Conflict at Work and External Dispute Settlement

A cross-country comparison

by

Sebastian Schulze-Marmeling

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Sebastian Schulze-Marmeling
Manchester Business School, Faculty of Humanities, University of Manchester
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Abstract

The focus of both academic and public debate on the expression of work-related conflict has long been focused on strikes. Substantial declines in collective disputes have been associated with more harmonious and less conflict-laden employment relations. This research deals with another, often forgotten form in which conflict is manifested, namely the settlement of individual conflicts through labour courts or employment tribunals. Its aim is to explore and explain differences in application rates to national judicial bodies both across countries and over time.

Using a novel database on 23 European Union Member States, it is found that a substantial degree of variance exists; claim rates across Europe differ substantially, and countries have developed along different lines. The explosion of court applications is found to be exceptional, and stability or volatility is identified in the large bulk of EU Member States. In order to explain cross-sectional and time differences, the research draws on wide range of literature, develops a new procedural concept of conflict, and proposes a comparative neo-institutionalist framework accounting for both institutions and actors.

The theoretical discussion elaborates three sets of arguments to predict claim incidence. First, it is argued that the existence of comprehensive collective industrial relations institutions, particularly employee workplace representation and collective agreements, tend to reduce the frequency of labour court claims. Second, the amount and complexity of employment regulation is argued to have an impact on the incidence of court applications. Finally, cyclical economic conditions and individual characteristics of the potential grievant are expected to predict the phenomenon.

Empirical evidence is presented from a range of different data sources, such as national administrative data and large-scale surveys for three country case studies on France, Germany and the United Kingdom. Findings support that all three sets of explanations contribute to the explanation of the incidence of labour court claims. Moreover, data seem to confirm the need for an interdisciplinary approach drawing on different bodies of literature.

Lay Abstract

There is a lively debate in the United Kingdom about the impressive increase in employment tribunal claims. The aim of this PhD is to explore and explain this development from a comparative perspective. For this purpose, the study compares the incidence of labour court or employment tribunal claims in 23 European countries. It is found that there are great differences in Europe whereas claims rates in the UK are below average, which indicates that there are fewer tribunal applications in the UK than in most other European countries.

There are numerous explanations for the variance in tribunal claims. We present evidence that employee representatives play a crucial role in the internal settlement (and, indeed, avoidance) of conflict. If the employee has no mean to address conflict through an employee representation institution, it is argued, they are more likely to take their grievance to an employment tribunal.

Similarly, we show that companies that are covered by a collective agreement report fewer claims. Our explanation suggests that agreements represent a set of rules that employers and employees have agreed on, which increases its legitimacy and acceptance, and might help to avoid conflictual behaviour.

A second argument proposes that the increased caseload for British employment tribunals is associated with more and more complex employment regulation and an easier access to the tribunal system. We discuss this argument and find that it helps to explain parts of the phenomenon, but more data are needed to elaborate the explanation in more detail.

Finally, the incidence of court claims is found to depend on cyclical economic conditions. In particular, tribunal caseload increases and decreases with the unemployment rate, and companies in economic difficulties report higher claim rates.

The research suggests that the articulation of conflict through the employment tribunal system depends on a range of factors, but is not the product of a tendency towards a ‘compensation culture’. If policy-makers want to limit the use of the court system, other mechanisms to articulate conflict should be in place, for instance through comprehensive trade union representation. Limiting the access to the tribunal system, for example through application fees, might decrease the number of court claims, but conflict is likely to be manifested differently.

Declaration

I hereby declare that no portion of the work referred to in the thesis has been submitted in support of an application for another degree or qualification of this or any other university or other institute of learning.

Copyright

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Of course, responsibility for any errors and omissions that remain in the thesis rests with me alone.

1 Introduction

There is a longstanding tradition of research on conflict at work. For decades, researchers from different disciplines have analysed the phenomenon and produced countless books and articles. The main, if not the only form of expressing employee discontent that attracted academic (and public) interest has long been that of collective industrial action, in particular strikes (Paloheimo, 1984; Shalev, 1992; Edwards and Hyman, 1994; Tsebelis and Lange, 1995; Carley, 2008; 2010; Brandl and Traxler, 2010). Recent years, however, have shown great decreases in strike intensity in virtually all developed market economies.

The disappearance of large-scale strikes from everyday news coverage may easily be equated with more harmonious and less conflictual work relations. The main reason for such a (mis)perception may be that 'new' forms of work-related conflict are less spectacular and disruptive for the uninvolved public, and there is relatively little knowledge about individual forms of conflict manifestation. Conflict may take subtle forms of 'organisational misbehaviour' (Ackroyd and Thompson, 1999) such as sabotage, absenteeism, or low work morale, which might not even be identifiable as the expression of employee discontent. A more obvious form of articulation it the enforcement of individual employment rights through the tribunal or court system,[1] which is at the core of this research.

The United Kingdom (UK) is one of the few countries in which there is a (relatively) lively public and academic debate on the increasing reliance on the employment tribunal system to settle work-related conflict. One of the main reasons for the interest may be the impressive rise in applications that the tribunals have received since their introduction, and even more pronounced since the late 1980s.

Increasing claim rates have been prominently attributed to an emerging 'compensation' or "punt-for-cash culture" (former CBI Director General, Digby Jones, cited by Hall, 2001). On the other hand, as a more general government commissioned report points out, that there is "very little analysis of what this term means, let alone proof that such a 'culture' exists" (Parsons, 2003: 60; cited by Williams, 2005: 500). Moreover, we will show below that there is no convincing evidence that compensation in labour court cases is excessively generous.

[1] Employment tribunals are the first-instance forum for individual labour disputes in the UK, most Continental European countries use the term labour court, and there is a range of other varieties. In order to ensure consistency, we use the terms employment tribunals and labour courts interchangeably.

The academic debate offers more sophisticated explanations for the phenomenon. A review of the literature reveals three broad mutually enhancing sets of arguments, which form the conceptual basis of our analysis. First, it is suggested that the existence of strong collective *industrial relations* institutions, collective bargaining and employee workplace representation, in particular, favour conflict avoidance, its resolution within the workplace and, in turn, have a negative impact on the incidence of labour court claims.

The second approach draws (often implicitly) on the work of Simitis (Simitis, 1984) and explains the rise in court claims to a growing body of increasingly complex *employment regulation* coupled with effective enforcement mechanisms (Malmberg, 2009). Finally, a range of additional factors are assembled under the umbrella of predominantly *economic approaches*. There are two sides to this argument. First, it is argued that the development of court claims follows cyclical economic conditions (Brown, *et al.*, 1997; Frick and Schneider, 1999; Frick, *et al.*, 2012). Second, individual characteristics of the claimant are expected to be important (Edwards, 1995; Knight and Latreille, 2000a; Peters, *et al.*, 2010).[2] A theoretical framework for each of the arguments as well as extensive literature reviews and research questions are presented in chapter 2.

The aim of this dissertation is to inform and extend the debate on "externalized dispute resolution" (Colling, 2004: 557) from a comparative perspective. For this purpose, we have deliberately chosen a quantitative approach to test the proposition on a large number of cases. Therefore, the analyses draw on cross-country and time-series data, as well as national surveys from three selected country case studies; France, Germany and the UK.

Our data and methodology allow analysis of the phenomenon at three different levels since we compare countries, workplaces and, to a certain extent, are able to control for characteristics of individuals. A more extensive discussion of the research methodology is provided in chapter 3.

The empirical analysis starts with the presentation of a novel database with information on the number of labour court claims for 23 Member States of the European Union (EU) over a period of up to 30 years. The data trace and compare the development of conflict

[2] It is acknowledged throughout the theoretical discussion below that individual characteristics are not purely an economic phenomenon.

externalisation over an extended period of time. We find that the UK pattern of constant increase is not unique, but remains an exception in the European Union.

In order to understand national differences, further empirical analysis embeds claims data into their national institutional contexts. With regard to industrial relations, the empirical analyses confirm that countries with centralised collective bargaining structures and high bargaining coverage record lower levels of claims, and so do workplaces that are covered by a collective agreement. Moreover, Member States with strong institutionalised employee voice institutions are less likely to report conflict externalisation, and workplaces with recognised employee representatives record lower levels of court applications.

Due to data limitations, the employment legislation argument is difficult to assess. Nevertheless, we succeed in identifying incidences of the relationship between new or more complex legislation and a higher caseload for the labour courts. The discussion suggests that such an impact may appear in three different forms, which may be corroborated through further empirical investigation.

Finally, the role of cyclical economic factors is found to be important. Most notably, tribunal claims follow the development of unemployment, and workplaces in economic trouble are more likely to experience a court claim application. Not surprisingly, company restructuring, in particular when it is associated with changes in staff levels, shows a similar effect.

With regards to individual characteristics, the results are ambiguous and partly contradictory. We suggest further research that might elaborate our conceptual framework to analyse their impact, in particular the impact of gender, with different data and possibly different methods. Chapters 4 and 5 present data, methods of analysis, and discuss results for the cross-country analysis and the country case studies.

This research hopes to enrich the academic and public debate through both its theoretical and empirical contributions. Theoretically, we propose a novel procedural concept of conflict that seeks to help understand the micro dynamics of work-related conflict, its process and different forms of articulation. This notion is fitted into a comparative institutional framework, which combines approaches from different disciplines (industrial relations, law, economics), and considers both the importance of formal institutions and behavioural patterns of individual actors. We hope that such a model contributes to the understanding of work-related conflict from a comparative perspective.

The empirical analysis confirms the necessity of a multidisciplinary approach. We find evidence for both the importance of actors and institutions, although findings are more comprehensive for the latter. The results suggest that the reliance on labour courts to settle work-related conflict is predicted by the institutional environment, and we identify cyclical economic factors to be an important factor that influences the settlement of conflict through the courts.

2 Literature Review

The core aim of this study is to assess the predictors for the reliance on external judicial bodies, such as labour courts or employment tribunals, to deal with work-related conflict. As discussed in the next section, the claim to an external body is conceptualised as a manifestation of a latent conflict, which emerges from the employment relationship. This section sets the conceptual ground for understanding the process of emergence and manifestation of conflict. In order to embrace the necessary elements of such a complex phenomenon, this chapter draws on a range of different approaches, since there is not one single concept that captures the different notions discussed here. Prior to that, the concept of conflict is discussed in some detail combining different strands of conflict-related literature. Moreover, different forms of conflict articulation are presented.

In the subsequent section, it is argued that Pondy's (1967) seminal paper on organisational conflict helps to understand the different *stages of conflict*, but it is shown that it makes insufficient propositions about its dynamics. In particular, it does not take into account the endemic nature of conflict inherent in the employment relationship and the role of external structures in the emergence and manifestation of conflict. In order to compensate for these shortcomings, this research adopts the pluralist notion of endemic conflict at work, based in particular on the work of Fox (1966; 1973), discusses some major critiques that the pluralist approach has provoked, and proposes minor adaptations in order to address some of the problematic points.

The general argument developed here suggests that endemic conflict may be channelled through the provision of an appropriate institutional framework. Whereas the general theoretical assumptions of the dynamics of conflict are seen to be universal, the institutional frameworks to channel conflict may differ significantly. Thus, a comparative institutional framework is needed that takes into account both actors and institutions, and their interactional relationship.

Institutions that regulate the employment relationship are discussed in the literature on *industrial relations*, and it is suggested that the existence of industrial relations institutions favours internal conflict articulation, and might even limit the amount of conflict emergence. A second institutional set of explanations that relies exclusively on the institutions external to the workplace is made with regards to *employment legislation*. Based on the work of

Simitis (1984; 1987), the discussion suggests that the externalisation of conflict is related to the 'juridification' of the employment relationship. The core of this argument states that the reliance on external bodies correlates with the provision of comprehensive employment protection legislation and accessible enforcement mechanisms. Finally, a broad range of e*conomic approaches* complete the set of possible predictors. It is argued that cyclical economic conditions and a number of personal characteristics that impact the individual's position on the labour market, are expected to be crucial determinants of the incidence of court claims.

The Concept of Conflict

A traditional definition of conflict at work states that conflict is

> "the total range of behaviour and attitudes that express opposition and divergent orientations between industrial owners and managers on the one hand and working people and their organisations on the other hand" (Dubin, *et al.*, 1954: 13; cited by Fox, 1966: 8).

These *opposition and divergent orientations* are the reason why conflict is seen as inevitable and inherent to the employment relationship. This notion is borrowed from pluralist scholars of industrial relations (see Section 2.2 for a detailed discussion on pluralism). Fox (1966) argues that both management and workers have a range of different allegiances whose interests they have to take into account. Based on these multiple allegiances of management and workers, and the shared power of management and the workforce, the pluralist literature sees conflict in the workplace as endemic and inevitable. This notion of endemic conflict is largely accepted by industrial relations scholars and other researchers who focus on the employment relationship. Nevertheless, pluralists have been criticised for assuming that "conflict is inevitable and natural, but [they] rapidly qualify this by focusing on the means through which conflict is institutionalised" (Edwards, 1986: 22). The argument developed here adopts the notion of conflict as being inevitable, but adds to it a dimension of *variable amounts* of conflict, which implies that levels of conflict may depend on external factors. In the following sections on the three sets of explanations, the discussion not only concentrates on the determinants for conflict *articulation*, but it also elaborates those factors that might foster its emergence.

Stages of Conflict

In his influential paper on conflict in organisations Pondy (1967) discusses the different stages of conflict. Conflict is described as a sequence of interlocking episodes starting from latent conflict to perceived conflict, felt conflict, manifest conflict and conflict aftermath. The paper's essential contribution that conflict must be analysed at different stages of development is crucial for the argument made here, and is discussed in the remainder of this section. Pondy does not, however, provide a clear definition of what *latent conflict* is or what its sources are. Therefore, the notion of endemic conflict discussed in the previous section is integrated into Pondy's concept of latent conflict.[3] Since endemic conflict is not necessarily articulated (or, in Pondy's words, manifest) both terms latent and endemic are used interchangeably throughout this study.

"By manifest conflict [Pondy] mean[s] any of several varieties of conflictful behaviour" (Pondy, 1967: 303). Manifest conflict comprehends the articulation of conflict in a range of different ways; some possible forms of manifest conflict and a categorisation are given in Table 2.2 below. Perceived conflict describes the individual's conception of a conflictual situation, which might occur, in Pondy's concept, in the absence of latent conflict, whereas felt conflict is a situation in which latent conflict is present, but does not impact the concerned individuals' attitude towards each other. These notions illustrate a major weakness of Pondy's approach. As discussed above, it is argued here that the existence of conflict is inherent in the employment relationship and, although the amount of conflict might not be stable, a situation in which conflict is absent does not exist.[4]

Thus, this research modifies the model and distinguishes between two main conceptual levels of conflict; emergence, which, given the conceptual differences of conflict, corresponds to Pondy's latent conflict, and manifestation. The intermediate phases, perceived or felt conflict,

[3] If a general definition of conflicting interests is applied, his concept is not necessarily contradictory with the definition here, since it is argued that this is a logical result of divergent allegiances of employers and employees. In that case, however, perceived conflict in the absence of latent conflict would be an impossible combination.

[4] It is acknowledged, however, that the endemic nature of conflict stems from a theoretical discussion of the structural characteristics of the employment relationship, and cannot be observed empirically.

are seen as the transition from latent to manifest conflict. The subsequent paragraphs discuss the modifications made to the original model.[5]

It is obvious that not all latent conflicts reach the stage of manifestation. By definition, it is impossible to measure latent conflict that is not articulated in any way. In other words, conflict that is entirely latent is unobservable.[6] The inherent nature of conflict in the employment relationship is an *assumption* based on the theoretical discussion in the previous section. Pondy's model of stages of conflict is based on the (implicit) assumption that, among other things, conflict follows a predictable course or pattern (Lewicki, *et al.*, 1992). Since not all of these stages are measurable, it is impossible to test this model (or other, similar ones) with empirical data. If data are used, it is in a very illustrative way only.

UK survey data, for instance, suggest that employees take some kind of action in roughly three quarters of cases in which they report problems at work (Genn and Beinart, 1999; reported by Lucy and Broughton, 2011). Moreover, there is some evidence that the transition from perception to action is systematically biased, in particular with regards to employment tribunal claims. Lucy and Broughton (2011) compare findings from the 2008 Fair Treatment at Work Survey (FTW), the 2007 Civil and Social Justice Survey (CSJS), the 2008 Survey of Employment Tribunal Applications (SETA), as well as evaluations of the customers of the Citizens Advice Bureau and the Helpline of the Advisory, Conciliation and Arbitration Service (Acas).[7]

Table 2.1 shows that there are systematic differences between people who report a work-related problem in a survey, bring these issues to a helpline, or make a claim to an employment tribunal. These differences are particularly marked for age, gender and length of service. Additional findings from the same sources suggest that there are differences concerning the work environment, for instance the size of the workplace or its sector of economic activity.

Due to the problems of establishing and corroborating the different stages of conflict (cf. Schmidt and Kochan, 1972) and our focus on one particular form of conflict manifestation,

[5] Dix, *et al.* (2008) discuss the difference between 'levels of discontent' as opposed to' levels of overt disputes', but they neglect the transitional phase that this research introduces. Moreover, their rich empirical analysis lacks any clear theoretical foundation.
[6] The lowest level at which conflict may be measured is that of employee discontent, which is articulated through, for instance, employee surveys (Drinkwater and Ingram, 2005; Dix, *et al.*, 2008).
[7] The Acas Helpline is a free-of-charge service that provides guidance on employment disputes for employers and employees.

this research simplifies the 'intermediate' stage of felt or perceived conflict into a more dynamic notion of *transition* from latent to manifest conflict. It is acknowledged that little is known about how this process of transition takes place, but research presented in the previous paragraph suggests that it is mediated in such a way that individual and environmental factors may have an impact. Figure 2.1 compares Pondy's model and the modified approach adopted here.

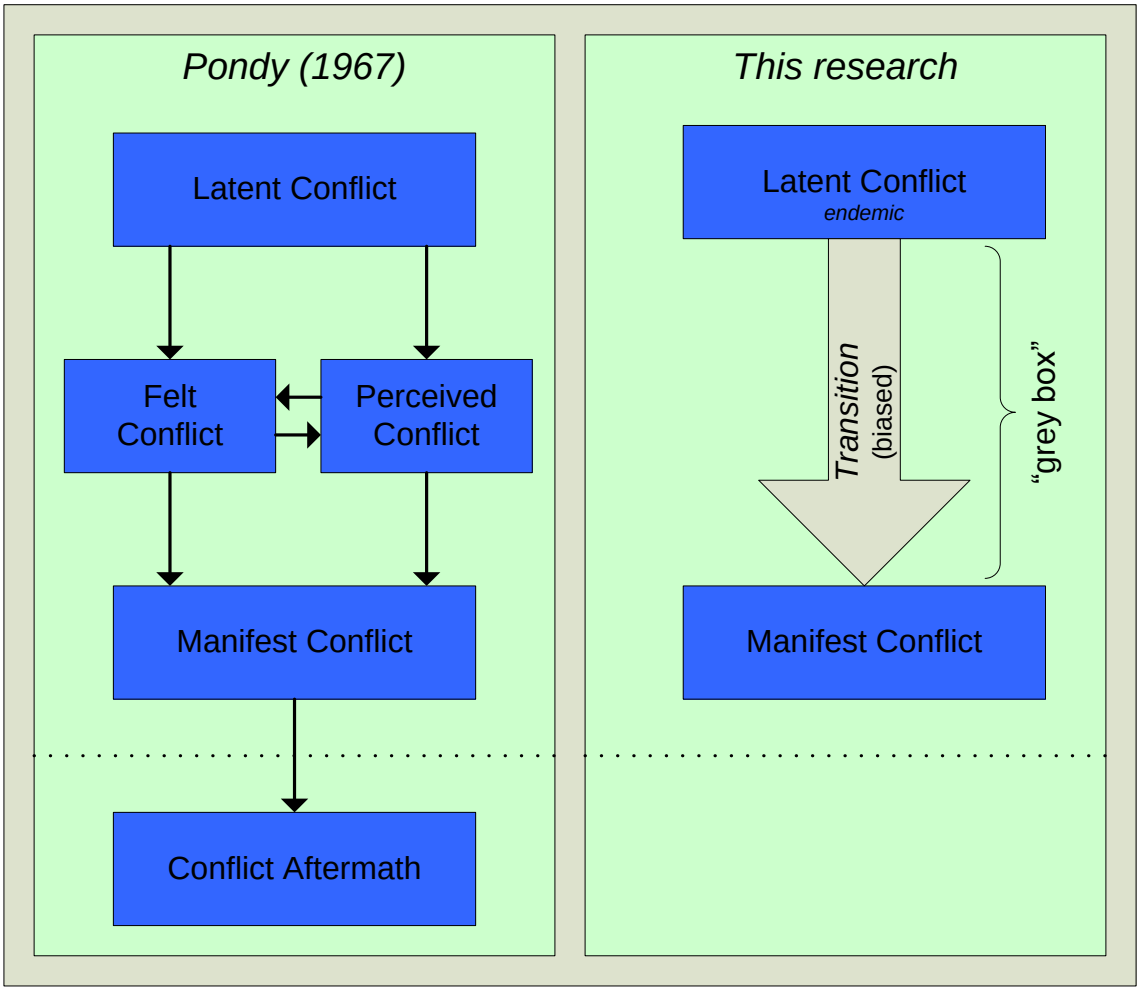
Although this notion of conflict articulation as a black (or, at best, grey) box might be intellectually frustrating, the main focus of this research is to find determinants for a particular form of conflict manifestation; claims to external judicial bodies. The role of latent conflict is conceptually important, but only plays a minor role in the empirical analysis since, as discussed above, latent conflict is not measurable. It is assumed that an increase in latent conflict leads to higher levels of manifest conflict, although it is acknowledged that the transformation between the two stages might be mediated. As discussed In Chapter 2 below, it is expected that external factors impact the amount of latent conflict, its manifestation, and the transitional stage in between.

Table 2.1 – Different Perceptions and Manifestations of Work-Related Conflict

Group that is most likely to …	**… report experiencing workplace problems**	**… bring employment problems to the Citizens Advice Bureau or the Acas Helpline**	**… make an employment tribunal claim**
Age	Under 25	Under 35 (CAB), Older employees (Acas)	Between 45 and 54
Gender	Female	Female (Acas)	Male
Length of service	Less than 1 year	Less than 2 years (CAB)	6 years on average
Qualification	Some	Leaving education by the age of 16 (CAB)	None
Long-term illness or disability	Yes	-	Yes
Ethnicity	-	Non-white groups (CAB)	Ethnic minority groups

Source: adapted from Lucy and Broughton (2011)

Figure 2.1 – Two Concepts of Stages of Conflict



Forms of Manifest Conflict

Manifest conflict at work can take different forms. This section offers a categorisation, before the scope of this research is subsequently discussed. A widespread distinction is made according to the level of organisation of conflict. The most common distinction is perhaps that of *collective* and *individual* action (Edwards, 1986). Collective action is organised by a group whereas individual action may be expressed by a single employee. Most prominent forms of collective conflict are strikes and lockouts, go-slows or work to rate, but they also include political lobbying, demonstrations, and public awareness raising. A second distinction is made according to the parties involved. Conflict is seen as internal when it is manifested between the employer and employee(s) concerned, and external when parties

external to the conflict are involved (such as other employers, the government, state agencies, etc.).[8] Table 2.2 provides some examples.

This research aims to understand the externalisation of work-related conflict and focuses on *individual* and *external* conflict as expressed through claims to employment tribunals or labour courts. It is argued that industrial relations institutions, employment legislation and the economic environment have an impact on externalisation since they affect the emergence and manifestation of work-related conflict. Though conceptually distinct, it is not possible to make an empirical differentiation between the latter, for the reasons discussed in the previous section. Claims to labour courts or employments thus serve as a proxy for both, bearing in mind the potential bias in between.

Table 2.2 – Forms of Conflict

	Collective	**Individual**
Internal	Strikes* Lockouts Non-strike action (go-slows, work to rate, overtime bans, etc.)	'Exit' 'Organisational misbehaviour' Informal negotiations Formal grievance procedures Conciliation by internal third party
External	Legal action Media campaigns Political lobbying	Mediation and conciliation Application to juridical bodies

* *Particular forms of strikes may take place outside of the workplace such as solidarity action or political strikes.*

It is acknowledged, however, that there is a range of other forms of conflict manifestation. An alternative to externalisation might be the internal handling of individual grievances through discipline, mediation, arbitration, or similar practices. These forms of handling conflict differ significantly between companies. Hence, existing research is limited to case studies of a limited number of companies (cf. Walker and Hamilton, 2011 for a review) or, in a few cases, to national survey data (Antcliff and Saundry, 2009; Knight and Latreille, 2000a). The effect of such mechanisms on conflict externalisation will be addressed when possible, but do not form the core of this research.

[8] It is acknowledged that the distinction between internal and external is not clear-cut. Trade unions, for instance, could be either an internal or an external party; however, this caveat is not of central importance for this research because employment tribunals clearly qualify as external institutions.

An ongoing debate in the literature on workplace conflict is the relationship between the different forms of conflict manifestation. Broadly, two forms of interaction are proposed; complements or substitutes (Drinkwater and Ingram, 2005). Probably the most important discussion focuses on the question "whether Employment Tribunal claims represent a new manifestation of the same conflict, previously voiced through collective action" (Dix, *et al.*, 2008: 11). The same authors argue, however, that not only the actors and issues involved differ between employment tribunal claims and strikes, but also trace a development of industrial relations in the UK that is associated with substantial declines in strike rates. The comparative data presented in the empirical section in Chapter 4 supports the argument that the relationship between strikes and court claims is more complicated than a simple substitution effect. Finland is an interesting case in point. The country used to record high strike figures until the early 1990s and experienced a substantial drop thereafter (Stokke and Thornqvist, 2001). Our analysis below will show, however, that the rate of claims to Finnish labour courts remains stable at a very low level.

It is reasonable to conclude that tribunal claims do not simply substitute industrial action. Rather, research has identified that "different types of collective action appear to have moved as complements to each other" (Drinkwater and Ingram, 2005: 393).[9] Thus, it might be argued that stronger complementary effects are recorded from within than across the four forms of conflict in Table 2.2. This is not to say, however, that collective and individual disputes are completely unrelated, since both are essential expressions of work-related conflict. The argument that both forms of manifestation are not two sides of the same coin does not contradict the argument that when employees are "[d]enied the cathartic aspect of collective disputes, individual discontent may have increased in reaction" (Drinkwater and Ingram, 2005: 393). This research integrates these arguments into Chapter 5 (the country case study on France), but a thorough analysis of the interrelationship between different forms of conflict manifestation requires further research.

