in disputes between different groups of employees and take care of everyday problems of employees.

The autonomy of works councils as representatives of the entire workforce implies that they have to act according to superior aspects instead of the interest representation of a certain group of employees. This orientation of action fosters the attribution of authority to works councils and a high grade of personalisation linked with their role as employee representatives. However, the representative function implies a specific risk because works councils often tend to represent core employees and to negate the interests of so called „fringe-employees“ or portfolio workers and freelancers.

### **Recognition of Moral Standards**

Another relevant task of works councils consists in advocating the recognition of social and moral standards embedded in the in-company lifeworld of employees in operational and decision-making processes. The legal framework of co-determination rights, especially with regard to social aspects and occupational health and safety, enables works councils to carry out this task. It creates an obligation of management to acknowledge the legitimacy of lifeworld demands. This legal framework restricts the range of management action, i.e. management has always to take account of the potential reaction of works councils in decision-making processes.

### **Recognition of the Legitimacy of Economic Demands**

The Works Constitution Act includes a legal obligation of works councils to acknowledge the legitimacy of economic demands. There are two different views this obliga-

tion can be interpreted: In a defensive view it means that the lifeworld demands are restricted by economic demands. Contrary to this perspective, it may signify that works councils can contribute to the improvement of the competitiveness or productivity of a company by the integration of the social and moral resources of the in-company lifeworld with economic demands. This alternative view takes into consideration that works councils may not only exert influence on the work morale of employees, but function also as mediators and interpreters between „lifeworld and system world“ - making use of a conceptual distinction by Habermas (1988). As mediator and interpreter works councils can on the one hand confront management with work-related problems on the shop floor. On the other hand works councils are able to impart or explain management decisions to employees. This might lead to an improved acceptance of management decisions within the entire workforce. Furthermore, works councils may act as a mediator between several groups of employees or different departments.

### **Social Exchange between Works Councils and Management**

The last but not least formative principle refers to the prevailing modus of interaction between works councils and management. It can be characterised as social exchange. Contrary to economic exchange, which fosters processes of distributive bargaining, social exchange advocates an integrative bargaining between management and works councils at company- or establishment-level. Integrative bargaining is dominated by the search for win-win-solutions and the mutual intention to sustain cooperation by the involved parties or actors (see also Löffler/Soffsky 1986: 21 p). Concessions of one party will be answered by concessions of the other party in an unspecified time span. The resolution of conflicts is based on compromise and understanding.

Social exchange rests on a bilateral give and take, which is neither highly specified nor carried out in a formalised manner. Moreover, sometimes a considerable lack of time may exist between give and take. In processes of social exchange the giving party or actor places trust in the receiving party or actor that the latter will provide a return service in future. If the receiving actor provides with a return service a basis of mutual trust-relationship is laid. Therefore, social exchange contributes to a relationship of mutual trust and loyalty. In processes of social exchange the content of exchange cannot not be standardised or regulated because it rests on voluntary decisions and actions. Contrary to economic exchange, the content of social exchange is not an integral part of treaties or formal works agreements. Social exchange at a company- or establishment level requires a stable relationship between management and works councils and a highly personalised interaction, i.e. a good relationship between management and works councillors.

## **5. *The Relationship between Works Councils and Trade Unions***

In Germany trade unions and works councils are legally independent from each other. This independence is also reflected in the division of labour between both of the institutional actors (Müller-Jentsch 2003: 49): Trade unions specialise on distributive bargaining in the arena of collective bargaining which includes strike as a legal means of industrial dispute. Works councils deal with forms of integrative, i.e. consensus-oriented bargaining which rests on co-determination at company or establishment level. This division of labour directs the action of trade unions towards is-

sues at a highly aggregated level, above all wages and working time. Works councils concentrate on the implementation and adaptation of collectively agreed norms on the establishment or workplace level (Dombois 2001: 141). This division of labour contributes to a mutual relief of trade unions and works councils by concentrating on their specific functions and tasks (Schmidt/Trinczek 1999: 180):

Despite this legal independence and the division of labour between both social actors their relationship can be characterised as symbiotic. The reasons why is on the one hand the consulting and co-ordinating functions trade unions exercise with regard to works councils. For example, new challenges to works councils, such as the implementation of team work or new technologies, cannot be met alone by works councils. Therefore, they demand for the support and advice of trade unions to better cope with new challenges at the establishment or workplace level. The advice and consultancy provided by trade unions enhances the representation of trade unions among works councils. In Germany three out of four works councillors belong to any of the DGB-affiliated trade unions, thus creating zones of trade union influence at the workplace level.

On the other hand works councils form the backbone of an active trade union membership. They play an important role for the recruitment of new trade union members and the financial resources to trade unions because the establishment level still prevails as the most important recruitment basis for trade union membership (cf. Müller-Jentsch 2003: 50; Schmidt/Trinczek 1999: 180). The importance of the plant level was enhanced by the fact that many a German trade union retreated from organising trade union members at the levels of local communities or quarters. Moreover, trade unions depend on works councils in order to mobilise union members at the plant level in order to support collective bargaining efforts. The mobilising function of works councils contains two dimensions: Firstly, works councils may mobilise union members at the establishment level for the goals of trade unions in collective bargaining processes and strengthen their collective bargaining power by means of industrial disputes, such as strikes or warning strikes. Secondly, works councils play a crucial role in the mobilisation of trade union membership support for the acceptance of results which were settled in collective agreements between unions and employers' associations. In this perspective works councils are as well mediators between trade unions and their membership as social buffers in both directions (Schmidt/Trinczek 1999: 180). For example, in the winter of 2003/2004 the IG Metall failed to introduce the 35-working-hour-week in East German collective bargaining processes because of a lack of support by trade union members and works councils.

Trade unions gained an at least limited admission to plant level according to the Works Constitution Act (Müller-Jentsch 1997: 277): Trade unions, which are represented in an establishment by at least one member among employees, obtain the right to initiative to elect a works council and to call in workshop meetings (Betriebsversammlungen). Moreover, trade unions have the right to participate in workshop meetings and meetings of works councils. Additionally, they can utilise their right to monitor the election of works councils. This also includes the option to contest the validity of the election in the case of irregularities. Trade unions are allowed to apply for a removal of works councillors who violate against the legal framework of works constitution. Trade unions may also apply for the punishment of an employer restricting or preventing the election of a works council or the action of works councillors.

Last but not least German trade unions tried to safeguard their influence on the establishment level directly by the establishment of trade union representatives („Vertrauensleute“), which should carry out a dual task: On the one hand they were to support the actions of works councils, whilst on the other hand they should prevent them from neglecting trade union interests in favour of establishment interest (Müller-Jentsch 2003: 45). According to the Works Constitution Act trade union members can exert their right to vote a body of trade union representatives at plant level. Generally spoken, a trade union representative is elected for 30 up to 50 employees. These trade union representatives carry out service functions for their trade union, as e.g. the distribution of trade union information among the workforce. The once intended strategy of trade unions to establish a stronghold of their own at the plant level often fails because the body of in-company trade union representatives is often controlled by works councils, i.e. leadership of this body is often carried out by works councillors. Notwithstanding, trade union representatives should not be regarded as a ‘toothless paper tiger’ because in times of disturbed relationships between trade unions and works councils they may emerge at the plant level as a competitive body to works councils (Schmidt/Trinczek 1991: 182). Then trade union representatives may for example form an alternative list of candidates in works councils’ elections and may win the elections replacing the former works council.

With regard to Norbert Elias the relationship between trade unions and works councils can be described as an interdependent figuration (cf. Elias 1993) characterised by an uneven balance of power in favour of works councils: Trade unions do not contain power of sanctions towards legally independent works councils. Moreover, trade unions depend more on works councils than vice versa. Works councils are able to carry out their job even without a strong affiliation to trade unions, whilst the latter depend highly on the co-operation of works councils to attain their goals. If works councils reject a co-operation with trade unions the influence of trade unions on the establishment level will diminish. Additionally, because of their intermediary character works councils often tend to prefer establishment interests in relation to trade union interests (Schmidt/Trinczek 1991: 181).

## **6. *The Distribution of Works Councils in the German Economy***

The institutional relevance of works councils as a pillar of the German industrial relation systems depends on their distribution among branches, regions and companies. At first glance the distribution of works councils should not be a significant issue in German industrial relations because works councils are mandatory in private firms with at least five employees according to the Works Constitution Act, but in fact works councils do not exist in many firms the legal provisions are valid for<sup>3</sup>.

The distribution of works councils in Germany varies with regions: According to the establishment panel study of the Institute of Employment Research (IAB) nearly 50 per cent of employees in private-sector establishments with at least five employees

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<sup>3</sup> In 1998 ca. 200.000 works councillors were elected in 36.000 firms in Germany. The high share of employee participation in elections of works councillors is about 75 per cent (Müller-Jentsch 2003a: 462 p.).

were represented by elected works councils in the western part of Germany in 2002. The statistical figures illustrate even a minor interest representation of employees by works councils in East Germany, where only four out of ten employees in private establishments with five or more employees are represented by works councils. The IAB-panel also shows a decline of interest representation by works councils in the eastern as well as in the western part of Germany between 1996 and 2002. The percentage of employees represented by works councils declined slightly about 0.5 per cent in the west during this period of time, whilst the decrease in the eastern part was more severe with about nearly two per cent (Müller-Jentsch/Weitbrecht 2003: 197). This stronger decline in works councils' representation of employees can be explained by the relatively higher number of plant closures during the 1990ies, the shorter tradition and the weaker power position of trade unions in East Germany compared to western parts of Germany.

'Size matters' in respect to the distribution of works councils: they are underrepresented in small and medium-sized firms. Especially in smaller establishments with less than 100 employees works councils often do not exist<sup>4</sup>. This gap of interest representation is above all severe in establishments with five to 20 employees because only in 6.2 per cent of these companies works councils were established. Therefore, researchers on labour relations conclude that smaller businesses are often co-determination-free zones in Germany (cf. Abel/Ittermann 2003; Wassermann 2002). The IAB-panel-study shows that the percentage of companies with works councils is especially low in companies with less than 50 employees (Müller-Jentsch 2003: 54).

Contrary to smaller firms, larger companies are strongholds of employees' representation by works councils: The IAB-panel illustrates that only companies with 100 and more employees belong to the „core zone of German industrial relations“, i.e. in most of these companies works councils and valid collective agreements exist (Wassermann 2002: 79). Works councils were established in circa 98 per cent of the companies with more than 1000 employees.

Abel and Ittermann (2003: 105) come to the following conclusion about the reasons for a weak distribution of works councils in small and medium-sized companies: "As a rule, the probability that a works council will either be established or already exists increases with the number of employees, the age of the company, and the differentiation of the management level. Further factors are the location of the business (regions with a long union tradition) and the union density rate; the lower the involvement is, the more improbable the foundation of works councils becomes".

Moreover, many smaller companies are characterised by a specific organisational culture, which feature is often an informal and direct communication between employees and employers on grounds of trust and consent. The social exchange between employers and employees reflects the interdependence of both parties and is reproduced by mutual expectations: Whilst owners or employers expect flexibility, commitment, reliability and a high work quality of employees, the latter expect from

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<sup>4</sup> In Germany 98 per cent of all firms are small businesses with 100 or less employees covering 53 per cent of the entire labour force, whilst nearly a quarter of the labour force is employed in companies with more than 500 employees. The share of these large companies among businesses in Germany is only 0.24 per cent (Abel/Ittermann 2003: 104).

employers to guarantee their employment by the acquisition of orders and autonomy at work. A formal representation of employee interests by works councils appears to be neither necessary nor wanted because of direct communication and forms of informal participation of employees (cf. Kotthoff/Reindl 1990). Furthermore, the leadership culture in many a smaller and traditional firm matters (Becke 2001). Several studies hint at the paternalistic self-image of employers which often contradicts to a formal interest representation of employees. It is based on the employer's conviction that she or he takes account of the interest of employees who belong to the "firm-family". In this view an interest representation of employees by works councils seems superfluous (cf. Brüggemann/Riehle 1995; Becke 2001; Sennett 1985; Staehle 1999).

## **7. New Challenges to the Institution of Works Councils**

Since the 1990ies the German system of industrial relations has undergone a shift, in which its foundations have in some respect changed drastically. This change also counts for the institution of works councils. In this chapter I would like to point out the new challenges to the institution of works councils which arose especially during the 1990ies.

### **7.1 The Change from Industrial to (new) Service Sectors**

The institution of works councils is confronted with an increase of so-called „co-determination-free zones“. These are companies, „which do not have legally secured co-determination in the form of works or staff councils and/or employee representatives on the supervisory board“ (Abel/Ittermann 2003: 103). According to a study of the Bertelsmann Foundation and the Hans-Böckler-Foundation the percentage of co-determination-free zones rose from ca. 51 per cent in 1984 to 60.5 per cent of companies in the German private sector in 1996 (Bertelsmann Stiftung/Hans-Böckler-Stiftung 1998: 52-54). During the same period of time the percentage of employees working in private companies with works councils decreased from 51 per cent to 42 per cent. This decline was especially attributed to the stagnation of the number of works councils between 1990 and 1994 in East Germany despite an increase in the number of companies (Wassermann 2002: 77).

The decrease in employee-representation at the establishment level can be partly explained by sectoral economic change. The 1990ies were marked by a severe structural economic change, which is characterised by an ongoing decline in manufacturing industries and an expansion of the service economy. Structural changes in traditional industrial sectors during the past 20 years were accompanied by the closure of plants, the transfer of employment to so-called 'low wage countries' and the decline of entire industries in Germany, such as large parts of the steel-or mining industry or textile and clothing industry. These traditional industrial sectors – with the exception of the textile and clothing industry - formed for decades the backbone of co-determination. Since the end of the 1980ies the number of works councils decreased in these strongholds of co-determination (ibid: 75). Because of these structural changes the representation of employees' interests by works councils diminished in traditional industrial sectors.

