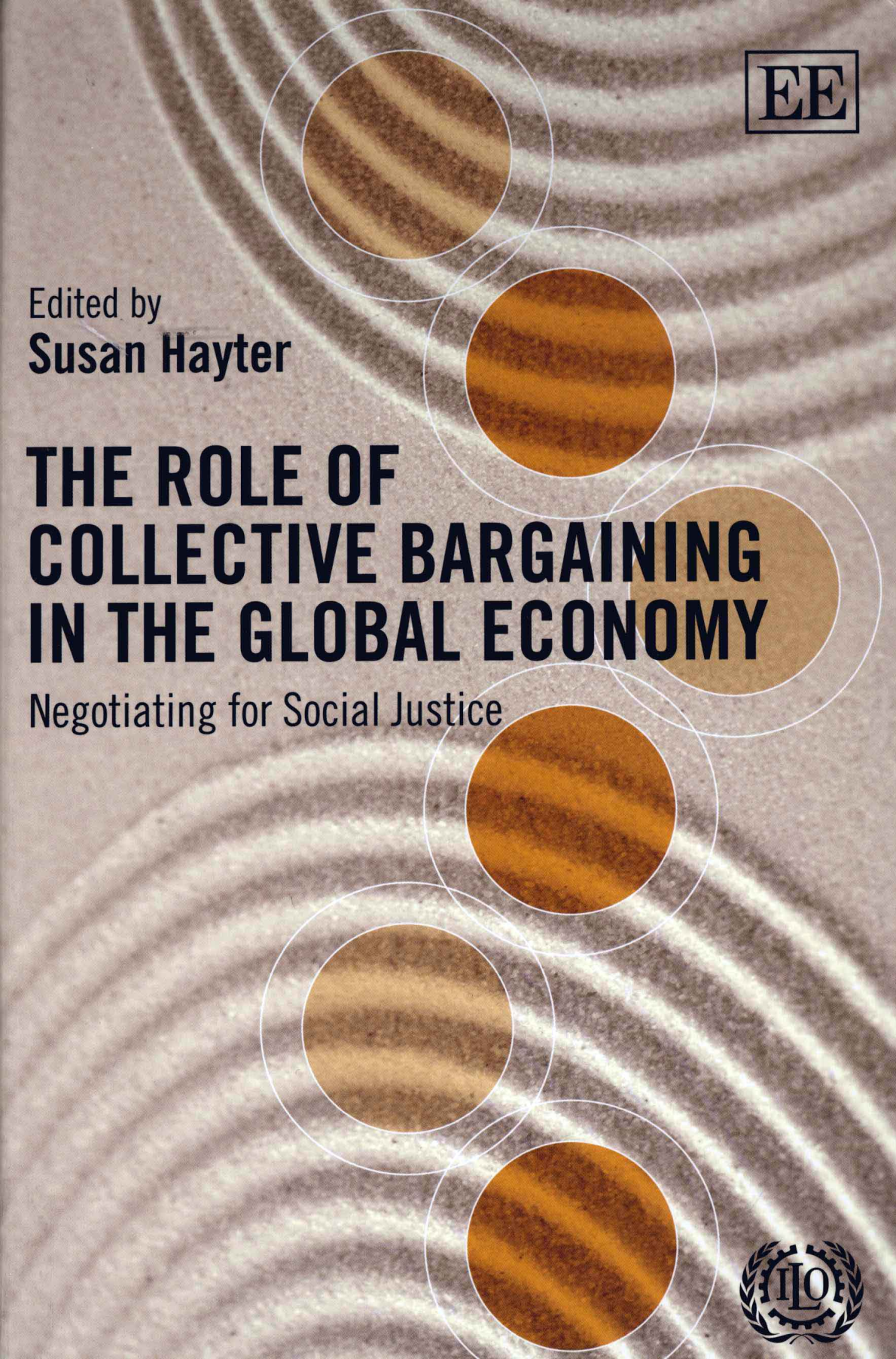
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Susan Hayter
THE ROLE OF COLLECTIVE BARGAINING IN THE GLOBAL ECONOMY
Negotiating for Social Justice
ILO

