

Defence is the Best Offence: Horizontal Disintegration and Institutional Completion in the German Coordinated Market Economy

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Abstract

The article considers how (new) forms of horizontal disintegration, like onsite subcontracting, challenge and change the industrial relations institutions of the German coordinated market economy (CME). Focusing on firm-level co-determination practices, it analyses how works councils respond to strategies of onsite subcontracting and what effects their responses have for the employment system. Based on evidence from 12 case studies, it is argued that although onsite subcontracting might prompt institutional erosion, this does not pass uncontested. Rather, practices of network-oriented employee representation on the part of works councils might bring about an ‘institutional completion’, in this case, the institutionalisation of the network as an additional point of reference for employee representation. This may stabilise and even extend the scope of existing CME institutions through a process of ‘institutional upgrading’. In some areas of the economy, however, management and works council practices are more likely to exacerbate dualisation and social inequality.

Keywords

Coordinated market economy, horizontal disintegration, structuration theory, subcontracting, varieties of capitalism, works councils

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Introduction

The varieties of capitalism approach (VoC) argues that economic exchange is governed by broader institutional settings at the national level, comprising typical patterns of corporate governance, inter-firm relations, vocational training, labour market policy and labour relations. It posits two ideal meta-types, liberal market economies (LMEs) and coordinated market economies (CMEs), each of which is distinguished by typical, complementary and functionally linked rules that yield characteristic practices and specific social and economic outcomes (Hall and Gingerich, 2009; Hall and Soskice, 2001). The interplay between these meta-types and particular welfare regimes also shapes societies more broadly (Thelen, 2014).

The ideal LME and CME types are associated with a distinctive pattern of industrial relations. In the German CME, for instance, economic action is embodied in a ‘dual system’ of industrial relations characterised by certain normative points of reference located at different levels: the workplace, the company, the group and the industry (Behrens, 2013). At the *sectoral level*, trade unions bargain with employer associations over collective agreements that specify terms and conditions of employment. At the *workplace*, employees are represented by works councils that are formally independent of trade unions. Under the Works Constitution Act, works councils enjoy strong legal rights to information, consultation and, on certain issues, co-determination, understood as joint decision making with the employer with scope to veto changes proposed by management and/or developing own initiatives. Relations between works councils and management are typically co-operative. In line with the requirements of the Works Constitution Act, works councils are required to serve the well-being of the company and pursue peaceful means for arriving at compromises with the employer as well as representing the interests of the workforce. These provisions rest on the implicit assumption that firms are vertically integrated and employ workers on standard employment contracts, the typical model held to be characteristic of the core sectors of the German economy, particularly manufacturing.

Academic discussion of the threats to the stability of CMEs and the factors pushing towards liberalisation extends back at least three decades (see, for example, Lash and Urry, 1987). Predictions about the likely outcomes of these developments can be divided into three broad approaches. First, the ‘institutional erosion’ thesis argues that globalisation will unleash a disruption of existing institutional models (for instance, collective bargaining) across the globe. In similar vein, it has been argued more recently that erosion may occur through a ‘hollowing-out’, in which institutions remain formally intact but become practically irrelevant (Holst, 2014).

Second, another strand, which might be labelled the ‘fragmentation or dualisation thesis’ (Palier and Thelen, 2010), does not regard liberalisation as a unique trend but rather notes the (growing) diversity within national systems (Lane and Wood, 2009). Accordingly, liberalisation and dualisation can be regarded as two major and inter-linked trends that run across different nation states (Jackson and Deeg, 2012) but with differing and contradictory developments within a single nation state. This adverts to the fact that there are market economies that exhibit the characteristics of the two

original ideal types (Lane and Wood, 2009). Accordingly, one may find institutional liberalisation or erosion in some segments co-existing with stability in others. Third, VoC proposes that national systems remain more or less stable, which may be due to the effects of institutional complementarities that, to some extent, can shield modern political economies from such disruptive forces (Hall, 2006). Alternatively, producers may opt for forms of production that reinforce these institutions (Thelen, 2014), or ‘countermeasures [will be] taken by society to balance the effects of free markets’ (Behrens, 2013: 219), which is likely to stabilise existing national institutions (Streeck and Thelen, 2005).