Besides, the structural economic change is marked by a growth of the service sector. For instance, the percentage of employees working in the service sector among the entire labour force rose between 1980 and 1997 from 49 per cent to 63.4 per cent in West Germany (Willke 1999: 55). This trend is on the one hand attributed to the rise of the so-called 'new economy' which is characterised by symbol-processing knowledge work, and on the other hand to personal services, above all in nursing and child rearing (Bandemer et. al. 1998: 413 pp.). In the private service sector the number of employees increased between 1984 and 1998 from nearly 9.5 million to 15.65 million. During the same period of time the number of works councils in companies of the private service sector rose only slightly from 8836 to 9000 works councils (Wassermann 2002: 76). Especially, in start-up companies of the new economy, which are not affiliated to any of the old economy companies or networks, the traditional institutions of German industrial relations are hardly spread, i.e. they are characterised by



an absence of collective agreements and works councils and a low profile on trade union membership among employees (Gesterkamp 2002). A study on forms of participation and co-determination in companies with shares quoted on the stock exchange of Nemax underscores this tendency. It illustrates that only in 18 per cent of the Nemax-companies a works council was founded (Kipker/Potthoff 2000). The distribution of works councils focused mainly on call centres, firms with shift operation or with a high relevance of mechanical production. Kipker and Potthoff found out that in many Nemax-companies informal forms of co-determination or participation were practised which were based on information and personnel meetings, round tables, forms of mentoring and coaching and the utilisation of intranet-platforms or electronic media (ibid.: 21).

Some German industrial relations researchers support the hypothesis of a convergence of co-determination and interest representation in the 'old economy' and the 'new economy'. They are of the opinion that in some years the dual structure of interest representation will be established and reproduced even in the digital economy (see e.g. Streeck 2002). In this view the current economic crisis of the 'new economy' fosters the development of the dual structure of interest representation<sup>5</sup>. Employees of the new economy are now confronted with a higher risk of unemployment and a decline in income and shares. According to the convergence hypothesis employees in the digital economy will question their prevailing individual representation of interests at the workplace. In this view the crisis of the new economy opens up space for an institutionalised co-determination. Recent studies on forms of co-determination within the new economy show that the crisis as well as the professionalisation and institutionalisation of companies of the new economy walk along with an increase of employee demands in respect to regulated working conditions and organised forms of interest representation (for an overview see Abel/Ittermann 2003: 114-115). An empirical study carried out after the breakdown of the new economy market indicates that in the meantime works councils were spread in 40 per cent of the 300 Nemax-companies, most of them were newly elected or founded (cf. Müller-Jentsch 2003a). However, recent studies also show, that alternative forms of participation or co-determination prevail compared to the establishment of works councils (cf. Städtler et al. 2004: 154; Müller-Jentsch 2003a: 470). Moreover, works councils are mainly founded in larger firms of the digital economy being threatened in existence or expecting a wave of dismissals (Städtler et al. 2004).

In the diverse service sector of the new economy differences in the distribution of works councils can be observed. The distribution of works councils varies between start up- or start up-grown companies and firms which are subsidiaries of larger companies of the so-called old economy. In other words, corporate culture matters, i.e. parent companies of the old economy with its tradition of institutionalised and legally codified forms of co-determination exert influence on their outsourced or newly

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<sup>5</sup> During the 1990ies the new economy with its different segments was one of the service sectors which employment figures expanded rapidly. For instance, employment in the segment of IT, telecommunication and new media expanded between 1998 and 2000 from 710.000 employees to 820.000 employees (Abel/Ittermann 2003: 112). In the meantime, the economic situation in the new economy changed. This new service sector is now facing an economic crisis, which is marked by a stagnation or decline in employment – with the exception of the segment IT- and software-services.

founded subsidiaries to adapt these forms of co-determination including works councils (see Boes/Baukowitz 2002). In small and medium sized start-up or start up-grown companies, which are not related to a larger corporate company with institutionalised and legally codified forms of interest representation, works councils can hardly be found. Besides, an individual representation of interests at the workplace and a self-image of organisational members as being part of the 'company-family' prevails (cf. *ibid*; Abel/Ittermann 2003). This comparison illustrates that the institution of works councils failed to gain advantage of the rise of the service economy, especially in small and medium-sized businesses of the new economy. Moreover, it illustrates that there exists a broader variety of participation, from informal or management-induced forms of participation to legally codified co-determination in the service sector, especially the new economy. This variety of forms of participation and interest representation contradicts to the convergence hypothesis because it questions its implication that institutionalised forms of participation and co-determination will even prevail in the digital economy.

Moreover, the convergence hypothesis negates the relevance of employees' different patterns of action and cognitive maps. This especially refers to highly qualified salaried employees in the digital economy. These employees who form a relevant part of knowledge workers in the new economy, display an attitude of retention or even rejection towards the institutions of works councils and unions (Städtler et al. 2004): One of the reasons why is the implicit psychological contract between this group of employees and their employers. The psychological contract rests on mutual expectations: Employers expect high loyalty, flexibility, quality and commitment of employees, whilst the highly qualified employees in return expect positive incentives, as e.g. high wages and/or forms of profit sharing, status and career options, as well as autonomy at work. Their self-image is based on consensus orientation and confidence in their self-assertion (cf. Kotthoff 1997; Baethge et al. 1995). Highly qualified employees are self-determined and often prefer an individual representation of their interests at the workplace. Furthermore, they appeal to new management concepts which offer them participation at the workplace and demanding jobs. Because of their self-assertion and their self-image as „quasi-entrepreneurs“, i.e. being part of the management, they seldom seek advice offered by works councils or trade unions (Abel/Ittermann 2003: 106). Among new forms of participation the financial participation in shares of the company played an important role enhancing the self-image of employees as quasi-entrepreneurs and shareholders of 'their' company. Turning employees into shareholders may lead to a change of perspectives: From a shareholder perspective one may emphasise the common ground, i.e. the confluence of interests between the employer side and employees. In this view an interest representation by works councils seemed unnecessary (Gesterkamp 2002: 79).

In face of these empirical findings the convergence hypothesis can be rejected because the economic crisis did not trigger a foundation wave of works councils or an increase in union membership in the digital economy as a reaction to economic crisis. Therefore, the variety of branches in the digital economy, the different social contexts of firms and the diversity of employees' action patterns have to be taken account of. In case of highly qualified salaried works it seems doubtful whether the economic crisis will alter their stable patterns of action and professional identity (cf. Städtler et al. 2004). However, works councils and unions might be established in the long run in the digital economy, if they undergo processes of strategic and institutional learning. I will turn to this point later.

## **7.2 Increased Labour Force Diversity in the German Economy**

New challenges to works councils as well as to trade unions arise from the altered social composition of the workforce in the German economy. First of all, I would like to sketch the enhanced workforce diversity. In a second step specific challenges to works councils caused by diversity are discussed. Workforce diversity refers to a variety of social aspects, such as e.g. class, ethnicity, gender, sexual orientation, race, age, qualification and social status. The attention paid to workforce diversity is attributed to the consideration that processes of social change effect the social composition of a nation's labour force in terms of increased social differentiation. Its focal point of reference is the industrial society of the 19<sup>th</sup> and 20<sup>th</sup> century in many western societies, which was characterised for a long period of time by a more or less stable social stratification, the establishment of a male-dominated standard employment relationship and a value-orientation of blue collar workers and public service sector employees which highlighted solidarity reflected by trade union membership and support of industrial action. These core features are closely tied to fordism as prevailing social pattern of regulation in industrial societies.

As shown in the last chapter the sectoral change from industrial to service economies went along with an altered social composition of the workforce of the German economy characterised by a decline in blue collar workers and an increase in salaried employees who display a comparatively higher degree of retention towards the institutions of works councils and trade unions and give priority to self-representation over representative forms of interest representation. Moreover, class identities lost their relevance as focal points of social identity in processes of social change and social individualisation, whilst a variety of social milieus emerged (cf. Beck 1992; Geiling 2001). Processes of social individualisation foster a diversification of life styles and value-orientations. In contrast to social individualisation trade unions and works councils still often refer to a more traditional image of the 'normal employee' which is affiliated to fordism.

This image of the 'normal employee' is also reflected by the male-dominated standard employment relationship, which is characterised by a "continuous full-time employment for life with increasing rights to social protection" (Dombois 2001: 158). Although the standard employment relationship contains a staying normative power as a pillar of the German social insurance system and as a relevant social construction, it is weakened by recent labour market developments and social change. On the one hand an increasing number of male employees are confronted with precarious forms of employment and a fragmentation of work-related careers by periods of unemployment and the necessity of professional reorientation (cf. Matthies et al. 1994). On the other hand female employment has been rising not only in Germany but globally despite an increase in mass employment in many European societies (cf. Castells 2001; Kohli 2000)<sup>6</sup>. In Germany this change in female employment can be illustrated by the typical development of labour force participation (ibid: 345): In 1957 the labour

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<sup>6</sup> According to OECD-statistics the average labour force participation rate of women increased from 48.3 per cent in 1973 to 61.6 per cent in 1993 in OECD-states. In the same period the labour force participation rate of men fell from 88.2 per cent to 81.3 per cent (Castells 2001: 159).

force participation rate of women declined sharply in early adulthood, i.e. after marriage and / or giving birth to children. In 1992 a different pattern of female labour market participation was observed: Women's labour force participation rate remained on a relative high level (over 60 per cent) throughout their adulthood until retirement. Their labour force participation curve included a second peak which hinted at a re-entry into labour market after the period of child rearing. The high rate of part-time employment among women indicates their interest in balancing work and family<sup>7</sup>. Differences in female labour force participation between the 1950ies and the 1990ies do not only reflect a change in the social composition of the entire labour force, but also a social-cultural change: women questioned the repressive patriarchal family model which legitimised male domination on the privilege as sole family provider restricting the spectre of women's activity to home work, child rearing and caring (cf. Castells 2001; Nunner-Winkler 2000)<sup>8</sup>. Therefore, the increase in female employment can be attributed to stronger work-orientation of women. In this perspective social inclusion in labour market cannot solely be explained by women's intention to contribute to the household budget, but rather as a means to self-realization or self-development and as a basis for an autonomous life, often providing women with a variety of social contacts and social recognition at work by colleagues (cf. Hochschild 2002; Nave-Herz/Onnen-Isemann 2000). A further increase in female employment, as e.g. in the expanding service sector, confronts works councils with enhanced demands to develop gender sensible strategies and to integrate gender democracy into their agenda of action. Otherwise, works councils might lose social legitimacy, at least among female employees.

New challenges to works councils result from demographic change towards an 'ageing German society', which can roughly be characterised by a decline in birth rates on the one hand and rising life expectancy attributed to a higher level of medical care and an improved general standard of living on the other hand.<sup>9</sup> The largest age group which will benefit from an increased average life expectancy is the so-called 'baby boomer generation' who outnumbers the age group of people who are over 60 years old today as well as age groups who are younger than the baby boomer generation. This leads to an accelerated ageing of population within the next 30 up to 50 years

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<sup>7</sup> Among the female labour force in the German economy 30 per cent work part-time, whilst this counts only for three per cent of the male labour force in 1998 (Kohli 2000: 379).

<sup>8</sup> The number of private households which are dominated by the model of the male sole family provider declined. In 1997 the male family provider model existed only in one out of three households in western parts of Germany and in a quarter of the entire private households in eastern parts of Germany. However, the increase of women in labour market participation rarely alters gender relations: Women are often confronted with a 'second shift' after work because their male partners seldom take on responsibility for reproductive activities, such as child rearing or housework (cf. Janczyk et al. 2003: 13 p.)

<sup>9</sup> This tendency of an 'ageing society' in Germany can be illustrated by the comparison between the age groups of children (up to 14 years of age) and human beings with at least 65 years of age between 1910 and 1990: It is striking that 34 per cent of the entire population were children in 1910, whilst their share declined to 16 per cent in 1990. In the same time span the percentage of people who were 65 or more years old increased from 5 to 16 per cent (cf. Heinz 2001: 152 p.). Demographic prognoses forecast that until 2030 the average age of the German population will increase to 48 years. In 2030 the percentage of people younger than 20 years old is estimated at 15 per cent, whilst the percentage of people older than 60 years is predicted to increase to 37 per cent (cf. *ibid.*: 153; Willke 1999: 209).

(Heinz 2001: 153). This general tendency of an 'ageing society' can only partly mitigated by an increase in immigration. Therefore, it can be predicted that the 'ageing society' will also walk along with an increasing average age of the workforce in the German economy. Due to a forecasted shortage of younger employees personnel policy or personnel management will have to adapt to demographic change and facilitate an 'ageing workforce' to cope with work-related demands by different programs and measures, such as work design, health promotion, age-oriented in-company career and personnel planning, by investments in their 'human capital' and in training programs tailored to work-related experience of these employees (cf. Brödner/Klaßen-Kluger 1998; Spieß/Winterstein 1999). Despite this striking tendency of an 'ageing society' its implications for the future composition of the workforce in the German economy was paid relative little attention to by management as well as by works councils and trade unions.

In 1957 retirement was fully established as a third phase in the span of life attributed to social policy in Germany, especially a dynamic rise of pensions, and to increased life expectancy. Therefore, pensioners were – compared to past generations – better equipped with financial resources and health questioning the for a long time prevailing image of retirement as a phase of physical and mental decay (cf. Kohli 2000: 367; Heinz 2001: 162). However, the group of elder employees became a reservoir for so-called 'humane personnel reductions' by companies in times of mass unemployment. This in-company labour market policy to reduce supply in labour was fostered by regulations on labour market policy which enabled – often financially attractive to older employees - early retirement schemes<sup>10</sup> or opened up other institutional pathways. This labour market policy was supported by a 'grand coalition' which consisted of the state, trade unions and employer associations (Kohli 2000: 368). At the establishment level management and works councils formed a dominant coalition utilising on a relative broad scale regulations which advocated a 'humane personnel reduction'. Feldman (2000: 189) points out the core idea linked with early retirement schemes: "The rationale behind this strategy is that if more older employees can be enticed to withdraw from the workforce voluntarily, fewer other employees will have to be laid off involuntarily".