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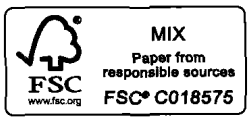

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Foreword

In 2009 the International Labour Organization celebrated the 60th anniversary of the Right to Organise and Collective Bargaining Convention, 1949 (No. 98). Today the global economy poses a number of challenges for employment, wages, working conditions and employment relations. Collective bargaining has a critical role to play in addressing these challenges and in advancing social justice. Yet as we know, union membership has been declining and collective bargaining has been weakened or remains underdeveloped in many parts of the world.

There is thus a need to advance scholarship on how the exercise of this right contributes to balanced economic and social development. This should inform policy development and help governments, workers and employers' organizations create an enabling environment within which to effectively exercise this right. This volume is a valuable contribution in that regard. It helps to build knowledge on the theory and practice of this fundamental principle and rights at work.

The volume brings together both ILO and external academic researchers to examine the impact of collective bargaining on different issues and in different parts of the world. As can be expected, the chapters reflect a diverse set of views and disciplines. The contributing authors explore a number of different issues, such as the role that collective bargaining can play in the context of the economic crisis, innovative practices and the economic effects of collective bargaining. The contributions cover a broad range of country contexts. Some may inform policy and institutional renewal in higher income countries where these institutions are more established. Others draw out the lessons and implications in respect of developing countries. While there is a strong comparative theme running throughout the volume, the authors are cautious of the risk of generalizing from one country to another.

The volume also points to areas requiring additional policy oriented research. These include the role that collective bargaining can play in recovery from the economic crisis and how this institution can encompass and improve the lives of those working under precarious employment contracts.

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Susan Hayter

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1. Introduction

Susan Hayter

Collective bargaining is a process of negotiation between the representatives of an employer (or employers) and of workers.[1] The intention of these negotiations is to arrive at a collective agreement that will govern the employment relationship.[2] This typically covers issues such as wages, working time, and other working conditions. Since collective agreements also regulate labour relations they are likely to address the rights and responsibilities of the respective parties. Collective bargaining is premised on a well defined employment relationship and the freedom of workers and employers to associate to an organization that represents their interests. It is a means to address work-related issues in a way that accommodates the interests of all parties concerned. Collective bargaining involves a process of joint decision making and is thus distinct from other forms of governance such as government regulation, individual contracts and/or the unilateral decisions of employers.

1.1 NEGOTIATING FOR SOCIAL JUSTICE

The origins of collective bargaining can be traced to the industrial revolution in the 18th and early 19th centuries, a period of profound technological, economic and social change that started in the United Kingdom and then spread to Western Europe, North America, and other parts of the world (Kaufman, 2004). The transition from manual home-based to mechanized factory-based production dramatically increased the intensity of production and transformed labour relations. At the same time demographic changes and the steady flow of people from the countryside to industrial cities led to a rise in the numbers of people available to work in factories. Workers sought to protect themselves from the effects of new production methods and increased competitive pressures by forming organizations capable of representing their interests to employers and the government (Windmuller, 1987).

Some of the first workers' organizations were guilds of craft workers who regulated entry to the trade. Others functioned as mutual benefit societies, offering protection against loss of income due to illness, unemployment or old age. Some of these early organizations reconstituted themselves as representatives of wage earners in large-scale industries. Faced with problems of child labour, long working hours, low wages and unsafe working environments, these early trade unions demanded improvements in wages and working conditions. Since they had the power to withdraw all labour in support of their demands, employers could either bargain with them or face a strike and loss of production. Collective bargaining thus emerged as a means to balance otherwise unequal (individual) bargaining power in employment relations and redress the deep inequalities and injustices of the period. Collective agreements also protected workers from some of the adverse effects of competition by establishing a *common rule* – standard rates of wages and conditions of work for wage earners in a particular factory, trade, industry or region.[3]