The rather static nature of earlier work in the VoC tradition has been addressed by subsequent contributions (Wilkinson and Wood, 2017) that explain change in diverging ways. Thelen (2014) identifies three mechanisms: deregulation (in LMEs such as the USA); embedded flexibilisation through institutional conversion (in CMEs such as Denmark); and a sector-based dualisation via a process of ‘drift’ that leaves institutions formally intact (in CMEs such as Germany). Among the triggers that promote institutional change in political economies, research has highlighted the role of the politics of liberalisation and deregulation on the one hand (for instance, Jackson and Sorge, 2013) and, on the other, new organisational models implemented by firms (for instance, Lane and Wood, 2009). Concerning the latter, more recent empirical research has suggested that new corporate strategies, such as the formation of inter-firm networks via outsourcing and subcontracting, could have severe impacts on the German employment system, even in core sectors. Inter-firm networks, in which actors organise their (economic) activities with reference to a certain set of relatively durable and (more or less) reflexively organised relationships (Windeler, 2001), come along as joint ventures, strategic alliances and global production networks, as well as onsite subcontracting. The latter is usually defined as the outsourcing of core functions to subcontractors that operate on the premises of the buyer (‘onsite’). This strategy is held to displace collective bargaining, workplace co-determination and the application of labour law (Doellgast and Greer, 2007; Holst, 2014; Lillie and Wagner, 2014; Pulignano et al., 2015). While disintegration fosters cooperation between firms and the establishment of inter-firm networks, it increases differences in regulation, as subcontractors are usually not governed by collective agreements and works council representation. Network forms of employee representation that may compensate for the lack of regulation are nearly non-existent and are not rooted in any labour law. Some studies have argued in support of the ‘fragmentation thesis’ that the growing use of agency work and subcontracting not only fosters a dualism between (a smaller segment of) permanent (secure) employment and precarious, insecure and substandard employment relations on the periphery, but it also generates a ‘fragmented landscape of labour relations’ (Holst, 2014). The latter is characterised by a multiplicity of diverse workplaces that do not conform to a straightforward dualistic insider–outsider pattern. Consequently, it was argued, institutions such as collective agreements and works councils no longer *shape* the employment system but become ‘dependent’ variables, consciously chosen by firm-level decision-makers based on a rational calculation of how to manage their enterprise. In contrast, other studies on agency work lean

towards the ‘stability thesis’. It has been demonstrated, at least for major German companies, that employee representatives can, at least to some extent, regulate this form of flexible labour, mitigate its negative effects and, consequently, contribute to the reproduction of the institutional pillars of German industrial relations (Artus, 2014; Benassi and Dorigatti, 2015). However, the debate is far from over, as firms, in reaction to global market pressures and political regulation, continuously implement new organisational forms and HR strategies that may affect the institutional setting.

This study seeks to contribute to the debate both theoretically and empirically. It is argued that the trend of institutional change is rooted in specific managerial strategies of onsite subcontracting at the micro-level. These strategies can lead to institutional erosion through the limits they impose on the scope of existing institutions such as collective bargaining, labour law and works council representation. Such erosion does not pass uncontested, however, as works councils can actively respond to reorganisation strategies by deploying workplace-level legal rights to co-determination and other resources to influence managerial decisions. This implies that existing institutions are not only the *objects* of the institutional change that follows from managerial strategies (Holst, 2014) but are also *actors* that actively process the challenges they face. They can also reproduce or change institutions. The contention here is that the outcome of bargaining between works councils and management over how subcontracting is implemented at the workplace level will be a segmentation of the German economy: while in some segments, there is evidence of erosion, in others, a process of ‘institutional upgrading’ can be detected that is likely to stabilise the German CME.

Concerning theory, micro-level bargaining is identified as a mechanism for institutional change that, as yet, has not been considered in any depth. Following Giddens (1984), structures and institutions are reproduced or changed in daily activities by more or less reflexive agents. In our case, change and ‘institutional upgrading’ stem from works councils adding new practices to existing institutions. Because inter-firm networks are not legally regulated in the German ‘dual system’ of industrial relations, works council practices that make reference to inter-firm networks serve as an *institutional completion* of the institutional system.

Empirically, the study investigates works council practices in two core industries of the German economy: manufacturing and retailing. Manufacturing was chosen because it constitutes a key industry of the German economy with regard to recognition, industrial policy, exports, employment and working conditions (see also Thelen, 2014). Retailing, too, represents a major area of economic activity, with over three million, mostly female (part-time) employees. Including this industry allows us to study differences between industries and sectors. Based on 12 case studies, the following questions are investigated:

- What are the challenges and threats posed by onsite subcontracting¹ to the German employment system in general and works councils in particular?
- How do works councils perceive onsite subcontracting, and how do they react when confronted with it?

- Do the data support the contention that the German employment system is undergoing an institutional change, consequently changing the nature of the CME and society?

In the remainder of this article, the theoretical approach is outlined (Section 2) and existing findings on the effects of onsite subcontracting on the employment system are briefly reviewed (Section 3). The methodology is outlined in Section 4. Section 5 reports case study findings, and different patterns of works council action when confronted with onsite subcontracting are analysed. Section 6 discusses major findings, and Section 7 draws some general conclusions.