[9] Different types of collective action are strikes, overtime bans, go-slows and other types of action.

2.1 A Conceptual Framework to Predict Externalisation of Conflict

The previous section set out the conceptual basis for conflict, its different stages, and introduced the notion that the amount of conflict and the way it is manifested may depend on factors external to the individuals concerned. This section identifies three sets of explanations that are expected to impact the emergence of latent conflict, conflict manifestation and settlement. The first two arguments look at institutions.

First, it is argued that the existence of industrial relations institutions is expected to play a key role, namely that of employee workplace representation and collective bargaining arrangements. Both institutional arrangements, may diminish the amount of latent conflict by providing the means to share authority and mutually agreed rules at the workplace, and, in turn, reduce conflictual behaviour. In cases where individual conflict is manifested, institutionalised employee interest representation is expected to serve as a channel to articulate and address conflict internally.

Second, labour market institutions, in particular employment law, are argued to be crucial in the process of conflict emergence and manifestation. The 'juridification' of the employment relationship is characterised by more and increasingly complex labour law, and more accessible enforcement mechanisms. The provisions of such institutions that are external to the workplace, facilitate employees' access to external enforcement mechanisms and are, thus, expected to increase the number of court claims.

Finally, the individual behaviour of actors is found to be insufficiently explained by a pure focus on institutions. Therefore, the third set of explanations offers a range of non-institutional approaches. The likelihood for conflict to emerge, it is argued, also depends on subjective preferences of the aggrieved employee. These preferences are expected to be shaped by a range of factors including the economic situation of the firm, the situation on the local labour market, and personal characteristics.

The chapter commences with a discussion and definition of institutions, actors, and how their interaction is interdependent. Thereafter, the three sets of arguments are discussed separately. Each section starts with a theoretical account followed by empirical literature.[10] Research questions are formulated at the end of each section for each of three arguments. The

[10] The section on the economic argument slightly departs from this structure.

separation of the theoretical does not imply that the three explanations are seen to be in competition or mutually exclusive. Rather, this research takes an approach that seeks to achieve what Crouch (2005: 5) has termed 'recombination' of different disciplines of social sciences, which have taken separate and highly specialised developments. The exercise of trying to recombine different streams of social science literature has been acclaimed as the major achievement of the school of neo-institutionalist (Crouch, 2005). In a similar vein, we expect a range of complementarities and interdependencies between our three explanations, which are discussed in the last section of this chapter.

Institutions and Actors

Hall and Soskice (2001a: 9) define institutions as "a set of rules, formal or informal, that actors generally follow, whether for normative, cognitive, or material reasons". Although the notion of rules that shape, to a certain extent, the behaviour of actors is a universal feature of institutions, the definition encompasses more than the formal institutions of employee representation and collective agreements. Moreover, there is no notion of sanctions for actors that do not follow the institution. Therefore, the much stricter definition provided by Streeck and Thelen (2009) seems to be more appropriate. They see institutions as "formalized rules that may be enforced by calling upon a third party" (Streeck and Thelen, 2009: 106).

The defining characteristic of an institution is not whether or not actors comply with it, but that the environment in which the institution is embedded expects them to do so, and imposes means to sanction non-compliance. Although the formalised nature of an institution reflects the way in which institutions are seen in this research, the threshold of third-party enforcement is problematic for several reasons. As Streeck and Thelen point out, a similar phenomenon might be considered differently in different countries:

> "[A]s long as trade unions are mere organisations, they can be suppressed and may even be outlawed by a hostile government. In some societies, however, where their existence and their activities have become protected by collective values and politically enacted norms, they constitute a socially sanctioned constraint for economic actors" (Streeck and Thelen, 2009: 108).

In the first case, unions are not considered as institutions, but are in the second one. The exact position of the threshold between the two is very difficult to locate. The threshold might also change over time since legislation or the public acceptance of institutions may change.

Nevertheless, it is argued here that, given this definition, all relevant industrial relations and labour market institutions qualify as such. Looking at the two extremes of industrial relations systems in terms of enforcement one can think of either a completely voluntarist or an interventionist state-led system such as, for instance, France. Third-party enforcement can be found in both. In the latter, it is by state regulation, in the former, at least in its archetypical version, by social partners. There are obviously a large number of possibilities between the two extremes. There is, however, no case in post-war history in European democratic societies or in the sample of countries used here in which trade unions or a major industrial relations or labour market institution has been completely 'outlawed by a hostile government'.

A key challenge of the study of institutions is the debate on the relationship between institutions and the actors concerned. The aim of the remainder of this section is to clarify the interaction between actors and institutions and it is argued that although institutions, as defined above, may shape the individual's behaviour, in order "[t]o understand an institution, one must look at both the rules and the players, seeing each as an interdependent context for the other" (Jackson, 2010: 66). This section draws to a large extent on the comprehensive review by Jackson (2010).

The key question in this discussion is whether actors' behaviour is shaped by their institutional environment, or whether institutions are defined and redefined by the interaction of individuals and groups with each other. In Jackson's words, it is whether we see actors as 'rule-takers' or 'rule-makers'. Whereas the former is criticised for being over-deterministic by seeing actors that "exist in a golden cage of institutions, which they cannot change" (Crouch, 2005: 3), the latter neglects the importance of formal rules. Thus, a common approach in modern institutionalism is to view the interaction of actors and institutions as *mutually constitutive* (Jackson, 2010).

Hence, it is acknowledged that the institutional context *shapes* actors' preferences, interests, goals, and behaviour, but it does not *determine* them. Rather, behaviour also depends on a range of subjective preferences that are largely independent of the institutional environment (Streeck, 1993; cited by Jackson, 2010). As a consequence, it is argued that the outcome of an institutional framework cannot be analysed by excluding the individual and collective actors within it. A purely institutional analysis is inherently incomplete (Jackson, 2010).

This research adopts a similar perspective of institutions as a “non-deterministic context for action” (Jackson, 2010: 80). The first two sets of explanations to explain the incidence of labour court claims draw heavily on the notion of how institutions shape the behaviour of the actors concerned. In this section, it is argued that the presence, absence and design of industrial relations institutions has a significant impact on the likelihood that a conflictual situation emerges, and helps to predict whether this is handled internally or externally. The next chapter makes a similar argument on labour law. Since the role of institutions shaping the behaviour of actors within them is found to be incomplete, the third set of arguments discusses a range of other explanations that are expected to impact actors’ personal preferences. These include personal characteristics and non-institutional contextual variables such as the situation of the local labour market.

2.2 Industrial Relations

The first institutional argument establishes the role of industrial relations institutions in the emergence and manifestation of work-related conflict. In order to understand how these institutions shape actors' behaviour, the section starts with an account of the theoretical foundations of the micro dynamics of conflict settlement and industrial relations at the workplace level. It focuses on the role of two important phenomena; employee workplace representation and collective bargaining. Drawing on the influential pluralist frame of reference, it is argued that employee representation can help to control management and serve as an important mediator for internal dispute settlement. Thus, it might help to avoid the emergence of latent conflict and increase the number of internally settled disputes. Collective agreements set standards that serve as a quasi-legal institution by which the workplace is managed. They are seen as a constraint to arbitrary management authority and expected to avoid manifest conflict. The presence of strong employee workplace representation and collective agreements is thus expected to have a positive impact on internal conflict settlement.

Although these micro dynamics of conflict are seen to be universal the institutional configurations that regulate the role of employee representation and collective bargaining differ substantially between countries. These differences will be discussed through an approach that draws on the comparative institutionalist literature. It is argued that coherent systems that show a strong emphasis on collective employee representation institutions are expected to be more effective in avoiding externalisation of work-related conflict. Thereafter, relevant empirical literature will be presented. The section finishes with a conclusion and proposes a set of research questions for this study.

Micro Foundation – A Pluralist Approach

A frequently cited framework in the literature of employee grievances is Hirschman's (1970) notion of *Exit, Voice and Loyalty*. Developed as a model to explain consumer behaviour, discontent may be expressed either though classical market mechanisms ('exit') or by articulating 'voice' and thus trying to influence important decisions. Freeman and Medoff (1984) applied this model to the employment relationship. Voice mechanisms for employees may take the institutional form of trade union representation within the workplace, collective bargaining, or the existence of grievance procedures (Lewin, 1999).

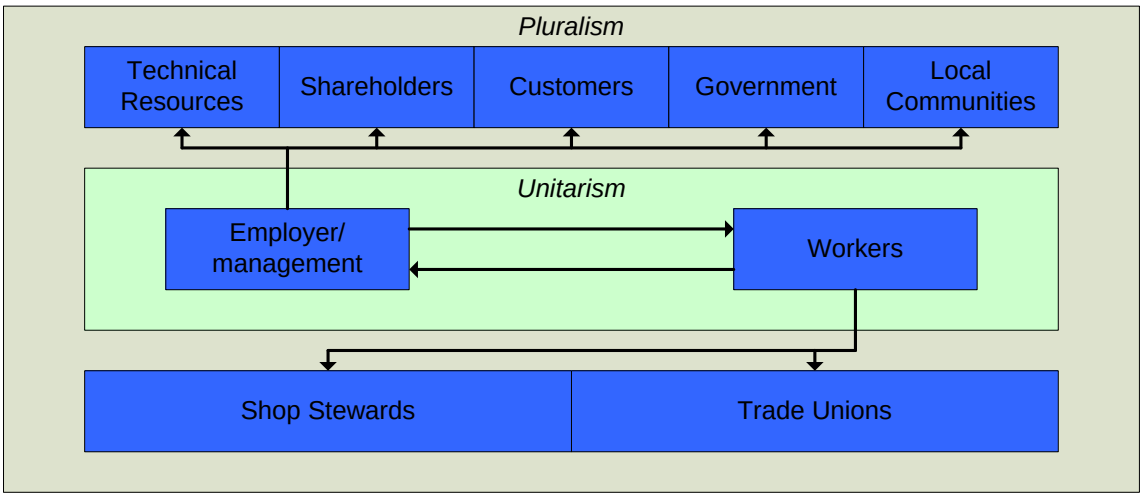
This approach, however, focuses on whether and how voice is articulated and the impact of voice on employees' loyalty to the firm. A typical argument, for instance, is that existing and functioning voice mechanisms help to decrease labour turnover (Freeman, 1980). Although this stream of literature is a valuable contribution to the debate on different ways to express discontent, the focus of this literature is on the circumstances within which employees are more likely to quit their job. The present research, however, tries to find determinants for the externalisation of conflict. Hence, the notion of *exit* falls short of explaining the question of interest here, though there might be some overlap. Most notably, the link between institutionalised voice and the increased capability to absorb conflicts internally is of interest, and the term 'employee voice' is used throughout this study.

Nevertheless the influential pluralistic 'frame of reference' seems to be a more suitable approach to explain this phenomenon. The distinction between pluralistic and unitary view was first made by Fox in his influential essay on *Industrial Sociology and Industrial Relations* (1966). Unitarists view the workplace as a 'team' with one single 'source of authority' and one single 'focus of loyalty', management. Everyone in the workplace has a common goal, the well-being of the organisation. Consequently, the involvement of a third party, such as a trade union, in managerial authority is seen as an unnecessary intrusion, as attempts to curb management authority, and will only be able to negotiate what would have been achieved anyway.

For social scientists, Fox argues, unitarism is of little analytical use and incongruent with reality. He proposes a pluralistic frame of reference that views the workplace as a pool of sectional groups with divergent interests. The simplest distinction one can think of is between employers or management and the workforce although other actors, such as the state, might be considered important (Brown, 1988). Although these groups depend on each other and have a common purpose in the 'survival of the whole' there is a range of other issues for which interests between groups are conflicting. Management is not only concerned with managing the workforce but is also responsible to, for instance, the company's customers and shareholders. Similarly, workers might have other allegiances than to management (see Figure 2.2). Rival sources of attachment explain why management cannot act in the interests of employees alone but needs to balance interests. Running a workplace, it is argued, is not only, and probably not even primarily, about managing people.

Although these multiple allegiances are crucially important for the analysis of group behaviour, the interest of research in industrial relations focuses on the relationship between management and employees. Fox discusses two ways of looking at this relationship. First, it can be described as a *market relationship*. This is the traditional view and focuses on economic aspects. Collective industrial relations, such as trade unions and collective bargaining, are seen as the only way for individual workers to establish institutions that can cope with employers and management. Consequently, the main purpose of these institutions is economic, primarily in fixing prices for labour through collective bargaining. The pluralist point of view, however, rejects the emphasis on economics alone and stresses the *managerial relationship* which is largely political in nature. Hence the main role of trade unions is to regulate the employment relationship and to participate in joint decision-making with management. Consequently management must share its power with its employees. Hence, whereas the market relationship emphasises the outcome, for instance wage increases, the managerial relationship focuses on the process.

Figure 2.2 – Possible Allegiances in the Unitarist and Pluralist Frame of Reference



Source: Own illustration based on Fox (1966)

As discussed at the beginning of this chapter, conflict is seen as endemic and exists independently of the existence of trade unions or other employee representation institutions. The latter only *express* and "*negotiate* the necessary adjustment of conflicting interests" (Ross, 1958: 115; cited by Fox, 1966: 8, italics added) that exist anyway. Pluralism thus contradicts the view of trade unions as 'trouble makers' and agitators that is common in

certain parts of the public and political domains, and reflects a unitary view of the workplace.[11]

Unlike the unitarist perspective, pluralists do not see conflict as something inherently bad or as an indicator of 'organisational ill-health'. Whereas unitarism traces back conflict to individual (mis)behaviour, Fox stresses the importance of structures that shape the behaviour of individuals. Disruption is thus "an outcome of group structure, group relations and group policies" (Fox, 1966: 9). The focus is not so much on the existence of conflict but on the mode of its expression. Whereas trade unions may articulate conflict in an *organised* and structured way, union-free workplaces are expected to experience a higher degree of *unorganised* and individual forms of conflict such as absenteeism, sabotage, and poor discipline.

Although the pluralist approach is important in industrial relations research, it has provoked a substantial critique.[12] Perhaps the most important debates centre around two of pluralism's basic assumptions. First, it is argued that the pluralistic view requires, at least, a rough balance of power between employers and the other groups present in the workplace. Second, it is assumed that there is a possible compromise between the diverging interests of these groups (Hyman, 1978; Edwards, 1986; 2003b; Brown, 1988) and that conflict "can be tamed through appropriate institutional means" (Edwards, 1986: 22). In what has been called an 'auto-critique' of pluralism (Edwards, 2003b: 11), Fox made a number of clarifications to his first distinctions (Fox, 1973). He argues that existing institutions manifest the structural dominance of capital holders over labourers and thus, partly rejects the concept of a rough balance of power. Employees are forced into a trade-off with capital holders that guarantee them the right to articulate their voice in exchange for their acceptance of the system in total. Hence 'marginal' bargaining between employers and employees does not touch upon issues that call into question the existence of a production system based on subordination, but are rather characterised as a process of adjustment or 'fine-tuning'. Although this is a move away from some of Fox's earlier statements it upholds the notion of acceptance and, more importantly, institutionalisation of conflicting interests within the organisation.

[11] Fox stressed, however, that "it might be argued that [trade unions] intensify or prolong conflict of interest" (Fox, 1966: 8).
[12] Pluralist writers hold different views, which lead to different notions of pluralism. As 'pluralism's pluralism' (Hyman, 1978: 17) will not be discussed here in great detail the critique presented is either of a more general type or refers primarily to Fox's (1966; 1973) positions.

The limitation of conflict and bargaining to 'marginal' issues and the neglect of more fundamental questions regarding the nature of production have been criticised by authors who hold a Marxist view of industrial relations, like Hyman (1975). The Marxist critique emphasises the pluralists' notion of the workplace as an isolated unit where conflict can be managed through institutionalisation. It is argued that the broader context is marked by constant class struggles, which is completely neglected by pluralists. As a consequence, pluralists simply assume the endemic nature of conflict without any discussion of its origins (Edwards, 1986). From a typical Marxist point of view, industrial conflict is embedded in the broader context of the political economy (Hyman, 1988). The pluralists' view, on the contrary, "merely concentrates on what happens when organizational expressions of conflict have already been articulated" (Edwards, 1986: 24).

The critique of pluralism that stresses the lack of contextual factors and the unsatisfying discussion of the sources of conflict certainly has a degree of legitimacy. For this and other reasons, the notion of conflict used in this research has been refined, as discussed in a previous section. On the other hand, pluralism's focus on the dynamics of managerial relations *within* the workplace provides a powerful explanation for the nature of endemic conflict and, in particular, of how conflict is manifested. Furthermore, it is arguably true that it is oversimplified to assume endemic conflict without any further discussion. At the same time, however, it is unclear how Marxism's class struggle would yield fundamentally different research questions to the ones formulated at the end of this section. Edwards, who holds an "appropriately explicated radical view" (2003a: 11), summarises Clegg's (1979) position that "pluralism could embrace many of the radicals' points and that for many practical purposes there was nothing to choose between the perspectives" (2003a: 12). This is not to say that both approaches are identical, but the pluralists' emphasis of conflict articulation makes it more suitable for this research.

Moreover, the industrial relations argument as presented above makes the assumption that "conflict is inevitable and natural, but [it] rapidly qualif[ies] this by focusing on the means through which conflict is institutionalised" (Edwards, 1986: 22). Therefore, as discussed above, the notion of conflict used in this research has been supplemented with the notion of variable amounts of conflict that differ depending on both actors and institutions.

Another critique by Edwards (1986) also deserves attention. He argues that pluralism is useful in analysing clashes between organisations, but neglects the role of individual conflict.

Although this is certainly true for some pluralist accounts,[13] Fox, in his early work, qualifies this by introducing the notion of organised and unorganised conflict (Fox, 1966). This distinction will be discussed and developed below. Pluralist accounts see conflict as conflict between groups, for example employees and management; in contrast to conflict between an individual employee and his/her manager. Moreover, the institutionalisation of conflict is collective through means such as recognised trade union workplace representation and collective bargaining. This does not mean, however, that the *emergence* and *manifestation* of conflict might not take place at an individual level. The latter, however, is neglected by most pluralists.

There might be two reasons for this; one that is *internal* and one that is *external* to the workplace. Firstly, most pluralists would argue that conflict settlement within the workplace at the individual level, between an individual employee and a manager, for example, is an insufficient means of resolving conflict effectively as it is opposed to the pluralists' notion of shared power between management and *organised* labour. Conflict is channelled by institutionalised collective bodies that should establish a relationship based on a rough balance of power. This is not the case for individual negotiations. This view is likely to be shared by most observers who hold a non-unitarist view of industrial relations (for instance Hyman, 1975). Moreover, research shows that informal talks between individual employees and management are a fairly ineffective means of conflict settlement and, although grievance and disciplinary procedures exist in many workplaces, they are often not followed, particularly when no trade union is present (see for instance Abbott, 2007).

Second, the reason why early pluralist writers neglected the external individual settlement of conflict might be found in the historical context in which pluralism developed, which was primarily at the University of Oxford in the 1960s and 1970s. At that time the UK had only started to develop legal protection for individual workers. The Industrial Tribunal (now Employment Tribunal) system, for instance, largely developed in the 1970s and Acas took over the role as an industrial conflict settlement body following the Employment Protection Act 1975 (Colling, 2010; Dickens and Hall, 2010). This missing notion of external individual conflict settlement, however, can be integrated into the pluralist approach.

[13] It could be argued that the emphasis on collective issues is, in part, because Marxist critique focused on the collective, hence Pluralists responded at the same level of analysis.

Fox's notion of organised and unorganised conflict has been discussed in the first section of this chapter. It implies a primacy of organised conflict when collective industrial relations institutions, such as trade union representation or collective bargaining, are present. In the absence of these institutions, Fox argues, unorganised *internal* conflict is more likely (Fox, 1966). It is argued here that the involvement of external conflict settlement bodies is just another form of unorganised conflict that takes place *outside* the workplace. Consequently, the referral of conflict to external bodies is expected to be more likely when no collective industrial relation structure exists within the workplace.

Finally, a last amendment has to be introduced into Fox's classical pluralist perspective. The notion of trade union workplace presence reflects the industrial relations situation in the UK in the 1960s that featured a strong dominance of unions over virtually all protective mechanisms for employees. Since this is a comparative project, however, and other countries use dual forms of union and workplace representation the term 'trade union workplace representation' is extended to '*employee* representation bodies' that include a broader range of institutional arrangements. These are not primarily non-union forms of employee representation that were set up to avoid the unionisation of the workforce. Rather, the broader notion also covers institutionalised employee representation that is formally separate from the unions, such as the German works councils.

The firm-level dynamics discussed in this section that describe the interaction of actors and industrial relations institutions are argued to be identical across countries. The institutional frameworks, on the other hand, differ significantly. Therefore, the subsequent section seeks to integrate the micro dynamics of conflict into a macro perspective drawing on recent literature from the comparative capitalism debate.

Towards an Institutional Approach

It was argued in the previous section that conflict is inevitable, but can be managed by channelling it through appropriate institutional configurations. Whereas inevitable conflict is universal, institutional channelling differs fundamentally between countries. The institutional configurations that represent workers' interests are reflected in national systems of industrial relations. The previous paragraphs have shown why collective institutionalised employee representation is expected to be important. This section discusses a comparative institutional perspective on industrial relations that accounts for national particularities.

The focus here is on arrangements that institutionalise collective workers' interests as they are expected to reinforce internal conflict settlement and, in turn, reduce the number of applications to external bodies. Arguably, two of the most important institutions that serve this purpose are collective bargaining and formally established employee representation and participation bodies within the workplace. Neo-institutional approaches to comparative capitalism, however, propose a wider view on institutional configurations because "it is not possible to appreciate the impact of an institutional arrangement in isolation, but only as part of a set of interlocking arrangements. The consequence is that despite the apparent commonality of form, to comprehend differences in the form and function of the employment relationship, it is essential to analyse the employment relationship embedded in its societal environment" (Rubery, 2010: 499).

This introduces the notions of *complementarities* and *coherence*. Although there are different forms of *complementarities* (Crouch, 2010), "the logic of strict complementarity is that certain efficiencies are achieved when balancing or contrasting characteristics are found alongside each other" (Crouch, 2005: 55). The concept of *coherence* refers to the fit of institutions within the overall setting. In other words, "[i]nstitutions are coherent if they are designed according to identical principles" (Höpner, 2005: 333).

Coherence can be identified within and across economic spheres (Kenworthy, 2006). Drawing on the highly influential 'varieties of capitalism' approach (Hall and Soskice, 2001b), Hall and Gingerich (2009) construct an index that locates at its extremes highly coordinated systems of corporate governance and industrial relations (typical for coordinated market economies, CMEs) and strongly market-driven systems (liberal market economies, LMEs). They find that economies that are coherent according to their typology (close to either the CME or LME extreme) record stronger economic performances. Other studies testing the same framework are less supportive of the institutional coherence hypothesis for CMEs and LMEs (Kenworthy, 2006; Taylor, 2004).

Based on the literature presented in previous paragraphs, this study adopts an 'embedded' approach instead of analysing employee representation and collective bargaining in isolation. The embeddedness of industrial relations systems in the wider economy has been discussed elsewhere (Hall and Soskice, 2001a; Thelen, 2001). This analysis concentrates on complementarities of institutions *within* the national system of industrial relations. A coherent system is a system that shows strong complementarities across many subspheres. It has been

argued above that strong institutionalisation of workers' interest is expected to reduce externalisation of conflict.

A suitable approach would thus focus on the strength of collective institutions for employee representation and the coherence and embeddedness of the institutional setting. Existing typologies of comparative capitalism are a valuable starting point for the discussion, but none appears to reflect the focus of this study sufficiently. The varieties of capitalism approach (Hall and Soskice, 2001b) places strong emphasis on complementarities but, among other critiques that are less relevant for this discussion, focuses on coordination rather than the expression of workers' interests. A similar point can be made about the approach of Whitley (1999). An extremely powerful typology is proposed by Amable (2003). He identifies types of capitalism based on a large number of empirical indicators. Although an industrial relations dimension is included it only covers few of the variables that would be of interest for this study and thus does not represent collective workers' representation sufficiently.

Due to the lack of a suitable typology an attempt to group countries according to their strength and coherence of collective institutions for employee representation is briefly discussed here. Purcell (1987: 533) defines collectivism as "the extent to which management policy is directed towards inhibiting or encouraging the development of collective representation by employees and allowing employees a collective voice in management decision-making". Following this definition, collectivist coherence would be expected in countries with a high coverage of employee workplace representation bodies, with substantial rights (co-decision rather than information and consultation) and compulsory recognition mechanisms. Moreover, a strong collectivist system would have a dual representation system with employee board representation (Jackson, 2005). Collective bargaining would be expected to cover a high proportion of employees, have a high degree of vertical and horizontal centralisation (i.e. multi-employer bargaining and coverage of different occupational groups respectively) and show good governability. The latter is based on the argument that "centralization is hypothesised to deploy its beneficial effects only when it is backed by state-based provisions" (Traxler, 2003: 5). High governability describes the existence of state provisions for the legal enforceability of collective agreements and peace obligations that prohibit industrial action for the period for which the agreement is in force.

The main critique of the most typologies of comparative capitalism is that they are "fixed over time" (Crouch, 2005: 31) and unable to explain institutional change. This research,

however, also deals with the question of how institutions change and the effect of this change on the externalisation of conflict settlement. Thus, this section introduces the notion of institutional change and proposes an approach to analyse change. From the early 1980s onwards virtually all capitalist countries of Western Europe and North America experienced fundamental changes in their societies and economies. Although there is broad consensus about the existence of this vogue of *liberalisation*, it is debatable how and to what extent it has changed the institutional configuration of nation states (Hancké, 2009; Streeck and Thelen, 2009). Despite debates about 'race to the bottom' and deregulation everywhere it is nowadays largely undisputed that there is no global convergence towards one distinct model but a persisting variety of nationally specific institutional configurations (Dobbin, 2005; Thelen, 2001).

A powerful approach to the analysis of institutional change is proposed by Streeck and Thelen. It is argued that there is "a *wide but not infinite variety* of modes of institutional change" (2009: 95, italics added). Dramatic disruption appears to be a rare phenomenon, mainly caused by war or revolution. Most institutional change, on the other hand, takes places incrementally and maybe not even visible in the first place, which they call *incremental change with transformative results*. In addition, they identify five different forms of change. It might appear in the slow rise of a subordinate relative to a dominant institution (*displacement*), the redesign of an existing institution (*layering*), deliberate neglect of adjustment of an institution (*drift*), the attachment of old structures to new problems (*conversion*), or gradual breakdown and disappearance (*exhaustion*). This research seeks to integrate the 'static' approach of comparative institutionalism into this framework of change. Incremental change with transformative results is expected to appear where exhaustion, drift or displacement leads to substantial weakening of an existing institution for collective employee representation. These transformative results are expected to be stronger in cases where changes in one or several institutions threaten the coherence of the wider configuration.