The 'ageing society' entered not until recent years the public and political agenda focussing on financial problems the German social insurance system and social policy is going to face in the near future. Increased financial contributions to social insurance to be paid by employers and employees are regarded as a threat to the competitiveness of the 'economic location Germany' in times of enhanced economic globalisation. Public and political awareness of demographic change as 'cost factor' initiated regulations whereby the retirement insurance system was partly privatised and fees for medical care and services were to be paid by employees. However, the supply-side oriented labour market policy which was based on 'humane personnel reductions' led to some not-intended impacts: Early retirement schemes in private and public sectors enabled companies to externalise social costs of personnel reduc-

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<sup>10</sup> Besides early retirement incentives different forms of 'bridge employment' are practised in companies in order to enable older employees a smoother, gradual transition out of work instead of an abrupt leave. Although many older employees appreciated early retirement incentives, others opted for forms of 'bridge employment'. In this case they withdraw from their long-term positions but carry out other tasks offering them opportunities to work with colleagues and in familiar in-company settings (cf. Feldman 2000: 189).

tions to the social insurance system; they also turned out to deepen public indebtedness (cf. Brödner/Klaßen-Kluger 1998). At the establishment level early retirement incentives to shrink workforces and dismissals of elder employees in processes of restructuring often caused severe in-company knowledge problems, i.e. a loss of productive knowledge and a deteriorated mix of human resource skills and experience (Burke/Cooper 2000: 10): Older employees often controlled in-company 'zones of uncertainty' (cf. Crozier/Friedberg 1979) which rested on their specific expertise, experience and tacit skills. Partly, they were not willing to share this knowledge with younger employees because it constituted a power base they could rely on in order to protect their in-company social status or position. Partly, management and works councils underestimated the work-related knowledge older employees had acquired and negated the necessity to establish forms of knowledge transfer between elder and younger employees. This case may also reflect a depreciation of older employees and their knowledge regarding them as not being capable to cope with new demands at the workplace (cf. Sennett 1998).

The social composition of the workforce in the German economy will also change in terms of ethnicity and migration<sup>11</sup>. Germany is de facto one of the largest countries of immigration with its 7.3 million foreigners, i.e. 9 per cent of the entire population in Germany. The largest group of immigrants to Germany consists of Turkish people (2 millions). The percentage of migrants among the labour force of the German economy is nearly the same. According to different prognoses it is forecasted that until 2010 the number of migrants in Germany will increase to 15 millions accompanied by a decline of the entire population in Germany to 82.7 million people (Willke 1999: 203). Therefore, it can be predicted that the share of migrant employees among the labour force of the German economy will also increase. In this case works councils will be confronted with enhanced demands of social integration. In their role as 'good shepherds' (Kotthoff 1995) works councils will have to enhance activities to safeguard migrant employees combating prejudice and discrimination against them at the establishment level. Moreover, as mediators between different groups of employees works councils will be challenged to promote intercultural co-operation and communication, which are also prerequisites to draw on cultural diversity as social resource for an improved competitiveness of firms.

Until today, works councils and trade unions have rarely taken account of enhanced workforce diversity. This lack of awareness is reflected by their prevailing image of 'normal employees', i.e. German male blue collar workers or male employees working in public or private service sectors (cf. Gesterkamp 2002). This image turns out to be problematic in several ways to works councils: Firstly, this lack of awareness restricts works councils capability to fully draw on competences, skills and experience linked with specific groups of employees for processes of problem-solving and negotiations at the establishment level. Secondly, to negate diversity can foster processes of alienation between works councils and specific groups of employees, especially if they and their competences or values are not acknowledged by works councils. Moreover, a lack of awareness regarding diversity limits works councils' sensitivity to

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<sup>11</sup> Gender matters also in respect to migration because 50 per cent of all migrants worldwide are women. Among the 120 million migrants worldwide ca. 100 million move to other countries to join their family members or to look for work. Since the 1960ies numbers of female labour migrants increased, whilst before labour migration was dominated by men, female migration often being filed under the category of family reunion (cf. Hochschild 2003: 18 p.)

in-company forms of discrimination. For instance, if works councils are not aware of gender related forms of discrimination they will not promote gender democracy or intend to break the informal 'glass ceiling' preventing female employees from gaining access to management ranks or abolishing gender related wage discrimination (cf. Meyerson/Fletcher 2002; Carl/Krehnke 1997). Therefore, by the neglect of diversity works councils might at least contribute unwillingly to social tensions at the establishment level stemming from processes of discrimination.

### **7.3 Transformation of Companies**

Another important challenge to works councils arises from the emergence of the production model of postfordism (cf. Dörre 2003; Boyer/Freyssenet 2003), which walks along with enhanced organisational change at the company and establishment level. First of all, the core features of postfordistic organisations are characterised. Next, their relevance to works councils is discussed.

#### **7.3.1 Diversity of Production Regimes**

Until the 1980ies the German economy was dominated by the production model of fordism which rested on a division of labour between larger companies concentrating on mass production backed by fordistic work processes and hierarchical organisational structures on the one hand and small and medium-sized businesses focussing on a highly specialised and flexible production on the other hand. The market economy of fordism was dominated by the supply side corresponding with a stable demand for goods and services. Employees participated in economic growth via rising wages or salaries as a result of collective bargaining agreements. Higher wages were regarded as a compensation for alienating forms of work.

During the 1980ies and the 1990ies the - in many branches prevailing - production model of fordism eroded in many respects in Germany (cf. Immerfall 1999; Dombois 2001): The German unification was combined with extensive financial transfers by the state to improve the living conditions in East Germany, to support processes of industrial restructuring and to combat the high rate of unemployment in the eastern federal states. These financial transfers enhanced the public indebtedness, which was answered by a policy of cutting back public expenditures by German governments since then. Moreover, the German labour market faced an increase in mass unemployment on grounds of economic crises and economic rationalisation processes of companies as well as a spread of precarious employment relationships. Today there are more than four million unemployed in Germany. The high number of unemployed employees and the increase of economic competition shifted the balance of power between the social partners in favour of employers. The emergence of capitalist market structures in the former socialist countries of middle and eastern Europe confronts parts of the German economy with an extensive competition on prices and costs, which partly walks along with the transfer of plants or production to the new market economies, as e.g. in textile industry. The creation of the common European Market enhanced economic competition for many German firms. Since the beginning of the 1990ies an expansion of economic internationalisation or globalisation can be observed linked with an extension of global trade on information, services and goods, an increase of financial and capital transactions and the emergence of new multinational companies by fusions and take-overs. Productivity, cost and price competition have been exerting a strong competitive pressure on social standards.

Moreover, the domination of the supply side in the market economy was in times of enhanced economic competition replaced by a demand-side domination, which is linked with an unstable and fluctuating demand of goods and services as well as with a growing importance of quality demands.

This situation of enhanced economic competition fosters transformation processes of companies. A key feature of this transformation can be described as a disentanglement of traditional boundaries of companies, which is based on the reorganisation of supply chains, as e.g. vertically integrated company networks in the automotive industry (cf. Sydow 1992; Ammon et al. 1996). Moreover, it rests on the build up of virtual inter-company networks utilising new information and communication technologies in order to reduce costs via outsourcing and enhancing the competitiveness of different network partners by synergies of co-operation (Picot/Reichwald 1994). For instance, such virtual networks are a common form of co-operation in the new economy.

A third strategy of the disentanglement of companies consists in the transformation of companies into network companies according to the new management philosophy 'small within big is beautiful' (Wassermann 2002: 93). A network company is created by the outsourcing of organisational units as subsidiaries or the purchase or foundation of other companies in order to integrate them into the network company (ibid.). Network companies are often organised by a holding structure as an umbrella organisation with a variety of subsidiaries which obtain a limited economic autonomy. Network companies are created in order to enhance the flexibility and competitiveness of corporations or companies to different markets or segments of markets. The subsidiaries are confronted with internal and external market pressures on grounds of cost-, efficiency- or productivity-based comparisons with internal or external competitors. The governance of the focal or parent company is based on indirect regulation by the fixation of economic targets, management by objectives, result-oriented controls and forms of 'discursive coordination' (Braczyk 2000: 562 pp.), in which economic objectives between the focal company and its subsidiaries are agreed on or imposed on subsidiaries. Subsidiaries obtain the responsibilities and autonomy to attain these objectives by self-organisation. The principle of indirect regulation paves the way to internal markets within companies or network companies. It is also implemented within subsidiaries or decentralised companies. The self-regulation of decentralised organisational units is supported by an integration of operating and decision-making and a reduction of the division of labour. Self-regulation at the workplace level rests on postfordistic work organisation with different forms of team or group work as a key feature. Contrary to the production models of Taylorism and Fordism employees are now often regarded as critical resources whose motivation, knowledge, competences, commitment and even emotions are crucial to the attainment of economic goals (Schreyögg 1998: 218).

Nevertheless, there is no clear trend from fordistic to postfordistic production regimes, but rather a complex variety of forms of work organisations in different branches. An empirical study by the Institute of Labour and Technology (IAT) analysed changes in work organisations in Germany between 1993 and 1998. The hypothesis, that the crisis of fordism opened up a new road to postfordistic production regimes, can be argued according to the IAT-study. It illustrates that the percentage of employees working in tayloristic or fordistic forms of work organisations increased from 37.4 per cent to 39.3 per cent as well as the share of employees working in posttayloristic forms of work organisations, which cover semi-autonomous team work and self-regulated individual work, raised from 22.7 per cent to 24.4 per cent (Bosch



2000: 253 p.). This result hints at a polarisation of work organisations in the German economy walking along with an imbalance in the distribution of wages: Nearly 50 per cent of employees employed in tayloristic or fordistic work organisations earned less than a net income of 1000 € per month, whilst such a net income only 25 per cent of the workforce working in postfordistic forms of work organisations obtained (Nordhaus-Janz/Pekruhl 2000: 38). Tayloristic and posttayloristic forms of work organisations spread as well in industrial sectors as in service sectors. For instance, one can detect tayloristic forms of work organisation in fast food restaurants, in call-centres with low quality tasks and especially in retail trade, which is characterised by an increase of often precarious forms of part-time work and further tayloristic division of labour (Bosch 2000: 254).

### ***7.3.2 Team Work and Self-Regulation at Work***

The sketched transformation of companies means a challenge to works councils and their self-image in several respects. First of all, the challenges to works councils by team working are referred to. In companies different types of team working may be introduced. They embrace work teams, as e.g. semi-autonomous group work, at the workplace level, parallel teams which operate alongside the formal organisational structure, as e.g. quality circles, project-teams formed for a specific purpose and a limited period of time and last but not least management teams (Cordery 2002: 326-327). Despite the broad variety of work teams they share some common features, such as regular team meetings with a free choice of issues to be dealt with and the institutionalisation of a team speaker who represents the team and moderates discussion processes during team meetings (Minssen 1999: 136-137).

Team working is at least in two respects a challenge to works councils: Firstly, team working and other forms of direct employee participation induced by management are often considered as a potential threat to works councils which undermine their role as representatives of the entire workforce and their monopoly on collective interest representation at the establishment level (Müller-Jentsch 2003: 51). Sceptical works councillors argue that team work is a kind of competitor to works councils, especially offering options of direct individual and collective participation to employees. In this view team speakers are often regarded as a disliked rivalry to works councils. Moreover, works councils may consider team concepts as a threat to their social-integrative function. In this perspective team work might foster group egoism and an internal fragmentation of employee interests. For example, work teams may develop internal structures and informal norms with the tendency to exclude those who do not comply with them.

Notwithstanding, the sceptical point of view is not shared by all works councils. Empirical findings show that especially strong works councils confide in their role of employee representatives and even support team concepts as options to link direct employee participation with representative participation by works councils (cf. Müller-Jentsch 2003a: 468). These works councils often negotiate works agreements with the company management to introduce team working structures. In this perspective direct employee participation is regarded as a supplementary form of participation which can relieve works councils from the regulation of workplace matters. Moreover, the co-operation between works councillors with work teams widens their options to settle work-related problems and disputes by the direct involvement of workers' 'first hand expertise' as a specific resource of knowledge and creativity for negotiations with the company management (cf. Hirsch-Kreinsen 1995).

The transformation of firms towards decentralised and market-driven organisations is accompanied with the internal break up of once established distributive patterns of power and status, defensive routines and established work practises. Furthermore, it may include transfers of employees and/or dismissals as a means of cost reductions. This transformation process increases the demands on works councils to safeguard the social integration of companies and to mediate between different groups of employees or in-company actors and their specific interests (Kotthoff 1995: 435 pp.). In face of an enhanced collision of interests among in-company actors works councils realise a rising demand in respect to training in conflict resolution for an effective action as moderators and interest mediators (ibid.: 440).

Tayloristic as well as posttayloristic forms of work organisations can be found simultaneously in many establishments whereby the demands for works councils in the field of work design and organisational development are increased. 'Old recipes' of a humane work design might be still useful to overcome a tayloristic division of labour, but they do not fit to postfordistic work organisations. Works councils are confronted with the ambiguous consequences of postfordistic work organisations which offer employees self-determination and self-regulation at the workplace and foster feelings of enthusiasm and commitment at work (cf. Warhurst/Thompson 1998; Becke et al. 2003). However, new forms of psychological stress and health problems, such as burn-out or stress attributed to emotional labour, often occur in postfordistic work organisations (cf. Peter 2003; Hochschild 1983). Postfordistic work can also be characterised by an intensification of and a disentanglement of work. This disentanglement is for instance marked by extended working hours and a removal of boundaries between work-related roles and the personality of employees (cf. Senghaas-Knobloch 2001; Gleißmann 2000), which may induce forms of self-alienation. Moreover, the disentanglement of work in postfordistic production concepts is reinforced by the increased significance attributed to customers. According to the principle 'customer first' or 'customer is king' customers are given priority in management and work processes. This principle often collides with established procedures, rules and competencies which are available to works councils in order to protect employees (cf. Tietel 2004). However, if employees identify to a large extent with their work and its related customer expectations, works councils' efforts to protect employees from a disentanglement of work may be rejected by employees. The disentanglement of work is a new phenomenon for works councils to deal with compared to working conditions in fordistic work organisations. Therefore, the ambiguity of self-regulated work or postfordistic forms of work organisation leaves works councils behind with an increased demand for advice.