Theory: A structurationist perspective on varieties of capitalism

In analysing and explaining the effects of onsite subcontracting on the institutional pillars of the German employment system, this study combines the VoC approach with Giddens's structuration theory. The VoC approach comprises a concept of institutions, institutional systems and (collective) actors (for instance, firms or unions). However, the concern of this study requires a twofold focus on both structures/institutions *and* agency (Barley and Tolbert, 1997). Structuration theory offers an encompassing account of (changes in) structures and practices within social systems, which are grounded in the daily activities of reflexive agents (Giddens, 1984).

Structuration theory points to social structures that are (re-)produced in social practices in an ongoing series of 'practical activities' (Giddens, 1984). Social structures are constituted only through action, which in turn is influenced by social structures (*duality of structure*). The three dimensions of social structures – legitimation, signification and domination – point to typical ways in which actors assign meaning or perceive social phenomena (rules of signification); what they regard as appropriate/inappropriate and what might be (positively or negatively) sanctioned (rules of legitimisation); and how they use power (resources of domination). Social practices are contingent and are the medium and result of rules of signification and legitimisation as well as the deployment of resources of domination.

From a structurationist perspective, society-wide institutions represent 'the more enduring features of social life [...] giving "solidity" across time and space' (Giddens, 1984: 24). Institutions are associated with typical social practices that are widespread among the members of a community or society (Giddens, 1984). Institutional change, consequently, is associated with the introduction of new social practices governed by new rules of signification and legitimisation as well as new modes for the deployment of resources. Changes occur because actors are not determined by structures but have leverage to act differently. In relation to the VoC debate, structuration theory would argue that the institutions of the employment system influence actors' choices and behaviour, but in order to persist, they must also be reproduced through their actions. Hence, institutional change will occur when actors' social practices deviate on a sustained basis from existing institutionalised practices. Structural stability relies on actors enacting institutional rules (Giddens, 1984) or on creating complementary ones.

In the light of structuration theory, therefore, certain trends – such as the reproduction of a certain ‘variant’ of capitalism – are ultimately reflected in corresponding social practices at the micro- (workplace) and/or meso-level (inter-firm network or industry). Conversely, changes in practices at the micro-level have the potential to alter structures and institutions (Giddens, 1984).

When applied to the phenomenon of onsite subcontracting, an analysis guided by structuration theory might contend that managers, guided by rules of signification and legitimation at the societal or industry level, increasingly choose to use onsite subcontracting, either because they perceive it as directly advantageous or because it exemplifies a modern managerial strategy. Institutional change at the macro-level may follow because the terms and conditions of employment at the subcontractors will cease to be governed by collective standards, and employees will drop out of the scope of the protection offered by works council representation. Moreover, new social practices in labour–management relations might evolve that will depart from the cooperative style characteristic of a CME.

However, the assumption that such an institutional change will *automatically* follow from an increase in subcontracting not only runs counter to a fundamental axiom of structuration theory but also ignores the fact that some managerial strategies, at least in Germany, are not determined by management alone. Rather, works councils, trade unions, social movements and state authorities represent powerful actors that can ‘shape’ management practices in a variety of ways, for instance, through bargaining over workplace agreements (works councils), negotiating industry or company collective agreements (trade unions), delegitimising certain practices (social movements) and setting and enforcing legal standards (the state) (Behrens, 2013). It is argued that these reflexive actors draw upon specific rules and resources and engage in bargaining processes with managers and employer associations, leading to ‘negotiated patterns’ of onsite subcontracting that reproduce – at least in part – the social practices inherent in CMEs.

Horizontal disintegration via onsite subcontracting and industrial relations

Unlike vertical disintegration (Doellgast and Greer, 2007), *horizontal* disintegration occurs when firms externalise functions at the same level of the value chain (such as production in a manufacturing firm). In this study, analysis is confined to the *onsite* subcontracting of core functions to subcontractors operating on the premises of the buyer using their own employees on long-term or even indefinite contractual arrangements for subcontracting. This form of subcontracting was chosen because it is likely to have the most severe consequences for existing industrial relations institutions, their wider setting and society as a whole through potentially increasing the share of precarious employment and undermining social security and labour law.