Empirical Literature

A very similar argument to that of incremental change through transformative results and the importance of institutional coherence is brought forward by Teague (2006). He finds that the breakdown of voluntarism and, as a consequence, substantial changes of traditional industrial relations institutions in Ireland has led to an increasing reliance on the use of external bodies.

The most important indicators of the 'changing dynamics of conflict resolution' are the decline in trade union density, in particular in the private sector, and the decline in the coverage of collective bargaining that provides a set of quasi-legal rules for employers and employees and thus limits the scope for arbitrary behaviour.

Edwards (1995) proposes that unions channel conflict at work in two different ways. First, they play the role of conflict arbiters and help to agree on appropriate grievance and disciplinary rules and procedures. Second, they protect employees from arbitrary treatment by the employer. Thus, the use of sanctions and disciplinary measures as well as dismissals is less likely in union environments. Further research on the relationship between industrial relations and conflict manifestation and settlement, which is discussed in the remainder of this section, broadly confirms these arguments.

A large-scale empirical study of employment tribunal applications in the UK shows that decreasing trade union membership is associated with a higher caseload for tribunals. This applies to several jurisdictions, but the results are particularly significant for cases under the Wages Act (Burgess, *et al.*, 2001). Research from Germany comes to similar conclusions. The use of micro-data from a works councillor survey, however, provides more differentiated results. This research finds that the existence of a works' council is less important than its role in managerial relations. The most important predictor for the likelihood of a claim to an external conflict resolution body is the cooperation between management and employee representatives. When works councillors state that the information policy of management towards them is 'excellent' or that management never obstructs their work, the number of claims is significantly lower (Frick, 2008).

In UK research based on the Workplace Employee Relations Survey (WERS) trade union presence appears to have a negative impact on the likelihood of an employment tribunal application, but the statistical results marginally fail the 10 per cent significance test. Most high commitment management practice indicators are found to have no impact. The only exception is the provision of financial information about the company to employees, which is found to increase the likelihood of the latter making a claim. The explanation offered for the latter is that the awareness of the financial situation of the firm and its ability to pay may encourage employees to claim (Knight and Latreille, 2000a).

This contradicts Frick's finding presented above that a company in good financial health is less likely to experience a claim. Using a more recent edition of WERS, Antcliff and Saundry (2009) find a weak and marginally significant negative relationship between the proportion of the workforce that is in membership of a trade union and the likelihood of an employment tribunal claim. Trade union density shows a stronger correlation with the incidence of disciplinary sanctions and dismissals. The authors argue that this is evidence for the role of trade unions as an effective arbiter for workplace disputes.

Drawing on data from WERS, Dix, *et al.* (2008) cross-tabulate and compare workplaces with different configurations of unions and non-union voice mechanisms with union-free environments. Their indicator, which is the same as our claims ratio, reports lower averages for workplaces with union voice mechanisms. Moreover, voice mechanisms are associated with lower rates of disciplinary sanctions and resignations, and, surprisingly, higher rates of absenteeism. According to the authors, their findings suggest that "workplaces with no voice mechanism are characterised by strong disciplinary regimes in which the main expression of conflict takes the form of employees exiting from the organisation" (Dix, *et al.*, 2008: 19). Their analysis does not, however, control for other workplace characteristics.

Probably the most comprehensive study on applications to employment tribunals in the UK comes from Dickens, *et al.* (1985). Based on more than 1,000 interviews, mainly with claimants but also with a range of other actors in the process, the authors find that non-unionised workplaces are more likely to experience employment tribunal claims.[14] It is argued, however, that this might interact with size and existence of formal grievance procedures, which are both associated with union presence.

Further research deals with determinants for conflict manifestation and settlement more broadly. UK case-study research shows that one of the main benefits of partnership agreements and a good relationship between trade unions and management is the quick and informal settlement of problems (Oxenbridge and Brown, 2004). In a study that draws on interviews as well as survey data from the South East of England, Abbott (2007) analyses characteristic features of workplaces where employees turn to the Citizens Advice Bureau (CAB) for support regarding conflict with their former employers. He finds that a vast

[14] Employment Tribunals were called Industrial Tribunals before they were renamed following the Employment Rights (Dispute Resolution) Act 1998. For consistency this study will only refer to Employment Tribunals even when the period before 1998 is concerned.

majority of CAB clients come from non-union environments and sectors where unions are rarely present at the workplace level, such as the private service sector. Moreover, it is found that informal talks are common, but largely ineffective in non-union workplaces. Similarly, formal grievance procedures are often ineffective too if they are not implemented correctly. Suitable implementation, in turn, is more likely to occur in workplaces with union presence. Finally, 93 per cent of CAB clients stated that a workplace union would have been the first contact point had it been present.

Walker and Hamilton (2011) review research from North America on the use of internal grievance procedures. By comparing different studies they find that formal grievances are twice as likely in unionised firms as in non-union environments. Although there are certainly several possible interpretations of this finding it might be read as evidence for the effective role of trade unions in the internal settlement of conflict. Further elaboration of this argument would, however, require a closer analysis of the applications to external bodies from the workplaces associated with higher rates of grievances.

A contested argument is that of the impact of the size of the workplace on the incidence of court claims. Saridakis, *et al.* (2008) find that small and medium-sized enterprises (SME) in the UK are more likely to produce employment tribunal claims and explain this phenomenon by pointing to the informality of employment relations. Since their methodology does not allow controlling for union presence, it remains unclear whether the size effect is not moderated by trade union presence, since the latter is significantly less likely in small workplaces. Blankenburg and Rogowski (1986) argue that the size effect is due to higher dismissal rates in small companies in Germany. When the number of claims is related to the number of dismissals, the claims ratio is found to be lower in small workplaces. From a macro perspective, research from the UK finds an association between the proportion of the workforce employed in small firms and the number of unfair dismissal claims (Burgess, *et al.*, 2001).

Controlling for trade union workplace presence (see above), Knight and Latreille (2000a) contradict these findings by presenting results that suggest that claims to UK employment tribunals are more likely to emerge from large companies. They offer the explanation that the rate of dismissal is higher in large workplaces and so are wages, which, in turn, increases the employees' costs of losing their job. Finally, the perception that companies can (and perhaps do) pay compensation is expected to be stronger in large enterprises. Teague (2006) discussed

the emergence of ‘non-union sectors’ in Ireland, which are characterised, among other features, by a growing number of small enterprises. Thus, the apparent size effect might mask the fact that smaller workplaces are less frequently unionised.

Conclusion and Research Questions

The analysis above addressed the theoretical underpinnings of the interplay between collective industrial relations and conflict at work. Drawing on the pluralist frame of reference and, in particular, on the work of Alan Fox (1966; 1973), the analysis argued that the workplace consists of different groups with conflicting interests. Conflict is seen as endemic but manageable through the provision of institutions to integrate collective workers’ interest groups into the managerial relationship. In the absence of such an institutionalisation of conflict, unorganised conflict is more likely to appear. Unorganised or individual conflict includes the reliance on external conflict resolution bodies.

Whereas the micro dynamics are universal their institutionalisation differs significantly between countries. It is argued that coherent systems of strong collective employee representation are more effective in avoiding externalisation of conflict. Although empirical research largely focuses on the micro level it broadly supports the theoretical assumptions that robust industrial relations institutions have a positive impact on internal conflict settlement. There is, however, only little comparative evidence available and most national research focuses on the UK. This study aims to fill this gap by conducting cross-country analyses of a number of European countries.

Based on the review above, three research questions arise. First, this project analyses the effect of the existence of industrial relations institutions on the number of cases brought to an external body. It is expected that strongly coherent collective institutions lower the emergence of latent conflict, increase the rate of internally settled disputes and thus decrease the likelihood of a claim to labour courts. In addition to these institutional indicators, the interaction of actors is deemed to be important in such a way that a constructive relationship between management and employee representatives increases the efficiency of employee voice institutions.

Second, the study examines the development of labour court claims over time in conjunction with the development of the industrial relations indicators. It is expected that those countries that have experienced a substantial erosion of collective industrial relations also report an

important increase of labour court claims. Third, it is expected that institutional changes affect the coherence of the institutional setting which, in turn, has an impact on labour court applications. It is expected that more coherent systems are more successful in avoiding externalisation of conflict.

2.3 Employment Legislation

This section argues that the extent to which labour market institutions, in particular individual employment rights, are important in shaping the employment relationship impacts the incidence of labour court claims. The role of employment law in the employment relationship is typically determined by historical developments specific to any country and ranges from countries with traditionally strong codified labour law, for instance France and Germany, to the classic voluntarist laissez-faire systems such as the UK. The different legal traditions form the core of Legal Origins Theory, which is briefly discussed in the beginning of this section. Thereafter, attention is drawn to Simitis' (1984) important contribution on the juridification of the employment relationship. In addition to the existence of labour law, mechanisms to enforce regulation, such as labour courts and employment tribunals, and their role in the settlement of work-related conflict are considered. The section concludes with the proposition of research questions.

Conflict Settlement and the Law

Legal Origins Theory predicts that the major national norms of social control of economic life can be explained by the country's legal heritage. Advocates of this approach (see La Porta, *et al.* (2008) for an overview) differentiate between common law countries with English legal origins and civil law states with French, German or Scandinavian roots.[15] The general notion of the approach suggests that, in common law countries, the state's main role is 'dispute resolving' and 'market supporting' whereas in civil law systems, governments are active in 'policy-implementing' and conditioning private contracting. (La Porta, *et al.*, 2008) La Porta, *et al.* (2008) provide a long list of evidence that allegedly support the claims of the Legal Origin scholars.

This stream of literature has two major weaknesses, however, that are relevant to this research. The first, more general critique is made by Deakin, *et al.* (2007a: 134) and points out that the approach is "flawed by [its] excessive reliance on an over-stylized account of the common law/civil law divide, which misdescribes the differences between legal families". The issue of overstating the importance of 'strong' legal origins is discussed in more detail in section 5.2 below.

[15] The fifths category is that of socialist legal origin, which plays little role in the theoretical and empirical debate, and is thus excluded here.

Second, advocates of Legal Origins have little to say about the enforcement of individual employment rights through a court or tribunal system. Although La Porta, *et al.* (2008) rightly point towards the early jury trials in twelfth-century England, the British State deliberately abstained from interfering with work-related conflict until the second half of the 20th century. Consequently, the common law countries were among the last in Europe to develop a judicial system (and a corresponding body of legal protection mechanisms) to deal with individual conflict at work. The first institution that resembles a modern labour court, on the other hand, was installed in civil law Napoleonic France in 1806 (see next section).

Although there might be ways to integrate these developments into Legal Origins Theory, it is concluded here that the literature is of little help in explaining the phenomenon under study in this research. Nevertheless, this is not to dismiss the importance of legal origins in general and we will see in the next section that the civil/common law distinction also appears in Malmberg's (2009) categorisation of enforcement mechanisms for employment regulation.

In contrast to advocates of Legal Origins Theory, the work of Simitis (1984; 1987)[16] emphasises that the settlement of work-related conflict is increasingly characterised by the intervention of the state through the provision of legal mechanisms in *all* countries under study. In this sense, juridification is the shift from complete reliance on contractual arrangements to a 'law driven' society that limits the scope of contractual autonomy between two parties and is, according to Simitis, most pronounced in the field of labour law. Juridification changes the relationship between the contracting parties, in this case particularly employers and employees, as well as the function of the state, which becomes actively involved in the process by regulating formerly private relationships and thus constitutes a central labour market institution.

The starting point of juridification is found in the early period of industrialisation. The 'excess' of contractual relations between employers and labour in early factory work lead to the introduction of laws to protect the workforce, such as prohibition of child labour, limiting working hours and basic health and safety provisions. This is the reactive period of juridification. At a later stage, the state shifts to a more preventive role that is no longer limited to a reaction to detrimental effects of contractual arrangements. Juridification thus

[16] The content of the discussion presented here mainly refers to the original German version of the chapter (Simitis, 1984) whereas direct citations are takes from the abridged English version published in Teubner (1987).

becomes embedded in a broader debate about *social* issues. Simitis' example is the shift from simply limiting dismissals to a state policy of promoting employment.

From a comparative perspective, Simitis does not see juridification as a phenomenon that is specific to a single state, but universal to all industrialised nations. Simitis explicitly includes the UK in that list, which has traditionally been described as the only European country in which the state abstained from industrial relations, at least at the workplace level (Kahn-Freund, 1983). It was the Donovan Commission that proposed the introduction of legal protection against unfair dismissal for individual employees and corresponding legal enforcement mechanisms as a result of an ever-increasing number of wildcat strikes over individual disputes (Royal Commission on Trade Unions and Employers' Associations, 1968).

The "ever increasing trend of legal regulation" (Simitis, 1987: 115) that has been triggered by industrialisation, however, takes different pathways that are embedded in the national institutional context. Although the trend to more and more complex regulation is seen to be universal, there might be very different forms of juridification. Consequently, it does thus not necessarily lead to institutional convergence. "Though 'juridification' everywhere reflects the shift to increasingly outspoken interventionism, the circumstances under which the interference is exercised are often very different" (Simitis, 1987: 118). Malmberg (2009) presents three categories of juridification and enforcement mechanisms that are presented in the next section.

The domain where juridification is manifested, however, is not limited to statute law. Rather, Simitis identifies three other domains; administration, for example in the form of labour inspectorates, the role of the courts (see below) and what he calls 'indirect steering' by social partners. The most important form of indirect steering is the conclusion of collective agreements. Initially, Simitis argues, collective bargaining was illegal. By making it legal, it is integrated into a wider state system the rules of which the bargaining parties have to obey.

Simitis devotes an extensive section to different kinds of criticism of juridification from different ideological camps all implying that it has reached its peak and some of them advocating 'deregulation' of the labour market. Simitis, however, sees juridification entering a new stage. From his perspective in the early 1980s, he identifies three emerging changes in the economy that do not fit into traditional concepts of labour and thus require new

regulation. First, he argues, changes in the labour force affecting old and female workers will need new legislation concerning discrimination against them in the labour market. Second, the state has an interest to intervene in the regulation of employment in high-risk technologies, in particular concerning nuclear power plants. Finally, technological changes that simplify the physical relocation of workers and allow them to do their work at home (teleworkers) will require new forms of legislation. For Simitis juridification is thus an ongoing process. It might take different forms and occur at different rates, but there is no alternative.

Simitis' approach has been criticised, mainly for the fact that in his view an intervention of the state equals an increase in legislation ("more law") (Clark, 1985). Clark and Wedderburn (1987) analyse the extent to which it is possible to apply Simitis' approach to the UK and find that juridification is an open process rather than an irreversible trend. There is, however, very little dispute about Simitis' proposition that there is a general trend for an increased role of legal regulation in the employment relationship before and, in particular, ever since the critique of Simitis' approach. There are two main reasons for this.

First, as predicted by Simitis, a number of legal innovations were reactions to changes in the workforce. Anti-discrimination legislation is a strong case in point, although its coverage is often much broader than expected by Simitis and deals, in addition to old and female workers, also with discrimination on grounds of race and ethnicity, disability, religion and belief, sexual orientation, and marital status. Other legal initiatives targeted those who were formerly 'marginally employed' (Hepple and Veneziani, 2009a).

Second, Member States of the EU have seen an increase in European legislation that directly or indirectly conditions the legal regulation of the employment relationship. Although few directives concerning labour issues had been passed in the 1970s the European Community and later the EU gained extensive competencies in labour legislation with the social protocol of the Treaty of Maastricht in 1992 and the Treaty of Amsterdam in 1997 including a departure in certain key areas from unanimous to qualified majority voting.[17] In terms of individual labour law "[m]ajor progress has been made particularly in legislation on health

[17] It is noteworthy that some issues, such as termination of employment, still require unanimity and there remains no direct legislative competence on issues such as pay (other than equal pay), freedom of association or the right to strike.

and safety, working time, work-life balance, atypical work, the protection of employees in the case of trans-national services and discrimination" (Weiss, 2010: 5).

The situation is slightly, but not fundamentally, different in the ten post-communist countries that joined the EU since 2004.[18] Their labour laws had to adapt to market mechanisms in a relatively short period of time. Consequently, all these countries substantially revised their old or introduced completely new labour codes in the early 1990s (Kudd, 2009). Moreover, they had to comply with EU regulation in order to be granted the right to join the EU. Thus, these countries are expected to have experienced juridification of a different type and, certainly, at a different speed.

Finally, even though juridification is seen as a universal trend in European countries, it is not assumed that there is a general trend towards convergence of employment legislation. Although a number of generally accepted legal principles have been identified throughout (primarily Western) European countries, such as dismissal protection, anti-discrimination legislation and, more recently, principles of 'flexicurity', the corresponding regulations are embedded in a specific national institutional context. There might thus be convergence of certain ideas, but not necessarily of specific institutions (Hepple and Veneziani, 2009a).

Enforcement of Employment Regulation

Apart from the expected role of juridification to explain the incidence of claims to juridical bodies in order to settle work-related disputes, different mechanisms to *enforce* the legislation are taken into consideration. Similarly to Simitis, Malmberg (2009) distinguishes three types of enforcement mechanisms; industrial relations, administration and the courts. Industrial relations are covered in Section 2.2. The role of the administration in enforcing employment regulation through labour inspectorates goes beyond the scope of this research. Therefore, the discussion here is limited to enforcement through judicial or semi-judicial bodies.

The idea of establishing specialised institutions to deal with work related conflicts goes back to the early 19th century. In 1806 the first *conseil de prud'homme* was established in Lyon, France, by a law that allowed its extension to other parts of the country. These *conseils* were already multipartite in character as they consisted of elected representatives of manufacturers, foremen, supervisors and workers; a feature that is still common in most European countries

[18] Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Slovakia and Slovenia in 2004 and Bulgaria and Romania in 2007. Croatia only joined in 2013 shortly before this research was concluded.

today. By the early 20th century most continental European countries had established specialised bodies to deal with labour disputes, for instance Belgium (established in 1809), Italy (1893, but reintegrated into the ordinary court system after the Second World War), Germany (1890 for manual workers, 1906 for clerical workers, establishment of a comprehensive labour court in 1926), Spain (1908, reforms in 1922, but then replaced under Franco in 1940), Denmark (1910), Sweden (1928), Austria (1946, but a tripartite board to deal with labour disputes existed since 1920), Finland (1946) and Ireland (1946). The only exceptions were the Netherlands, where no special labour courts were established until recently, and the UK, where employment tribunals were only established in 1964 but did not play an important role before the early 1970s (Ramm, 1986; Malmberg, 2009).[19]

The rationale for establishing specialised labour courts was to provide a relatively informal and speedy procedure to deal with labour disputes. Moreover, most bodies are bipartite or tripartite with representatives from both the employers' and the workers' side. The reason for this is that the formal procedures of the ordinary courts were often too complex and expensive for the poor and, at least in the 19th century, often illiterate working class. Moreover, judges at the ordinary courts lacked the expertise necessary to judge labour disputes and their 'middle-class mentality' was seen as biased towards the employers' side (Ramm, 1986).

Although the reasons for the establishment of specialised labour courts as well as their composition broadly coincide in most European countries, their role in the enforcement of labour legislation differs significantly. Malmberg (2009) has identified three models; the *Continental European* model, the *Nordic* model and the *British* model. Most continental European countries have specialised courts that deal with labour disputes and allow single employees to bring claims, increasingly with the support of their unions. Reforms of the continental system since the early 1970s, which Malmberg considers as the start of an important vogue of juridification, include speeding up the process (in some countries such as Germany, Italy and France), the training of judges and the introduction of some rights for social partners to bring claims on behalf of their members. In general, Malmberg identifies moderate pressure for change in the continental system.

[19] With the exception of the so-called 'munitions tribunals' that dealt with labour disputes during the First World War.

The *Nordic Model* is characterised by strong reliance on social partners. Although a considerable body of employment legislation exists, this applies mainly to collective labour disputes. Collective disputes are dealt with by a single court composed of representatives from the state and the social partners. There is no possibility for appeal. It is very difficult for individuals to bring claims, in particular when the claim is not backed up by a trade union. The Nordic countries have experienced some pressure for reform and a slight shift towards individually enforceable employment rights. There is, however, still a very strong dominance of regulation of labour disputes by social partners.

Strong reliance on social partners is also an important feature of the British Model. It was traditionally characterised by 'collective laissez-faire' with considerable autonomy from the state advocated by both employer and employee representatives. Collective agreements traditionally dominated over legally enforceable regulations. Conflict settlement was also primarily in the hand of the social partners. The system, however, has changed significantly since the 1960s when numerous unofficial strikes and the collapse of laissez-faire led the Donovan Commission to recommend the introduction individual unfair dismissal legislation. The extent to which employment relations in the UK are ruled by individually enforceable employment laws has increased ever since.

A fourth category, which is not covered by Malmberg, includes the new EU Member States. This group is probably the most heterogeneous because employment legislation and enforcement differs considerably among countries (Eurofound, 2004). They all have in common, however, that they had to reform their system of employment legislation dramatically in the process of transformation towards democracy and free market economy and their pursuit of joining the EU. Therefore, this category can be described as transitional with radical changes in the last 20 years.

More recent developments in the settlement of labour disputes include the introduction of several forms of alternative dispute settlement mechanisms such as conciliation bodies or ombudsmen. Recent research shows that every EU Member State has such a system in place (Purcell, 2010a). Moreover, courts at higher levels, such as in the European Courts of Human Rights (ECHR) and the European Court of Justice, impact on the process of enforcing employment legislation at national level (ECJ) (Malmberg, 2009). The latter two will, however, only play a subordinate role in this research.

Empirical Literature

There is relatively little empirical research that looks at the relationship between the extent of legal regulation and claims to juridical bodies. Malmberg (2009), for instance, describes how the number of labour court claims increased in Germany in the 1970s, in particular with regards to collective issues, as a consequence of the 1972 Works Constitution Act and the 1976 Co-Determination Act. The consequence was changes in the Labour Court Act in order to speed up procedures. Moreover, there is evidence that the direct use of discrimination legislation in employment tribunal applications in the UK has been limited (Dickens and Hall, 2006).

Teague (2006; 2009) argues that the breakdown of voluntarism has led to a growth in the volume and complexity of employment law in Ireland and given rise to a more extensive use of legal institutions to settle conflicts. The 'tightly knit' system of Swedish industrial relations, on the contrary, is still largely governed by the social partners without any prominent resort to law, in particular with regards to individual labour disputes. Another comparative study uses quantitative methods to analyse the relationship between new legislation and the number of claims to juridical bodies in the UK and Germany, but finds that economic factors are more important determinants (Brown, *et al.*, 1997, see also below). In a similarly designed study that compares Germany and Spain, it is found that Spanish labour market reforms that were aimed at facilitating individual dismissal had a statistically significant negative effect on the incidence of labour court claims concerning unfair dismissal and remuneration (Frick, *et al.*, 2012). In Germany, on the contrary, changes in employment law did not show any significant result. In both cases, however, the impact of economic factors was stronger than changes in employment regulation (ibid.). The economic findings of this research are presented in Section 2.4.

Conclusion and Research Questions

This section argues that the juridification of the employment relationship and the possibility for individuals to enforce these rights affect the incidence of claims to juridical bodies.[20] The aim of this research is to determine the impact of juridification on the incidence of application to juridical bodies. Adopted from Malmberg, countries are grouped into four

[20] Another line of argument suggests that in addition to more law there is also more awareness of individual employment rights due to prominent landmark cases that are reported by the press (Dix, *et al.*, 2008). This proposition is, however, quite difficult to assess empirically.

categories. First, what Malmberg calls the British model will be the *Anglophone model* in this research as it is joined by Ireland. The reason is that there are crucial similarities between the two countries with regards to the collapse of voluntarism and strong reliance on social partners (Teague, 2006). As the pace and substance of juridification in the last 30 years is particularly pronounced and pressure for reform is high it is expected that juridification has a strong impact on the incidence of applications to juridical bodies, and that claims to judicial bodies have strongly increased.

In the second category, the *Continental European model*, pressure for reform and juridification is moderate and its impact on labour court claims is, thus, expected to be moderate too. Since there is a longer tradition of enforcement of individual labour rights through the courts, higher overall levels of claims are expected. On the other hand, these systems are likely to experience less volatility. Thirdly, *Nordic countries* still place strong emphasis on social partners to settle individual conflicts at work. Juridification has mainly taken place with regards to collective issues and is typically backed up by social partners or even based on agreements concluded by them. Thus, it is expected to have a low impact on labour court claims and, in more general terms, low rates of claims to the courts.

Finally, although heterogeneous as a group, *New Member States* have undergone drastic changes in employment regulation since the fall of the Iron Curtain. These reforms are expected to have a strong impact on the incidence of labour court claims. As institutions adapt to the new situation, it is expected that legal reforms will have a stronger impact on the incidence of labour court claims than in the other groups, which have long-established legal institutions. Hence, it is expected that this group is characterised by high levels of volatility in claims to labour courts.

2.4 Economics

Whereas the last two sections have discussed the expected impact of institutions on the emergence and manifestation of conflict, this section discusses a broad range of approaches that are, to different degrees, related to the field of economics. This section presents the results of an extensive literature review that categorises relevant research into two groups. First, the most extensive body of literature argues that hostile economic conditions increase the likelihood that employees will seek compensation from their (former) employer through the courts. At company level, evidence suggests that poor economic performance increases the emergence and manifestation of conflict. The second body of literature emphasis how personal characteristics of the aggrieved employee influence the emergence of conflictual situations and the probability that an individual makes a claim.

This section discusses these approaches in greater detail and proposes research questions. Since the economic argument consists of several sub-arguments that are treated separately, the structure of this chapter is slightly different insofar as empirical literature is presented at the end of each sub-section, and not at the end of the section.