Many employers resisted these early attempts by workers to engage them in a process of joint rule making. Their actions were supported by public policies that derived their justification from the doctrine of economic liberalism. These gave preference to individual contracts of employment thus weakening trade unions and retarding the development of collective bargaining (Windmuller, 1987). The tide began to turn when some countries amended their laws to remove restrictions to the formation of a trade union and legal obstacles to the right to strike. This was followed by enabling legislation that protected the right of trade unions to conclude collective agreements.[4]

Against the backdrop of a severe economic depression in the early 1930s, growing awareness of the limits of free markets and rapidly declining living standards, policy makers in many countries took steps to promote collective bargaining as a means of regulating wages and working conditions.[5] For example, in the USA, the National Labour Relations Act in 1935 (also known as the Wagner Act) provided employees with the statutory right to form, join and assist labour unions and conduct collective bargaining. It included among 'unfair labour practices' the refusal of the employer to bargain with a union that the majority of workers have chosen as their bargaining agent (Iserman and Wolman, 1947).[6] In France, following a general strike, the incoming government, employers' confederation and union signed the 'Matignon Agreements' on 7 June 1936, which removed obstacles to trade-union organization, granted a 40-hour work week and led to the enactment of the right to collective bargaining. The new Collective Agreement Act of 24 June 1936 permitted the extension of collective agreements in an occupation or industry as a way of protecting

employers and workers from competitive labour practices which might otherwise undermine standards in collective agreements (Hamburger, 1939).

It is worth noting that in some countries the regulation of collective bargaining emerged from agreements between employers and unions. For example, in Sweden, following a period of industrial conflict, employers' organizations and trade unions negotiated a 'December compromise' in 1906 which recognized freedom of association and other rights. This led to the conclusion of a number of other agreements and culminated in the Basic Agreement of 1938. Legislation simply codified rights that had become generally recognized in collective agreements.[7] Similarly in Norway, an agreement between the employers' association and worker confederations in 1935 set out the procedure for collective bargaining.[8]

By the mid 1930s, a report of the International Labour Organization (ILO) noted 'the increasing importance of the collective agreement as an element in the social and economic structure of the modern industrial community . . . in many countries the collective agreement is now a recognized method of determining working conditions' (ILO, 1936, p. 265). The legal and institutional arrangements that developed for the conduct of collective bargaining differed across countries. In some countries, notably those in continental Europe, collective agreements were incorporated into the legal system as a new source of regulation. Others such as the United Kingdom emphasized the voluntary nature of collective bargaining and autonomy of the parties. In Australia and New Zealand, a system of arbitration was put in place and its awards were the outcome of collective bargaining (Bamber and Sheldon, 2007).

In 1944, in the wake of the Second World War, the ILO adopted the Declaration of Philadelphia, annexed to the ILO Constitution, which reaffirmed its founding statement that 'labour is not a commodity' and that 'lasting peace can be established only if it is based upon social justice', and recognized the 'solemn obligation of the International Labour Organization to further among nations of the world programmes which will achieve: . . . the effective recognition of the right to collective bargaining'. The international community adopted a series of new international instruments including the Freedom of Association and Protection of the Right to Organize Convention, 1948 (No. 87) and the Right to Organize and Collective Bargaining Convention, 1949 (No. 98) which came to be basic international law on the subject (Rogers et al., 2009).[9]

These international instruments gave renewed impetus to the development of collective bargaining. The institutional arrangements for collective bargaining continued to vary, reflecting the policy orientation of

the government, the priorities of workers, employers and their organizations and historical institutional factors. For example, many countries in Western Europe developed a tradition of multi-employer bargaining at a sectoral or inter-sectoral level. In countries such as the USA and Japan, single-employer bargaining at the enterprise or establishment level became the predominant mode of collective bargaining. Some authors attribute this to a historical compromise which reflects the nature of industrialization. For example, employers in the chemical, clothing, construction and metalworking industries in countries such as France, Germany, Italy and Sweden engaged in collective employer action in order to counteract the influence of strong industrial unions and neutralize the (individual) workplace from trade union activity. In the USA and Japan, the relatively large employers that emerged during early stages of industrialization insisted on single-employer bargaining (Sisson, 1987).