### ***7.3.3 The Ambivalence of Co-Management by Works Councils***

In processes of organisational transformation works councils take on a specific role of change agents attributed to the so-called co-management of in-company change processes or restructuring. This form of „co-operative modernisation“ (Bertelsmann-Stiftung/Hans-Böckler-Stiftung 1998) is based on the participation of works councils in „strategic business decisions“ (Müller-Jentsch 2003: 51). In particular, co-management is characterised by early information of works councils on trends related to the company development in order to enable works councils in good time to develop demands in social and personnel respects. Then it contains an involvement of works councils in important in-company change processes by management. Last but not least, co-management rests on works councils' access to all relevant information about the company. In return a company-oriented and economic way of thinking is

expected of works councils by management (Wassermann 2002: 60). Co-management is compatible with other important functions exerted by works councils, such as the protection of employees' interests and the optimisation of organisational transitions. The top-management of companies often supports the function of co-management by works councils because it expects a relief of demands related to organisational transformation. Moreover, an active involvement of works councils offers a stable and calculable organisational change in the view of management (Kotthoff 1995: 437).

Two different levels of co-management can be distinguished each of them contains specific risks to works councils. The first refers to co-management at the level of company-management. At this level works councils are involved in the creation of strategies related to the further development of a company. Works councils' contribution to strategy development consists above all in a preventive assessment of (potential) social consequences (ibid: 440). This active involvement is risky for works councils because they might lose the critical reflection of strategies proposed or favoured by the top-management. In case of a high identification with those strategies works councils may alienate themselves from the workforce they represent. The second level of co-management focuses on an active involvement of works councils in steering committees of organisational change. Contrary to the first level with works councils acting as generalists they act as experts and specialists at the second level. The risk related to co-management at the second level consists in being absorbed by detailed problems of organisational change and a neglect of a strategic approach. According to Kotthoff this risk can be coped with, if works councils practise an internal division of labour with regard to the two levels of co-management (ibid.). Nevertheless, an effective co-management affords a special training of works councils to be capable of a reflective involvement in organisational change processes. Furthermore, it requires an access to internal and external expertise and a higher competence of works councils in the utilisation of adequate work methods for co-management. These requirements are necessary to enable works councils to develop alternatives to management-decisions (Wassermann 2002: 61).

In economic crises of the 1990ies the relevance of "soft forms" of plant level employment policy increased in larger as well as in medium-sized companies. The Works Constitution Act provides works councils with the right to negotiate so-called social plans with management. In social plans measures to protect employees from dismissals are fixed. These measures can e.g. include alternatives to lay-offs, such as early retirement schemes, short time working, vocational training, in-company transfers of personnel or compensations for voluntary redundancies (Dombois 2001: 140). Taking account of works councils' rights related to the participation in selecting personnel, internal mobility and social plans the company management learned to prefer such soft forms of employment policy instead of favouring dismissals to overcome crucial economic situations of a company. Redundancy remained the last measure to be taken. By pushing soft forms of employment policy at plant level works councils often succeeded at least in the protection of the core workforce from dismissals and sustained job stability - so far the 'bright side of the moon'. However, this successful employment policy contains also a 'dark side of the moon'. It is revealed by higher obstacles to employees of the external labour market to gain access to companies. In the long run work is carried out with a shrinking core workforce, if companies turn into "fortresses" against the external labour market. This may question the basis for a competitive in-company knowledge management as well as increased work intensification for the remaining core workforce.

### **7.3.4 Fragmentation of Works Councils by Network Companies**

The transformation of companies into strategic network companies or networks of companies leads to an erosion of companies in the traditional sense. Therefore, network companies are a threat to the foundations of the Works Constitution Act, which was not conceptualised for network structures of companies. According to Kotthoff (1995: 443) such network structures contribute to an erosion of the so-called “paradigm of the establishment” as a pillar of the German works constitution. This paradigm consists of the guiding principle of establishments as hierarchically structured communities of production combined with a unity of management and operation. The described institutional configuration of works councils is embedded in this community of production. The latter also builds a platform for the social exchange between management and works councils. The foundations of social exchange, i.e. reciprocal information and communication between in-company social partners and a stable relationship as basis for mutual trust and reliability, are questioned by the structure of network companies. The satellite-establishments of network companies are often sub- or sub-sub-companies. This means that the management of such satellites is only provided with fewer competences in strategic decision-making. In this case top-managers of subsidiaries are not anymore the relevant counterpart to works councils because significant strategic decisions are made at higher levels, as e.g. at the holding level of network companies, to which works council do not have any access to. Because of the very limited range of strategic decision-making at the level of subsidiary-managers the social exchange between management and works councils erodes. Works councils are left behind without any direct counterpart on the management side. A prerequisite of social exchange at the establishment level consists in managers equipped with relevant competences of decision-making (cf. Dörre 1999: 200; Kotthoff 1995: 443).

This problem is enhanced in multinational network companies with different centres of decision-making located in several countries. In multinationals or large network companies social exchange between works councils and management at the establishment or company level is furthermore questioned by the emergence of a new social type of top-managers. Their orientation of action is marked by flexibility and their determination to attain economic goals in a variety of companies (ibid.). Flexibility becomes a key feature for promotion and career options; furthermore, it is a test of one’s proof of worth (cf. Sennett 1998). Flexibility requires the change of top-management positions. Thereby, it contradicts to continuity as the basis of social exchange between management and works councils. If flexibility replaces continuity on the managers’ side, they will hardly develop a social affiliation and responsibility towards a certain company or establishment. In case of management changes works councils face difficulties in preserving the social integrative community of production (Kotthoff 1995: 443-444). Social exchange is a crucial social resource for trust-related alliances of modernisation at the establishment level (Dörre 1999: 199). If it erodes, prospects of a social integrative modernisation of firms will fail.

Processes of transformation continue also in network companies. In many cases they are linked with redundancies, selling and buying of companies or subsidiaries, closures of inefficient satellite-companies or plants. Moreover, processes of outsourcing open up opportunities to change sectoral areas of collective bargaining. Therefore, the outsourcing of in-company units as subsidiaries is often linked with working conditions being altered. Outsourced subsidiaries which belong to a sectoral area of collective bargaining different to the parent company may create new demands for employees, as e.g. comparatively lower wages or longer working hours and

ployees, as e.g. comparatively lower wages or longer working hours and enhanced insecurity of employment perspectives. It also leads to a social disintegration on the side of employees: Splitting up entire workforces in several workforces of different subsidiaries weakens the spatial as well as the social cohesion among employees (Wassermann 2002: 95). Moreover, this split up of entire workforces may walk along with a fragmentation of former larger works councils to several minor works councils each of them representing the workforce of a certain subsidiary. This tendency confronts works councils with higher or new demands in co-ordinating themselves on a level superior to a single establishment, subsidiary or company. In order to eschew that the interests of employees and works councils of different subsidiaries or companies are played off against each other by co-ordinated management activities at the network level, works councils are going to found networks on their own. Networking among different works councils at a holding level requires specific qualifications and competences to co-operate effectively in network companies. The new challenges to works councils in network companies cannot be met with established structures of works councils on a corporate level, because network companies embrace a larger spectre of branches and markets. Therefore, works councils co-operating in networks superior to the subsidiary or establishment level have also to direct their attention more closely to these different branches, markets and diverse groups of customers (ibid.). Such informal forms of networking among works councils within network companies lack a legal basis for co-determination in the works constitution act of 1972. This lack is not astonishing, because at the beginning of the 1970ies nowadays network companies were unknown to legislators.

## **7.4 The Decentralisation of Collective Bargaining to the Establishment Level**

During the 1990ies the severe crisis the German economy faced increased the demand to find flexible solutions towards rationalisation, enhanced competitiveness and the avoidance or at least limitation of redundancies. Therefore, employers' associations and trade unions often agreed on the utilisation of a legal option within the legal frameworks of the Works Constitution Act (§ 77) and the Collective Agreement Act (§ 4) which provides so-called opening clauses to enable supplementary works agreements to collective agreements. According to these acts employers' associations and trade unions can authorise management and works councils at the plant level to conclude supplementary works agreements (Jacobi et al. 1998: 218)<sup>12</sup> for the duration of a collective agreement. In this view collective agreements function as frameworks, in which general rules, margins of wage increases and pillars for the regulation of new matters are fixed, whilst the specific regulation and differentiation of general norms is delegated to the plant level (Jacobi 2003: 35). The supplementary works agreements have to comply with the collective agreements. Opening clauses foster forms of "concession bargaining" which rest on the core idea that opening clauses facilitate firms to reduce labour costs or to increase productivity, whilst in return employment is guaranteed at the plant level (Dombois 2001: 148).

There are several options for opening clauses which can refer to entrance pay, economic hardship, location investments, working time corridors, competition between different sectoral collective agreements, the suspension or postponement of wage rises or branch clauses (for an overview see Jacobi 2003: 35-36). To put it in a nutshell, two general types of opening clauses can be distinguished (Seifert 1999: 158): The first type refers to financial or monetary concessions, as e.g. deferments of pay increases, lower entrance pay for young or unemployed workers and a reduction or differentiation of standard rates of wages. The second type of opening clauses is directed to the flexibilisation of working time. It may include a (temporarily) reduction or extension of working time without monetary compensation, the implementation of working time accounts and agreements in respect to the accumulation and compensation of overtime.

The combined regulation of collective and works agreements via opening clauses enlarge the options of firms to find specific and flexible solutions to economic problems or challenges, which cannot be met sufficiently by generalised norms of collective agreements. Therefore, opening clauses on the one hand increase the adaptability and flexibility of multi-employer sectoral agreements of collective bargaining to specific situations of firms. In this perspective opening clauses enable a downgrading of collectively agreed standards to improve or stabilise the economic situation of firms and protect employees from dismissals (Dombois 2001: 149). On the other hand the

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<sup>12</sup> The spectre of opening clauses ranges from "soft recommendations to "obligatory conditions" to social partners at the establishment level (Müller-Jentsch 1997: 289). Opening clauses were in the past mainly utilised in bargaining processes on flexible working time. When the IG Metall succeeded in collective bargaining in 1984 introducing the 38.5 hours working week employer associations pushed in return to opening clauses for a flexible implementation of the weekly working hour reduction at the plant level. These negotiations triggered off about 10.000 works agreements on flexible working hours in the metal industry (ibid: 289 pp.).

generalising character of collective agreements is undermined leaving behind heterogeneity of implementation at the establishment level.

This decentralisation of collective bargaining policy means that the establishment level emerges as an additional locus of distributive bargaining, which is linked with new challenges to the institution of works councils: Works councils often have to cope with processes of organisational transformation and decentralisation. Opening clauses and “alliances for jobs” at the establishment level enlarge their spectre of tasks and responsibilities, especially in the field of collective bargaining. The decentralisation of collective bargaining functions towards the establishment level undermines the established division of labour between the political arenas of the works constitution and collective bargaining (Müller-Jentsch 2003a: 468). It also poses another important demand on works councils, which might lead to a “structural overcharge” (Schmidt/Trinczek 1999: 122) and undermine social exchange at the establishment level (Kotthoff 1995: 446). Works councils have experience with social exchange and its affiliated integrative bargaining. However, they may be neither accustomed to nor qualified enough to cope with distributive bargaining processes and its related economic exchange. In respect to distributive bargaining they also lack the trade union power of sanctions.

Above all in an economic crisis of an establishment or in times of enhanced economic competition the works councils’ range of action and negotiation in distributive bargaining is limited. This especially counts for situations, in which works councils make concessions to managers on matters, in which works councils have a strong legal position (Schmidt/Trinczek 1999: 122). In times of an enhanced economic competition the logic of competitive restructuring prevails in industrial relations at the establishment level. This complicates integrative compromise on rationalisation between management and works councils. Then works councils solely remain negotiation strategies which aim at restricting negative effects of competitive restructuring as much as possible. In face of drastic financial cutbacks and competitive restructuring combined with redundancies works councils concentrate on defensive action in order to restrict or eschew further dismissals and to negotiate compensations for employees who suffer from dismissals or outsourcing (cf. Hirsch-Kreinsen 1995: 375; Dörre 1999: 201 p.). For example, the management of big German companies, such as e.g. DaimlerChrysler and Siemens, threatened to close down production plants in Germany and defer production to low wage countries in order to reduce labour costs. In collective bargaining negotiations between management and works councils and the IG Metall union agreements were recently settled which focus on an extension of working hours without financial compensation for employees. A prerequisite to cope with and to reduce structural overcharge on the side of works councils consists in support, advice and training offered by trade unions. Such a support requires sufficient capacities and resources of trade unions. Here, the door to another challenge to works councils is opened.

### **7.5 *Fragile Trade Union Support to Works Councils***

During the 1990ies both of employer associations and trade unions suffered from a decrease in social legitimacy. Employer associations had to face an increase in exits, especially by smaller and medium-sized companies being seldom the target of trade union strikes. Moreover, many newly founded companies, as e.g. firms of the new economy, and American-based multinationals, such as McDonald’s and Wal Mart, avoided to join any German employer association. This tendency weakened the soli-

parity among employers and their power to generalise collective agreements at sectoral levels. As a reaction to these problems some employer associations offered firms a special “non-coverage” membership status in order to stay close to the collective bargaining structure without complying with standards of sectoral collective agreements (Jacobi 2003: 27). The scope and the coverage of collective agreements declined during the 1990ies. For instance, between 1995 and 1997 the percentage of private-sector establishments in West Germany adhered to multi-employer sectoral agreements decreased from 52 per cent to 49 per cent. Looking at employees whose working conditions are regulated by collective agreements this meant that their share declined from 70 per cent to 65 per cent (Dombois 2001: 150).

The decline in union membership can be partly attributed to processes of de-industrialisation in eastern Germany, which went along with the closure of former key industries as an important reservoir of union membership. The expansion of the service sector enhanced an altered composition of the German workforce since the 1980ies; white-collar employees outweighed blue-collar workers. This change was not mirrored in union membership, because 70 per cent of the entire union membership consisted of blue-collar workers in 2001, most of them working in the public sector and traditional industrial branches (Jacobi 2003: 21). Between 1994 and 1998 the DGB-affiliated trade unions lost 15 per cent of their membership. In other words the trade unions’ membership decreased from 9.768.373 million members in 1994 to 8.310.783 members in 1998 (Dombois 2001: 152). Recently published statistical figures hint at a further process of membership decrease since then because in December 2002 the DGB-affiliated unions covered 7.7 million members in December 2002 (Jacobi 2003: 20).