Direct and Expected Costs

This section discusses the expected role of direct and expected costs associated with labour court claims. Direct costs refer to the expenses that arise for a plaintiff in filing and pursuing a claim. The most obvious direct cost occurs from legal fees that fall due when a claim is filed. There are, however, a range of countries in which no labour court fees apply or work-related court claims are exempt from regular civil court fees. This is the case in countries such as Belgium, Estonia, Ireland, Italy, Poland, Romania, Slovenia and, hitherto, the UK.[21] In Germany, for instance, claimants or respondent may be charged after the labour court has ruled a judgement, though it is reported that this is relatively uncommon (Frick and Schneider, 1999). In France, a lump-sum payment of €35 has applied since October 2011, which is beyond the period covered in this study. The fee is waived for claimants eligible for legal aid. Spanish labour courts charge between €90 and €150 depending on the procedure applied.[22]

[21] This is a non-exhaustive list.
[22] The Spanish government has increased fees to €150 and €300 as of January 2013 (Agencia Estatal, 2012).

Austrian labour courts demand fees depending on the amount in dispute, whereas charges that apply to all other civil courts are waived for grievances filed to labour courts that concern less than €1,450. Austrian fees are regularly adjusted to inflation. The last adjustment was implemented in 2011 and sets, for instance, charges at €97 for claims of an amount in dispute up to €2,000, €155 for amounts between €2,001 and €3,500, or €155 for amounts between €3,501 and €7,000. The UK government introduced a new fees regime on 29 July 2013. The combined fees for initiating a claim range from £160 to £250 for filing a claim, and further charges if cases go to a tribunal hearing (up to £1,200 per claim in more serious cases).

In some countries, such as France and Germany, claimants may apply for legal aid. In addition to fees to register a claim, some national labour courts may assign court fees to the losing party after the judgement. While there is no legal aid for UK employment tribunal claims, there is a complex fee remission structure based on receipt of social security benefits and/or income.

Other direct costs might occur when claimants are represented by a lawyer. It seems, however, that legal representation is voluntary in all countries in the sample. Moreover, it is often possible to be represented by trade union officials, family or other parties. According to UK survey data, 46 per cent of employment tribunal claimants had regular representation in 2008 (55 per cent in 2003). 52 per cent of represented claimants were assisted by a solicitor or barrister, 15 per cent by trade union representatives, 15 per cent by family, and 12 per cent by the Citizens Advice Bureau. The mean (median) amount paid for help by employment tribunal claims was £4,124 (£2,000): however, only roughly one-third of plaintiffs that received assistance reported that they paid for all (27 per cent) or for some (6 per cent) of their professional advice and representation (Peters, *et al.*, 2010).

German research suggests that an increasing number of legal expenses insurance policies cover labour court costs (Frick and Schneider, 1999). Observational evidence collected by the author from the French Labour Court in Paris[23] suggests that it is very rare that either party to a dispute is not represented by a lawyer or a trade union representative. If the claimant is eligible to legal aid, it may cover the costs of legal assistance.[24]

[23] All French labour court hearings are open to the public. Lists of the claimant, the respondent and their representatives are on display outside of the room where the hearing takes place.
[24] A popular argument among some practitioners and in the public is that the increasing caseload of UK employment tribunals is due to a growth in ‘compensation culture’ and ‘no win no fees’ arrangements. A 2004

Furthermore, there are non-financial resources that have to be invested in court claims, notably time and energy. Peters, *et al.* (2010) suggest that the median duration spent on a case according to the British data was seven days per claimant. The mean was considerably higher, 42 days, but is reported to be inflated by a small number of employees who gave particularly high figures. 36 per cent of claimants mentioned stress, emotional drain or depression as non-financial consequences of the tribunal claim.

Although this analysis is based on descriptive evidence from only a few exemplary cases, it allows some conclusions to be drawn. The direct financial costs of bringing a claim to a labour court in Europe over the period covered, 1981–2010, seem to be rather modest. Registration fees appear not to exist in many countries, although a number of countries have introduced fees in recent years. If case submissions are charged, the amount is relatively low and legal aid mechanisms are often in place. Representation in the court is voluntary and claimants may choose to be represented by trade union representatives, family or friends, who may not charge fees. Hence, direct financial costs do not seem to be a powerful predictor for cross-country differences in reliance on labour court claims.

Based on the sparse data available, it is difficult to make precise predictions about how the investment of time and energy might affect the likelihood of an individual making a claim. As a general assumption, however, it is suggested that individuals are more likely to claim when they have sufficient free time at their disposal, because they are unemployed, for instance, than when they are in full-time employment.

Nevertheless, since direct costs are found to be an insufficient explanation of court claims, a broader cost model is discussed here. Frick, *et al.* (2012) propose an economic model of *expected costs* of the dispute to explain the relationship between the situation of the local labour market and claims to labour courts on unfair dismissal and remuneration issues. It is argued that higher overall expected costs (or *opportunity costs*) of the dispute increase the likelihood that the employee sues their former employer. A modified and extended version of their approach that is adapted to this research is discussed here. Hence, the total expected costs of the dispute are a function of the expected earnings loss caused by the dispute and the duration of the loss.

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report by the Department for Constitutional Affairs (DCA) finds that although the latter might affect the outcome and stage of settlement of the case, there is no evidence to indicate that they create more cases (cited by Gibbons, 2007). Moreover, exploratory research suggests that claimants were largely motivated by a feeling of injustice and not so much by external advice by ‘no win no fee’ lawyers (Moorhead and Cumming, 2009).

Formally, this may be expressed as

$$EC_D = ED_D * EEL_D$$

where EC_D is the expected cost of the dispute, ED_D is the expected duration and EEL_D is the expected earnings loss. If the case has been filed by an employee who remains in the employment relationship with their employer, expected earnings loss might be the result of wage deductions or pay raises withheld in the case of a promotion not being granted.

It is more likely, however, that the dispute that led the employee to file a claim results in loss of employment since it is reported that a vast majority of court claims are filed after the employment relationship has ended. Unfair dismissal or related provisions seem to be the most important jurisdiction in many countries for which such data are available. It is also likely, however, that cases under other jurisdictions are filed after the employment relationship has come to an end. In this regard, Blankenburg and Rogowski (1986: 75) argue that "it is unlikely for parties in an ongoing social relationship to resort to formal legal rules when a dispute arises". French administrative data presented in Chapter 5 provides some evidence in support (see also Munoz Perez and Serverin, 2005). Although only 35 per cent of all claims accepted in the UK were on unfair dismissal in 2008 (Tribunals Service, 2012),[25] SETA data suggest that in the same year just 8 per cent of all claimants still worked for the employer against who they filed a case when they reached the tribunal hearing (Peters, *et al.*, 2010).

Moreover, reinstatement appears to be a relatively rare outcome of a court hearing. In the UK, for instance, only eight rulings for reinstatement were made between April 2010 and March 2011 (Tribunals Service, 2011). Evidence reported from Germany suggests that if reinstatement is ordered by the court, the employer often applies for termination of the employment contract, for which the court sets a severance payment (Frick and Schneider, 1999; Schneider, 2001). Alternatively, the judge may propose that the parties agree to transform the dismissal with immediate effect into a regular one and continue to pay the employee a salary until the end of the notification period, for which the employee is released from work.

[25] The 2008 figure is reported for reason of comparability because SETA was compiled in the same year. The proportion of cases dealing with unfair dismissal dropped to 24 per cent in 2009, 22 per cent in 2010, and 24 per cent in 2011.

OECD data from 2008 indicate that in the 21 EU Member States for which such information is available reinstatement following an unfair dismissal claim is (almost) always made available in four countries (Austria, Czech Republic, Estonia, Luxembourg), fairly often made available in six Member States (Greece, Hungary, Italy, Portugal, Slovakia, Slovenia), rarely or sometimes made available in seven national systems (Germany, Denmark, Ireland, Netherlands, Poland, Sweden, the UK), and that four countries have no right or practice of reinstatement (Belgium, Finland, France, Spain) (OECD, 2009).

It can thus be assumed that the employment relationship of the vast majority of claimants has been terminated and that they are available on the labour market, at least for a short time. In case of unemployment, the expected earnings loss is the salary minus welfare benefits the claimant is eligible to, and the expected duration equals the expected duration of unemployment. If the claimant has already found new employment when the case is filed, expected earnings losses are described by the difference between the current and the previous salary, and expected duration of the dispute as the time it might take to reach previous income levels. It is expected that both the expected earnings loss and the expected duration of the dispute are correlated to cyclical economic indicators and individual characteristics. These will be discussed in the remainder of this chapter.

Economic Conditions

This section argues that economic conditions affect the incidence of labour court claims for different reasons. First, it is expected that a hostile economic environment increases the potential for conflictual behaviour and, in turn, the emergence of conflict in the first place. Second, it is argued that, based on the argument presented in the previous section, the expected costs for employees are subject to the economic situation and, as a consequence, impact the likelihood of conflict being manifested as claims to a judicial body. Both approaches are discussed in this section.

The most obvious form of conflictual behaviour that is associated with economic conditions on the local labour is the rate of dismissal.[26] If dismissal is used as a mean to adjust to economic changes, it is very likely that it results in a conflictual situation between the employer and the employee. It has been argued in the previous section that a high proportion

[26] The relationship between economic conditions and dismissal is arguably moderated by national employment protection legislation (e.g. Bertola, 1990). This argument is developed in Section 2.5.

of claims are brought by employees who do not work for the employer against which they bring a claim. Rough estimates from the UK and Germany estimate that the percentage of dismissals that are followed by court claims is about 10 per cent in the former and 13–17 per cent in the latter (Cully, *et al.*, 1999; Bielenski and Ullmann, 2005). Older estimates report significantly lower scores, a 'rate of litigation' after dismissal of 6 per cent in West Germany and 1 per cent in Great Britain in 1978, although data and calculation methods differ from more recent research (Blankenburg and Rogowski, 1986). In France, it is found that there are substantial differences between those who are made redundant for economic reasons and those who are dismissed on other grounds. Analysing data from 1993 to 2004, the claims ratio is, on average 1.9 per cent for the former and 34.1 per cent for the latter, with notable variations over time (the minimum being 1.0 per cent and 25.8 per cent, and the maximum 2.6 per cent and 41.0 per cent, respectively) (Serverin, 2006).

Although it is acknowledged in line with the discussion presented above that this rate might vary, it can be expected that adverse economic conditions that are associated with higher dismissal rates also increase the amount of conflict and, in turn, the number of claims to labour courts or employment tribunals.[27]

The second part of the argument draws more directly on the concept of expected costs elaborated in the previous section in order to explain how the economic environment is expected to impact the manifestation of conflict. The previous section introduced the notions of the expected duration of, and the expected earnings loss caused by, the dispute. In case of a termination of the previous employment relationship, which is, as discussed above, the most likely outcome leading to a court claim, the expected duration of the dispute is mainly determined by the availability of suitable employment on the local labour market. The more jobs available that fit the aggrieved employee's profile, the shorter the expected duration of the dispute.[28] Major changes in the employment structure, such as large-scale restructuring or the shift of employment shares between sectors, might strengthen this impact. This argument,

[27] A somehow different argument that has been reported from practitioners is that employees may expect that filing a claim increases the employer's willingness to settle privately since expected costs for the employer are considerable. The Gibbons Review cites research that, in the UK, the average cost to employers to defend an employment tribunal claim is estimated to be £9,000 (Gibbons, 2007). Poor economic performance of the employer might enforce this strategy since the financial costs of a full court hearing may seem more threatening. There is, however, no evidence to support that employees are driven by sophisticated strategical concerns of such nature when they decide whether or not they want to bring a claim.

[28] This already indicates the importance of personal characteristics, which are discussed in the subsequent section.

though under a range of different theoretical premises, has been subject to considerable empirical analysis.

Brown, *et al.* (1997) use time-series regional data from the UK and Germany to assess if local labour market developments or legal developments are better determinants for the incidence of labour court claims. They find "that labour market developments, such as the flow into unemployment and the vacancy rate exert somewhat stronger influences on the cyclical number of unfair dismissal claims than changes in the legal infrastructure of the labour market" (Brown, *et al.*, 1997: 344). Drawing on regional time-series data for West Germany, Frick and Schneider (1999) find a strong and statistically significant correlation between regional unemployment and applications to labour court claims. A similar analysis comparing West Germany and Spain found that unemployment and vacancy rates are strong predictors for labour court claims in both countries (Frick, *et al.*, 2012). Estonian research finds evidence for a moderate relationship between regional unemployment and the number of claims to the labour inspectorate and the courts (Masso, 2003).

In a graphical data analysis of unemployment and labour court claims in Germany and Spain Bertola, *et al.* (1999) find a similar correlation between the two indicators, which is particularly marked in Germany. Marinescu (2002) uses gross domestic product (GDP) as a more general indicator for economic conditions and finds that claims to French labour courts behave pro-cyclically to GDP. On the contrary, UK research that used regional data finds no significant impact of unemployment on tribunal claims, but established that the decline of manufacturing employment in the UK is strongly associated with the increase of redundancy claims (Burgess, *et al.*, 2001). Similar results can be obtained when workplace data are used. Frick (2008), for instance, shows that, among other things (see above), redundancies, restructuring, but also more generally poor economic performance of the company is associated with a higher rate of claims to labour courts in Germany.

Anecdotal evidence collected by the author from a conversation with a German labour court judge suggests another possible relationship between economic conditions and court claims. The availability of jobs in the local labour market might not only impact on the frequency of claims, but also on the jurisdictions under which claims are filed. According to the judge, unfair dismissal claims are more common in times of high unemployment, whereas claims concerning the details of the termination of the employment contract, such as the content of the job reference issued by the employer, occur primarily in periods of economic growth.

Testing this relationship in any more detail is, however, beyond the scope of this thesis and might be subject to future research.

The expected earnings loss, in turn, depends mainly on individual characteristics that are discussed in the next section. A more general argument, however, suggests that earnings losses resulting from unemployment are cushioned by generous welfare systems that offer comprehensive unemployment benefits (Bertola, *et al.*, 1999). Higher replacement rates of these benefits lessen the expected earnings loss. Again, Frick, *et al.* (2012) point out that the amount and duration of benefits might depend on a range of individual characteristics.

Other research adds a further dimension to the expected cost considerations discussed here, namely the probability and benefits of winning a case. It is argued that the chance for an employee to win a case or the compensation awarded to the claimant might predict an individual's decision to sue their employer. Bertola, *et al.* (1999), for instance, calculated the chance for a worker to win a case and cross-tabulated this with the relative frequency of reference to courts as an arbiter for labour disputes. Their reading of the table seems to suggest that the incidence of court claims is high in those countries where workers have a high chance of success. Masso (2003) finds a similar relationship in Estonia. UK research shows a positive association between the chance of winning and the incidence of claims over several jurisdictions, and a positive relationship between the awards made to claimants and the number of cases under discrimination legislation (Burgess, *et al.*, 2001).

This argument, however, is based on the assumption that claimants have *perfect information* on the outcome of their case (or, at least, very reliable information on their chance of winning and the amount awarded in compensation), a proposition that is associated with rational choice theory popular in Neo-Classical Economics. Among many others, Skidelsky has convincingly criticised the assumption of perfect information in this stream of economic literature and its role in the events that lead to the economic crisis (2009).

Illustrative evidence to support that there is a considerable degree of uncertainty attached to a labour court claim,[29] that claimants do usually not have perfect information and, thus, might even have unrealistic expectations can be drawn, again, from the British Survey of Employment Tribunal Applications. Data presented show that 67 per cent of claimants that

[29] A more radical version of this argument about uncertainty before the court is reported from legal practitioners in Ancient Rome in the proverb *Coram iudice et in alto mari sumus in manu Dei* ("On the high seas and before the court, one's fate is in God's hand").

were unsuccessful at their Tribunal hearing had perceived that their chances of winning the case at the start of the procedure were very (43 per cent) or quite (24 per cent) likely. For plaintiffs who won their case, the percentage was only slightly higher (76 per cent, 52 per cent and 24 per cent, respectively). Employers' expectations were only marginally more realistic. 46 per cent of employers that experienced cases in which the claimant won thought that their chance of winning was likely (14 per cent) or very likely (32 per cent), and a large proportion thought that they had an even chance (35 per cent) (Peters, *et al.*, 2010).

Strictly speaking, the existence of uncertainty is a necessary condition for the emergence of labour court claims. If both parties had very reliable information on the outcome of the case and the amount at which the case will be settled, they could reach a private agreement and save the transaction costs of bringing the claim to court. This line of argument is inspired by similar literature on strikes (Brandl and Traxler, 2010).

Kahneman and Tversky (1979) have, in their often-cited paper, proposed a more realistic model of choice under risk. They argue that human beings are generally risk-averse in choices promising sure gains, but that they tend to be risk-seeking in choices involving sure losses. This statement, however, supports the suggestions made above about the economic environment. If the result of a dispute is perceived as a sure loss; for instance, because it led to the termination of the employment relationship and there are low chances of finding alternative employment due to high unemployment, aggrieved employees might be more willing to 'gamble' and bring their cases to the courts.

A more general argument about expected benefits is that piecemeal evidence suggests that awards granted by labour courts are not excessively generous. SETA data show that the median award in the UK was £2,000 in 2008,[30] whereas the median annual income of claimants was estimated to be £20,000 (Peters, *et al.*, 2010). All jurisdictions combined, this translates into a median compensation rate of roughly 10 per cent, which seems to be far from being an excessive amount, in particular when considering the financial and non-financial costs for claimants (see above). According to administrative data from the Employment Tribunals Service, however, the compensation in unfair dismissal cases was substantially higher with a median amount of £4,269 in 2008, 6,275 in 2009, and £4,591 in 2010.

[30] The mean award was considerably higher (around £5,400), but seems to be a less meaningful because it is inflated by a few cases with high awards.

Comparative data on compensation provided by the OECD reflects the typical amount of compensation awarded by the courts following unfair dismissal after 20 years of service (OECD, 2009). The indicator is presented in relative terms as the number of monthly salaries that the employee may receive. Information on all 21 EU countries for which data are available are presented in Table 2.3. Data show that the majority of countries (12) grant compensation of not more than a yearly wage, and no country apart from Sweden more than two annual salaries.[31] It is noteworthy to reemphasise that these are compensations that are paid after 20 years of tenure. The average (median) employee who brings an unfair dismissal claim to a UK employment tribunal, however, only has 7 years (4 years) of service (6 and 3 years for all jurisdictions, respectively) (Peters, *et al.*, 2010). As a consequence, average compensation might be significantly lower than reported in Table 2.3 because the average tenure of claimants is substantially below 20 years. Again, these data do not provide strong support for the proposition that courts provide excessive awards are fuelling the number of claims.

In conclusion, this section argued that hostile economic conditions affect the incidence of labour court claims. The weakness of this macro-economic argument is that it implicitly assumes a perfect spatial match, but favourable conditions in the local labour market might not necessarily influence the expected costs of a dispute for all workers in the same manner. Rather, it is suggested that the effect is moderated by a range of personal characteristics. These are discussed in the subsequent section.

Table 2.3 – Typical Compensation Following Unfair Dismissal after 20 Years of Service

Compensation in terms of monthly salaries	Countries
≤ 3 months	Poland
≤ 8 months	Austria, Czech Republic, Greece, Netherlands, Estonia, Luxembourg, UK
≤ 12 months	Denmark, Spain, Hungary, Slovak Republic
≤ 18 months	Belgium, Germany, Finland, France, Italy, Slovenia
≤ 24 months	Ireland, Portugal
≤ 30 months	
> 30 months	Sweden

Source: OECD (2009), data for 2008

[31] Due to lack of comparable data, Sweden is not part of the sample, but all existing information suggests that individual labour court claims are very rare.

Individual Characteristics

The argument on individual characteristics can be divided into two subsections. First, the behaviour and treatment of individuals is expected to differ according to these characteristics, which might, in turn, impact on the emergence of conflict. Moreover, the expected costs of a dispute, as presented in the introductory section of this chapter, are likely to differ between individuals. It is acknowledged that these arguments are not purely economic in nature, but they are subsumed under this heading for reasons of consistency. Most empirical literature that analyses individual characteristics draws on economic approaches. Finally, the discussion of different stages of conflict at the beginning of this chapter has to be taken into consideration. It was argued that the transformation between latent conflict and conflict manifestation is expected to be systematically biased. The remainder of this section must be read in conjunction with this constraint. Based on a literature review, the discussion centres around five individual characteristics that are expected to have an impact; skill level,[32] employment status, age, gender and ethnicity.

Research by Edwards (1995) and Knight and Latreille (2000a) discusses the influence of individual characteristics of the workforce on the use of disciplinary measures (the former) and discipline, dismissal and claims to employment tribunals (the latter). It is argued that *highly qualified workers* are less conflict-prone because white-collar workers are found to comply better with workplace regulations and show lower rates of absenteeism. Moreover, companies invest more in the human capital of high-skilled workers, which makes it more expensive to replace them. Both factors are expected to reduce the potential for latent conflict. A similar argument could be made about full-time and part-time employees, whereas the potential for latent conflict is expected to be less present for the former than for the latter, and other forms of atypical employment, such as agency work or employees on fixed-term contracts. Previous research has shown that agency workers and fixed-term employees report lower levels of job satisfaction (de Graaf-Zijl, 2008) and, more generally, that perceived job insecurity decreases job satisfaction (Jahn, 2013).

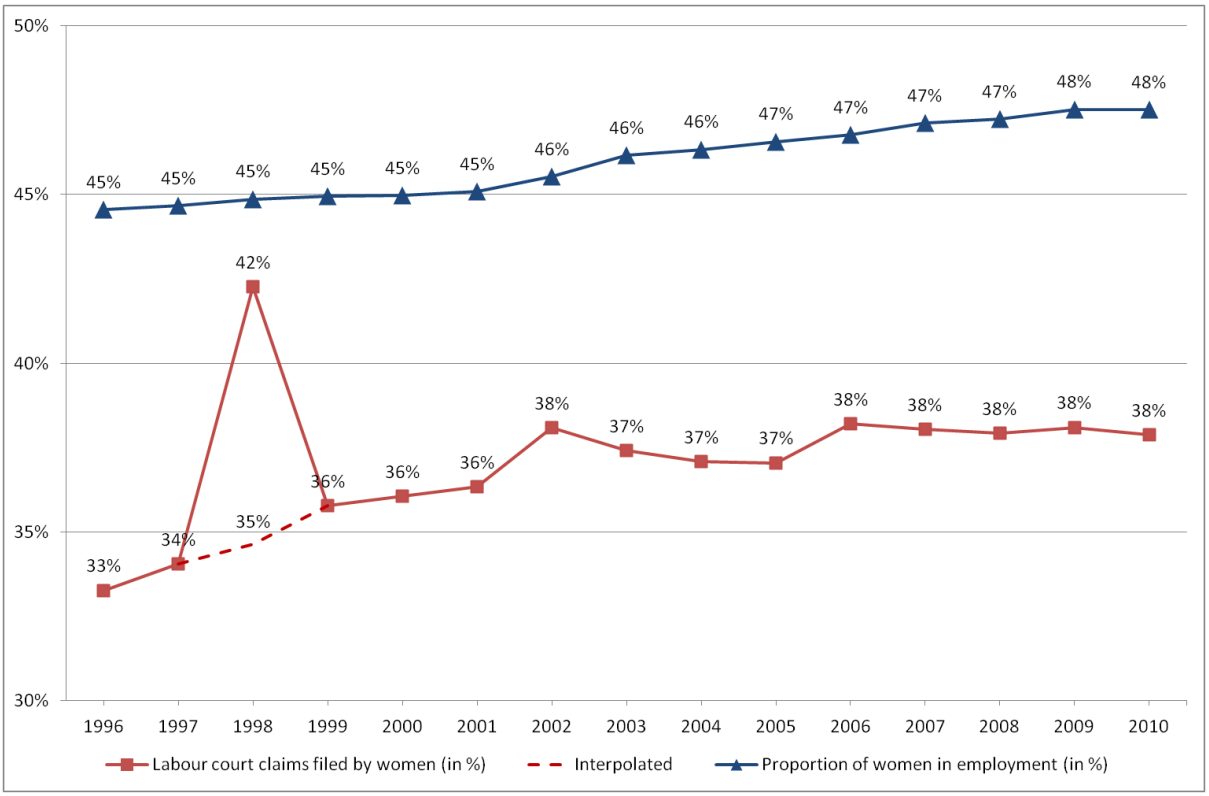
Moreover, some individual characteristics might increase the likelihood of discrimination or other forms of abusive behaviour. This might apply, among other things, on the grounds of

[32] The impact of skills is discussed theoretically, but cannot be assessed empirically for reasons of data availability (cross-country chapter and German country analysis) or technical problems to integrate the items into the regression models (France, UK).

age (young or old workers), *gender*, or *ethnicity*. All these groups have been reported to have experienced more workplace problems (see Table 2.1). Consistent with the research presented in this section, the effect of these characteristics may be ambiguous since the table shows that reporting workplace problems does not necessarily mean that these groups are also more likely to file a formal claim at a labour court.

More generally, data from France show that women are also underrepresented in French labour courts. Figure 2.3 shows that on average 46 per cent of the French workforce were female between 1996 and 2010, whereas only 37 per cent of all labour court claims filed in the same period came from women. This corresponds to an average difference between the two indicators of almost 10 per cent. The year 1998 is an outlier that has been attributed to a series of exceptional claims by employees of the Regional Health Insurance Fund (*Caisse régionale d'assurance maladie, CRAM*) and some banks in that year (Munoz Perez and Serverin, 2005). The dotted line shows a figure for that year that has been corrected for the unusual cases.

Figure 2.3 –Women in Workforce and Among Labour Court Claimants in France, 1996–2010



Source: Own calculation, Eurostat, Répertoire Général Civil (RGC)

There might be a range of reasons for the under-representativeness of some groups in labour court proceedings; for instance, a lack of awareness of their rights, reluctance to enforce their

rights through the judicial system, or lack of experience and unrealistic expectations of the process. Moreover, different effects of the same characteristic may operate in different directions. The example of gender is illustrative. Whereas women are more often subject to discrimination, it is also reported that they show better compliance with company regulations, which can be expected to decrease the amount of latent conflict (Edwards, 1995; Knight and Latreille, 2000a).

In terms of the manifestation of conflict, the concept of expected costs used above can explain differences by individual characteristics. In conjunction with the previous section, the expected cost of a dispute, in particular the chance to find new employment on the labour market depends on individual characteristics. *Low-skilled employees* are expected to have more difficulties in finding alternative employment, which increases their individual costs of losing a job and, in turn, might increase their chance of filing a complaint. *Part-time workers* may suffer from similar difficulties since they may lack sufficient experience and training. In addition, it is found that *older workers* have more difficulties in finding a job on the labour market (Drinkwater, *et al.*, 2008), which is expected to make disputes more costly to them. Similar discrimination arguments can be made about *ethnic minorities*.