Collective bargaining was also gaining ground in the developing world in the 1960s and 1970s. In French-speaking Africa, collective agreements tended to be negotiated at the industry level. In English-speaking Africa, most collective bargaining took place at the enterprise level, with the exception of countries such as Kenya and Ghana where it took place at the industry level. Some post-independence governments adopted relatively interventionist approaches to wage and income policies and kept a tight rein on the union movement.[10] Collective bargaining was also expanding across Latin America, although it was limited to particular sectors such as the oil, energy, metallurgical, building and transport sectors. As a general rule, collective bargaining was conducted at the enterprise level, with the exception of some industries in countries such as Argentina, Mexico and Venezuela (Bronstein, 1978). In Asia, some governments repeatedly stated that its practice be subordinated to the objectives of economic and social development and limited the scope of collective bargaining. Collective bargaining developed largely at the enterprise level, with the exception of a few countries and industries (ILO, 1976). In later years, industrial relations in developing countries tended to shift away from the pervasive state intervention that characterized the early independence period. With the transition from authoritarian to democratic rule in many countries in Asia, Latin America and Africa, industrial and economic democracy was extended to workplaces, and employers and unions assumed more responsibility for establishing employment conditions (Fashoyin, 1991, 2010).

Collective bargaining became widely recognized by scholars as a key instrument for regulating working conditions and employment relations in a manner that ensures fairer distribution of productivity gains; improves working conditions and enhances the dignity of workers; takes wages out of competition; legitimizes rules and institutionalizes industrial conflict.[11]

Some of the legal literature stressed the importance of collective bargaining as a counterbalance to the power of the employer. For example, Kahn-Freund, a preeminent legal theorist in writing on labour and the law states:

> The conflicting expectations of labour and management can be temporarily reconciled through collective bargaining: power stands against power. Through being countervailing forces, management and organized labour are able to create by autonomous action a body of rules, and thus to relieve the law of one of its tasks. (Kahn-Freud in Davis and Freedland, 1983, p. 69)

Over time the scope of collective bargaining expanded in many countries to include issues such as job security, training, parental leave and equal opportunity. Chapters 2, 3 and 4 in this volume provide insight into issues on this expanded bargaining agenda. Through collective bargaining, innovative, responsive and reflexive forms of regulation were crafted in respect of issues such as working time, as discussed in Chapter 3. In other countries, particularly those where collective bargaining was only beginning to emerge, collective agreements addressed a more limited set of issues, sometimes only referencing minimum standards prescribed in national law.

Towards the end of the 20th century, rapid economic and technological change and the integration of product and labour markets exposed enterprises to greater competition and placed pressure on labour standards. Policy makers were increasingly concerned with the need to promote labour market flexibility (Brodsky, 1994). The regulation of labour markets, whether emanating from collective agreements or governments, was seen as a source of inflexibility (discussed further in the next section). In this context, some of the literature on collective bargaining began to emphasize the role that unions could play in enhancing enterprise flexibility, efficiency and competitiveness.[12]

In some countries a rollback of policy support for collective bargaining, structural changes in labour markets, rising unemployment and an increase in non-standard forms of employment (fixed-term, temporary agency and part-time work) resulted in a decline in both union membership and the coverage of workers by collective agreements.[13] In others, collective bargaining coverage remained stable as innovative bargaining practices were adopted and collective bargaining structures adapted. For example, faced with growing demands for enterprises to be more flexible, efficient and competitive, sectoral and inter-sectoral agreements in countries such as Austria, Belgium, Denmark and Italy began to allow for subsequent articulation of wages and working time through negotiations at the enterprise level. In practice, this meant that the focal collective agreement concluded at the most important bargaining level delegated

particular issues to regulation at a lower level, within a binding framework. This 'organized decentralization' within a multi-level bargaining system helped maintain a high degree of coordination of bargaining activities and high levels of collective bargaining coverage, while at the same time enabling the parties to address the specific needs of enterprises and of workers at their workplace (Traxler, 1995).