The membership of most of German trade unions is dominated by male blue-collar or public sector service workers. Therefore, trade unions are still oriented towards the protection of the standard employment relationship and a wage policy which reflects the image of the male and sole family provider. German trade unions developed comparatively few initiatives to modernise their understanding of work or labour taking account of altered gender relations and of women’s stronger work-orientation (cf. Schnack/Gesterkamp 1998: 220 p.) Although the workforce of the rapidly expanding service sector is characterised by a still continuous increase in female employment, women are underrepresented in trade unions according to their share in the entire workforce in the German economy<sup>13</sup>. Among male workers 36.5 per cent are members of DGB-affiliated trade unions, whilst only 21.8 per cent of all female workers are organised in these unions (Jacobi et al. 1998: 203).

Moreover, trade unions are worried about the low and yet still declining number of young members under 25 years (Dombois 2001: 152). Only 17 per cent of younger workers are members of DGB-affiliated unions (Jacobi et al. 1998: 203). This loss of membership may also indicate that German trade unions were not capable to develop appropriate membership strategies in respect to the recruitment and binding of new members in the face of general trends of social individualisation and a stronger

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<sup>13</sup> In 2000 43.5 per cent of the entire workforce was female in the German economy (compared to 42 per cent within the workforce of the European Union). The increase of female employment went along with an expansion of part-time work. Between 1990 and 2000 the percentage of part-time work increased from 13.3 per cent to 17.6 per cent in Germany (European Union: from 13.3 per cent to 16.3 per cent). In 2000 nearly 87 per cent of all part-time workers in the German economy were women (Ruppert, 2003: 106 p.).



social differentiation even in former cohesive working class segments (cf. Geiling 2001).

The decline in membership walked along with a decrease of membership fees which restricted drastically the financial resources of many trade unions<sup>14</sup>, especially smaller unions suffered from financial losses. Therefore, the crisis of social legitimacy resulted in a financial crisis in many trade unions which triggered mergers of unions based on take-overs as well as amalgamations, as for example the newly founded large service sector trade union ver.di. At the end of the 1990ies only eight out of the former 16 German unions (1950) survived. The remaining trade unions often restricted the range of their activities to 'core business', as e.g. collective bargaining, social or industrial policy, and underscored service-orientation as a pathway to attract new members or to halt the ongoing decline in membership (cf. Martens 2001: 177).

Nevertheless, mergers of trade unions caused severe problems at the union level as well as at the level of works councils: First of all, some mergers were accompanied by disputes between the involved trade unions. Conflicts did not only result from quarrels about the distribution of power positions, influence or financial resources, but were also attributed to different organisational cultures of unions (cf. Klatt 1997). Secondly, mergers created larger trade unions with a more heterogeneous membership. As a result of the increased heterogeneity the interests of membership widened and became more differentiated (Jacobi 2003: 22). Thirdly, mergers turn out to be of disadvantage to works councils in some respects: Mergers often are accompanied by processes of centralisation and cost reductions. Both of these tendencies lead to a reduction of highly qualified fulltime trade union functionaries at the level of local executive bodies. These local functionaries can provide works councils with advice and support in processes of organisational transformation and may facilitate them in processes of the decentralisation of distributive bargaining at the establishment level. The centralisation of trade union organisations also embraces a centralisation of highly qualified functionaries to the headquarters of trade unions, thus increasing the barriers to works councils for direct support and consultancy. In sum, the conclusion can be drawn that the centralisation of German trade unions and the reduction of their financial resources will not be sufficient to meet the challenge of an increased demand on advice and support provided for works councils (Schmidt/Trinczek 1999: 122).

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<sup>14</sup> The decline in union membership triggers off reorganisation processes and bargaining conflicts within unions as organisations. For instance, the trade union ver.di nearly lost 300.000 members between March 2001 and December 2003. Until the end of 2002 the financial deficit mounted to 71.5 million €. This deficit induced consequences for the nearly 5000 employees at ver.di (Sauga 2004: 71): The national executive committee of ver.di and the ver.di-works council settled an agreement in 2003 which included a forcible loan to ver.di financed by a wage-cut of five per cent for half a year. Moreover, voluntary reductions of working hours by employees will not be financially compensated anymore. In the meantime, the financial deficit expanded because of an ongoing decline in membership. Under these circumstances the national executive committee pushes urgently for further cost reductions in forms of compulsory reductions of working time without financial compensation for all ver.di-employees. The announcement of additional financial cuts is rejected by the ver.di-works council who interprets it as a violation of the settled and still valid agreement. It sounds paradoxically, but the reorganisation processes of trade unions motivated disappointed union employees to join the association of union-employees (VGB, i.e. Verband der Gewerkschaftsbeschäftigten), which was founded to negotiate collective bargaining agreements with the DGB-affiliated unions as employers (ibid).

## **8. *Institutional Learning as a Starting Point to meet new Challenges***

### **8.1 *Learning and Institutions – a Contradiction?***

Initiating und sustaining processes of learning proves to be on the one hand a vital prerequisite of institutions of the German system of industrial relations to adapt to economic and societal change and to cope with new challenges which arise from the self-dynamic interaction processes within the social figurations of industrial relations as well as to imprint on or influence these change processes. On the other hand institutions are generally characterised by an inert tendency to maintain social order and stability. Institutions restrict the potential range of social action via normative means of regulation, as e.g. social conventions, social rules or norms and the power of sanctions, and by influencing the social cognition of actors. They serve two significant functions: To form human needs and to safeguard the existence of societies and their structures enabling social order (cf. Lipp 1992: 136). In governing social and economic action institutions also serve as elastic and multifunctional mechanisms to mediate and channel social tensions (ibid.). As social filters institutions select choices of social action and in decision-making which are appropriate in a certain situation (Visser 1996: 5). Delivering information to mutually interdependent actors, as e.g. in the case of industrial relations, and providing sanctions they support social actors in the development of mutual expectations and therefore contribute to an enhanced predictability of social action (ibid.). Whilst institutions focus on social stability and the predictability of social action they partly lack inventiveness and are often resistant to change. Institutional change is on the one hand a prerequisite of societal change because social change often evolves by the reformation or creation of institutions (cf. Lipp 1992: 137). On the other hand institutional change often takes place at a relative slow pace and is to a high extent characterised by path dependency. Therefore, 'unconventional' forms of change, which are alien to the historic corridor of institutional evolution, such as institutional breakages or collapses, seldom occur. Path dependency means that the further development of institutions is influenced by the formative period, in which institution building took place. According to Müller-Jentsch (2003a: 472) institutional change takes often place at 'historic points of intersection' which alter power relations between involved social actors and create structures of opportunity for an institutional reform or redesign<sup>15</sup>.

Institutional learning is a form of institutional change. In respect to the system of industrial relations it is closely linked with collective learning processes among and between the different social actors being involved in. There exist two ways of institu-

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<sup>15</sup> Such 'historic points of intersection' are for example wars, the election of a new government in democracies (as for instance the first German government led by the social-democratic party and chancellor Willy Brandt), global economic crises or important industrial disputes and their outcomes. The institution of works constitution or works councils in Germany is a good example of path dependency of institutional development because the institution of works constitution was created by the state, i.e. by legislation of the social-democratic government and parliament in 1920 with its core features still valid today (cf. Wassermann 2002; Schmidt/Trinczek 1999).

tional learning: Firstly, it can occur more or less unintentionally, embedded in self-dynamic social interactions between actors. Secondly, it can take place as an organised collective learning process of social actors who shape institutions and their related social norms and rules and reflect underlying basic assumptions affiliated with institutions. Works councils and trade unions are significant social actors who influence the development of works constitution or collective bargaining as social institutions. As socially established actors which are legally guarded against their abolition they became social institutions on their own.

In respect to the new challenges works councils face today, I would like to discuss demands of institutional learning at the level of works councils and even at the level of trade unions, which might contribute to cope effectively with these challenges. The discussion of some demands related to institutional learning is focussed on organised collective learning processes. Institutional learning refers among others to the level of institutional norms and rules and the guiding principles of institutions. It also embraces institutional actors' strategies and practises related to institutions. Institutions are products of social interaction and learning, i.e. they are created, challenged and changed by social actors. Taking account of the social constitution of institutions requires reference to the social construction of institutions. Actors bring on cognitive maps, values, beliefs and basic assumptions in interaction processes linked with institutional development. These dispositions are often learnt implicitly, as e.g. in processes of internalisation and socialisation in institutional settings. The power of institutions to govern everyday action can be attributed to their often implicit character in social action or decision-making because institutions are often taken for granted without being reflected from time to time (cf. Preskill/Torres 1999: 99). If social constructions and dispositions are rooted deeply in everyday practises in institutional settings, they achieve a high extent of social acceptance. Social actors tend to sustain and defend these constructions even against contradicting evidence or incidents (Argyris 1996). Such defensive routines often turn out to be strong barriers to institutional learning, above all if questioning these social constructions is regarded as a threat to established institutions. Moreover, social constructions guide the awareness and interpretation of socio-economic change and may prove to be highly selective in the development of practises, strategies and mechanisms to cope with challenges institutional actors realise and define as such.

Despite the power of defensive routines institutional learning can be initiated and promoted. As the history of works councils in Germany proved, institutional learning can take place, if an institution is challenged by conflicts between social actors or new strategies designed by works councils' 'counterparts'. For instance, the institution of works councils remained its stability and social recognition among employees when management introduced participative production concepts to the establishment level. Works councils often coped successfully with the underlying risk that this participative management offer to employees could undermine their interest representation by opening up their interest representation to employees whereby new space for dialogue between works councils and employees was created. Furthermore, works councils played an active role in the implementation of participative production concepts on grounds of co-management. Institutional learning can be initiated, if an institution is threatened in existence or at least facing a severe crisis. This requires that institutional actors recognise such a threat or crisis. For example, the decline in membership German trade unions face indicates a crisis of social legitimacy. Therefore, the recognition of existential threats or crises may serve as a starting point to institutional learning, reflecting and altering established routines, practises, strategies

and dominant social constructions of reality. Furthermore, institutional learning can be fostered, if institutional actors develop and implement mechanisms and procedures to reflect and to examine, whether their strategies, core beliefs and assumptions are still appropriate to meet new challenges. This requires to a certain extent previous institutional learning having created or enhanced an institutional awareness and sensitivity to changes within an institutional environment.

## **8.2. *Institutional Learning of Works Councils***

In my opinion the future of works councils as a relevant pillar of the German system of industrial relations is closely woven with a reflective modernisation of works councils and trade unions which is based on processes of institutional learning. Works councils would be overestimated to meet the sketched new challenges without any support. They require a supportive infrastructure reproduced and sustained by trade unions. However, unions remain also highly dependent on works councils: They will not overcome their financial misery by giving priority to the development and implementation of cost cutting programs, but rather they also have to increase their membership. Insofar, they still depend on works councils to recruit new members. Moreover, unions require the support of works councils to build up or mobilise their power base of members in industrial conflicts. Therefore, it could be assumed, that 'the song remains the same' - under altered circumstances. Notwithstanding, there are hints, that - despite this mutual interdependence between works councils and unions - the linkage between the two institutions will lessen. For instance, a new study on the regulation of interests in the digital economy (Städtler et al. 2004) illustrates, that in areas dominated by highly qualified employees, the social reputation of works councils as an institution is comparatively positive, especially if employees had direct experience with works councils. However, most of the interviewed highly qualified employees disapprove of trade unions because they are regarded e.g. as pillars of the 'old economy', not in touch with the lifeworld of employees in the digital economy and hence incompetent to represent their interests (ibid.: 156). These empirical findings indicate that even if unions support employees to establish works councils in firms of the digital economy, they cannot rely on works councils as a recruiting base for union membership, at least in areas dominated by highly qualified knowledge workers. This tendency might lead to a further shift of the figuration and its asymmetrical power balance (cf. Elias 1993; Menell 1992) between works councils and unions in favour of works councils. However, an eroding support of trade unions by employees may cause even severe problems for works councils because in order to cope successfully with new challenges - especially if functions of collective bargaining are delegated to the establishment level and works councils are confronted with the spread of network companies - they will to a larger extent remain dependent on support and advice provided by unions.

### **8.2.1 *Critical Reflection of Practises in Interest Representation***

An institutional learning of works councils in order to meet new challenges linked with postfordistic and participative production concepts includes a reflection of practices of interest representation. In this case works councils' institutional learning may be fostered by co-management and an enhanced involvement of and dialogue with employees. In processes of organisational transformation co-management proves to be a core demand to works councils. Works councils have to create and enhance resources to combine co-management with conceptual participation, i.e. to influence

and imprint on company-strategies by confronting management with their own strategic ideas and concepts to sustain the competitiveness of companies as well as to safeguard the in-company lifeworld and the interests of employees. Co-management therefore requires works councils to supplement their protective strategies by conceptual strategies which aim at the further development of companies and their social lifeworlds.

In order to avoid being trapped in or absorbed by detail work of co-management (cf. Kotthoff 1995), works council should integrate employees, their competencies and tacit knowledge to design and to collectively reflect processes of organisational change and transformation. Opening up interest representation to forms of direct participation also counterbalances management efforts to integrate employees and their human resources by participative management concepts. Additionally, such linkages between representative and direct participation are compatible with many employees' expectations to be recognised as industrial citizens in companies (cf. Müller-Jentsch 1994). They also take account of – especially highly qualified or younger - employees' interest in a higher extent of self-representation. Works councils may attract employees to direct participation as well as to become candidates for works council elections, if they e.g. check and utilise innovative forms of co-determination and direct participation first practiced in firms of the digital economy.

Works councillors often develop a self-understanding and orientation of action which rests on the assumption that works councils representing the entire workforce of an establishment do not only act on behalf of the workforce but can also rely on their expertise knowledge in highly regulated and legally codified fields of negotiation (as e.g. occupational health and safety), in which works councils attained a knowledge advantage compared to employees. This orientation of action and self-image is linked with established routines of communication. Due to these routines works councils tend to act as competent and in some ways paternalistic or autocratic interest representatives, who define social situations to be intervened in.