Frick, *et al.* (2012) point out that unemployment benefits in many countries depend on tenure, previous wages, family status and other factors. Thus, expected earnings losses could be higher for young people with insufficient labour market experience, low-skilled and low-wage labour, and unmarried people. Similarly, Knight and Latreille (2000a) argue that financial compensation awarded by employment tribunals in the UK depend on length of service, age and weekly earnings, all of which are lower for younger workers, which may make a claim less attractive to them.[33]

Empirical literature based on the SETA data broadly supports these propositions. Since SETA does not include a control group of employees without ET experience, additional data sources have to be used in order to make comparisons with the total population. Comparing SETA and Labour Force Survey (LFS) data shows that "[i]n comparison with the workforce as a whole, ET claimants are more likely to be aged 45 or over (47 per cent of ET claimants, against 38 per cent of all employees), but less likely to be aged 16–34 (27 per cent versus 38

[33] In contrast to the critique of the neo-classical assumption of *perfect information* of individuals, this information can be easily obtained and may well be taken into consideration by employees before filing a claim.

per cent)" (Peters, *et al.*, 2010). A similar finding is reported from clients who ask the Citizens' Advice Bureau (CAB) for assistance in employment disputes (Abbott, 2007).

SETA data also show that a quarter of all ET claimants had no formal qualification, which is substantially higher than among the employed population (8 per cent) (Peters, *et al.*, 2010). Although this might partly be due to age, as the proportion of low-skilled claimants increases with age, this might also be read as evidence that the costs of losing a job are higher for low-skilled workers. This is not only because they might have more difficulties to find a new job, but also because of lower unemployment benefits or less savings. The same report also finds that the proportion of married claimants is slightly below the rate of married persons in the total population (49 per cent and 52 per cent, respectively).

More systematic research points in a similar direction. The likelihood of a claim to a UK employment tribunal seems to be higher from a workplace with a high share of manual workers (Knight and Latreille, 2000a). Perhaps not surprisingly, an increasing proportion of women in the UK workforce is associated with higher incidence of claims under discrimination legislation (Burgess, *et al.*, 2001). Overall, however, the proportion of male ET claimants is higher than the share of men in the workforce (60 per cent and 51 per cent, respectively) (Peters, *et al.*, 2010). With regards to discrimination on grounds of ethnicity Knight and Latreille (2000a) also find that an ethnically heterogeneous workforce has a positive and statistically highly significant impact on the likelihood of an ET claim. Similarly, SETA data show that the proportion of white claimants is slightly lower than of white workers in total (86 per cent and 91 per cent, respectively). Not surprisingly, this proportion is substantially lower in race discrimination cases (Peters, *et al.*, 2010).

Conclusion and Research Questions

This section departed from the institutional approaches presented previously and discussed the extent to which economic literature can explain the incidence of employment tribunal applications. Although generally less 'theoretical' than the other sections, the concept of expected costs was found to be promising. The higher the expected costs of the dispute, it is argued, the higher the likelihood that a claim is filed. In addition, a number of indicators have been identified to explain different amounts of emerging conflict.

Hence, a range of economic conditions and individual characteristics of the aggrieved employee have been discussed that are expected to impact the likelihood of a court claim. It

is expected that a hostile situation in the local market increases the incidence of claims to labour courts. Moreover, individual characteristics that increase the potential for latent conflict and worsen the chance to find alternative employment might moderate this effect. Nevertheless, the role of these characteristics might be ambiguous for several reasons.

2.5 Interdependencies and Complementarities

The three sets of explanations have been presented in three different sections. They are not seen, however, as mutually exclusive and there is a range of interdependencies and complementarities between these arguments. Interdependencies occur when the two or more of the explaining factors predict each other. There is, for example, a long-standing debate about the impact of industrial relations, in particular collective bargaining, on economic performance (Calmfors and Driffill, 1988; Siebert, 1997; Traxler and Kittel, 2000; Traxler, 2003; 2004). UK evidence shows, in turn, that the economic situation, in particular with regard to unemployment, has an impact on trade union membership (Waddington, 1992). Cazes and Nesporova (2003) analyse the impact of employment legislation on employment.

The analytical importance of these interdependencies, however, is limited. This research does not seek to explain the occurrence of the explanatory variables, but their effect on the incidence of labour court claims. Nevertheless, interdependencies will be of interest for the interpretation of the results as observed effects might be the result of a moderator effect. Moreover, it is of technical interest when it comes to regression analysis as the intercorrelation of predictors would violate the assumption of linear independence of the explanatory factors. The technical issues will be discussed in greater detail in the empirical chapters.

The notions of complementarities and coherence were introduced. Complementarities were defined as an increased efficiency when certain institutions or institutional characteristics are found alongside each other. Coherence is the design of institutions to identical principles. Although these terms were introduced with regards to industrial relations, the literature on comparative institutionalism argues that coherence and complementarities may also exist across different subspheres of the economy (for instance Kenworthy, 2006). In other words, industrial relations and labour market institutions do not exist independently of each other and there may well be complementarities across these spheres.

Sweden is a case in point. Since individual conflict settlement is primarily the responsibility of the social partners, legal regulations concerning individual employees and the respective enforcement mechanisms are relatively weak, and labour law places an emphasis on collective rights (Malmberg, 2009). In Ireland, on the other hand, the weakening of previously strong social partners has been balanced by an extension of individual

employment legislation (Teague, 2009). Other research has found complementarities across a wider range of economic spheres (Hall and Gingerich, 2009). This thesis seeks to integrate this notion of complementarities across subspheres of the economy as far as possible.

Another form of complementarities of explanations occurs when different arguments help to explain different aspects of the phenomenon. Research on the incidence of strikes, for example, finds that institutional factors are powerful predictors of differences between countries, whereas economic conditions are a strong explanation for changes over time (Brandl and Traxler, 2010).

In its attempt to recombine the different disciplines, this research takes into account notions of interdependence and complementarities across the explanations to some extent and in different aspects. Most generally, the three arguments, industrial relations, employment regulation and economics, are seen to be supplementary and not mutually exclusive. Nevertheless, it is difficult to assess complementarities in the models given the data available.[34] The more qualitative introduction to the country case study section, however, seeks to compensate for such shortcomings.

[34] Attempts to integrate interaction effects into the regression models were unsuccessful.

3 Methodology

After having outlined the theoretical approaches employed in this study, this chapter discusses the research methodology. In a first step, the ontological and epistemological positions that are adopted are briefly discussed. The aim is not to trace the vast amount of controversy in the field, but to locate this research in terms of its notion of knowledge, and of how knowledge can be acquired. Reference to rival positions is made when it seems necessary. Thereafter, the research design is presented and discussed. This section outlines the reasons for choosing a quantitative comparative approach and shows which temporal, geographical and topical aspects this research focuses. More detailed and technical accounts of research methods are provided in each of the empirical chapters. The section ends with a discussion of the limitations of the research strategy propositions and a range of suggestions for alternative approaches, which might supplement the analysis conducted here.

3.1 Theories of Scientific Knowledge

Before we enter into the discussion of the research design in this study, it is necessary to clarify some assumptions and theoretical standpoints that are taken. The most general assumption on which the research is based is that an outside world exists independent of the observing subject, and that the dynamics of this outside world may be captured through appropriate mechanisms. These basic assumptions refute those of *radical constructivists* (especially von Glasersfeld, 1987) and, to some extent, those of *interpretivists*, who see the existence of an outer world as the product of its perception by the observer. Some of the logical problems of constructivist approaches are discussed by Wendel (1992), for instance. The remainder of this section discusses theoretically how knowledge about the subject-independent outer world can be acquired, following closely Karl Popper's epistemological philosophy of *critical rationalism* (Popper, 1945; 1963), which guides the discussion throughout the subsequent paragraphs.

The starting point of empirical research is the formulation of hypotheses (or, more broadly, research questions) that are based on theoretical considerations. The test of theories is the core concern of scientific researchers. According to Popper, it is not logically or practically possible to *verify* theories since we cannot test them on all possible subjects at all times in the past, present, and future. Therefore, the verification of a theory would require generalising from a few to all cases (*induction*). There is, however, no general rule or logic for valid

induction (Chalmers, 1999). Therefore, the advocates of critical rationalism reject validation of theories as an acceptable means to make scientific progress, but accept that one can produce evidence to support theoretical propositions. Theories can be falsified and refuted, however, with available data, and thus contribute to scientific progress. Popper (2002) stresses that a single observation that seems to contradict the theory does not yet falsify it (the latter is often referred to as *naïve falsificationism*).

Theoretical concepts, and the proposed causal relationship between them, however, cannot be observed in the real world. If we propose, for instance, that the existence of employee voice mechanisms reduces the incidence of conflict externalisation, it is necessary to define the main concepts ('employee voice mechanisms' and 'conflict externalisation') and to suggest how they can be observed (since neither employee voice nor conflict externalisation can be observed directly). There are, thus, two different levels, the theoretical and the observational level, both with their own language and vocabulary (Carnap, 1956). The challenge for the researcher is to establish a correspondence between these two levels or, in other words, to find indicators to observe the theoretical constructs. In our case, we argue that one indicator to measure employee voice may be the presence of a trade union, and we measure the externalisation of conflict as claims to labour courts or employment tribunals.

The character of these *operationalisations*, the translation of theoretical concepts into observable indicators, is that of a testable theory itself. For instance, it is not only discussed why employee voice is expected to decrease conflict externalisation, but also why the existence of a trade union at the workplace is expected to be an indicator of employee voice. The latter is empirically testable just like the former, and both may be falsified. If we operationalize 'employee voice' as, among other things, the presence of a trade union at the workplace and we find evidence that contradicts our theory, the result can be due to a false theory, a false operationalisation, or both.

In summary, this research develops testable research questions based on the literature, develops operationalisation strategies for the concepts employed, which have the formal status of theories themselves, and uses data that are, as will be shown below, publically available to test the theoretical propositions. Hence, it is possible to criticise (and to falsify) all theoretical elements of this research. There is no hidden interpretation in the data, as there would be if the research was conducted from an interpretivist point of view, for instance. Hence, other researchers can replicate and criticise every single step and thus contribute to

the advancement of knowledge in the field. Of course, there are issues around data quality and the shortcomings of available methods of analysis. These weaknesses, however, can be discussed and, to an extent, controlled for, as the empirical chapters show.

Following the brief epistemological debate in this section, this research is structured accordingly. In the previous chapter, theoretical approaches from different areas, most notably industrial relations, law and economics, are reviewed and assessed, and form the basis of research questions that guide the empirical analyses. Each of the empirical chapters includes a section on operationalisation that discusses how theoretical concepts are linked to observable (and available) measures. Weaknesses of the indicators are discussed whenever they appear most striking. We will present evidence that corroborates our theoretical suggestions and, if no supportive findings are obtained, discuss whether we expect that more sophisticated instruments could deliver different results, or if it is likely that the theoretical approach is likely to require adjustments. The remainder of this chapter presents the research design chosen for this study, discusses some shortcomings, and makes, when deemed necessary, reference to alternative research strategies.

3.2 Research Design

The core of this research is to explore and explain the incidence of labour court and employment tribunal claims. There are different levels of analysis that appear. First, there is the *macro level*. Typically, judicial systems and most legal regulation are organised nationally and, therefore, the nation-state appears to be the logical choice. Other research on the same topic, however, has used political entities below state-level, such as the German *Länder* or the Spanish *comunidades autónomas* (Frick and Schneider, 1999; Frick, *et al.*, 2012). More recent debate in the industrial relations literature suggests departing from the nation state as a basis for comparison, and a focus on sectors instead (Bechter, *et al.*, 2012). Second, the analysis can take place at the meso level. Since this research analyses claims arising from the employment relationship, it necessarily involves two parties that belong to or belonged to the same organisation, the workplace or firm, and the latter may be subject of the analysis when analysing the incidence of court claims. Finally, the individual that decides to make a claim might do so, among other things, for reasons that are connected to their personal characteristics, which makes the *micro level* an interesting focus of study. The research design adopted here seeks to cover all three levels to some extent.

The macro level is covered by a large-scale country comparison. The country level was chosen because national states remain the most important regulators of the employment relationship in our sample, and all countries covered have nationally organised enforcement mechanisms in place. There are two broad possible strategies for conducting such comparisons using either qualitative or quantitative methods. Since there is little research on which this study can build, it was chosen to cover, in this first step, a large sample of countries, and to use quantitative methods to analyse the data, in order to test our propositions on a large number of cases.

An alternative strategy, such as the one presented by Teague (2009) when comparing Ireland and Sweden, results in more in-depth country information, but does not permit the identification of general trends and dynamics across a larger selection of countries, as allowed by quantitative approaches. The country sample covers all Member States of the European Union as of 31 December 2010[35] and was chosen for both analytical and practical reasons. Analytically, all Member States have at least some common institutions in place that allow for basic protection of employees (unfair dismissal protection, for instance) and for enforcing these rights. On the other hand, there are substantial differences in national institutions that provide the leverage necessary for meaningful analysis.

Practically, there are good comparable data available for these countries from sources like Eurostat or the OECD. Since there is an interest in developments over time, the general focus of this research is the period 1981 to 2010. Following Hepple and Veneziani (2009b), these thirty years cover three distinct sub-periods, which are roughly characterised by deregulation and restructuring (1980–1989), increased pressure from globalisation (1990–1999), and European integration and the most severe economic crisis since the Second World War (2000–2010). The new Member States that have started their transition towards democratic political institutions and capitalist market system in the late 1980s and early 1990s enter the analysis in 1991.[36] Data were collected from national sources. A detailed list of data availability, sources, and a brief description is provided in appendix 8.3.

[35] Thus excluding Croatia.

[36] The term 'new EU Member States' typically describes the twelve countries that have joined the EU in 2004 and 2007. The distinction made here differs slightly. New Member States refer to those that have only started to install democratic labour market institutions around 1990, i.e. those ten countries that were ruled by a communist regime before. The two countries that are 'established' democracies, but only joined the EU in 2004, Cyprus and Malta, are treated as 'old' Member States.

In addition to data on the incidence of claims per country, our database includes a range of quantitative indicators that cover some of the predictors that are expected to explain both inter-country and over-time variance, as discussed in the literature review. More technical details on the research methods are given in the cross-country chapter below (Chapter 4). A similar stream of literature that looks at the occurrence of *collective* work-related conflicts (strikes) was highly influential in designing the cross-country models (especially Brandl and Traxler, 2010).

Such a macro perspective is expected to yield interesting findings on the general dynamics of individual conflict settlement through the courts and tribunals, but it mainly covers one of the three possible levels of analysis. Therefore, and to give a more detailed insight into country-specific dynamics of conflict externalisation, the comparative analysis in Chapter 4 is supplemented by three country case studies (Chapter 5). They were designed to compensate for some of the shortcomings of the cross-country chapter, and data were chosen to include information on the meso level (the workplace) and, to some extent and through proxies, on the micro level (the individual). For this purpose, we use national survey data that are analysed with conventional regression techniques. More detailed accounts of the methods of analysis are given in the respective country sections. Theoretically, it is argued that the juridification argument is difficult to assess in the cross-country chapter due to insufficient data. The introduction to the country case study chapter proposes a descriptive approach that combines qualitative and quantitative elements.

The subjects of the country case study chapter are France, Germany and the UK. These three countries were chosen for different reasons, both analytical and practical ones. Theoretically, the three countries represent different analytical categories. Visser's (2009) meta categories summarise a range of approaches from recent comparative capitalist literature. According to his analysis on the EU, Germany forms part of the Centre-West model, France is in the Southern category, and the UK is an example of the Western group. These categories are contrasted using ten indicators. With regard to production regimes, the Centre-West corresponds to coordinated market economies and West to liberal market economies (Hall and Soskice, 2001a). It has been argued frequently that France does not fit into either of these groups, and it has therefore been classified as statist economy reflecting the prominent role of the state (Schmidt, 2002). This particular form of capitalism is also known as Mediterranean Mixed Market Economy (MME) (Rhodes, 2005). Welfare regimes are segmented and status-

oriented in France and Germany, and only provide residual benefits in the UK (Esping-Andersen, 1990). Closely linked to the welfare state is the classification of employment regimes that distinguishes between dualistic approaches with a well-protected core and a vulnerable periphery, and liberal regimes that are largely based on the assumption of self-regulation (Gallie, 2007). The remaining dimensions cover a range of issues around industrial relations regimes in the three countries, classifying the three countries under the headings of social partnership (Germany), a state-centred approach (France), and liberal pluralism (UK). Table 3.1 summarises all indicators.

Table 3.1 – Employment and Industrial Relations Regimes

Category	Centre-West	South	West
Country	Germany	France	United Kingdom
Production regime	Coordinated	Statist	Liberal
Welfare regime	Segmented		Residual
Employment regime	Dualistic		Liberal
Industrial relations regime	Social partnership	State-centred	Liberal pluralism
Power balance	Balanced	Alternating	Employer-oriented
Principal level of bargaining	Sector	Variable/unstable	Company
Bargaining style	Integrating	Conflict oriented	
Role of social partners in public policy	Institutionalised	Irregular/politicised	Rare/event-driven
Role of the state in industrial relations	'Shadow of hierarchy'	Frequent intervention	Non-intervention
Employee representation	Dual system	Dual system and union-based	Union-based

Source: Visser (2009)

This brief discussion of different employment and industrial relations regimes in Europe shows that our choice of countries for the case studies represents three distinct types of European capitalism. It is noteworthy that Visser (and others) identifies two more archetypes, which are not covered by our analysis; the Northern and Central Eastern European countries. With regards to the practical reasons for choosing France, Germany and the UK, both macro (long time series) and micro data (surveys) are available to analyse the phenomenon under study in some depth. Moreover, qualitative information is readily available that captures the

institutional setting of the legal systems, its enforcement mechanisms, and the different industrial relations institutions. The empirical chapters discuss differences in the dynamics of conflict externalisation across the three economies.

3.3 Limits of This Study and Alternative Research Strategies

Although the research strategy discussed here is considered to be the most appropriate to analyse our research questions, a few shortcomings remain. The predominantly quantitative approach, and reliance on secondary data, might mask some of the micro dynamics of conflict externalisation. Whereas our 'top-down' strategy allows the identification of patterns across a relatively large population, an additional 'bottom-up' approach that draws on qualitative methods and interviews with workplace representatives and individual claimants could scrutinize the dynamics of conflict externalisation within the workplace, which we deduce from theory and empirical accounts gained through other research. Such a qualitative study would not replace, but could supplement our findings presented below. Moreover, the use of primary data might have allowed extension of the country sample to other groups, such as a Nordic or Central Eastern European Member State, for which suitable survey data could not be identified, and thus covering all five distinct models of European capitalism proposed by Visser (2009). We will point towards precise examples in which such information would be considered most useful throughout the empirical chapters, and in our concluding remarks.

A possibility to combine the advantages of both quantitative and qualitative research strategies is the use of a mixed methods approach. Results from quantitative and qualitative research may be used in a mutually reinforcing way. Alternatively, Creswell (2003: 16) argues, "one method can be nested within another method to provide insight into different levels or units of analysis". Our research design, however, already covers three different levels of analysis and it is difficult to think of additional ones. Nevertheless, a mixed methods approach would have been helpful to corroborate findings from the quantitative analysis. The reasons that have led to the decision to focus exclusively on quantitative research are discussed in the subsequent paragraphs.

Most notably and as the literature review above sought to show, there is little comparative research on the topic that systematically analyses the three distinct sets of indicators that we have identified. Therefore, the first aim of this research is to provide evidence based on data with broad topical, temporal and geographical coverage. The choice to supplement the large-

scale time-series model with national country case studies based on survey data finds its justification in the trade-off between a strategy that stresses high coverage and high generalisability, and attempts to take into account the particularities of the individual case.

Nevertheless, adding in-depth qualitative case studies on, for instance, individual companies would be considered the 'next logical step' if this research was to be extended. In the scope of the relatively tight timeframe of a doctoral thesis, however, it is not feasible to conduct additional data collection of such a substantial scope. Alternatively, additional qualitative date could be obtained from interviews with practitioners such as employment judges or lay members. Although such interviews are a promising source of interesting information, the construction of a reliable dataset based on individual interviews requires a considerable amount of resources. As a minor compensation for these shortcomings, reference to information obtained through casual conversations with employment judges and observational data from tribunal hearings in Berlin, Manchester and Paris are given as illustrative examples (or, indeed, possible topics of further research) with no claim for representativeness.

Apart from methodological limits, choices in the research design also had to focus on the analysis of one particular form of conflict articulation. The literature review has already pointed out that conflict at work is seen as a process with different stages that does neither starts nor ends with court claims. We have discussed some of the problems connected with the articulation process, and pointed towards other forms of conflict manifestation. The latter can only be dealt with briefly. In particular, a more recent phenomenon that this research neglects is the use of alternative dispute resolution mechanisms to settle disputes before they go to court, which exist in most EU Member States (Purcell, 2010a). The country case studies on Germany and the UK make some comments on the role of internal dispute settlement mechanisms, but they cannot be treated comprehensively. Almost totally excluded is the role of external mediators from private or public organisations specialising in conciliating work-related conflict. The role of Acas in the UK is a case in point, although its main activity is to find an amicable agreement between the parties once a claim is filed (and thus counts in our statistics), and pre-claim conciliation has only been recently introduced (Purcell, 2010b).

Moreover, this research excludes all stages to which a claim might lead once it has been filed with the appropriate authorities. Existing research has dealt with the outcomes of claims from a range of different perspectives (Latreille, 2009; Moorhead and Cumming, 2009; Schulze-

Marmeling, 2009; Saridakis, *et al.*, 2008; Armstrong and Coats, 2007; Latreille, 2007; Urwin, *et al.*, 2007; Aston, *et al.*, 2006; Brown, *et al.*, 2006; Knight and Latreille, 2000b; Knight and Latreille, 1998; Earnshaw, *et al.*, 1998). This study, however, only deals with filed claims and does not discuss factors that might impact the stage of settlement or the outcome.

As pointed out above in this section, the geographical focus of three types of European capitalism excludes, at least, two more archetypes. Moreover, the sample is limited to the European Union or, more precisely, to those Member States for which data are available. Although this choice was consciously made in order to assure a certain degree of homogeneity of the comparative analysis, it obviously excludes large parts of the world that might have different ways of dealing with individual work-related conflict. Such an extension would also have had an impact on the methods employed since data availability might be limited, and available information can be expected to be less comparable than in our sample due to stronger national idiosyncrasies.

The levels of analysis could have been extended to cover, for instance, regions or certain sectors within a country. Regional approaches adopted elsewhere (Frick, *et al.*, 2012; Frick and Schneider, 1999; Brown, *et al.*, 1997) have the advantage that all regional units in a given country experience the same effect of national legislation. Hence, the introduction of a new law that grants new rights to employees should increase the rate of claims equally across the country. The research cited above has shown, however, that there are substantial differences between regions. At this point, regional indicators, such as local unemployment, can be used to identify which factors account for intra-country variance. It would be equally possible to supplement such analyses with industrial relations data, if available, at regional levels. A similar point could be made for sectors as the main level of analysis. Both strategies, however, would require either that disaggregated information is available from each country, or that different methods are employed using primary data. In any case, it is likely that any research with a similar scope as this one would have to be limited to a small number of countries.

4 Individual Conflict Settlement from a Cross-country Perspective

The previous chapters derived research questions for the three sets of arguments from a broad range of literature. This chapter comprises the first empirical analysis that aims to assess the theoretical propositions from a cross-country perspective. In a first step, data are presented for a sample of 23 Member States of the European Union.[37] Due to insufficient data, statistical analysis is limited to the arguments on industrial relations and economics. The regression results largely confirm the tested propositions. On the other hand, the analysis suggests that cross-country analysis should be supplemented by more detailed country analysis in order to account for the dynamics of country-specific institutional setups.

This section commences with a brief sketch of the history and current state of labour law in Europe. The aim is not to give a detailed description of employment regulation in all countries, but to draw a general picture of the situation of employment legislation in Europe, and to show some general trends. Thereafter, data on national systems of labour law enforcement mechanisms and, most notably, the incidence of claims filed to these bodies are presented and discussed. The third part presents data and methods for the statistical analysis; the fourth section discusses the results. The chapter finishes with a conclusion.

[37] It is noteworthy that data on labour court claims are available for Bulgaria and Romania. Since there is insufficient information on the independent variables, however, these countries only appear in the descriptive part of the analysis, but had to be excluded from the presentation of the data used for regression and the final analysis.

4.1 Individual Employment Legislation in Europe

A brief historical sketch

Most observers date the genesis of labour law to the period of the industrial revolution. According to Hepple (1986: 13), "[l]abour law is the product of the Industrial Revolution, of the shift from an agrarian handicraft economy to one in which machine manufacture in mills and factories dominated". The transition from small crafts to large factories was accompanied by the development of an increasingly comprehensive notion of the employment contract that regulates the relationship between the employer and the employed (Veneziani, 1986). It would take until the first half of the 20th century, however, before the idea of special protection of the employment contract found its way into European legislation. In common law countries, such as the UK, comprehensive employment protection provisions would only be in place well after the Second World War.

The rationale for introducing special protection for the employment contract stems from the considerable bargaining imbalance between labour and capital, which gives employers the opportunity to impose abusive or hazardous working conditions, which employees, in the absence of special protection, may be unable to refuse (Bronstein, 2009). As a consequence, leaving the employment relationship to 'pure' market regulation may lead to destructive competition, in particular, amongst those whose skills are frequently available (Hepple, 2004). In a situation of an excessive offer of low-skilled manual labour, for instance, workers might find themselves in fierce competition with their peers so that they are forced to accept wages that do not provide a decent living and working conditions that threaten their health and, in turn, their long-term ability to perform work. More generally, the aim of employment protection is that no worker shall be forced to accept employment conditions that "fall below what is understood to be a decent threshold in a given society at a given time" (Bronstein, 2009: 1–2).

Early legislation on working conditions was thus designed to cushion the most excessive abuses of the industrial revelation with measures limiting excessive working hours, female and child labour, as well as the introduction of rudimentary health and safety rules to avoid the most severe work-related accidents and the spread of diseases (Bronstein, 2009). Many of the early provisions were limited to some sectors with particularly poor working conditions or, such as the British 1833 Factory Act, to subordinate workers in manufacturing (Lewis,

1976). The idea of specialised and unified regulation for the whole workforce was only developed in the late 19th century and advocated by a group of German labour law scholars such as Philipp Lotmar and Hugo Sinzheimer (Hepple, 1986). Harmonisation and extension of both the scope (the groups covered), and content (the issues regulated) of labour law, however, did not spread throughout Europe before the 20th century.