Onsite subcontracting in Germany has been the subject of only a small number of studies. While some research has aimed at documenting abuses, illegal practices and wider effects on the employment system, only one representative survey yielding data on the incidence of onsite subcontracting in manufacturing and retailing has been conducted (Hertwig et al., 2015). This suggests that the challenges of onsite subcontracting appear

to be most severe precisely in those workplaces in which the characteristic institutions of the German employment system have been most robust. In manufacturing, nearly 45% of large firms with more than 499 employees, the cornerstones of German co-determination (Ellguth and Kohaut, 2017), made use of subcontracting. Just under half of these (20.2% of the overall total) used onsite subcontracting in the sense noted above. In smaller firms, subcontracting was not so widespread.

This also held for retail, where establishments, aside from some large food chains, are much smaller than in manufacturing. Only 11% of larger companies (50 employees and more) made use of subcontracting, of which more than half used onsite subcontracting (6.7% of the total). These options played only a very marginal role in the medium and small enterprise segment. Even though onsite subcontracting is therefore concentrated in the larger food chains and hypermarkets, this group of establishments exerts a major influence on wider industry developments due to the large proportion of both the revenue and the (part-time) employment it accounts for.

According to the survey data, one-third of managers interviewed indicated motives for using onsite subcontracting, which suggests that this could pose a serious challenge to the German employment system. Managers specified a desire to use subcontracting as a replacement for the now more expensive option of agency work (30%) or to reduce labour costs (36%). Other motives typically associated with subcontracting predominated, such as 'increasing flexibility' (81%), 'concentration on core competencies' (78%) or 'receiving services that cannot be self-provided' (67%).

More than one-third of managerial respondents reported that onsite subcontracted workers received lower pay and had to work longer hours than employees of the client companies. This is also illustrated by case study research (see Brinkmann and Nachtwey, 2014). First, the terms and conditions of subcontracted workers tend to be less favourable than those of employees at client companies. Very often, the subcontracted workers tend to work in workplaces with neither a works council nor collective bargaining coverage and that operate flexible working time schemes or frequently make use of overtime. In effect, workers are located in 'co-determination-free zones' (Wirth, 1994). Only in very rare cases, such as some categories of highly skilled workers operating on a freelance basis, do contract workers receive higher pay than the core workforce, with a type of risk premium for accepting the requirements of a high degree of flexibility and a willingness to adapt to different social, economic and spatial environments. In some extreme cases of cross-border posted work, contract workers were not paid at all (Wagner and Hassel, 2016).

Second, research indicates that onsite subcontracting diminishes employee participation rights and, as a result, contributes to a 'de-democratisation' of workplaces. In particular, a number of works councils' co-determination rights cease to apply once a workforce drops below a certain numerical threshold. Of particular importance is the granting of paid time-off for at least one member of the works council (Works Constitution Act 2017, para. 38) where an establishment has 200 or more employees. This requirement is often no longer met where an employer relocates operations to subcontractors whose employees do not count towards the total. Because subcontractors rarely have works councils, no one is able to exert at least some control over the working conditions of subcontracted workers (Lillie and Wagner, 2014; Wagner and Hassel, 2016).

Methodology

The aim of the empirical research² was to gather primary data on the motives, operational practices and effects of onsite subcontracting on industrial relations and society more broadly, together with information on the working conditions and contractual terms of onsite subcontracted workers. The research was conducted in 12 firms, nine in manufacturing and three in retailing. For manufacturing, four companies from the metal and electronics branch and five from food processing were selected. In those cases in which access to the subcontractor was granted, the subcontractors' management representatives were also interviewed to make a relational perspective possible.

The choice of industries was guided by media and trade union reports, which indicated that onsite subcontracting was both widespread and particularly problematic in the selected areas. Likely candidates were noted from such reports and from a telephone survey of participants who had indicated their willingness to take part in a broader study. Firms were then selected via a theoretical sampling method that sought to gain a broad picture in terms of company size and the intensity of the use of onsite subcontracting.

Each case study included interviews with different actors, primarily managers and works council members. The interviews focused on the motives for using subcontracting, how subcontractors' services were coordinated, works council strategies and the employment conditions of subcontractors' employees. In one case (vehicle manufacturing), there was access only to the works council and management representatives at the subcontractors. In addition, five interviews with business associations and trade unions in manufacturing and retailing were conducted. The interviews lasted between 30 minutes and three hours. Table 1 sets out the basic characteristics of the contracting companies in the sample.

The sample appears quite heterogeneous, with company sizes ranging from 40 employees (one food processing company) to more than 10,000 (one large manufacturer and two retail chains). There was also some variation in the intensity of subcontracting: while some used subcontracting only fairly sparsely (one had even abandoned a subcontract at the time of investigation), others ('Steel') were running over 100 subcontracts, with more than 1000 contract workers onsite at certain times.