In processes of organisational transformation as well as in implementation processes of innovations at the establishment level, as e.g. distant-work or the introduction of environmental management systems, the character of fields of negotiations changes to less specific, sometimes ambiguous matters of negotiations, which cannot be regulated by norms and codifications because of their contingent nature. For instance, the process and/or outcomes of participative management approaches cannot be foreseen. Therefore, the traditional status of works councillors as experts of interest representation is questioned. Furthermore, works councillors' paternalistic orientation of action towards employees is challenged by employees' expectations to be treated also by works councils as competent problem solvers at the workplace. Works councils can cope with contingent organisational change processes if they alter their communicative style and enlarge their traditional role-set by developing or enhancing roles of co-manager, interest mediator and 'in-company translator' between different subcultures or work-cultures (cf. Klatt 1994; Kotthoff 1995). As mediator and translator between diverse groups of employees or subcultures of a company (cf. Klatt 1997) works councils can explore groups' specific demands and interests related to innovations or organisational change processes and mediate between them to develop a concise concept or an approach to design change processes in which the management perspective is balanced with the lifeworld-perspective of employees and in-company-subcultures or work-cultures. In this view works councils take on the role of a 'frontier commuter' being capable to identify with different subcultures or groups of employees and management. This capability enables works

councils to open intermediary spaces for dialogue and organisational learning between different subcultures (cf. Tietel 2001). Developing roles as in-company life-worlds mediators or 'frontier commuters' and translators between different work- or subcultures enlarges works councils' capacity of action to better cope with highly contingent issues or change processes. Nevertheless, 'frontier commuters' often walk on thin ice. For instance, they might face reproaches of missing loyalty by (groups of) employees works councils represent (ibid.).

Organisational change is always linked with not-intended consequences and results, because it is embedded in social figurations between different in-company actors (cf. Becke 2002). Figurations are characterised by asymmetrical balances which undergo changes on grounds of processes of negotiation between involved social actors. Figurations create 'chains' of social action including a self-dynamic which can neither be overlooked nor forecasted by any specific social actor because their range of action and awareness of interaction processes is limited (cf. Elias 1993; Mennell 1992). Creating social spaces for dialogue on organisational change enables works councils to discuss with employees their expectations and interests with respect to organisational change and to mutually reflect (potential) problematic and not-intended consequences of organisational change as a starting point for further processes of organisational learning and negotiations with management. By creating social spaces for a reflective dialogue with employees affiliated to specific work cultures, which are e.g. rooted in specific units or sections of a company, works councils enhance their chances to detect not-intended effects of organisational change within and between different organisational units. This may foster their competencies in 'system thinking' (cf. Senge 1990) as a resource of action to shape organisational change as processes of organisational learning. Moreover, the dialogue between works councils and employees as members of specific in-company work cultures can be supportive to works councils in negotiations with management utilising the local knowledge and experience base of work cultures as early indicators of problems related to organisational change.

However, a support of employees to works councils is not self-evident in processes of organisational change. An in-print study on subjective experience and coping strategies of works councillors in processes of organisational change, which was mainly carried out in the service economy, illustrates that works councils are confronted with a 'competition on employees' (cf. Tietel 2004). Participative management approaches and postfordistic production concepts may prove to be as incentives to employees to join the side of management. In this case works councils might lose their basis of interest representation in the workforce of an establishment. Therefore, the 'competition on employees' appears from a works council's perspective as a combat to win employees' 'hands, hearts and minds' (cf. Warhurst/Thompson 1998). Workforce support for works councils' establishment-related labour policy turns out to be fragile. Therefore, works councils have to invest time and capacities of action to achieve the support of employees. In the perspective of works councillors this 'competition on employees' is regarded as a painful experience because it demonstrates a lack of social recognition by the workforce they represent (Tietel 2004). This problem underscores the significance of triangle relationships works councils are embedded in (cf. ibid; Tietel 2001). They are confronted with demands to balance triangle relationships with management and employees as well as with trade unions and management. In my view the reflection of triangle relationships therefore turns out to be a significant requirement to enhance works councils' capacities of action in organisational change processes. Supervision or coaching offered to works councils might

provide assistance to cope with complex triangle relationships in organisational change.

### **8.2.2 Diversity as Social Resource of Interest Representation**

Institutional learning of works councils could take account of the diversity of employees as a reservoir for an improved interest representation. Facilitating employees of underrepresented groups to become elected as works councillors might provide works councils with competencies, skills and experience which had been neglected before. Turning to the social composition of works councils it is striking that some groups of employees are underrepresented according to their share in the entire labour force. This especially refers to women and migrants as works councillors. For example, more than ten per cent of the labour force in Germany consists of migrant employees, whilst less than five per cent of elected works councillors are migrants (Müller-Jentsch 1997: 279). In the 1990ies only about 23 per cent of works councillors were women (cf. Jacobi et al. 1998: 211) compared to ca. 40 per cent of their share in the entire workforce of the German economy. Problems in respect to works councils' social legitimacy may arise, if this social gap of representation widens. Furthermore, an enhanced representation of nowadays underrepresented groups of employees could improve the sensitivity to their perspectives in works councils' everyday practices and routines as well as in co-managing organisational change. Studies on the relationship between gender and reorganisation processes indicate that the representation of female employees in works councils enhances options to take account of the problematic work situation of women in reorganisation processes, e.g. typical labour intensive 'female workplaces' often belong to the kind of jobs which are outsourced or which do not benefit from postfordistic production concepts introduced to firms (cf. Kutzner 2003). An improved representation of women in works councils could at least sensitise works councils and management for the gender dimension of work and organisation. At its best it could promote ideas and concepts of gender democracy supported by gender sensitive works councillors as well as male and female employees. In Germany a gender-related institutional learning of works councils might be fostered by the amendment of the Works Constitution Act in 2001: It includes provisions about a minority share of women in works councils. Due to these provisions the percentage of women elected to works councils has to be equivalent to their percentage within the workforce of a company (ibid: 31)<sup>16</sup>.

Recent restrictions imposed by government on future early retirement, the increase of employees' average age and company policies to defer or restrict new engagement of employees and apprenticeships as means of cost-cutting question works councils' practises on early retirement schemes at the establishment level and maybe even their attitude towards older employees. Therefore, works councils could develop age-sensible strategies which might contain at least three starting points: Firstly, by taking account of an increased average age of employees works councils can promote and negotiate concepts of health promotion, an age-oriented work design and

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<sup>16</sup> There are empirical hints that the gender provision of the new Works Councils Act contributed to increase the share of women among works councils. A recent empirical study analysed the results of works council elections in spring 2002 referring to branches, in which unionised employees are members of the IG Metall. The study reflected an increase of female works councillors from 18 per cent to 23 per cent between 1998 and 2002, whilst the percentage of women among the company workforces decreased slightly to less than 21 per cent (cf. Rudolph/Wassermann 2002).

in-company career or task change planning which facilitates older employees to sustain their health and resources. This implies training concepts tailored to the needs and experience of older employees in order to comply with new work-related demands. Secondly, it includes taking account of diverse generations of employees at the plant level. Works councils could foster inter-generational co-operation and mediate conflicts between different age-groups or generation groups within the entire workforce. Different generation or age groups of employees often share a common set of work- or company-related experience, reality constructions and social or employment status (cf. Mannheim 1980). A key task for works councils consists in facilitating a social climate of mutual recognition between different age or generation groups which contribute to avoid or overcome a depreciation of older employees, their knowledge and experience. Last but not least, works councils can develop strategies to design the transition of older employees to retirement at the establishment level. For example, this may contain forms of 'bridge employment' which allow older employees a (partial) withdrawal from their long-term position and in return offer them other rewarding tasks. An example of such tasks could be mentoring or training younger employees to fully take over their position after retirement. These starting points rest on the prerequisite that works councillors reflect critically their basic assumptions towards older employees, especially if these assumptions are based on prejudice against older employees.

### ***8.2.3 Co-operation of Works Councils***

Fusions, mergers and acquisitions which create or alter multinational companies as well as the transformation of companies into network companies with different, more or less autonomous subsidiaries challenge work councils because these tendencies demonstrate the limits of an establishment centred or single company-centred co-determination. These tendencies increase the demand of works councils' institutional learning with respect to an enhanced co-operation among works councils of different companies or subsidiaries on regional, national and even international level. It includes the necessity to develop procedures of co-ordination, mutual consultation and strategy development among different works councils to enable and facilitate a co-ordinated interest representation or co-determination at the level of multinational corporations or network companies. Such co-ordinated actions should also contain precautions to eschew that the involved works councils are played off against each other by the top-management of network companies or multinationals, as e.g. in decisions to outsource or defer production or jobs.

In respect to the transformation of companies into network companies the new Works Constitution Act of 2001 offers a better starting point for co-determination to works councils (cf. Wassermann 2002), yet it still has to be proved whether and how far this legal innovation facilitates works councils to meet the challenges linked with network companies. The reform of the Works Constitution Act may turn out to support institutional learning of works councils. For example, the act (§1) provides a legal platform for the election of a unitary works council in a so-called "joint establishment" in company networks with different subsidiaries. In this case the joint works council is elected by employees of the involved subsidiaries. The new model of co-determination at the level of company networks is especially suitable for networks of satellite firms, in which the management of satellites has only a limited range of autonomy and therefore is also restricted in its role as employer. This enables a unitary interest representation at the company network level by the joint works council and fosters a social integration among employees of different satellite firms of a net-



work company. Nevertheless, there are some obvious barriers to this kind of interest representation because the new model of co-determination is not compatible with all kinds of company networks. In dynamic markets - accompanied with an integration of outsourced satellites into new branches and an outsourcing of business units as a first step towards sale or fusion - the new model does not work (ibid: 156).

Furthermore, the new Works Constitution Act enlarges the legal basis for the development of new works council-structures at the level of network companies. The new Works Constitution Act opens up options to elect a joint works council and to combine different establishments in network companies to specific areas of interest representation via collective or works agreements, if it contributes to an easier foundation of works councils or enables an "appropriate interest representation of employees", as formulated in § 3 of the Works Constitution Act of 2001. This provision creates opportunities for new forms of co-operation of works councils related to different companies. It also provides a legal basis for still existing forms of inter-company co-operation between works councils.

At the level of multinational companies the European directive 94/94EU on European Works Councils provides a legal framework for interest representation in multinationals with several companies or establishments in different European countries. This directive was criticised for being ineffective in terms of the regulation of industrial relations at the level of multinational companies. In this view the European directive on European Works Councils failed to halt processes of 'social dumping' between establishments of multinationals and between multinationals and single European member states, i.e. it is supposed that European industrial relations at the level of multinationals will be dominated by fragmentation instead of European harmonisation (cf. Helbig 1999: 245 pp.). From a German industrial relations' perspective criticism is raised against the low level of participation rights European works councils are provided with in regard to co-determination rights of German works councils<sup>17</sup>. Despite this criticism the potential of this directive should not be underestimated: It offers works councils a platform for a co-ordinated interest representation at the level of multinationals. Institutional defects were partly compensated by activities of European works councils (EWC) involving employees (Dörre 1999a: 319). Moreover, there is no evidence that the EU-directive generally fosters processes of social dumping. Evaluation studies on the implementation impacts of the EWC-directive on industrial relations in German-based multinationals, such as Volkswagen AG, indicate that a high level of regulation was maintained. In some multinationals EWC succeeded in negotiating frame agreements with top management (Müller-Jentsch 2003a: 471). In case of Volkswagen European works councils developed as an effective body of interest representation and co-ordination in terms of co-operative conflict resolution with management and of solidarity in balancing employment reductions or increases between different European establishments (Helbig 1999: 258). EWC at Volkswagen turned out as an intermediary body which fostered the transfer of German-based industrial relations at the company level to other European-based establishments and companies affiliated to Volkswagen (ibid.). In my view this empirical finding reflects also that German works councils contain a potential for institutional learning at the level of European works councils. Finally, the practise of EWC will evoke demands to reform the EU-

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<sup>17</sup> According to the EU-directive European Works Councils' participation rights are limited to rights of information and consultation (Müller-Jentsch 2003a: 470 p.).

directive on European Works Councils claiming stronger rights of participation (Dörre 1999a: 319).

### **8.3 *Institutional Learning of Trade Unions***

Institutional learning of works councils is a necessary, but not sufficient precondition to sustain the capacities of social action and co-determination linked with this institution. Works councils will in the middle range and in the long run still depend on unions as a solid infrastructure for co-determination by works councils, especially to meet new demands related to a decentralisation of collective bargaining at the establishment level and to processes of organisational transformation. In face of a decline in membership and the extension of co-determination-free-zones the existence of trade unions as a stable and relevant social institution is at stake. If trade unions lose further political influence and bargaining power, the infrastructure they offer works councils will be questioned. However, the demand of their supportive infrastructure by works councils also depends on the capability of trade unions to provide advice, expertise and consultancy tailored to the needs of works councils and employees. If services and infrastructure of trade unions are regarded as inappropriate to problems works councils and employees are confronted with, the latter will hardly ask for their advice and support. In this case chances to increase union membership would also diminish for trade unions. Therefore, an enhanced service orientation of unions towards works councils and employees is per se no remedy to cure severe decline in union membership or to compensate a decline in loyalty based on traditional working class orientations and affection to unions (cf. Streeck 1987: 475). Even if works councils ask for advice, it cannot be taken for

granted that they promote union membership among the workforce they represent (cf. Städtler et al. 2004).

Regarding the altered social composition of the workforce in the German economy and the expansion of the service sector trade unions do not remain the obvious institution works councils and employees turn to in order to seek advice and support. Traditional close links between employees and trade unions loosen in face of processes of social individualisation and sectoral change. Employees tend to be more sceptical of whether trade unions are capable of delivering competent support and advice. In this view unions are often regarded as too distant to the lifeworld of employees and their working conditions. Such a sceptical or negative image of trade unions may to some degree reflect prejudice against trade unions. In my view it also may convey a cultural gap between the altered work-related lifeworlds of employees and even of works councils on the one hand and trade unions on the other hand. In Germany trade unions are to a still significant extent oriented towards the image of the male, fully employed blue collar worker in industry or in public services. This group of employees was for a long time the backbone of trade union support and membership. Trade unions often negated the increased diversity of the workforce in the German economy whereby a distance to different groups of employees was created. This especially refers to groups of employees who do not resemble the dominant image of employees sustained by unions. Participation marks a further relevant dimension of this cultural gap: Trade unions are still bureaucratic and hierarchical non-profit organisations, in which forms of direct participation are more or less restricted to elections of representatives at the local level. This lack of participation contrasts e.g. to increased demands to work-related involvement and self-determination among young employees who often regard work as a source of self-development (cf. Baethge 1994).