New issues began to emerge in some European countries in the 1930s. These included, among other things, basic protection of the employment contract, pay and working conditions, and employee rights at the workplace. Other countries departed from this principle by, for instance, granting priority to collective bargaining over legal regulation (the Nordic countries) or by leaving the regulation of the employment relationship to employers and unions (the UK's 'voluntarism') (Bronstein, 2009). The economic boom in Western Europe after the Second World War, which was characterised by impressive economic growth rates and low unemployment, not only lead to the establishment of extensive welfare provisions (Hepple and Bruun, 2009), but also to a 'golden age' of individual employment rights.

At the core of Western European policy in the three decades following the end of the Second World War was the development and protection of the standard employment contract of indefinite duration and performed full-time.[38] This form of employment was protected especially by the idea that the employer may not terminate the relationship without valid reasons, which was translated into a broad range of unfair dismissal legislations across Western Europe and is also subject to international legislation (see below) (Bronstein, 2009).[39]

In recent decades, however, both the context and content of labour law has changed substantially. Mainly as a result of increased international competition and pressure to reduce costs, many firms have outsourced and delocalised parts of their production. This has impacted the employment relationship in a way that a simple identification of the employer who is responsible for respecting labour standards and liable for eventual violations has become increasingly difficult. Thus, in Veneziani's (2009: 112) words, "the contract of

[38] The standard employment contract is often associated with the male breadwinner model that was similarly dominant in that period.

[39] It is noteworthy, however, that the introduction of unfair dismissal legislation took place at very different paces. Countries like Germany had some dismissal protection in place as early as 1920 whereas the notion only entered UK law with the 1971 Industrial Relations Act based on the recommendations by the Donovan Commission.

subordinate employment has changed its original function of the pure exchange of mutual obligations (work and remuneration) to become a legal base for social relations not exclusively between persons but between persons and a complex organisation's structure". The increased use, and legal facilitation, of new forms of flexible employment, temporary agency is work is probably the most prominent case in point, has contributed to this development.

The increased international pressure on competitiveness also led to calls, mainly by employers and right of centre governments, to introduce more flexible contractual work arrangements or to deregulate existing provisions. Subsequently, virtually all Western European countries underwent substantial labour market reforms. An important pillar of these reforms was the liberalisation of atypical forms of employment that depart from the standard employment relationship. Most notably new laws allowed for a more flexible use of part-time employment, fixed-term contracts, on-call work, telework, and temporary agency work. It is not always clear how these relatively new forms are covered by existing employment protection provisions.[40] More recently, the coverage of substantive labour provisions has been extended to atypical employment (Veneziani, 2009). This is also the result of European Union initiatives (see below). In addition, the use of self-employment as a means of flexible labour seems to have risen, which renders a clear distinction between subordinate employment and independent work increasingly difficult (Bronstein, 2009).

Apart from the introduction of more flexible forms of employment, the protection of the standard relationship through unfair dismissal procedures underwent some changes after the early 1980s. Probation or qualification periods during which only some provisions apply were extended. Moreover, the increased use of fixed-term contracts undermines unfair dismissal protection because the latter does not cover the non-renewal of a contract.[41] Finally, there are cases in which exceptions to the application of unfair dismissal legislation have been extended. In Germany, for instance, unfair dismissal legislation does not apply to very small companies. In 2003, the threshold to be covered was increased from five to ten employees (Bronstein, 2009).

[40] Bronstein (2009) makes the point that most of these arrangements were not new, but had been used that rarely that regulators did not feel the need for substantial regulation. Agency work is an exception. A non-binding opinion of the ILO suggested that its Convention No. 96/1949 would prohibit the use of private agencies. Thus, they were forbidden in countries like Spain and Sweden.

[41] On the other hand, fixed-term employees can usually not be dismissed unless there is a case of gross misconduct. In addition, the legislator has introduced exceptions to this rule in order to protect fixed-term staff. In the UK, for instance, the non-renewal of a fixed-term contract is considered to be a dismissal.

In other areas, employee rights have been extended substantially. For instance, there now is comprehensive equality legislation in place in all European Union countries. This new field is often described as the extension of general human rights to the workplace (Hepple, 2004). Hence, and not least as a result of European Union legislation, it is unlawful to discriminate against employees on grounds of a range of subjects such as race, nationality, ethnicity or colour, gender, marital or civil partner status, sexual orientation, age, or religion or belief. This substantial legal equality has been described as "[o]ne of the most significant developments in labour law since the Second World War" (Hepple, 2009).

In contrast to the developments depicted in previous paragraphs, the former communist economies of Eastern Europe have followed very different trajectories.[42] Before the fall of the Iron Curtain, the employment relationship in these countries was between an individual and the state, and jobs were often assigned by central planning authorities. Thus, the labour codes of these nations were based on fundamentally different assumptions. This changed abruptly with their transition to free-market economies. In a first step, collective labour regulation was reformed in order to allow for freedom of association and the establishment of free trade unions, collective bargaining and industrial action. The second tranche of reform included the introduction of new labour codes or the comprehensive revision of the old ones in a comparably short period of time (Bronstein, 2009). The development was fuelled by the invitation to join the EU that was extended to the twelve that joined eventually between 2004 and 2007.

Very broadly, two distinct tendencies could be observed during the early transition process. First, the coverage of labour law was narrowed. It no longer applied to virtually the whole working-age population, but excluded the self-employed and civil servants (or introduced different provisions for public and private sector employees). Second, the transformation to a capitalist economy led to massive restructuring and, in turn, high unemployment that had been previously unknown to these countries. Second, the scope and issues of the labour codes had to be adapted to the conditions of a capitalist labour market. Following Bronstein (2009: 238) "[t]hese changes regulated issues such as alternative forms of the contract of employment, hiring and dismissal procedures, protection against unjustified dismissal, transfer of enterprises, variations in the terms and conditions of employment, protection of wages, including in cases of the insolvency of the employer". These substantial changes in a

[42] The section on Eastern Europe draws heavily on Bronstein (2009).

very short period of time raise concerns about whether the systems can be administered effectively and to what extent legal changes have an impact on the practices of companies.

International Influences

Apart from national trajectories in the development of employment law, all EU Member States have experienced the impact of international legislation, most notably from two organisations; the International Labour Organization (ILO) and the EU. The former exerts influence most notably through issuing Conventions that might be ratified by Member States individually. It is reported that these Conventions had an impact on work regulation in particular as regards the protection of women, children and disabled workers in the early years of the ILO (Ramm, 1986). More generally, the Conventions are a form of 'soft' law and their implementation depends to a large extent on the signatory's willingness to comply. Therefore, it is difficult to assess to what extent ILO Conventions have had an influence on individual labour law in the EU Member States, but the overall influence on regulation relevant to this research is expected to be relatively modest and, more important, relatively equal across countries.

More important is the impact of the EU on individual employment law.[43] Four fields of intervention in individual employment law are briefly mentioned here (cf. Weiss, 2010). First, there have been a range of initiatives to tackle the fragmentation of the labour market through regulation that ensures equal treatment for workers under atypical employment contracts and thus broadens the scope of protective measures under national law. These concern, more particularly, casual workers, seasonal workers, homeworkers, teleworkers, temporary agency workers, and part-time workers (Blanpain, 2010). Second, some observers argue that the main impact of EU regulation on individual employment rights, and indeed in social policy in more general terms has been in the field of anti-discrimination and equal treatment legislation (for instance Barnard, 2012). Most notably, regulation seeks to tackle discrimination on grounds of gender, but also racial or ethnic origin, religion or belief, age, disability and sexual orientation.

Third, there is a variety of EU regulation on employment legislation that seeks to improve occupational health and safety and working conditions in general. The most notable outcome

[43] There are numerous comprehensive textbooks on European labour law (for instance Barnard, 2012; Bercusson, 2009; Blanpain, 2010). This section aims at identifying some general trends that are relevant to this project and not to discuss in great detail the development of European regulation in the field.

of this field is of policy is perhaps the Working Time Directive (Deakin and Morris, 2012).[44] Fourth, there are some more specific protective measures in place that aim at workers in trans-national services (Weiss, 2010) or at those affected by collective redundancies. This point also covers the directive to tackle undeclared work that requires that employers provide written proof of employment.

The interest of supranational labour law for this research lies primarily in the consequences for inter-country differences with regards to individual employment law. If comprehensive European legislation is in place, this would certainly result in strong convergence of national employment regulation regimes.[45] In reality, however, individual employment law remains to a large extent under national responsibility and in spite of substantial progress in some areas there are scholars who suggest that the dynamics behind the "golden age of European labour law" (Weiss, 2010: 3) have come to halt (Krebber, 2009).

Nevertheless, the brief discussion presented here seeks to illustrate that the juridification of the employment relationship is an ongoing process. Legislation has been extended to groups and issues that had not been covered previously. This development continues in spite of a tendency to deregulate the standard employment relationship in some countries, for instance through weakened unfair dismissal regulation. European initiatives have fuelled the juridification of the employment relationship by further extending the scope of existing legislation (through the principle of equal treatment) and the extent (through provisions that cover new issues) of national regulation (Bronstein, 2009; Hepple and Veneziani, 2009b).

In addition, it is argued here that the mere existence of employment rights is a necessary but not a sufficient condition for the external settlement of work-related conflict. In order for employees to assert their rights, effective enforcement mechanisms must be in place. A stylised overview of the development of labour courts and employment tribunals in Europe is presented in the next section.

[44] Originally Directive 93/104/EC, now Directive 2003/88/EC.
[45] This is under the assumption that regulation is implemented and enforced in a sufficiently similar manner into national labour law. In reality, EU Member States have a fairly significant degree of autonomy in chosing the form and method of implementation.

4.2 Data and Descriptive Findings

The previous section provided a very brief history of employment law and the juridification of the employment relationship in Europe. This section presents data on a range of issues associated with this research. First, it was argued in Section 2.3 above that the existence of comprehensive employment regulation can only be effective if accessible enforcement mechanisms are in place. Therefore, we present some national data on labour courts and employment tribunals and confront them with Malmberg's (2009) categorisation of systems of enforcement mechanisms. Second, data on the frequency of claims to these national bodies are presented in a descriptive manner. It is argued that there is no evidence for a general tendency towards conflict externalisation in Europe.

Enforcement of Individual Labour Law

This research analyses the frequency and development of claims to judicial bodies handling individual employment disputes. All European countries have institutions in place that are responsible for the enforcement of individual labour law. In 15 EU Member States there are specialised courts or tribunals, 10 countries deal with individual labour disputes in the ordinary courts, and two have mixed systems. As discussed in Section 2.3, Malmberg (2009) argues the *Nordic* countries rely heavily on the social partners to settle individual workplace conflict. Thus, it is not surprising that specialised labour courts are not a common feature. Denmark and Finland deal with individual disputes through ordinary courts whereas Sweden has a dual system.[46] In Sweden, there is a national labour court (*Arbetsdomstolen*) that deals with individual disputes but only if the case comes from a workplace that is covered by union representation and a collective agreement, and if the claim is backed up by a union or an employers' association. If that is not the case, grievances must be filed with the ordinary local courts. In these instances, the Arbetsdomstolen may serve as court of appeal.

The *Anglophone* group, represented by the two countries with common law systems in the EU, Ireland and the UK, is characterised by a system of commissioners (Ireland) and tribunals (UK) to deal with individual disputes. In Ireland, there is a range of bodies that handle individual disputes. The usual first instance for individual claims is the Rights Commissioner Service (Dobbins, 2004). Although this is a 'non-legalistic' procedure (Teague, 2005) most disputes concerning issues such as unfair dismissals, working time,

[46] For more details, see Appendix 8.3.

parental leave or part-time work are referred to the Rights Commissioner. In the UK, employment tribunals deal with the vast preponderance of individual labour disputes in the first instance.

The two Anglophone countries share some more common features. Both have, at least in design, relatively informal systems of conflict settlement and neither of them uses the term 'court' for their enforcement institutions, which stand outside of the regular civil law court system. Moreover, Ireland and the UK share a long tradition of voluntarist industrial relations and thus have established their specialised resolution dispute systems relatively late. UK employment tribunals were established (as *industrial* tribunals) by the Industrial Training Act in 1964 and Ireland saw the introduction of its Rights Commissioner Service through the 1969 Industrial Relations Act. A third country might be included in this category. Although Malta's legal system is a mix of common and civil law, individual employment rights are enforced by industrial tribunals that are fairly similar to the system in the UK. Since insufficient empirical data are available for Malta (see below), this question is only of theoretical importance for this research.

Specialised labour courts or specialised chambers in the regular civil court system are the dominant mode of dealing with individual labour disputes in the *Continental European* category, which are present in eight out of eleven countries (with the exception of Greece, the Netherlands and, since the end of the Second World War, Italy). Overall, an early development of specialised bodies can be observed in this category (Malmberg, 2009). Moreover, it seems that continental European systems of individual labour dispute resolution generally show a higher level of integration into the system of civil courts than the other groups, especially the Nordic countries. Apart from the different composition of the judges (usually delegates from social partners in some cases supplemented by a trained judge) and often lower barriers to access the courts (through exemptions or reductions of court fees) labour courts in continental European countries often resemble other civil courts, or they are integrated into the civil court system through specialised chambers, often with specialised rules and proceedings.

The transitional economies of the new Member States in *Central and Eastern Europe* show a mixed picture. It is noteworthy, however, that specialised labour courts only exist in four of the ten countries; Hungary, Poland, Romania and Slovenia. None of the Baltic countries has specialized labour courts. Estonia has established Labour Dispute Commissions

(*Töövaidluskomisjon*) that are attached to the labour inspectorate and serve as first instance for individual labour grievances. Local civil courts serve mainly as courts of appeal (Masso and Philips, 2004; Eamets and Masso, 2004). Moreover, the Czech Republic and Slovakia, which used to form Czechoslovakia until 1992, and Bulgaria deal with individual labour claims through their regular civil courts.

National Claims Data

The main focus of this research is the use of national enforcement mechanisms discussed in the previous sections. Hence, data were collected from national sources on the incidence of first-instance labour court claims or, in countries without specialised labour courts, claims that deal with employment issues or the labour code. Information was obtained for a maximum period of thirty years (1981–2010) for most countries and for twenty years (1991–2010) for the post-communist Member States that only developed democratic institutions following the fall of the iron curtain. A detailed description of national data sources, definitions and availability are provided in the data appendix. Figures are available for 23 EU Member States[47] with variations in availability over time (see Table 4.1). In order to make data roughly comparable, figures are presented as a claims ratio (CR) that denotes the number of claims per 1,000 wage or salary earners in employment.

$$CR_{it} = \frac{claims_{it}}{employment_{it}} \times 1{,}000$$

where i is the country and t is the year. Table 4.1 shows the over-time mean (μ), the standard deviation (δ) and the coefficient of variation (CV) by country. The rank of the country for the respective indicator is provided in brackets. Detailed country data are provided in Figure 4.1.

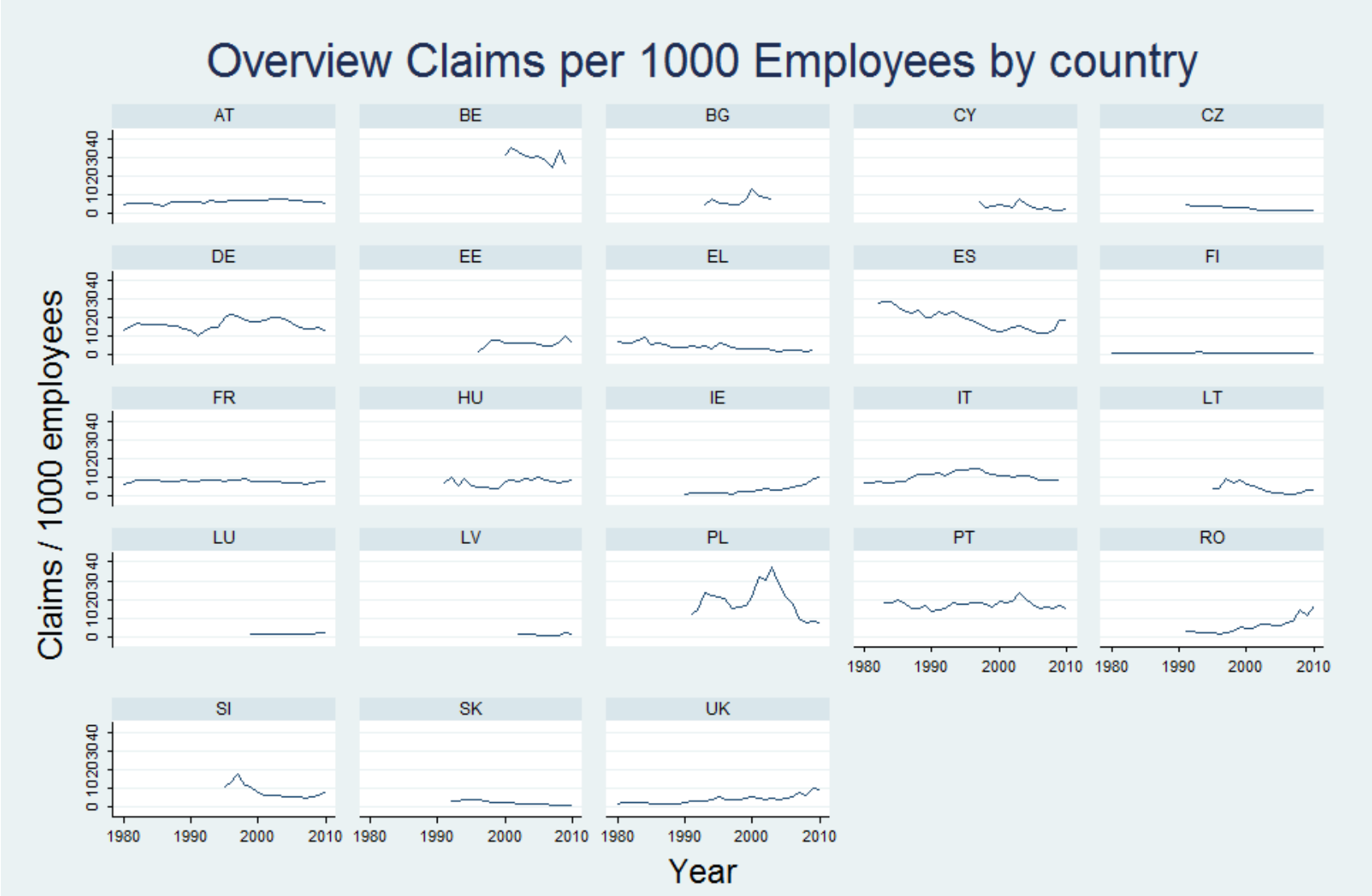
[47] Data on Sweden are available from the national Arbetsdomstolen only. Since this runs counter to the argument of claims brought *individually* (see data appendix), Sweden was excluded from the analysis.

Table 4.1 – Claims Ratio: Data Availability and Descriptive Statistics

Country	N/N_{max} (%)	μ (Rank)	Min. (Rank)	Max. (Rank)	δ (Rank)	CV (Rank)
Austria	30/30 (100)	6.3 (11)	3.9 (10)	7.7 (17)	0.9 (19)	0.14 (20)
Belgium	10/30 (33)	30.3 (1)	24.7 (1)	34.9 (2)	3.3 (5)	0.11 (22)
Bulgaria	11/20 (55)	7.1 (9)	4.6 (9)	12.7 (9)	2.5 (9)	0.35 (12)
Cyprus	14/30 (47)	3.6 (18)	1.4 (14)	7.4 (18)	1.7 (16)	0.47 (7)
Czech Republic	20/20 (100)	2.7 (19)	1.3 (17)	4.9 (19)	1.1 (17)	0.41 (11)
Estonia	15/20 (75)	6.1 (12)	1.4 (15)	10.1 (11)	2.0 (14)	0.32 (13)
Finland	30/30 (100)	0.7 (23)	0.5 (22)	1.3 (23)	0.2 (23)	0.25 (16)
France	30/30 (100)	7.8 (8)	5.9 (7)	9.1 (15)	0.6 (20)	0.08 (23)
Germany	30/30 (100)	16.0 (5)	10.3 (4)	21.2 (5)	2.7 (6)	0.17 (18)
Greece	29/30 (97)	4.1 (14)	1.9 (12)	8.9 (16)	1.9 (15)	0.46 (8)
Hungary	20/20 (100)	7.1 (10)	3.5 (11)	9.9 (12)	2.0 (13)	0.28 (14)
Ireland	18/30 (60)	3.6 (17)	0.9 (19)	10.2 (10)	2.7 (8)	0.74 (1)
Italy	29/30 (97)	10.3 (6)	6.5 (6)	14.8 (8)	2.4 (10)	0.23 (17)
Latvia	9/20 (45)	1.1 (22)	0.5 (23)	2.2 (21)	0.6 (21)	0.51 (5)
Lithuania	16/20 (80)	3.9 (16)	0.8 (20)	9.4 (14)	2.7 (7)	0.70 (3)
Luxembourg	12/30 (40)	1.6 (21)	1.2 (18)	2.1 (22)	0.3 (22)	0.17 (19)
Poland	18/20 (90)	19.2 (2)	7.7 (5)	37.2 (1)	8.7 (1)	0.45 (9)
Portugal	28/30 (93)	17.2 (4)	13.5 (2)	23.6 (4)	2.1 (12)	0.12 (21)
Romania	20/20 (100)	5.8 (13)	1.7 (13)	16.8 (7)	4.2 (3)	0.72 (2)
Slovakia	19/20 (95)	2.1 (20)	0.8 (21)	3.6 (20)	1.0 (18)	0.47 (6)
Slovenia	16/20 (80)	8.1 (7)	4.8 (8)	17.6 (6)	3.5 (4)	0.44 (10)
Spain	29/30 (97)	18.7 (3)	11.1 (3)	28.3 (3)	5.3 (2)	0.28 (15)
United Kingdom	30/30 (100)	3.9 (15)	1.3 (16)	9.6 (13)	2.1 (11)	0.54 (4)
All countries	483/590(82)	10.6 (-)	-	-	1.1 (-)	0.10 (-)

Sources: See Table 8.3in the appendix for national claims data. Employment data from Visser (2011b).

Figure 4.1 – Labour Court Claims per 1,000 Employees by Country



There is substantial variation in claims rates between countries ranging from 0.7 claims per 1,000 employees in Finland to 30.3 in Belgium. The EU average is a claims ratio of 10.7, and the median is 6. The standard deviation and the coefficient of variance are both indicators of volatility. The latter, which is defined as the proportion of the standard deviation to the mean, might be a more reliable figure since it is independent of the average volume of conflict. Hence, France, Belgium and Portugal report relatively stable levels of claims over time, whereas high volatility is recorded in Ireland, Lithuania and Romania.

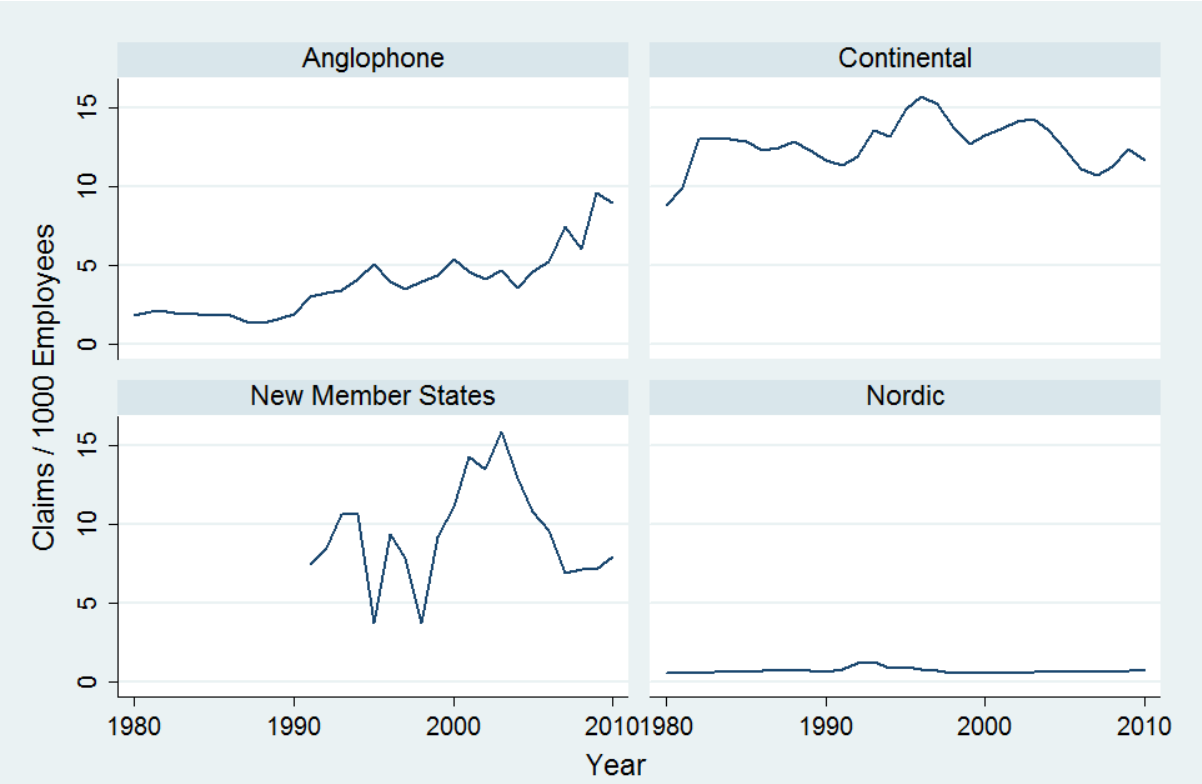
With regards to Malmberg's categorisation discussed above, Figure 4.2 distinguishes the rate of claims per 1,000 employees accordingly. It is noteworthy that this rate only gives a very rough indication of actual developments for two reasons. First, there is considerable variance both between and within countries in these groups (see Table 4.1 and Figure 8.1 in Appendix 1). Moreover, due to data availability issues, the number of observations taken into account differs considerably both within and across categories. The Nordic category, for instance, is only represented by Finland since no information is available on any other country. The Anglophone group is dominated by the UK because Ireland only enters the equation in 1990 and is missing data for 1993 to 1995. In conjunction with these caveats, the reading of the data broadly confirms the propositions made above; strong increase in the Anglophone category, high but relatively stable levels in Continental Europe, high volatility in the New Member States, and low levels and little variation in the Nordic group.