All interviews except one were recorded, transcribed and analysed using categories derived from structuration theory and the VoC approach. Content analysis was performed with an interpretative qualitative method that in a first step focused on strategic (i.e. action-related) aspects and in a second step on institutional (i.e. [re-]production of context-related) aspects. Drawing on insights from Giddens (1984: 288 and 327), first, the subjective frames of meaning of actors and the way they utilised their resources were identified for each case. In the second step, the findings were compared between cases and contrasted with results found in the literature. In this way, it was possible to interpret the findings in a context-sensitive way and to elaborate the rules of signification and legitimisation, together with the resources of domination, that governed works councils' social practices and constituted relevant structural elements.

The works councils in the sample companies differed markedly in terms of their structures, attitudes to onsite subcontracting and access to resources. While the latter points will be considered below, works council structures reflect the differences in both company size (as the size of the works council varies with the establishment size) and industry. In metalworking and electronics, the works councils were not only larger but also

Table 1. Characteristics of companies in the sample.

Case	Industry	Size (no. of employees at site) / works council size (members)	Extent of subcontracting / number or extent of onsite subcontracts
Cast iron	Metal and electronics	700 / 13	high / 1
Steel		4000 / 27	high / high
Mechanical engineering	Food processing	490 / 9	high / high
Vehicle manufacturing		> 10,000 / 47	high / high
Malt		40 / 3	none / 1
Meat	Retailing	200 / 7	none / high
Drinks		140 / 7	none / 1
Sweets		250 / 9	none / 4
Milk		800 / 13	low / 2
Hypermarket	Food chain A	250 / 9	none / none (previously 1, 2014 none)
Food chain A		>10,000 / 41	high / high
Food chain B		>10,000 / 41	high / high

highly professional. They are backed by a high level of union density and have close connections to trade unions. In food processing and retailing, the degree of professionalism varied and was particularly low in small firms ('Malt', 'Drinks').

Patterns of management–works council interaction and institutional change

Our research found that works councils adopted one of two broad positions towards onsite subcontracting: rejection or acceptance. Each of these encompassed two sub-types of works council response with quite different implications for the issue of institutional change. Two types of works councils were identified that sought to mitigate the effects of onsite subcontracting through a strategy of using their leverage over managerial decisions to reduce its incidence and exert some influence over the terms and conditions of employment at the subcontractors ('bargained acceptance') or to ban onsite subcontracting ('confrontational rejection'). The other two types either simply accepted management's decision to use onsite subcontracting and de facto recognised their lack of influence ('resigned acceptance') or failed to gain any type of a grip at all on the issue, as they lacked strategic capacity ('inconsequential rejection'). Table 2 provides an overview.

(I) The two sub-types 'resigned acceptance' and 'inconsequential rejection' appear to contribute to an institutional erosion of the pillars of the employment system.

Resigned acceptance. In this pattern, the works council accepted management's arguments for onsite subcontracting, typically without reservation. Their rules of signification oriented them to the well-being of the firm and of the core workforce. In some cases, as in 'Milk', there was an informal agreement implicitly limiting onsite subcontracting

Table 2. Patterns of works council behaviour and effects on the employment system.

Works council type	Resigned acceptance	Inconsequential rejection	Bargained acceptance	Confrontational rejection
Cases	<i>Drinks, Milk, Food chain A and B</i>	<i>Malt, Cast iron</i>	<i>Mechanical engineering, Vehicle manufacturing, Meat, Steel</i>	<i>Sweets, Hypermarket</i>
Effect on employment system/society	Partly erosion	Erosion	Reproduction and adaptation	
Effects on conditions of work and employment	–	– –	+/-	

to certain functions, such as logistics. Where the dominant strategy in the industry was one of securing cost leadership, this configuration was characterised by an alignment of interests between management and the works council, both of whom agreed on the need to make the company flexible and competitive through the employment of low-paid and flexible workers.

Inconsequential rejection. In these cases, the works council had very little knowledge about onsite subcontracting, both in general and in terms of the scale of its use at their establishment. For many representatives, the topic was still rather new, and the works councillors felt that they first needed to gather information in order to form their own strategies. In essence, works councils of this type neither had any leverage over management nor any scope for influencing its decision to outsource or the working conditions of the subcontractor's employees.

To illustrate, in one case ('Malt'), management had been using onsite subcontracting for more than 20 years. The works council only discovered this recently when a trade union official brought up the topic. However, because of media reports and trade union advice, the works councillors took a negative view of the practice. As a hypothesis for further research, one may expect this pattern to be rather unstable and likely to shift to one or another of the other three patterns once the works council has improved its knowledge of the practice and implications of onsite subcontracting.