Furthermore, the sectoral change is accompanied by an altered relationship between works councils and trade unions. In traditional industrial sectors and in public services sometimes works councils act as the “extended arm of trade unions”, more often they display an ambivalent orientation of action (Schmidt/Trinczek 1991): On the one hand they co-operate with management in order to contribute to the economic competitiveness of the plant, on the other hand they take account of the specific interests of employees which often contradict to economic interests related to the establishment. Besides, they are confronted with trade union demands and their collective interests which often collide with the specific interests of employees as well as with economic interests. Within this three-fold dilemma works councils try to balance the different interests they are confronted with in their workaday lifeworld. Balancing these different interests is linked with giving priority to solutions of compromise.

As shown before, there exists e.g. a strong retention of highly qualified workforces in the digital economy towards unions and union membership. In such areas of the service sector or the digital economy works councils or employees’ representatives with a very detached attitude towards unions are no exception. These works councils often avoid contact with unions or regard the relationship between employees’ representatives at the establishment level and unions as a one way street (ibid), i.e. unions are regarded solely as service organisations without any support offered to unions in return. Such employees’ representatives only seek the advice of unions, if difficult legal matters cannot be handled by themselves properly or if they depend on specific knowledge they are not capable of. This detached orientation towards unions is reflected in the low profile of works councils in recruiting union members and a reluctance to mobilise employees for union support in times of industrial disputes. More-

over, they do not engage in trade union activities at the local level. Bodies of union representatives hardly exist in such companies. This tendency hints at a cultural gap between trade unions and employees and sometimes even works councils. It reflects the necessity of trade unions to initiate processes of institutional learning, if they want to remain attractive to employees and to sustain a supportive basis for collective bargaining.

Institutional learning by trade unions may contribute to eschew the extension of co-determination-free zones in the expanding service economies, to halt the decline in union membership and to strengthen the linkage between unions and employees' representatives at the establishment level. Moreover, it is directed to enhance trade unions capacities in labour policy in order to develop and to promote alternatives to neo-liberal policy concepts and strategies (cf. Martens 2001: 179). However, institutional learning turns out to be a significant challenge to trade unions which can be described as bureaucratic, more or less traditionally oriented non-profit organisations which offer seldom enlarged options to membership participation (cf. Zech 1998; Martens 2001). Contrary to business organisations, trade unions have to balance the interests of diverse target groups of membership who are affiliated to a different extent to unions. At least three different groups of union membership can be distinguished: full-time union functionaries, honorary functionaries, such as works councillors or union representatives at the establishment level, and ordinary union members. The expectations of these groups differ in respect to trade unions. For instance, full-time functionaries might be interested in the development and goal attainment of union's labour policy, whilst works councillors as honorary functionaries expect services from trade unions tailored to their needs and to meet establishment-related challenges. Last but not least, ordinary members may seek for advice and information in respect to specific work-related problems (Zech 1998). Therefore, institutional learning turns out as a rather complex process in trade unions in which the different memberships and their interests or expectations have to be taken account and involved in. Therefore, institutional learning of trade unions requires processes of organisational development based on the involvement of different membership groups.<sup>18</sup>

In my view three different starting points of institutional learning at the level of trade unions, which might be directed to enhance works councils' capacities of action in order to meet new challenges, can be identified:

- Diversity strategies of membership recruitment and binding
- Issues of political or collective action
- The improvement of regional capacities of action.

These starting points are closely interconnected.

### ***8.3.1 The Development of Diversity Strategies***

The idea of developing diversity strategies refers to the practical and academic discussion on diversity as a new management concept (cf. Krell 1997; Thomas 2002; Thomas/Ely 2002). I would not like to recommend trade unions to utilise diversity management as a recipe, but rather to consider its core ideas for the development of

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<sup>18</sup> In many German trade unions processes of organisational development were carried out (cf. Martens 2001; Alemann/Schmid 1998), mainly in response to a decline in membership and induced financial deficits or linked with the merger of different unions. However, a broader participation of union members proved to be rather the exception than the rule.

innovative strategies in addressing employees as well as recruiting and binding union members. Diversity management refers to the altered social composition of the workforce in modern societies, which is becoming more diverse because of different social processes, such as e.g. an increase of migrant workers in times of Europeanisation and globalisation, an increase in female employment and processes of social individualisation which foster a diversity of social milieus and lifestyles. In the perspective of diversity management differences among employees are a potential key to innovation, competitiveness and flexibility of an organisation, if diversity is realised, honoured and fostered by drawing on the different talents and skills of a diverse workforce (cf. Gabriel et al. 2002: 217 pp.).

From a trade unions' perspective the idea of diversity first of all would imply to take their leave of their dominant image of a 'normal employee'. The development of strategies and advice to an assumed 'normal employee' negates and violates the specific needs of different groups of employees (ibid: 218). The recognition of diversity implies to reflect critically the fictional image of the male, fully employed blue collar worker and sole family provider as 'normal employee'. A critical reflection of basic assumptions on the 'normal employee' is a necessary first step to diversity strategies. Furthermore, it requires union functionaries to explore closely the needs and interests of different groups supported by an attitude of openness, curiosity and sensitivity with respect to different work-related lifeworlds, work cultures and groups of employees. Such an attitude may be fostered by an enhanced organisational sensitivity and recognition of diversity within unions. Exploring diversity requires an interactive process between unions or their representatives on the one hand and employees and works councils on the other hand. Enhancing capacities of trade unions' action at local or regional level can contribute to explore diversity and to develop strategies in addressing and binding diverse groups of employees or union members, such as e.g. part-time workers, free-lancers, women, migrants and salaried knowledge workers.

Diversity strategies imply the development of advice or service offers tailored to different groups of employees, their needs and interests. For example, unions may establish a hotline or develop brochures for free lancers in the new economy which inform them about their legal rights and union services. The implementation of such new services requires a service-orientation of union functionaries towards honorary members as well as towards employees seeking advice. Such offers may in a longer perspective even contribute to overcome resentment on the side of specific groups of employees, such as highly qualified white collar workers. To attract employees of the digital economy to trade unions some unions started to innovate their strategies addressing employees by the utilisation of new technologies as information platforms and offering services to employees without limitation to trade union membership (Abel/Ittermann 2003: 114). In this case, signing on new trade union members remains solely a potential further step. For instance, the large service sector trade union ver.di financed a project team called connex.av which initiated the build up of a works council in one of the model firms of the new economy (Pixelpark) in Germany utilising an e-mail campaign<sup>19</sup> (cf. Gesterkamp 2002). Such new strategies form structures of opportunities whereby employees can obtain union support in respect to

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<sup>19</sup> Further information on this initiative can be obtained from the connex-webpage <http://www.connex-av.de/aktuelles>.

specific work-related problems and settings. These structures of opportunities also function in another direction: They may contribute to overcome mutual stereotypes between specific groups of employees and union representatives and to strengthen the ties between both sides.

Union strategies of diversity might also be useful in order to address works councils. Trade unions are to bear in mind tendencies of a changed social composition of works councils since the end of the 1990ies (Schmidt/Trinczek 1999: 123): Firstly, the potential of recruitment for works councils changes from blue collar workers to white collar workers partly embracing salaried workers with higher qualification and promoted former blue collar workers who attained the status of salaried employees. In the meantime, works councils composed of a majority of salaried employees prevail in many firms at least in the service economy. Secondly, this altered social composition of works councils walks along with a different self-image as well as with a different style of establishment policy. Works councils dominated by salaried employees are characterised by a stronger emphasis on rationality in processes of social exchange with management, a higher degree of delegation and participation with regard to employees and a tendency of increased professionalisation and qualification. Moreover, these works councils opt more often for strategies of co-management and prefer team-oriented work styles. Their relationship to trade unions is marked by a stronger emphasis on matter-of-fact co-operation compared to an emphasis on solidarity and emotionality (*ibid*).

Until now diversity was solely discussed with regard to attracting and binding employees or works councils to trade unions. Besides this external dimension there exists an internal demand for diversity strategies which is closely woven with the tendency of forming large multi-sectoral trade unions in Germany. Such trade unions imply an increased heterogeneity of membership with regard to different criteria, such as gender, qualification, social status and origin, work traditions or affiliation to different trade union cultures. For example, the IG Bauen-Agrar-Umwelt (IG BAU) as one of the newly founded multi-sectoral trade unions covers construction workers, forest workers and gardeners. Before the merger the IG BAU consisted mainly of male construction workers. Merging with minor unions implied that the IG BAU today also represents sectors which are quite different from their traditional membership, as e.g. female employees are a relevant factor among gardeners. They share with forest workers quite different work and union traditions compared to construction workers. Problems related to an integration of different trade union cultures in mergers or fusions of unions to multi-sectoral trade unions (cf. Klatt 1997) can be reinforced, if diversity in membership is negated. In face of an increasingly diverse membership unions have to be aware to balance different interests of members without neglecting or preferring the needs of specific groups of members. Multi-sectoral unions can draw on the different qualifications, experience and competences of members in order to develop policy strategies tailored to different fields of action. However, this requires an organisational recognition of diversity, a stronger participation of union members and a reflection of existing or prevailing work practises.

Drawing on different members' or functionaries' experience with work practises obtained in their former union may serve as a productive potential for innovative union strategies, services and advice offers. In this view diversity in unions is closely linked with cultural change and a reflection or change of strategies and work processes within unions as organisations (cf. Thomas/Ely 2002). It tackles also the relationship between employed union functionaries and honorary members opening up spaces for an enhanced involvement of honorary members within unions. Moreover, multi-

sectoral unions can refer to the different traditions, structures and strategies of their merged or fused unions in order to develop innovative strategies.

Unions which are sensitive to diversity in membership might direct capacities to an internal union building in order to develop a common set of norms, goals and priorities of action, i.e. a normative union platform as a 'boundary object' (cf. Strübing 1997) to which different groups of union members can refer to. In order to create a well accepted platform participation of union members is required. However, such a platform as a boundary object to different groups of union membership does not exclude conflicts once agreed on, but is open to further processes of conflict or negotiations taking account of the potential change of interests or in membership composition or changes in union environments to which a specific platform proves to be inappropriate.

### **8.3.2 Issues of Political or Collective Action**

From a perspective of diversity unions may recognise different life worlds employees are embedded in and the moral demands and social values they are affiliated to, such as e.g. environmental orientations of action or beliefs in fairness and justice. Therefore, addressing to new potential members and binding a diverse membership can be combined with issues of political or collective action which reflect or refer to different lifeworlds of employees. An enlarged spectre of issues may be partly attractive to specific groups of employees, but it includes the disadvantage that the profile of a certain trade union might blur. This disadvantage can be avoided, if new issues taken up by unions are framed within their thematic spectre of industrial relations, i.e. if new issues are related to or combined with established fields of union action, such as collective bargaining or social, health and employment policies, or if they refer to the primary task<sup>20</sup> of unions, i.e. the labour policy-related interest representation of employees. In this perspective new issues, as e.g. 'work-life balance', sustainability<sup>21</sup> or demographic change, may include in three ways an innovative potential for unions: Firstly, taking up new issues or the anticipation of new societal trends might open up spaces of dialogue with groups of employees who convey more or less a sceptical attitude to unions or works councils. Secondly, unions may deal with new issues in order to symbolically demonstrate their modernity in public or political discourses in order to gain access to or an improved position or recognition in areas of innovation policy. Last but not least, taking up new issues is a starting point to develop new strategies or concepts, service and advice to works councils who are confronted with

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<sup>20</sup> The concept of 'primary task' reflects a key concept of the socio-technical approach of the Tavistock Institute. The primary task refers to the primary goals of an organisation. In other words, the primary task can be described as the task or the central purpose an organisation was founded to carry out or to fulfil (cf. Rice 1958; Hirschhorn 1999; Senghaas-Knobloch 2001).

<sup>21</sup> In the public and scientific discourse on sustainability labour was acknowledged as a core category of sustainability (cf. Brandl/Hildebrandt 2002; Ammon et al. 2002). Sustainability refers to a triple dimension approach which embraces the interlinked dimensions of social, economic and environmental sustainability. In Germany there hardly exist any studies which analysed works councils pattern of labour policy on sustainability at the establishment level, especially in respect to firms which promote sustainability as a new management concept. In regard to trade unions a new research project started recently which examines potentials and barriers to the development and implementation of trade union dialogue on sustainability by the example of the IG BAU, i.e. the former construction workers trade union (cf. sfs/Peco-Institute 2004).

these issues. Examples of such issues are the implementation of new technologies at the establishment or inter-company level or the development of demands for the design of sustainable work systems which can reduce or eschew an intensification of work in knowledge intensive sectors or in work cultures dominated by highly qualified salaried employees (cf. Docherty et al. 2002). In my view the issue of 'good work' is a significant starting point to enlarge the focus of unions' employment strategies, which concentrate on safeguarding or creating employment. The issue of 'good work' can strengthen qualitative aspects of union employment policy. Unions could start or intensify a public debate about criteria, demands and concepts of 'good work' addressing ambivalent effects of postfordistic forms of work organisation on employees. This issue might also open union access to employees in the new service economy, especially to highly qualified, salaried employees interested in the avoidance of the disentanglement between work and their private sphere.

### ***8.3.3 The Improvement of Regional Capacities of Collective Action***

Mergers of unions are accompanied by a centralisation of financial resources and personnel within newly founded multi-sectoral trade unions (cf. Martens 2000). Therefore, decision-making processes, in which a centralisation of resources and personnel is fostered, reduce the regional or local capacities of trade union action. Restricting or cutting off regional capacities of action may at first glance appear as an adequate contribution to solve the financial crisis unions are in. In political terms this cost-cutting-strategy turns out to be rather problematic because it endangers unions' stance as a relevant political actor at the regional level. A (partial) regional withdrawal of unions restricts their regional capacities of action in at least three ways: Firstly, the local or regional level is - besides the establishment level - the main locus of direct interaction between union representatives and employees, i.e. a significant platform to obtain access to new potential members and to the lifeworlds of different groups of employees. Centralisation of resources complicates the establishment and continuity of direct interactions with employees at the local or regional level. Direct interactions between union representatives and employees enable the latter to build up or place institutional trust in unions and their offered advice and services. Institutional trust is an important prerequisite of and a social resource for unions to increase their membership as well as for binding and mobilising members for political or industrial action. Therefore, processes of centralisation restrict the options of unions to foster institutional trust in direct social interactions with employees at the regional level.