A closer analysis of country-level data sheds more light on this phenomenon. It is noteworthy that there is no general trend towards an increasing reliance on labour courts in Europe. Hence, this first and admittedly superficial reading of the data does not support the hypothesis that the juridification of the employment relationship leads to higher caseloads for labour courts in *all* countries. Table 4.2 groups countries according to overall trends of the development of labour court claims. Strong increases, defined here as a rise of at least 50 per cent over the period for which data are available,[48] only occurred in five countries: two of the Baltic States (Estonia and Latvia), the two Anglophone countries and Romania. Estonia shows somehow different patterns since there is a strong increase over time, but pronounced fluctuation as well. The overall rise is caused by two periods of strong increases from 1996 to 1999 and from 2008 to 2009 whereas declines are recorded for the time span in between.

[48] It is noteworthy that comparability might be limited as a result of differences in data availability. For example, according to this method of calculation, the quota of claims has decreased by almost 20% in both Belgium and Germany, but the figure is based on 10 years in the former and 30 years in the latter.

Modest changes in the rate of claims to labour courts are reported from 15 countries including all members of the Continental European group except Greece. Moreover, nine out of eleven countries from this group report no clear trend towards increase or decrease, but rather fluctuation.[49] This also applies to Hungary and Bulgaria, although the latter is a borderline case. A constant trend towards modest decrease of labour court claims is recorded in Cyprus, Lithuania, Poland and Slovenia. The Czech Republic and Slovakia, which separated in 1992, as well as Greece show a similar but more pronounced tendency.

Figure 4.2 – Claim Rates by Malmberg's Classification of Enforcement Systems



Accepting the caveats regarding the data mentioned above, this way of looking at the data shows that the categorisation proposed by Malmberg seems to be related to the development of claims to labour courts and broadly supports the suggestions made above. It is worth noting, however, that there are substantial differences between the 'extreme' developments. In Ireland, claims to the LRC were almost eleven times as high in 2010 as they were in 1990. In Estonia, there were 7.2 times as many claims to the Töövaidluskomisjon in 2010 than in 1996. The same indicator is at 4.3 in the UK (1981 to 2010) and 4.1 in Romania (1991 to 2009). At the lower end of the scale, the ratio of claims to labour courts has decreased by

[49] Defined here as being below the country group median of the coefficient of variance.

‘only’ 75 per cent between 1993 and 2010 in Slovakia, 67 per cent from 1981 to 2009 in Greece, and 65 per cent in the Czech Republic in the same period as Slovakia.

Table 4.2 – Development of Labour Court Claims by Category

Country	Trend	
Anglophone		
Ireland	++	constant
United Kingdom	++	constant
Continental		
Austria	+	fluctuating
Belgium	-	fluctuating
Cyprus	-	constant
France	+	fluctuating
Germany	-	fluctuating
Greece	--	constant
Italy	+	fluctuating
Luxembourg	+	fluctuating
Portugal	-	fluctuating
Spain	-	fluctuating
New Member States		
Bulgaria	+	fluctuating
Czech Republic	--	constant
Estonia	++	fluctuating
Hungary	-	fluctuating
Latvia	++	constant
Lithuania	-	constant
Poland	-	constant
Romania	++	constant
Slovakia	--	constant
Slovenia	-	constant
Nordic		
Finland	+	fluctuating

++ strong increase, + modest increase, - modest decrease, -- strong decrease

4.3 Explaining National Varieties

As set out in the earlier theoretical chapters, three approaches have been identified to explain the incidence of labour court claims. For reasons of data availability, however, this part of the analysis can only focus on industrial relations and economics since no sufficient comparable data are available on the legal argument. The two main data sources are briefly discussed here, together with a number of reasons why they do not seem adequate for this project.

First, the OECD has published time-series indicators on the strength of employment protection legislation (EPL). These indicators cover a range of items that measure the costs and procedures of individual and collective dismissal (OECD, 2009). Although the index contains interesting information on the protection of the employment relationship, it puts a strong emphasis on dismissal procedures and does not cover to the same extent the possibility of employees making a claim against their employers. A more technical reason why the indicators are not taken into account is their geographical and temporal scope. Since they only cover all OECD countries and time-series information is available for the years 1985 to 2008 this would considerably limit the degrees of freedom in the regression analysis.[50]

A more suitable index that measures legal change over time (1970–2005) is developed by Deakin, *et al.* (2007a). The authors, however, cover only five countries, three of which are in the country sample used here (France, Germany and the UK).[51] Therefore, the legal argument cannot be taken into account and this part focuses on industrial relations and economic conditions. Deakin, *et al.'s* (2007a) data are used, however, to assess the juridification argument on the small subsample chosen for the country case studies in Chapter 5.

Industrial Relations

The discussion in Section 2.2 suggests that strong collective industrial relations have an impact on the incidence of claims brought to employment tribunals or labour courts in Europe. More precisely, it is hypothesised that high coverage of encompassing collective bargaining and strong employee representation at the workplace level decrease the emergence of conflict and provide an efficient institutional framework for the settlement of conflict within the workplace. Whereas the theoretical background was discussed above, this section

[50] The latest version of the index, which extends data to 2013, was published just before the end of the research period.
[51] The other two countries are India and the United States.

will present empirical data on industrial relations over the period that is covered by this research (1981–2010).

During the period under discussion, the political and economic situation, and, as a consequence, industrial relations in Europe changed dramatically. The first wave of deregulation and privatisation in the 1980s affected long-established industrial relations practices, such as sectoral collective bargaining, or even lead to an erosion of key institutions, particularly in the UK. The breakdown of communism in Europe following the fall of the Berlin wall in 1989 was succeeded by the capitalist transformation of former communist countries and the development of democratic industrial relations institutions in a context in which unions, in Lenin's sense, had often been the extended arm of the Communist Parties to control workers, and free collective bargaining had largely been banned. Since the early 2000s, European integration accelerated both institutionally and geographically with Economic and Monetary Union of the European Union (EMU) coming into full operation and major waves of EU enlargement in 2004 and 2007.

This section seeks to capture the most important developments in this eventful period that are relevant to this research, and present the data that will be used to test the hypothesised relation between industrial relations and labour court claims. Since the development of industrial relations in the EU over the last thirty years is not the main focus of this study, only a brief discussion is presented here. As discussed in the theoretical section above, the analysis will focus on three key issues; collectivism, coherence and change over time. Data are taken, unless stated differently, from Jelle Vissers's comprehensive Database on Institutional Characteristics of Trade Unions, Wage Setting, State Intervention and Social Pacts (ICTWSS) (Visser, 2011b). Whereas the ICTWSS is a valuable source of information, its data sometimes risk oversimplifying complex institutional phenomena.

Collective Bargaining

Numerous indicators may be used in order to measure the relative strength of collective bargaining. Perhaps the most obvious one is the proportion of the workforce with terms and conditions of employment determined by a collective agreement or collective bargaining coverage. As discussed above, centralisation of collective bargaining does not only include coverage, but also a high degree of vertical and horizontal integration (Traxler, 2003). These indicators, however, show high degrees of multicollinearity so that not all of them can be included in the regression model.

Nevertheless, in order to reflect national systems of collective bargaining two indicators are used. First, the most obvious one is collective bargaining coverage. Second, the indicator that has been chosen to serve as proxy for coherence and collectiveness of the bargaining system is the dominant level at which bargaining takes place. It is argued that this also predicts bargaining coordination (Visser, 2011b). The indicator used here distinguishes between three different bargaining levels; local or company bargaining, sectoral or industry bargaining, and national or central bargaining (see Table 4.3).

Table 4.3 – Possible levels of collective bargaining

	Local or company	Sectoral or industry	National or central
Austria		X	x
Belgium		X	X
Cyprus		X	
Czech Republic		X	
Estonia	X		
Finland		x	X
France		X	
Germany		X	
Greece		x	X
Hungary		X	
Ireland	x		X
Italy		X	x
Latvia	X		
Lithuania	X		
Luxembourg		X	
Poland	X		
Portugal		X	x
Slovakia	X	X	
Slovenia		x	X
Spain		X	x
United Kingdom	X	x	

More than one X indicates that dominant bargaining level has changed; a lowercase x denotes that this level has only been dominant for a relatively short period.

Only countries for which sufficient data are available to enter the regression model are taken into account.

Source: adapted and recoded from Visser (2011b)

It should be noted, however, that these data are fairly general and might mask important variance within the countries such as different levels of wage setting mechanisms in the private and public sector. A further weakness is that Visser does not provide any justification on his country scores, which makes it difficult to assess the justification of individual scores and to evaluate their reliability more generally. As noted earlier, the country case studies in

the subsequent chapter are designed to compensate for some of the shortcomings of the cross-country analysis in accounting for more country-specific information.

Works Councils

Similar to the indicators on collective bargaining an ideal operationalisation of works council strength would be a mixture of their legal status coupled with some kind of coverage indicator. Since the latter is not available for all countries and over time, the analysis is limited to the institutional strength of employee representation bodies. Data used here thus categorise countries by the legal minimum standards that the law (or national agreements) assigns to work councils. A common distinction of employee participation at company level separates between the right to be informed (*information*), the right to be heard and to give non-binding advice (*consultation*), and the right to take part in the decision-making process (*codetermination*) (cf. for instance Mückenberger, 2009).

Some kind of legal provisions for employee representation exist in all EU Member States. Since the 2002 Directive on informing and consulting employees in the European Community basic common standards exist at European level although it has been argued that the impact of the initiative is very limited (Carley and Hall, 2009; Hall and Purcell, 2012). In any case, data show that some variation remains between countries. Table 4.4 shows countries in the sample as grouped by Visser (2011b).[52]

Table 4.4 – Employee Representation Rights

Rights	Countries
Information	Cyprus, Czech Republic, Estonia, Greece, Spain, Ireland, Italy, Lithuania, Latvia, Poland, Portugal, United Kingdom
Consultation	Belgium, Finland, France, Hungary, Luxembourg, Slovenia
Codetermination	Austria, Germany

Source: Visser (2011b)

Visser's categorisation of employee representation rights distinguishes countries by the right of the works councils to sanction management decisions. The 'information' group includes countries in which workers only receive information, 'consultation' describes countries with employee representatives that are entitled to advice management on social and economic issues, and 'codetermination' describes a process of joint decision making, at least on some issues. As for the institutional data on collective bargaining, Visser does not provide any

[52] Some of the data were recoded in order to fit the theoretical propositions and the technical requirements of the regression analysis.

justification of the country classification or discusses a criterion for the cut-off point between these categories. Therefore, the categorisation is certainly simplified and there might be good reasons to argue for a reclassification of certain cases. As a consequence, it is obvious that a substantial degree of intra-category variance remains. Nevertheless, the ICTWSS is by far the most comprehensive data source on industrial relations institutions. Thus, this study relies on its data and their accuracy, but the caveats made above should be born in mind when reading the results.

Moreover, it is worth noting that the institutional framework for employee representation appears to be very 'sticky' since there is virtually no variation over time, although not all changes in national regulation, including those that followed the introduction of the EU Directive establishing a general framework for informing and consulting employees in 2002, might be captured by the data. There are only two cases in which countries changed the legislation to an extent that it lead to a reclassification according to the distinction made here. In 1992, Hungary passed legislation that introduced a legal basis for works councils including some basic consultation rights (Fodor and Neumann, 2005). Similar legislation came into force in Slovakia in 1999. Following the discussion above, it is expected that countries with strong employee representation bodies experience lower levels of court claims.

Trade Unions

The final set of industrial relations indicators concerns trade unions. Whereas a range of structural trade union indicators exist, union density is the most important measure for this research as a "valuable but imperfect expression of the weight of joint regulation" (Vernon, 2006: 189). The literature presents two opposing arguments that are taken into consideration in this research. First, and in line with most of the theoretical discussion presented in Chapter 2, unions are expected to mediate conflict between employers and employees (cf., for instance, Antcliff and Saundry, 2009). As mentioned in the section on works councils, an ideal indicator would measure the presence of works councils or trade unions at workplace level. A review of recent literature on trade union density finds, however, that "whilst meaningful workplace organization is often rooted in statutory provision for representative participation, such provision is neither necessary nor sufficient; it is however strongly related to *high, and still more so to relatively stable, union density*" (Vernon, 2006: 194, italics added). In the absence of coverage data for employee representation, we might thus use both trade union density as percentage of the workforce and year-on-year changes as proxies of

strength and stability of employee workplace representation. Consequently, we would expect that low and declining union membership is associated with higher levels of court claims.

On the other hand, Colling's (2009) research suggests that unions might play the opposite role. By providing legal services to their members, unions might encourage employees to file complaints when their rights have been breached. If this argument prevails, it would be expected that high union density is associated with high caseload for national labour courts. The mediation argument would produce a negative relationship. Data from SETA, on the other hand, suggest that trade union members are not more likely to make an employment tribunal claims than non-members (Peters, *et al.*, 2010).

There is extensive literature on the patterns of trade union membership in Europe (for instance Blanchflower, 2007; Visser, 2002; 2011a). Table 4.5 presents some summary indicators of the data used here, namely union density in 2010, the mean over time and the standard deviation. The table shows that in spite of the general trend towards decline in membership, there is broad variation among countries in the sample ranging from well-below 10 per cent in Estonia and France, to 70 per cent in Finland.

Economics

The theoretical discussion in Section 2.4 suggested a number of economic explanations that might predict the incidence of labour court claims. Due to data availability and technical constraints, the analysis in this section is limited to a few indicators. First, it is expected that high levels of unemployment and rising unemployment rates are associated with higher caseloads for the labour courts, and vice versa. With regards to structural economic factors, the sectoral composition has been identified as a potential explanation. Research on collective conflict has shown that there are strike-prone sectors, in particular manufacturing (Carley, 2008; 2010), which is traditionally characterised by above-average union coverage. Similarly, it is hypothesised here that there are differences between sectors. In order to control for the sectoral composition of the economy, the share of service sector employment enters the equation. In addition, changes in employment in the industry sector are used as a proxy for restructuring. Finally, the theoretical discussion above suggests that claims patterns might differ by gender. On the one hand, women are expected to be more often subject to discrimination but, on the other hand, are reported to be more compliant with company regulations, which can be expected to decrease the level of conflict (Edwards, 1995; Knight

and Latreille, 2000a). To account for gender differences, the share of female employment is taken into account. Table 4.6 summarises the variables used for the regression models.

Table 4.5 – Trade Union Density by Country

Country	2010	Mean	Standard deviation
Austria	28.1	41.3	8.5
Belgium	52.0	51.9	1.5
Cyprus	49.8	59.7	5.7
Czech Republic	17.3	31.6	17.1
Estonia	6.1	10.1	3.3
Finland	70.0	73.4	4.2
France	7.7	10.0	3.0
Germany	18.6	28.1	5.9
Greece	31.3	31.3	5.7
Hungary	16.7	18.3	2.5
Ireland	38.0	42.7	7.7
Italy	38.3	38.1	4.3
Latvia	11.8	17.2	3.4
Lithuania	10.5	14.6	5.4
Luxembourg	34.5	40.2	2.9
Poland	15.0	19.7	4.2
Portugal	19.3	27.6	8.6
Slovakia	14.0	23.6	6.6
Slovenia	25.4	36.9	6.3
Spain	16.7	14.3	2.7
United Kingdom	27.3	35.8	7.6

Only data for countries that have a complete record on the respective year in order to enter the regression model are taken into account.

Source: Visser (2011b)

Statistical Modelling

All data presented above are fitted into a standard time-series cross sectional regression model with panel-corrected standard errors (Beck and Katz, 1995). In order to account for country-specific heterogeneity we use fixed-effects models, as confirmed by a standard Hausman test. Comparison of data on claims to labour courts harbours several problems of cross-national comparability. Most notably, available data might not measure exactly the same phenomenon because the responsibility of the courts in handling disputes varies between countries. There are country-specific differences with regard to responsibility and accessibility of the courts, and data might thus also reflect national institutional idiosyncrasies. In order to account for this phenomenon statistically, the independent variable enters the equation in logarithmic form. Brandl and Traxler (2010) use a similar approach for their comparative analysis of the incidence of strikes. In order to make coefficients

comparable, all metric variables were standardised. Moreover, time-series data show signs of autocorrelation, which is specified as first-order autocorrelation AR(1) in the estimation.

Table 4.6 – List of variables

Variable	Description
NCLAIMS	Number of claims to national first-instance labour courts or employment tribunals as a proportion of wage and salary earners in employment
$CBCOV_t$	Percentage of employees covered by collective agreements
$CBLEVEL_t$	Dominant level of collective bargaining: 0 = Local or company bargaining 1 = Sectoral or industry level 2 = National or central level
$WCRIGHTS_t$	Rights of works councils: 0 = no rights or information rights 1 = consultation rights 2 = codetermination rights
$TUDENS_t$	Union membership as a proportion wage earners in employment
$\Delta TUDENS_{t-1}$	Annual changes in union density
$UNEMP_t$	Unemployment rate
$\Delta UNEMP_{t-1}$	Annual change in unemployment rate
$FEMEMP_t$	Share of female employment in the labour force
$SERVEMP_t$	Share of service sector employment in the labour force
$\Delta INDEMP_{t-1}$	Annual change in industry sector employment

Sources: Number of claims data collected from national sources, economic data from OECD and Eurostat, industrial relations data from Visser (2011b).

As discussed above, data for the post-communist transitional economies have been collected from 1991 onwards. Hence, when the full model over 30 years is calculated there is more weight on the old Member States for which data are available for the full period (Model A). Therefore, two specifications of the regression are presented; one full model for the period 1981 to 2010 and a truncated model for the years 1991 to 2010 (Model B). Since the role of institutions is expected to be different in old and new Member States, an extra model is calculated for the old Member States only (Model C). Finally, the main models are calculated with and without time dummies in order to find if there are time-dependent trends in the data.

4.4 Results

Table 4.8 and Table 4.9 show the results from the regression models A, B and C (see Table 4.7). Since no systematic information on the legal infrastructure is available, the results can be divided into two sets of indicators; industrial relations and economics. At first glance, it is noteworthy that the economic indicators show stronger correlations in the general models whereas the institutional or industrial relations items are increasingly associated with labour court claims in the model for the old EU Member States. This finding supports the thesis of institutional stability that is more developed in the old Member States in which democratic industrial relations institutions have been established earlier. The remainder of the results section will discuss the results in greater detail.

Table 4.7 – Overview of the Regression Models

Model	Country sample	Period
A	All	1981–2010
B	All	1991–2010
C	Old Member States	1981–2010

Industrial Relations

The results show a statistically significant negative relationship between collective bargaining coverage (CBCOV) and the incidence of labour court claims over all but one specification. These findings support the classic pluralist assumption of channelled conflict through the institutional provision of encompassing collective bargaining arrangements (Fox, 1966; 1973). The only exception is the first specification of the 'short' model, in which the transitional economies have a stronger weight than in the other models. Although the minus sign suggests a negative relationship, the coefficient fails conventional significance tests. This finding and the fact that collective bargaining indicators are generally stronger in the time-invariant models with stronger weight on old Member States (specifications II) might be read as evidence that collective bargaining coverage is a more reliable indicator to predict inter-country differences in old Member States than it is to explain over-time variation in the transitional economies.

This finding is corroborated when we look at the indicators for the dominant level of collective bargaining (CBLEVEL). Although a negative relationship is recorded from all models, this is only significant in model C accounting for old EU Member States only. Again, the predictors are slightly stronger in the II models suggesting that their predictive power

increases when controlling for time trends. In other words, the incidence of labour claims decreases with higher-levels of collective bargaining *only* in the old EU Member States, and the association is stronger in explaining differences between countries than trends over time. Nevertheless, the significant correlations in model C/III support the suggestion that the observed trend towards bargaining decentralisation is, in the old Member States and to some extent, associated with higher levels of claims.

Similarly, the indicator measuring the institutional strength of works councils (or national equivalents, WCRIGHTS) largely confirms our expectations by showing the expected negative correlation in all but one model specifications. The result is strongly significant. Nevertheless, there are a few caveats to that finding. As argued above, the legal strength is nothing like a perfect indicator for our purpose since it does not take into account the actual coverage of employees by such institutions. It has also been argued that the relationship between the works council and management, and not the mere existence of such a body is the more important predictor for externalisation of conflict (Frick, 2008). Moreover, it is noteworthy that the indicator has shown some degree of volatility over different model specifications. Although effects are stronger in the models with period-controlled effects, the association does not turn out stronger in the old Member States, and the codetermination item (WCRIGHTS = 2) even shows an inverse correlation in one of the models. The latter contradicts parts of our expectations and is not in line with the findings on collective bargaining presented above. Further analysis presented in Chapter 5 will seek to compensate for that shortcoming.

As the last industrial relations indicator, the strength of trade unions (TUDENS) was expected to be ambiguous. Indeed, trade union coverage shows no significant association to labour court claims in models A and B. In the old Member States, on the other hand, strong unions show statistically significant negative correlation with the dependent variable. Again, this finding is marginally stronger when controlling for time trends. Changes in trade union density (ΔTUDENS) do not show systematic results. Although the coefficient shows the expected negative sign the association is only significant in one of the six specifications.

A possible explanation for these findings might be the different role of unions in the transitional economies where density dropped significantly in the 1990s and unions were (and indeed are) often still associated with their strong link to the communist parties in their socialist eras. In the old Member States, however, strong trade unions significantly explain

both over-time and cross-country differences. In conjunction with Vernon's (2006) notion of strong unions as an indicator for active workplace representation, the evidence suggests that high coverage in combination with strong institutional employee involvement significantly reduces the number of court claims. The thesis that stability in union density is even more important is not supported by the data. Similarly, the results do not provide evidence for Colling's (2009) legal mobilisation hypothesis.

Economics

The unemployment indicators broadly confirm the propositions made above. High unemployment and even more pronounced changes in the unemployment rate show positive and strongly significant correlations with the incidence of labour court claims. This pro-cyclical behaviour is in line with most of the available literature (Brown, *et al.*, 1997; Frick, *et al.*, 2012; Frick and Schneider, 1999; Masso, 2003).[53] There are, however, some particularities that are noteworthy. First, the unemployment rate (UNEMP) is not statistically significant for the old Member States when controlling for time trends. A possible explanation might be the stronger role of institutions in that group and the weaker explanatory power of unemployment with regards to predicting differences between countries. The latter is corroborated by the fact that regression coefficients are weaker in all models that control for time trends.

Nonetheless, the country-fixed effects model for the old Member States also shows both weaker correlation and significance than previous estimations. This emphasises the suggestion made above that institutions are more powerful predictors in the old Member States than in the transitional ones. Changes in unemployment rates (ΔUNEMP), on the other hand, are very strong predictors across all specifications and correlations are even stronger among the old Member States. Somewhat unexpectedly, the indicator also scores higher in the country and period-fixed models.

None of the other economic indicators is significant for the established market economies, but two indicators score heavily on models A and B. The female employment rate (FEMEMP) significantly increases the reliance on labour courts. This finding is unexpected insofar as women are known to be underrepresented in the claimants population (see

[53] Only Burgess, *et al.* (2001) find no statistically significant relationship for the UK.

conceptual discussion above), although UK survey results suggest that women are more likely to experience problems at work (Lucy and Broughton, 2011).

Sectoral variables show that claims decrease with the relative size of the service sector (SERVEMP). This is surprising in two ways. First, the service sector is reported to be characterised by large numbers of small companies, and low rates of workplace representation and collective bargaining (for instance Hassel, 1999; Teague, 2006) and would thus be expected to produce a greater number of claims than, for instance, employment in manufacturing. Second, in conjunction with the findings presented above it seems to be contradictory that a large share of the female-dominated service sector decreases the likelihood of conflict externalisation whereas the presence of women on the labour market increases the number of claims. A possible explanation for the service sector correlation is that the data used include public sector services (education, public health care) and public sector employees are ineligible to file claims to 'regular' labour courts in some countries.

Finally, the indicator that measures restructuring (INDEMP) does not show strong significant correlations although the direction of the relationship is as expected. The coefficient is only weakly significant in model B, specification II. Since coefficients are relatively low, however, there is no sufficient evidence to support the suggestions made above. The following empirical chapters use more sophisticated measures of restructuring to analyse its impact on tribunal claims.

Table 4.8 – Regression Results

	Dependent variable: log NCLAIMS			
	Model A (1981–2010)		Model B (1991–2010)	
	I	II	I	II
$CBCOV_t$	-0.195**	-0.269***	-0.113	-0.183**
	(0.08)	(0.08)	(0.08)	(0.08)
$CBLEVEL_t = 1$	-0.040	-0.041	-0.051	-0.040
	(0.07)	(0.08)	(0.06)	(0.07)
$CBLEVEL_t = 2$	-0.082	-0.068	-0.094	-0.074
	(0.07)	(0.09)	(0.07)	(0.09)
$WCRIGHTS_t = 1$	-1.175***	-2.182***	-1.874***	-2.100***
	(0.19)	(0.28)	(0.25)	(0.27)
$WCRIGHTS_t = 2$	-1.051***	-1.023***	-1.007***	-1.059***
	(0.17)	(0.17)	(0.13)	(0.14)
$TUDENS_t$	0.061	0.040	0.102	0.100
	(0.08)	(0.07)	(0.08)	(0.09)
$\Delta TUDENS_{t-1}$	-0.192	-0.313*	-0.174	0.220
	(0.15)	(0.16)	(0.18)	(0.18)
$UNEMP_t$	0.143***	0.118***	0.161***	0.135***
	(0.03)	(0.04)	(0.03)	(0.04)
$\Delta UNEMP_{t-1}$	0.137***	0.178***	0.119***	0.162***
	(0.04)	(0.05)	(0.04)	(0.05)
$FEMEMP_t$	0.293***	0.280***	0.408***	0.423***
	(0.07)	(0.07)	(0.08)	(0.08)
$SERVEMP_t$	-0.233***	-0.347***	-0.327***	-0.291***
	(0.06)	(0.11)	(0.08)	(0.11)
$\Delta INDEMP_{t-1}$	-0.009	0.018*	-0.011	-0.014
	(0.01)	(0.01)	(0.01)	(0.01)
Constant	1.557***	1.631***	1.502***	1.523***
	(0.17)	(0.19)	(0.16)	(0.18)
K × T	418	418	330	330
N / K	20	20	16	16
R^2	0.742	0.807	0.824	0.856
F-test	0.000	0.000	0.000	0.000

TSCS OLS regression with panel-corrected standard errors in parentheses. In order to increase comparability and to cope with collinearity, metric variables have been standardized.