Where either of these types of works councils were present, management had considerable discretion to establish onsite subcontracting. Considered in aggregate, such responses would tend to reduce the number of workers covered by collective bargaining and works council representation and contribute to a lowering of employment conditions. In effect, this would promote institutional change in the German CME through intensifying dualisation and, via the operation of the German social insurance system, would lead to a more segmented society with high(er) income inequality.

(II) Half of the cases in the sample were assigned to the two sub-types 'bargained acceptance' and 'confrontational rejection'. In essence, these categories of works councils aim

to influence or combat managerial strategies of onsite subcontracting. It is likely that works council behaviour of this type will not only stabilise and reproduce the existing institutional pillars of the German employment system but might even expand the range of regulation via practices of network-oriented employee representation, resulting in a process of institutional completion.

Bargained acceptance. In most cases, the works councils adhered to a pattern in which workforce representatives accepted onsite subcontracting, possibly even perceiving it as a legitimate and necessary form of inter-organisational collaboration. At the same time, however, acceptance was made subject to two conditions. First, employee representatives wanted to be involved in determining how onsite subcontracting was organised; and second, they insisted that the terms and conditions of employment for employees working for onsite subcontractors should meet certain minimum standards. Following these rules of signification and legitimation, works councils mobilised a number of resources to induce management to bargain over onsite subcontracting, despite the fact that this form of activity is outside their formal legal domain. In some cases, representatives were able to conclude agreements. Interestingly, works councils of this type tended to be found in large companies in manufacturing, building on a traditional culture of cooperative labour relations that – conceptually – mirrors specific rules of signification and legitimation in this sector. This appears to be an important precondition for a works council being able to act beyond its formal competence.

In one such case ('Steel'), the works council itself felt it was necessary to use onsite subcontracting. One argument was the existence of economic pressures due to new entrants in the market and an increased demand for flexibility. Another reason was that the company concerned had become dependent on purchasing competencies for tasks it could no longer carry out alone. The works council accepted onsite subcontracting as a means of enhancing the ability of the company to adjust the size of its workforce and thus avoid future direct conflicts with management should it suffer a fall in revenue. Given the scepticism of this works council towards the likely impact of subcontracting on employment and working conditions, its acceptance was predicated on intensive involvement. This included bargaining with management over core items affecting the use of onsite subcontracting, such as its scope and duration, working hours, pay and health and safety. The works council also actively fostered the setting up of works councils in subcontracting firms and established cooperative relationships with them. In doing this, they succeeded in closing an 'institutional gap' through the practice of network-oriented employee representation, leading to an instance of institutional completion in the form of an advance beyond the formal scope of works council participation and movement towards a 'co-determined inter-firm networking' (Duschek and Wirth, 1999) able to deliver benefits for employees at both the contracting firms *and* the subcontractor.

Confrontational rejection. Works councils of this type also sought to gain influence over onsite subcontracting measures taken by management but via a different strategy. Because their position was informed by strong feelings of injustice and/or dysfunctionality, their behaviour tended to be more combative and conflictual, guided by the overall

objective of the complete removal of onsite subcontracting and via a strategy of threatening management rather than bargaining over improvements. In contrast to 'bargained acceptance', such works councils were found in medium-sized firms that lacked any tradition of cooperative conflict resolution.

In one case ('Hypermarket'), the works council's rejection was the result of five years' experience with onsite subcontracting. The works council's main concern was that employees at the onsite subcontractor were unable to meet the retailer's requirements with regard to quality and reliability (with negative effects on customer satisfaction and, eventually, employment). Eventually, the works council demanded that all onsite subcontracted work should be insourced. The local works council in this firm was strongly supported by the central works council at the company level, which had access to additional resources and suggested a range of strategies, such as naming-and-shaming or refusing consent to management plans in areas where the works council had strong(er) legal rights, as a form of micro-politics. Due to a change in management, the works council's demands were finally accepted, and management hired 15 new employees. Even though management made use of a new collective agreement that provided for lower pay rates for insourced work in retailing, insourcing in effect increased labour costs for the retailer, possibly offset by higher productivity and/or better quality.

In the second case ('Sweets'), the works council and management had a long history of conflict that extended to the issue of onsite subcontracting. Management refused to recognise the works council as a legitimate representative of employee interests, not only for subcontracting but more generally. Firm-level labour relations were characterised by open confrontation, in which both sides used all available resources to achieve their goals, including resorting to labour courts, conciliation panels (established under the Works Constitution Act), customs authorities (which, in Germany, enforce certain labour standards) and informing the public.

Discussion

There are robust empirical data to support the contention that horizontal disintegration constitutes a new set of threats to the institutional framework of the German employment system. The specific consequences of onsite subcontracting are, however, less clear-cut. The data indicate that it depends to some extent on how employee representatives respond.