Secondly, a centralisation of unions' resources and personnel can impair the quality of advice and services offered to works councils, especially if works councils are confronted with severe challenges, such as organisational transformation processes and a partial decentralisation of collective bargaining to the establishment level. In case of personnel reduction or extensions of the regional scope unions' functionaries have to cover they may face a situation of enhanced work-related overcharge. Often these union representatives act as 'single combatants' (ibid). Therefore, processes of union centralisation can indirectly restrict works councils' capacities of action, if the supportive union infrastructure they depend on is endangered or deteriorates in quality at the regional or local level.

Last but not least, processes of union centralisation may restrict resources and capacities of local or regional union bodies and functionaries required in order to maintain their involvement as active participants in regional development and innovation networks based on co-operation between employers, unions, works councils, cham-



bers of industry and commerce or craft and local or regional political authorities or political actors. Such regional innovation networks can contribute to socially embed economic action of even large firms by fostering interactive regional learning processes and the development of regional social capital. This includes, that even firms which operate at an international level are introduced to social conventions of economic development which prevail in regions (cf. Morgan 1997: 500 p.). Firms can only afford to violate partly such social conventions, if they depend on regional capacities, resources and infrastructure or labour market as potential competitive advantages for the achievement of their economic assets (cf. Hirsch-Kreinsen 1997). Moreover, the local or regional public sphere may turn out to be a critical factor even for multinationals, if their social reputation is questioned or their economic action is publicly scandalised (cf. Dörre 1999: 204). If union bodies at the regional or local level are equipped with sufficient resources, they can play an active role in such regional development networks. In this case they will be able to co-produce regional social conventions and social capital in order to socially embed economic action.

In my view the discussed negative side effects of union centralisation strategies require a critical reflection within German unions. They also call for a more decentralised trade union engagement strengthening the local or regional capacities of collective action. This may contain at least a partly redistribution of financial resources and of highly qualified union personnel to the local or regional level. Such a two-fold redistribution of resources would enlarge as well as improve the capacities of trade unions at the local or regional level to initiate or support the foundation of works councils, especially in co-determination-free zones, and provide works councils with direct support and a highly qualified consultancy and information to meet new challenges. Moreover, better equipped executive bodies of unions at the local or regional levels are a prerequisite for an improved and more effective engagement of unions in local or regional alliances for jobs and vocational training or in regional networks of innovation and employment policy.

Notwithstanding, a redistribution of resources and highly qualified personnel towards the regional level will - in face of the severe financial deficits trade unions are confronted with - only partly be realised. Therefore, a supplementary strategy could focus on a closer networking between union functionaries and honorary union members. This would enable local or regional union bodies and their functionaries to draw more intensively on the skills, competences and experience of honorary members in organising and supporting union action and initiatives at the local or regional level. Issue-oriented co-operation with other interest groups or non-governmental organisations are a further starting point to achieve union goals at the regional level by the combination of resources related to different social actors. For instance, some unions, as e.g. ver.di, and their members co-operate closely with attac in several German towns to foster public awareness of economic globalisation and its negative side effects on labour, social standards and working conditions (cf. Grefe et al. 2002) as well as to demonstrate against the current supply-side oriented reforms of the 'red-green' German government in social and employment policy. However, the involvement of unions in inter-organisational networks at the local or regional level also implies a risk potential for unions: Networking is directed to enhance or enlarge local or regional capacities of action. To form coalitions or to found networks and to develop co-ordinated action requires compromise which might restrict unions' autonomy and capability of action (cf. Streeck 1987: 489).

Institutional learning of unions contains organising issue-oriented public dialogues at the local or regional level directed to employees and works councils without limiting

access to union membership<sup>22</sup>. Such forms of open dialogues may even appeal to employees or works councillors who are not affiliated with any of the DGB-unions or are sceptical of unions. They lower potential access barriers to such works councillors or employees and may also integrate researchers, consultants and trainers to broaden the available expertise (cf. Kutzner/Kock 2003: 179)<sup>23</sup>. Involving different social actors in forms of regional dialogue enables an intersection of different social worlds (Strauss 1993). Intersection provides trade unions and works councils with knowledge and expertise which might enlarge their scope of strategies and decision-making criteria related to specific problems they face; sometimes intersections can even induce institutional actors to reflect their core beliefs (Wiesenthal 1995: 147). In this perspective intersection is a form of unconventional institutional learning partly dissolving or at least loosening up established borders between institutions or institutional actors and their environments (ibid: 145).

Last but not least, institutional learning of trade unions can be fostered by co-ordinated forms of inter-union co-operation<sup>24</sup>. Such forms of co-operation are an innovative starting point for inter-organisational learning processes of unions overcoming the sector related barriers to union co-operation. They also can serve as a supportive infrastructure for works councils related to different sectors but being confronted with similar problems. This refers firstly for outsourced production-related services, as e.g. software-development, logistics or call-centres, in which working conditions and environments are similar despite different sectoral backgrounds (Kutzner/Kock 2003). Secondly, such an inter-union co-operation makes sense to co-ordinate unions' and works councils' activities in network companies or at the level of multinational corporations and with regard to processes of supply-chain reorganisation, which might affect jobs and working conditions of employees. Trade unions could play a crucial role in the foundation and the support of inter-company or company network works councils, especially if unions co-operate more closely in union networks to accompany the transformation of company networks with satellites affiliated to different branches. Co-ordinated inter-union initiatives can support problem-oriented exchange of experience between works councils embedded in different company cultures and branches. Furthermore, they may form a platform to develop co-ordinated concepts of consultancy and support among different unions tailored to

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<sup>22</sup> Helmut Martens (2001: 179) expounds even a new model for trade unions: the 'network union', which is based on the creation of spaces of internal and external dialogue with other social actors, especially at the levels of establishments and regions, in order to develop alternatives to neo-liberal policy approaches.

<sup>23</sup> An example of good practise was developed in Dortmund by the trade union ver.di, and the DGB-related co-operation agency 'science – labour' organising a regular 'call centre talk' (cf. Kutzner/Kock 2003: 178 p.). Invited to and involved in the call centre talk are union members, works councillors, call centre-employees as well as consultants, social researchers, trainers and representatives of the local economy and employment agency. Contrary to union organisations neither union membership nor a fixed membership in the regular call centre talk is a prerequisite to take part in. As shown before, the call centre talk is also addressed to participants who do not work in call centres bringing in their specific expertise. The call centre talk triggered further activities, such as the development of a research project on labour relations in call centres, co-operation between researchers and works councils with regard to occupational health and safety issues in call centres or the publication of a regular newsletter which informs about the local call centre 'scene' in Dortmund.

<sup>24</sup> Inter-union co-operation also contains a European dimension. In recent years trade unions in Europe became more sensitive to international co-operation and co-ordination of unions' strategies and collective bargaining policies as means to shape a 'social Europe' (cf. Jacobi et al. 1998: 231).

the needs of works councils being confronted with processes of supply chain reorganisation. Such innovative forms of inter-union co-operation were mostly practised as pilot projects<sup>25</sup>. Therefore, they still have to be developed and stabilised among trade unions.

## 9. Conclusion

In summary, institutional learning plays in a two-fold way a crucial role for works councils as an institution of the German system of industrial relations: Firstly, institutional learning can enhance the stability, adaptability and the further development of interest representation and co-management of works councils. However, 'internal' processes of institutional learning of works councils are limited in their scope and effectiveness, because they do not equip works councils sufficiently with capacities of action required to meet new challenges arising from a partial decentralisation of collective bargaining to the establishment level, the transformation of companies into network companies, the ambivalence of postfordistic production and service concepts on working conditions or the altered social composition of the workforce. The institution of works councils appears to be overcharged to cope with these new challenges on its own. Therefore, works councils' institutional learning secondly has to be enlarged by taking up innovative impulses from trade unions in order to develop specific action strategies to cope with these new challenges at the establishment or inter-company level.

However, giving a fresh impetus to works councils also requires processes of institutional learning at the level of trade unions. A significant prerequisite to provide a supportive infrastructure of information, advice, consultancy and training, which enables works councils to cope with new demands effectively, consists of a critical reflection of 'basic assumptions' (cf. Schein 1999) most of the German trade unions shared with regard to the image of employees they represent. This includes taking account of the altered social composition of the entire workforce in the German economy and its social diversity. Such a critical reflection might be a starting point to develop more differentiated strategies and supportive services tailored to specific work cultures and organisational fields employees are embedded in. Moreover, a re-discovery of the local or regional level as a resource to enhance trade unions' capacities of action could foster institutional learning processes of trade unions, especially as a platform for the development of new forms of work-related dialogues with works councils and diverse groups of employees, for networking between different unions and with other social institutions or organisations, such as non-governmental organisations, research institutes and regional or local authorities. Open forms of work-related re-

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<sup>25</sup> For instance, the trade unions of metal and chemical workers co-operated in an inter-company action research project, which was set up by the two unions and Volkswagen (cf. Ammon et al. 1996). During the project different metal- and chemical based alternatives to a PVC-solution in car construction were assessed and compared to the PVC-alternative on basis of a product life cycle analysis. Moreover, different starting points for the involvement of employees in company and inter-company product policy and with regard to the means of life cycle analysis were tested. The unions organised workshops, in which works councillors and employees of the involved companies discussed among other issues the potential impacts of a potential substitution of PVC with regard to the establishments they were affiliated to, exchanged experience of working conditions along the product chain and developed a catalogue of demands for the implementation of life cycle analysis in companies from employees' perspective.

gional dialogue may prove in the long run as an interesting starting point to foster or initiate the foundation of works councils within the expanding service economy. They can also contribute to build up or enhance institutional trust in trade unions by employees and works councils. Institutional trust remains a crucial factor for the social recognition of trade unions as an important social institution by works councils and employees in new service sectors as well as in German society. Last but not least, such open forms of dialogue between trade unions, works councils and other social actors might be utilised by trade unions to innovate their labour or social policy, as e.g. to develop new projects and concepts.

In conclusion, the future of works councils as a hybrid and innovative institution of German industrial relations will depend on the symbiotic relationship between works councils and trade unions. Both of them will remain mutually interdependent to meet new challenges which tend to undermine or threaten their existence. Therefore, a figuration of co-operation between trade unions and works councils may also turn out to be of relevance in future. If co-determination-free-zones continue to spread, trade unions will lose their most important backbone of mobilisation for industrial conflict and labour policy. A disjunction of trade unions and works councils can also occur, if newly founded or existing works councils loosen their ties to trade unions, as e.g. in case of works councils dominated by highly qualified salaried employees who are characterised by a sceptical attitude towards unions. Therefore, institutional learning by trade unions might prove to be as a significant prerequisite to re-establish or to enhance a figuration of co-operation between trade unions and works councils. However, this symbiotic relationship will be supplemented compared to previous decades. In my view forms of co-operation between works councils, as e.g. at the levels of network companies or multinationals, will gain in significance as well as forms of co-operation among different trade unions. Restructuring is often not limited to the establishment or company level but extended to rationalisation processes which focus on supply chains or products. In order to develop labour-oriented strategies and concepts to safeguard employee interests and to seek for options of a humane design of such restructuring processes closer inter-union co-operations which also involve works councils of different firms alongside supply chains or product life cycles is required. Furthermore, inter-union co-operation is a significant prerequisite to promote a co-ordinated labour policy in processes of social dialogue at the European level. In this perspective inter-union co-operation might foster the development of a project called 'Social Europe', which contrasts to neo-liberal policy models.

The perspective of social diversity can be utilised likewise as a social resource of institutional learning by works councils and trade unions. The utilisation of this social resource requires trade unions and works councils to take account of the increased social diversity of employees and to recognise diversity as relevant issue to direct their action to. The perspective of diversity enables works councils to enhance their sensitivity for hidden forms of discrimination at the workplace or establishment level. It also increases their ability to explore the differentiated structure of needs and interests within the workforce at the establishment level. Therefore, the perspective of diversity can support works councils to take on the roles as mediator, moderator and 'frontier commuter' in processes of organisational change. The recognition of diversity might serve as a starting point to develop innovative strategies of interest representation or to open new fields of labour policy at the establishment level, as e.g. generation policy or gender democracy. Moreover, the recognition of social diversity turns out as a significant prerequisite to draw on the competences, knowledge and experience of diverse groups of employees. This also refers to trade unions, if they

intend to involve honorary members or employees in union activities. The perspective of diversity might pay off for trade unions because it enables them to develop services and advice tailored to specific groups of employees which in return can increase and intensify communication and dialogue with different groups of employees. In this view, the recognition of diversity can stimulate or enhance institutional trust placed in trade unions by diverse groups of employees.

The starting points of institutional learning which were discussed in respect to works councils and trade unions can contribute to a further modernisation of industrial relations in Germany. However, the institution of works councils will still face severe tests: Competitive restructuring will continue, outsourcing of services and production and the transfer of employment to so-called 'low wage' countries remain a threat of closure to many a German establishment and hence to the existence of its works council. Therefore, institutional learning, renewal and reform will remain on the agenda of works councils and trade unions in order to sustain their existence and to innovate their labour policy.

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Research is concentrated on topics of decent work facing the new global economic structures and new normative demands on organisational and work culture. The regulation of work conditions in global structures is centred. Sustainability, Corporate Citizenship and generativity are the main foci. Two fields of research are of interest:

- Global economic structures and economic imperatives, new management systems and new technologies are analysed with respect to the impact they have on relations of employment and work in Germany as well as other highly developed industrial societies. By which policies is it possible to create validity for fundamental social standards and norms in the context different groups of actors: governments (as members of international organisations), workers and employers associations and non-governmental initiatives. In this context discourses on good governance and good practice which are conducted in the political arena of the International Labour Organisation and the European Union are to be considered.
- New forms of work organisation and work design as well as changing processes in the companies' structures and in organisational culture and work culture are analysed. Research focuses on the question, how interests are defined and collectively bargained by the employees. How can wishes, needs and competencies of employed men and women be reconciled with goals of the organisation in a sustainable manner? Special attention is paid on the relationship between the different spheres of work and life and on the subjectivity of the employees as organisational members. How do organisations deal with emotions of their members in their everyday work?