In 1995, in the context of increasing globalization and growing concerns over labour standards, the Copenhagen World Summit for Social Development defined a set of 'fundamental' workers' rights. This paved the way for the adoption in 1998 by the ILO of the Declaration on Fundamental Principles and Rights at Work according to which member States have a constitutional obligation to respect and abide by the principles concerning four fundamental workers' rights, namely: freedom of association and collective bargaining, the elimination of forced labour, the abolition of child labour and the elimination of discrimination at work. These core labour standards are widely cited in bilateral trade agreements, international financing contracts and in corporate social responsibility policies. Chapter 11 addresses a particularly important development, which is the inclusion of these core labour standards in international framework agreements between global union federations and multinational enterprises.

The status of collective bargaining as a fundamental right has been reinforced by a number of landmark decisions. In 2007, the Supreme Court in Canada ruled that Canada's Charter of Rights and Freedoms protects the right of union members to engage in collective bargaining.[14] In 2008, the European Court of Human Rights for the first time recognized the right to collective bargaining as an essential element of the right to form and join trade unions as protected by Article 11 of the European Convention on Human Rights.[15]

As Chapter 10 shows, the global economic crisis that unfolded in 2008 revealed a number of imbalances, not only in the financial industry, but also in respect of the labour market institutions, such as collective bargaining, that provide countervailing power to powerful financial and business interests. The asymmetric nature of globalization allowed for greater ease in the movement of capital (not labour) and tilted bargaining power in favour of employers. Before the economic crisis, wages had been stagnating, wage inequality had been increasing and the share of national income going to labour had been declining in many countries (ILO, 2008). As Chapter 6 shows, some of the causes of the widening gap between low and high wage earners were the weakening of trade unions and erosion of collective bargaining institutions. The *raison d'être* of collective bargaining over a century ago had been to balance power and by so doing obtain a fairer share of productivity gains, promote equity, facilitate stability in

employment relations and advance social justice. In the face of significant economic progress but growing inequality and other imbalances which threatened jobs and incomes, the ILO adopted the Declaration on Social Justice for a Fair Globalization (2008) which again places collective bargaining at the heart of efforts to ensure that economic and social progress go hand in hand.

1.2 DEBATES OVER THE VALUE OF COLLECTIVE BARGAINING

Freedom of association and the right to collective bargaining are fundamental workers' rights and recognized as such in most of the world. They are key tenets of democracy and an essential means through which workers are able to balance bargaining power and negotiate improvements in their working conditions. Yet while collective bargaining may enjoy recognition by the international community as a fundamental right, its value has repeatedly been called into question on grounds that collective bargaining institutions create obstacles to the flexible adjustment of enterprises, are a source of labour market rigidity and have a negative effect on efficiency. This viewpoint is particularly pervasive in policy circles. While rarely pushed to the point of denying workers the right to join a trade union, labour relations frameworks are designed in such a manner as to privilege individual rights over collective rights (Lee, 1998). For example, the *OECD Jobs Study* (1994) argued that:

> there is a need in both the public and private sectors for policies to encourage greater wage flexibility and, in countries where the scope for increasing such flexibility is limited, to reduce non-wage labour costs. Actions on these fronts would involve changes in taxation, social policy, competition policy and collective bargaining. (OECD, 1994, p. 49)

The latter included the deregulation of collective wage institutions (specifically phasing out the extension of collective agreements) and the decentralization of collective wage setting to the enterprise level in order to increase wage and labour cost flexibility.

This view is supported by a neo-liberal discourse, premised on the theories such as those of Simons (1944) and Friedman and Friedman (1980) which promote the deregulation of labour markets and the dismantling of institutional support for trade unions and collective bargaining as a way of improving economic performance. According to this view, collective agreements impose restrictive practices (for example, shorter working hours, work to rule and so on) which reduce productivity and put a brake

on enterprise flexibility. Collective bargaining raises wage levels (and labour costs) to the point that unionized enterprises begin to restrict or reduce employment. The displacement of workers to the non-union sector depresses wages there and exacerbates wage inequality overall. Enterprises may also pass these (inflationary) wage increases onto consumers as higher prices eroding the real wage of all workers and undermining macroeconomic stability. In developing countries, this argument typically posits 'insiders' against 'outsiders'.[16] Collective bargaining is seen as a tool to protect the interests of a small labour aristocracy, harming the income and employment prospects of the majority of workers outside formal labour markets. Most empirical analysis of this type has focussed on the union wage mark-up and its effect on efficiency, employment and inequality.[17]