Works council reactions: Between neglect and regulation of onsite subcontracting

The works councils revealed quite different reactions to their companies' strategies of onsite subcontracting. Half of the works councils researched were unable to influence whether and how onsite subcontracting was used. These works councils were guided by rules of signification and legitimation that either framed onsite subcontracting as a necessary or effective means for enhancing the competitiveness of their company or did not see it as a relevant issue. Consequently, they did not make use of any of the specific

power resources usually available to a German works council. In effect, the representatives failed to achieve any regulation or improvement of employment conditions at onsite subcontractors.

In contrast, six works councils in the study displayed approaches to employee representation that suggested some *regulation* of onsite subcontracting through workplace-level bargaining. These works councils succeeded in engaging in a form of 'co-management' in which they actively sought to shape the conditions for onsite subcontracting through negotiation with management. These works councils referred to rules of signification and legitimisation that were partly rooted in the culture of their economic sector and partly in their own sense of what it meant to be a professionalised works council representative. On this basis, they sought ways to use their existing resources to extend their influence beyond their formal participation rights. They 'act otherwise' (Giddens, 1984: 14).

This finding is noteworthy, as it demonstrates how works councils have been able to extend their reach to topics not formally within their scope. Works councils successfully applied CME 'rules of the game' to subjects outside their original remit. By aiming for a say in managerial decisions about onsite subcontracting, the works councils clearly exceeded their formal rights in several ways. First, participation rights were applied in a field outside the list of topics on which works councils have co-determination rights. Second, the works councils gained influence beyond their formal domain by the regulation of work in *other firms*. This 'network perspective' is especially notable, as it documents a change in the rules of signification towards assuming the role of a 'network councillor'. As a result, some works councils not only managed to achieve institutional stability but even succeeded in extending their regulative domains, which constituted an institutional completion, that is, the creation of a further point of reference for works council activities, the inter-firm network. Third, the pressure exerted by employee representatives to set up new works councils in subcontractors serves to extend the works council coverage throughout the German economy. In effect, works councils have been able to raise their degree of leverage and, concomitantly, the institutional strength of this core institution of the German CME in general. In this respect, works council activities can both reproduce existing institutions and change and enlarge their purview.

Change of the CME: Evidence for institutional erosion, fragmentation and upgrading

Concerning the effects of onsite subcontracting on the institutional patterns of the German CME, there is *partial* evidence for the three scenarios outlined in the introduction, which may improve the understanding of institutional change. First, there is support for the erosion hypothesis, illustrated by those cases in which no objection was made to onsite subcontracting strategies. Second, in other cases, such strategies did not pass uncontested, but resistance was associated with a 'defensive' works council response. This underpins the fragmentation/dualisation thesis (Thelen, 2014), according to which the German industrial relations system would become more internally divergent (Palier and Thelen, 2010). Third, there is also evidence for the institutional stability thesis; however, this needs to be expressed more precisely. The findings reported here indicate that

the stability of the German employment system's institutions (as a macro-pattern) is achieved through institutional change within the specific domain of industrial relations. However, this type of change does not come with erosion but with 'institutional upgrading', which is achieved via practices of network-oriented works councils. Because upgrading is characterised by improvements in regulation outside the scope of formal regulation, it leads to institutional changes, which in effect contribute to the stability of the CME as a whole. In other words, institutional change in one *domain* of the CME – the industrial relations system – may foster the reproduction of the broader model (Lane and Wood, 2009), as actors creatively apply existing regulatory possibilities to complete the institutional setting. In this way, stability – 'defence of the CME' – is achieved through change. As a(n) (unintended) by-product, 'defence' strategies also represented a form of 'offence' deployed to escape from the narrow constraints of existing formal norms. As such, it represents 'institutional work' (Lawrence and Suddaby, 2006), generating new institutions via social practices – in this case, a 'network employee representation'.

Factors of institutional change

The findings shed light on the antecedents of and conditions for institutional change and its variety as well as the factors that might trigger it. First, the effects of horizontal disintegration are likely to vary by *sector and company size* as important contexts (for worker representatives). The case studies suggest that works councils in large corporations have been more successful in influencing decisions over onsite subcontracting because of their resources, such as a high degree of professionalism, well-developed relations with management (even if not always cooperative) and support from trade unions and other external agents, such as advisers. This is less the case for works councils at small-to-medium enterprises (SMEs) and in the service sector, which serve to reproduce existing differences (although this is a distinction not included in the ideal types of the VoC approach). However, the boundary seems to be a more blurred one. In contrast to Thelen (2014), the dividing lines in the sample of this research not only run between manufacturing and services, but also within manufacturing and within the service sector. Further research might be needed to explore the specific contextual conditions under which fragmentation takes place by, for instance, investigating the role of particular industries rather than broad sectors or the distinctive effects of corporate strategies such as product differentiation (as in the metalworking and electronics industry) and cost leadership (as in food processing and retailing). This would appear to be a fruitful approach, as vast areas of the German economy, notably SMEs and the service sector, are works council-free zones. The same holds true for collective bargaining in these settings (Ellguth and Kohaut, 2017). Consequently, decisions over outsourcing and the determination of employment conditions are at the discretion of management in large parts of the economy, subject only to statutory provisions and professional or informal standards (Windeler and Wirth, 2004). Accordingly, institution building via institutional completion might, at least for the moment, be limited to certain parts of the economy, making it likely that different sectors will continue to exhibit differing standards, with some industries moving towards a 'high road' and others towards a 'low road' scenario (Turner, 1991).

Second, whereas previous research pointed to state policy and company strategies as triggers of institutional change (for instance, Jackson and Sorge, 2013), the current findings point to micro-level bargaining within firms and their cumulative effects as an important 'go-between'. Acknowledgement of the micro-political nature of decision making in organisations also rules out the use of the functional arguments that have often been put forward to explain the stability of CME institutions (Hall and Soskice, 2001). Even if complementarity might increase efficiency, actors at the micro-level are hardly able to foresee the consequences of their choices.

Structuration theory and VoC

In terms of the associated theoretical issues, the findings support the contention that there is neither an automatic process of 'institutional change' towards a dualised economy as a result of managerial strategies nor a full commodification of labour (Holst, 2014). Rather, the effects of any new strategy are subject to bargaining between actors at the workplace and firm level, and they depend on the interpretative schemes, norms and resources of the actors involved (Giddens, 1984). While VoC is largely confined to macro-level processes, the structuration theory concept proposed here urges researchers to pay attention to the interplay of the micro-, meso- and macro-levels of social systems. This concept helps researchers understand the overall different behaviour of works councils (and micro-level actors in general). Because social practices are rooted in different social structures at the industry or societal level, actors tend to differ in their views and interpretations and in the way they deploy resources to facilitate action. Accordingly, any analysis that seeks to predict trends (here, institutional change) without inquiring into actors' behaviour at the micro- and meso-level (here, negotiation of horizontal disintegration) will lack explanatory power, since it will leave out the role of practices that conserve institutions, enact structural provisions and build new institutions.

One limitation of this study is its focus on the firm level. Bargaining, particularly in the case of onsite subcontracting, also involves political actors, social movements, employer associations and trade unions, all of which might influence the regulation of subcontracting through processes of 'institutional work' at meso- and macro-levels. For instance, as a result of trade union lobbying, recent changes in labour law (Bundesregierung, 2016) have provided works councils with mandatory information rights about third-party employment at workplaces. This suggests a modest shift in the rules of legitimisation at the macro-level that can enhance works councils' capacities at the micro-level. Giving a structurationist underpinning to the VoC approach can represent a valuable tool for analysing these developments, which involve processes at the macro-, meso- and micro-level, since it directs attention to the (changing) rules of signification and legitimisation as well resource usage. In this case, macro-level institutions provide rules of legitimation and signification (industrial democracy, legitimate right to participate in management decisions, union principles of 'equal-pay-and-treatment') as well as resources (strong co-determination rights) to actors (here, works councils) that evidently view onsite subcontracting as antithetical to basic rules of legitimation, such as notions of fair treatment and compliance with legal obligations.

Conclusion

In line with existing literature on institutional change, this study confirms that onsite subcontracting poses a threat to the German CME and can lead to further dualisation, with far-reaching consequences for wider social inequality. However, in contrast to the findings of mainstream research in political economy, this research shows that reflexive actors are able to change existing institutions or develop new ones through practices of network-oriented employee representation. Through this, they may achieve an institutional completion that closes the loopholes available to firms and their managements. By defending the CME institutions, such practices initiate an (unintended) offensive response, which goes hand-in-hand with new rules of signification and legitimisation as well as a different deployment of resources. Through this, actors in the German political economy might be able to re-constitute elements of a more solidaristic CME in some industries and thereby change the pattern of social institutions as a whole. Nevertheless, the ‘completion’ must be regarded as a temporary one, because in reaction to global market pressures and political regulation, firms continuously implement new organisational forms and strategies that will challenge the institutional setting.

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Notes

1. The terms ‘onsite subcontracting’ and ‘contract for work’ are used synonymously.
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