Path breaking theoretical work by Freeman and Medoff (1984) recognized the monopoly face of unions, which could be used to raise wages above competitive levels through collective bargaining. However they argue that not only have these features been exaggerated in anti-union theories but that unions have a second face. This 'collective voice / institutional response face' gives unions a very different appearance. It provides workers with a voice in decision making at the enterprise that can be harnessed to improve labour relations, worker participation and managerial performance. The results of their studies show that unions are associated with a reduction in wage inequality; a larger proportion of compensation allocated to social benefits (for example pensions, health insurance, and so on); less labour turnover; the retention of skills and increased incidence of firm-specific training; improvements in workplace practices and increased productivity.

What Freeman and Medoff's work and the empirical studies that followed in the institutional tradition show is that unlike the behaviour of monopolistic enterprises, which merely set prices to maximize profit, the *process* of collective bargaining (that is, the exercise of 'voice') provides unions (and employers) with incentives to behave in a responsive manner. Through collective bargaining, parties identify common as well as conflicting interests. On this basis, they are able to negotiate trade-offs among conflicting interests and agree to enhance joint gains. For example, both enterprises and workers can benefit from increases in productivity, higher profits and higher wages. The trade union may also agree to greater flexibility in working time (and a reduction in overtime premia) in exchange for workers' having greater choice over the duration and scheduling of their working hours. The rigidity / flexibility dichotomy is somewhat simplistic. Collective bargaining can be a tool for balancing employers' interests for workplace flexibility with workers' interest for worker-oriented forms of flexibility.

If we are to understand unions and collective bargaining as a Janus-faced

(two-faced) institution, what circumstances then lead to the predominance of one face (the institutional responsive face) over the other face (the monopoly face)? A comprehensive review of the empirical literature on the macro and micro-economic effects of trade unions and collective bargaining concludes that the outcome is contextually specific and depends on the economic, institutional, political and legal environment in which unions and employers negotiate – and that shapes incentives (Aidt and Tzannatos, 2002). It is the configuration of institutions – within a particular context – that makes the difference. It is thus important, from a comparative point of view, to consider that whereas a particular aspect of collective bargaining may lead to a favourable outcome in country X, it may have a different effect in country Y because the rest of the institutional structure differs. Thus many of the contributions to this volume examine the theory, policy and practice in a particular national context.

It is also important to bear in mind that apart from the configuration of institutions, there is also likely to be variation in the *form* a particular institution takes. For example, the literature points to the important role that bargaining coordination plays as a determinant of labour market and macroeconomic performance in higher income countries.[18] However, trade unions and employers' associations may influence or synchronize wage settlements in very different ways. Examples include national tripartite social pacts between government, employers' organizations and trade unions; centralized collective bargaining arrangements; national employers' organizations and trade union confederations which play a coordinating function; and informal means of coordination such as pattern bargaining (for example, the collective agreement in the metal sector in Austria and Germany acts as a trendsetter).

Returning to the policy debates, having reviewed a body of empirical analysis, the OECD undertook a formal reassessment of its policy advice.[19] In 2006, the OECD was more cautious in its policy advice:

> It would be useful to take fuller account of the fact that national industrial relations practices are part of the social and political fabric, implying that bargaining structures are not easily changed by government action . . . Recent experience also suggests that greater allowance be made for the potential contribution of centrally coordinated bargaining . . . (OECD, 2006, p. 88)

Despite the body of evidence regarding the 'collective voice / institutional responsive' face, this second face is seldom recognized. It is thus clear that despite its place as a fundamental right of workers, the superiority of collective bargaining over other methods of governance needs to be