I = model with country-fixed effects, II = model with country and period-fixed effects

** significant at 0.10 level; ** significant at 0. 05 level; *** significant at 0.01 level*

Table 4.9 – Regression Results for 'Old' EU Member States†

	Dependent variable: log NCLAIMS	
	Model C (1981–2010)	
	I	II
$CBCOV_t$	-0.201**	-0.203***
	(0.08)	(0.07)
$CBLEVEL_t = 1$	-0.295*	-0.385**
	(0.18)	(0.19)
$CBLEVEL_t = 2$	-0.328*	-0.398**
	(0.18)	(0.19)
$WCRIGHTS_t = 1$	-0.790**	-2.311***
	(0.37)	(0.32)
$WCRIGHTS_t = 2$	0.738**	-0.565***
	(0.37)	(0.18)
$TUDENS_t$	-0.239**	-0.254***
	(0.10)	(0.08)
$\Delta TUDENS_{t-1}$	-0.013	-0.009
	(0.17)	(-0.19)
$UNEMP_t$	0.054*	-0.010
	(0.03)	(0.04)
$\Delta UNEMP_{t-1}$	0.190***	0.263***
	(0.05)	(0.06)
$FEMEMP_t$	-0.001	-0.029
	(0.08)	(0.07)
$SERVEMP_t$	-0.078	-0.176
	(0.07)	(0.11)
$\Delta INDEMP_{t-1}$	0.003	-0.008
	(0.01)	(0.01)
Constant	0.037	1.125***
	(0.39)	(0.28)
K × T	316	316
N / K	24	24
R^2	0.808	0.867
F-test	0.000	0.000

TSCS OLS regression with panel-corrected standard errors in parentheses. In order to increase comparability and to cope with collinearity, metric variables have been standardized.

I = model with country-fixed effects, II = model with country and period-fixed effects

** significant at 0.10 level; ** significant at 0. 05 level; *** significant at 0.01 level*

† including Cyprus

4.5 Conclusion

Some general conclusions can be drawn from the analysis presented in this chapter. It has clearly demonstrated that there is no general trend towards increasing reliance on labour courts or employment tribunals in the EU. Although we could not test for the impact of juridification due to data limitations, the simple equation of more and more complex law in all European countries and, as a consequence, stronger caseload for the national labour courts seems over-simplistic.

Rather, the section presented attempts to identify groups of countries that share common patterns. A simple categorisation distinguishes between different rates of increase or decrease, and levels of volatility. Fitting national claims data into Malmberg's (2009) adapted and extended classification of enforcement mechanisms appears to provide some interesting insight, suggesting that only the Anglophone countries have experienced substantial rises in claims whereas other groups record overall high levels with little volatility (mainly Continental Western European countries), low and stable amounts of court claims as individual dispute settlement systems are handled by the social partners (Nordic countries), and medium levels of claims combined with high volatility (transitional economies in Central and Eastern Europe). It is noteworthy, however, that a substantial degree of intra-group heterogeneity remains.

Regression analysis in the second part of this chapter provided general support for the role of industrial relations institutions. High collective bargaining coverage in combination with, in the old Member States, centralised bargaining, as well as strongly institutionalised employee voice institutions coupled with, again only in the smaller sample of Western Europe, high trade union density, have shown to significantly lower the incidence of conflict externalisation. Institutional indicators appear to be more important in explaining inter-country variance in the established Western European democracies whereas the economic indicators score more significantly when all countries are taken into the equation. This might support the hypothesis that institutions in the transitional economies have yet to develop to their full extent. Moreover, it points to a shortcoming of this analysis that is inherited from the methodology adopted. Although the findings give a solid insight into the general functioning of institutions, a considerable neglect of the dynamics within these institutions is inherent to this analysis (and any other study of a similar type). In other words, the focus is

purely on the institutions and not on the actors that interact within (Jackson, 2010). This shortcoming is further discussed in the country case studies in Chapter 5.

With regards to economics, we find some confirmation for our theoretical propositions. The evidence suggests that externalisation of conflict is strongly correlated to unemployment. In addition, the analysis suggests that this effect is amplified when the institutional setup is weaker since the economic indicators showed more significant results in the models that included the post-communist economies. Nevertheless, the results also point towards more in-depth investigation. In particular, the role of gender and sectors remains ambiguous.

Therefore, the next stage of this research will look at three countries in more detail; France, Germany and the UK. In a first step, national country data and external information on the legal infrastructure are used to discuss the impact of juridification. Drawing on national survey data, the remainder of the chapter shall shed more light on the dynamics of national institutions, the ambiguous role of some of the economic indicators, and national developments in labour law that could not be dealt with from the cross-country perspective. Moreover, we expect to compensate for some of the problems associated with poor data availability, in particular with regards to works councils. Unfortunately, no comprehensive dataset could be identified that covers a transitional economy from Central or Eastern Europe or a country of the Nordic group that would have allowed us to corroborate the suggestions about different roles of institutions in these categories.

5 Country Case Studies

In order to compensate for some of the shortcomings of the previous chapter, this section analyses three countries in greater detail; France, Germany and the UK. The analyses are expected to deepen our understanding of institutional dynamics, to explore developments that were difficult to integrate into the cross-country analysis, and to identify country-specific effects. Overall, the aim is to scrutinise and elaborate the findings from the comparative analysis (Chapter 4), and to supplement them with additional evidence.

Therefore, this chapter starts with a comparative analysis of the institutional frameworks in the three countries. The discussion focuses on different institutional mechanisms for the enforcement of individual employment legislation. Moreover, relevant industrial relations institutions, collective bargaining and employee workplace representation, are compared and discussed.

Thereafter, the analysis draws on a comparative labour market regulations index and additional qualitative data to shed some light on the juridification argument. Although both data and methodology have clear limits, it is argued that the assumptions made by the juridification literature contribute to the understanding of the incidence of labour court claims in the three countries, in particular with regards to developments over time. At the end of the section, three different but complementary readings of the juridification argument are offered.

National country data are used in the subsequent parts to analyse institutional and economic explanations in a country context. Findings from the industrial relations analysis are largely confirmed, and so are most of the economic propositions. In addition, the analyses allow refinement of some of the cross-country findings. In the final section of this chapter, results from the country chapters are discussed from a comparative perspective, and embedded in their national institutional contexts.

5.1 Institutional Framework

Enforcement of Employment Law

This section discusses the enforcement systems of individual labour law that are in place in the three countries under study. A comparative historical overview finds that the development of specialised labour courts or employment tribunals took place at very different paces. Nevertheless, the second part of this section argues that modern enforcement systems show similar procedural rules and practices in France, Germany and the UK, whereas responsibilities over jurisdictions and professional groups are slightly different.

Development

France was the first country to establish specialised labour courts. In 1806, the first *conseils de prud'hommes* (CPH) was set up by law in the city of Lyon, which also allowed for the extension to other regions. The early institution differed substantially from modern labour courts (Kieffer, 1987), but it already incorporated the idea of labour representatives as judges. Moreover, the first CPH only had competencies in disputes concerning the quality of work and the rate of payment, although this was quickly extended to other minor work-related conflicts. From 1848, all employed persons were eligible to vote or stand in elections for CPH councillors. The gradual extension of the competencies and coverage of the CPH made them "one of the most fundamental elements in the way labour disputes were solved" from the 1880s onwards (Ramm, 1986: 271).

Consequently, the labour movement gained an increasing interest in the institution. Following pressure from unions a major reform was implemented in 1907 that constituted the basis of the functioning of modern French labour courts. It introduced the right for municipalities to request the establishment of a CPH, extended their competencies to a large range of sectors, included women in the electorate, and established the principle of a rotating chair between a representative from the employers and the employees. Minor reforms in 1919 and 1924 made changes in the election procedures and extended the CPH's competencies (Ramm, 1986). The latest major reforms of 1979 ("Boulin reform") and, to some extent, 1982 established, among other things, the universal coverage of CPH in all regions regardless of whether local authorities had requested the establishment of a local court (*généralisation territoriales*), the unitary five-chamber structure for all French labour courts, extended the CPH's competencies to all employees (*généralisation professionnelles*) and established a professional status for

the judges (Bonafé-Schmitt, 1987; Marinescu, 2002; Malmberg, 2009). Most recently, the 2008 reform of the judicial system reduced the number of CPH by 61, from 271 to 210 first-instance courts (Ministère de la Justice, 2011).

The first specialised labour courts in Germany were set up in 1926. These courts consisted of three members, a trained judge and two lay members, representing employers and employees, and could deal with almost all individual labour disputes. Geographically, courts were organised at local (first instance), regional (*Länder*), and national level. During the Third Reich, individual labour disputes were dealt with by the so-called 'courts of honour'. After the Second World War, however, the pre-war labour court system was largely re-established in West Germany (Ramm, 1986) leading to the 1953 Labour Court Code (*Arbeitsgerichtsgesetz*). In particular, the new code continued the principle of organisational independence of the specialised labour courts.

Increased caseloads in the labour courts, in particular with regards to collective issues, led to the adoption of a new Labour Court Code in 1979. The new provisions introduced a range of measures that aimed to speed up the process, in particular regarding individual unfair dismissal claims (Malmberg, 2009). Similar reforms, although limited in extent, were undertaken in 2000 (*Arbeitsgerichtsbeschleunigungsgesetz*). The new provision aimed to simplify and accelerate the process of a labour court claim. It touched upon a number of administrative issues and, among other things, introduced the possibility of a second conciliation hearing (see below). In addition, some marginal changes were made in 2006 and 2009. As of 31 December 2010, there were 119 first-instance labour courts in Germany.

The development of specialised bodies to deal with individual labour disputes in the UK started relatively late. Industrial tribunals were installed by Section 12 of the 1964 Industrial Training Act in order to deal with industrial training levies. Jurisdiction was quickly extended to disputes between individual employers and employees through the Redundancy Payments Act of 1965 and, most notably, to unfair dismissal through the Industrial Relations Act of 1971[54] (Burgess, *et al.*, 2001; Schneider, 2001; Hayward, *et al.*, 2004). The range of jurisdictions for which tribunals have responsibility has been extended ever since. The full list is discussed further below (see also Table 5.5 on page 153). In 1998, the Employment

[54] Blankenburg and Rogowski (1986: 72) rightly point out an interesting difference between Germany and the UK in the understanding of unfair dismissal: "While in Britain a dismissal is considered to be either fair or unfair, a German dismissal is reviewed in terms of whether or not it was 'socially justified'".

Rights Dispute Resolution Act renamed the institution as 'employment tribunals' (Deakin and Morris, 2012).

Responsibilities and Procedures

According to Article L511-1 of the French Labour Code, the CPHs are exclusively responsible for individual labour disputes concerning the employment contract in the private sector and are mainly concerned with issues such as redundancy, disciplinary sanctions, wage and bonus payments, working time, and health and safety issues. There are only a few exceptions. The local civil courts (*tribunaux d'instance*) deal with issues concerning the nomination process of employee representatives, such as works councillors or lay members to the CPH, but have virtually no competence in individual labour disputes. If the votes of the four lay members of a CPH hearing are split, they will consult a judge from the local civil court to cast the decisive vote. The regional courts (*tribunaux de grande instance*) deal with most collective labour disputes, notably strikes, the interpretation of collective agreements, or issues around information and consultation. Finally, individual disputes in the public sector are dealt with by the Administrative Courts (*tribunaux administratifs*). French CPH may also hear disputes between two employees, for instance in harassment cases. Both employers and employees are eligible to make a claim, although the large majority (some 95 per cent) come from employees.

The responsibilities of German labour courts are more extensive than those of their French counterparts as they deal with all disputes that arise from the employment relationship, including both individual and collective disputes. Thus, they may also rule on issues such as collective conflicts (strikes) and workplace representation.[55] Moreover, there are no special bodies to deal with claims from the public sector in Germany. Claims may be brought by employees, trade unions and works councils (almost 99 per cent of cases dealt with in 2010), or employers.

Employment tribunals in the UK deal with a range of jurisdictions concerning the individual employment relationship. In 2010, the most common jurisdictions under which employment tribunal claims were filed were working time (30 per cent), unfair dismissal (28 per cent), and unauthorised wage deductions (19 per cent) (Tribunals Service, 2011).[56] There are, however,

[55] The procedure discussed here, however, mainly refers to the claim made by an individual employee against their employer.
[56] Cases may touch upon more than one jurisdiction.

a few work-related disputes that may also be brought in civil courts (County Courts or the High Court); for instance, 'pure' breach of contract claims.[57] Other cases are exclusively dealt with by the civil courts; for example, tortious claims such as stress, personal injury and negligence (if not as a result of discrimination), and collective disputes involving industrial action. The latter are dealt with by the High Court of Justice in a way that judges may grant an injunction if they find that planned or ongoing industrial action is unlawful. This could be, for instance, because unions involved in the strike have not complied with the UK's complex balloting and notification requirements. At the individual level, both private and public sector employees may file claims to employment tribunals. In 2008, 19 per cent of all claimants filed a case against an employer in the public sector (Peters, *et al.*, 2010).

In order to be eligible to apply,[58] qualification periods apply in Germany and the UK. In the former, employees must have seniority of six months in the same company whereas there are some exceptions for small companies that have been changed frequently. In the UK, the qualification period has been regularly altered between six months and two years.[59] No qualifying period applies in France but a seniority of two years is necessary for some remedies (Deakin, *et al.*, 2007b).

The composition of the bodies to deal with individual labour disputes in the three countries is similar, insofar as all include representatives of the social partners as judges or lay members with substantial influence on the ruling and the decision-making process. In France, all labour court hearings are chaired by four lay judges, two representing the employers and two representing the employees. Thus, France is the only country in which first-instance labour courts do not employ trained judges at all.

The so-called councillors (*conseillers*) are elected for a five-year term with the possibility of re-election. The nomination and election process is organised by two electoral colleges, one for each side of the employment relationship. The employers nominate and vote for candidates that represent the employers' side in the CPH. One has to fulfil the criteria of an employer in order to vote or run for office. The same applies to employees.

[57] It is noteworthy that since 1994 such claims may also be brought in employment tribunals on termination of employment, provided the sum in dispute does not exceed £25,000.
[58] Different qualification periods apply depending on jurisdictions. Typically, there is no qualifying period for discrimination cases. Data reported here apply to unfair dismissal claims.
[59] For those employed on or after 6 April 2012, the qualifying period for unfair dismissal claims was increased from 12 months to two years. Exceptions apply if the worker claims to have been dismissed on grounds of pregnancy or maternity leave, trades union membership, reporting health and safety risks, whistleblowing or assertion of statutory rights. In these cases, no qualifying period applies (Acas, 2012).

Although, theoretically, everyone who meets the eligibility thresholds may become a candidate, most CPH judges have been nominated by their union or employers' organisation. In the 2008 elections, 93 per cent of the employers and almost 99 per cent of the employee representatives that were elected had been on such a list (Ministère du Travail, 2009). In addition, the CPH is divided into five chambers. Four of these chambers have the responsibility for a particular sector; Agriculture, Commerce, Industry, and Other Activities. The fifth chamber diverges from the principle of division by economic activity as it is responsible for claims from managers from all sectors (Munoz Perez and Serverin, 2005).

The composition of German labour courts and employment tribunals in the UK is fairly similar. In Germany the court panel consists of one trained judge and two lay members representing employers and employees. Lay members are appointed for five years (four years before 2000) following a proposition by, in most cases, trade unions and employers' associations. Re-appointments are possible. Lay members have the same voting rights as the judges and might, in theory, overrule them.

In the UK, a full panel of an employment tribunal equally consists of a legally trained employment judge and two experienced lay members with, typically, one with an employer background and the other one with an employee and/or trade union background. Lay members are appointed by the Lord Chancellor (until 2008 by the Secretary of State) after either being nominated by the social partners (38 per cent of lay members) or having passed an open competition process with written tests and interviews (61 per cent) (Corby and Latreille, 2011). Traditionally, a full panel was common in most tribunal hearings although in some cases judges could sit alone. The possibility for a judge to sit alone was introduced through the Trade Union Reform and Employment Rights Act 1993 and extended through the Employment Rights Dispute Resolution Act 1998. Since April 2012, judges now sit alone on unfair dismissal cases, unless the claim touches upon multiple jurisdictions one of which requires a full panel, or the judge decides the particular case so requires.

Over the period that is covered by the survey data used here and the time-series analysis presented in the previous chapter, none of the three countries charges fees for the application to their labour courts. Legal representation is voluntary in all three countries. Advice and representation may be sought from a lawyer or a trade union representative. Other possible representatives include, for instance, family (Germany and UK), spouse (France), friends (UK), and co-workers (France). In France, the then Secretary of State for Justice announced,

in July 2009, that oral hearings would be abandoned, which would have been a *de facto* introduction of compulsory legal advice. Following protests from the social partners, however, the reform was not enacted (Les Echos, 6 August 2009).

Once a claim is filed, all countries have pre-hearing conciliation meetings in place. In France, most cases are referred to the conciliation committee (*bureau de conciliation*) that seeks to foster an amicable agreement. The committee consists of two lay judges only and may not issue a binding judgement. If the two parties do not agree, or agree only partially, a full hearing has to be called. It is reported that about 10 per cent of all cases are settled through a conciliation meeting (Vert, 2004). In some rare cases, there is no conciliation meeting before the full hearing. In Germany, both parties are invited to a conciliation hearing (*Güteverhandlung*) in the presence of a judge, but without lay members. If no agreement can be reached, a full hearing is scheduled.

The UK has an external body to deal with pre-tribunal conciliation, Acas. Established through the 1975 Employment Protection Act, all claims and the responses from the respondent are sent to Acas, which has a statutory duty to attempt conciliation. If conciliation fails, an employment tribunal hearing will be organised. In addition, Acas has recently begun to offer pre-claim conciliation for employees who feel that their rights have been breached, but who do not want to pursue a formal claim to an employment tribunal.

In France, the full hearing takes place in the presence of all four lay judges. Both sides have the opportunity to present their points of view and may provide evidence to support them. During this process, the judges can, in consultation with both parties, call a mediator that seeks to reach an extrajudicial agreement. If no amicable agreement can be reached, the lay judges render a judgement, which has to be agreed with simple majority (i.e. at least three out of the four judges must agree). In 2009, roughly 50 per cent of all claims ended with a judgement (Munoz Perez and Serverin, 2005). Full hearings in Germany have a very similar form. The judge and the two lay members hear the statements and, if necessary, see evidence in support of the arguments or hear witnesses. Unlike other civil court proceedings, parties in a labour court hearing may still agree on an amicable arrangement during the hearing.

In the UK, there usually is a pre-hearing review with the judge alone. These meetings help to discuss any preliminary issues. If the judge comes to the conclusion that either the claimant or the respondent has little prospects for success, the party concerned can be ordered to pay a

deposit of up to £500 as a condition of proceeding to a full tribunal hearing.[60] At the full tribunal hearing, both parties are given the opportunity to present their case. There is no absolute rule as to which side starts, but there are certain common procedures. In unfair dismissal cases, for instance, the respondent is usually asked to give evidence first, whereas the claimant often makes a start in discrimination cases. Parties are encouraged to find an amicable agreement during the hearing. If a binding judgement is made, the claimant and the respondent are asked to agree on a private settlement for compensation. If that fails, the panel determines compensation, if applicable.

In all three countries it is possible to file an appeal against the original decision. In France, either party may contest the original judgement if the sum in dispute exceeds €3,980 and the judges allow for an appeal. The appeal has to be filed to the regular Court of Appeal (*cour d'appel*). In those cases where the court does not allow an appeal or the sum in dispute is below €3,980, the defeated party can only file a notice of appeal, as a last resort, to the Court of Cassation (*cour de cassation*).

In Germany, each of the 16 *Länder* has a regional court (*Landesarbeitsgericht*), which mainly serves as court of appeal. An appeal is admissible when the first-instance labour court has allowed for it, or if the sum in dispute exceeds €600. In addition, some jurisdictions are generally admissible for appeal, such as unfair dismissal or the justification of temporary employment. The Federal Labour Court (*Bundesarbeitsgericht*) in Erfurt serves as the court of last resort. In the UK, an appeal lies to the Employment Appeal Tribunal if either party can argue that there were flaws in the legal reasoning of the first-instance decision.

This section considered the development and current state of the art of enforcement mechanisms for individual employment law in France, Germany and the UK. It has shown that there are differences in the historic development, in particular with regards to timing and pace of installing such institutions. Moreover, there are some differences in terms of responsibilities and professional groups covered. The latter specifically applies to the exclusion of public servants from access to French labour courts. Nevertheless, the overall functioning of these bodies is relatively similar in the three countries; especially the procedure followed once a claim in filed, and the composition of the panel to hear the case.

[60] Up to £1,000 since April 2012

Industrial relations and Labour Court Claims

As discussed in Section 2.2, collective industrial relations are expected to have a negative impact on the incidence of labour court claims. This section discusses the role of industrial relations institutions, in particular collective bargaining and works councils, with regard to individual work-related conflicts in the three countries. Each section concludes with a few general comparative remarks.

Collective Bargaining

Collective wage bargaining in France takes place predominantly at sectoral level, but a substantial, and growing, number of issues are negotiated at company level. Therefore, there is some debate about which level is dominant. Whereas some scholars describe the national and sectoral levels as most important, in spite of a trend towards decentralisation and increased autonomy of the company level (Bevort and Jobert, 2011), others find that, at least for wage bargaining, there is "no [...] bargaining level that is clearly most important. While, in particular, for small and medium-sized companies the sector level is the most important, it is the company level that is key for larger companies" (Schulten, 2005).

In Germany, collective bargaining predominantly takes place between employers' association and trade unions at sectoral and regional level, typically on an annual basis. In the UK, sectoral bargaining has collapsed in most of the private sector and company bargaining is the most wide-spread form among companies covered by any kind of agreement. This section elaborates the trends and dynamics of collective bargaining in all three countries.

In France, sectoral agreements are concluded between at least one employers' organisation and at least one trade union. Typically, there is a framework agreement that includes a whole range of issues concerning working conditions, pay and welfare. This basic agreement is then supplemented by a number of amendments, such as the recurring wage agreements (Bevort and Jobert, 2011). The social partners may then make a request to the Ministry of Labour, which can extend the agreement to the whole sector.[61] Once an agreement is concluded and, eventually, extended, it is legally binding upon the parties and constitutes the "occupations' law" (Bevort and Jobert, 2011: 197). This procedure is used extensively. In 2010, 880

[61] In order to be extended, the agreement must have been signed by at least one trade union that is considered representative at sectoral level. The rules for being considered representative at sectoral level are complicated and have been changed recently. An overview is given by Robin (2008). Bevort (2012) provides a more comprehensive account.

collective agreements were extended by the Ministry, 367 of which were wage agreements (Ministère du Travail, 2011). In contrast to most other European countries, French collective agreements are concluded for an indefinite period.

In addition, bargaining at company level has gained in importance. In 1982, the so-called Auroux law introduced compulsory annual company bargaining on wages and working time between the employer and delegates of the representative local unions. Although the aim of these negotiations was to establish "decentralized compromises" (Bevort and Jobert, 2011: 205) the principle of favourability applied that prohibited any deterioration from higher-level agreements. The 1998 Aubry law introduced the statutory 35-hour working week and encouraged the social partners to negotiate its implementation at company level (Bilous, 1998). Later reforms further weakened the institutional basis for sectoral collective bargaining by diluting the principle of favourability. This development started 2004, but was, with regards to working time, considerably altered with the 2008 reform, which allowed for the negotiation of voluntary overtime agreements at company level (Robin, 2008).

Nevertheless, bargaining coverage remains very high mainly as a result of the existence and use of extension mechanisms. It is estimated that between 90.4 per cent (data for 2008 from Poisson, 2009) and 97.7 per cent (data for 2004 from Combault, 2006) of employees are covered by a collective agreement.[62] On the other hand, there is little dispute that the extension of company bargaining has had a weakening effect on sectoral bargaining. In 2010, 33,826 company agreements were signed. That is an increase of 18 per cent since 2009 (Ministère du Travail, 2011).

The consistent trend of increasing company bargaining agreements has certainly been fuelled by changes in the legal framework. Although this was necessarily the intention of all these reforms, some observers of French industrial relations see this as part of a larger trend towards decentralised collective bargaining (Bevort and Jobert, 2011; Jobert, 2012). They argue that the incomparably high level of coverage is partly misleading as it masks the content of the agreements concluded, which might be of poor quality. For instance, in 2005, 40 per cent of all wage agreements fixed the rate of pay for the lowest occupational group below the national minimum wage for the same year. Although this proportion has decreased

[62] Differences in the figures might be explained by different data sources, Poisson uses administrative data whereas Combault draws on a survey, and by the fact that Combault includes the so-called "status" in the coverage data. The status is a staff regulation for employees in the public sector, where working conditions are determined by legal or regulatory provisions rather than collective bargaining.

ever since, it was still 11 per cent in 2011 (Ministère du Travail, 2011). Bevort and Jobert (2011) further argue that the low quality of some agreements can be seen in the low rate of signature by one the two largest French trade union confederations, the General Confederation of Labour (Confédération générale du travail, CGT). In 2010, the confederation had only signed 30.4 per cent of all sectoral agreements (33.8 per cent in 2000). The same data, however, also show that the other large confederation, the French Democratic Confederation of Labour (Confédération française démocratique du travail, CFDT), signed 76.6 per cent of all accords (69.2 per cent in 2010) (Ministère du Travail, 2011). This might illustrate a radicalisation of parts of the union movement rather than a deterioration in the content of collective agreements.

There seem to be, however, considerable sectoral differences. Bevort and Jobert (2011) argue that there are three different groups. The first cluster of sectors is characterised by lively social dialogue and great importance attached to sectoral agreements with salaries above the national minimum wage. These are sectors with a high proportion of SMEs and manual workers, such as construction, repair of motor vehicles, or the plastics industry. Second, there are important sectors where sectoral bargaining is still important, but a shift towards the company level can be observed in order to introduce more flexible wage schemes. Metal or chemical industries are a case in point. Finally, there are parts of the economy that demonstrate general difficulties in undertaking centralised social dialogue. This is arguably the case where there is no tradition of collective bargaining: hotels, restaurants and catering (HORECA) are the most obvious examples.

German sectoral agreements are typically concluded in one region, which then serves as a ‘pilot agreement’ for collective bargaining in other regions (Keller, 2004). This relatively centralised form of bargaining serves the purpose of a cartel by taking the price for labour, in particular wages, but also working conditions, such as working time, out of competition between companies in the same sector (Hassel and Schulten, 1998). Once an agreement is concluded, it is legally binding upon the signatory parties, i.e. the employers’ associations and the affiliated companies, and the signatory trade union. In practice, terms and conditions apply to all employees in the companies that are members of the signatory employers’ association. For the period for which the agreement is in force, neither party is allowed to call for industrial action, such as strikes or lock outs (‘peace obligation’).

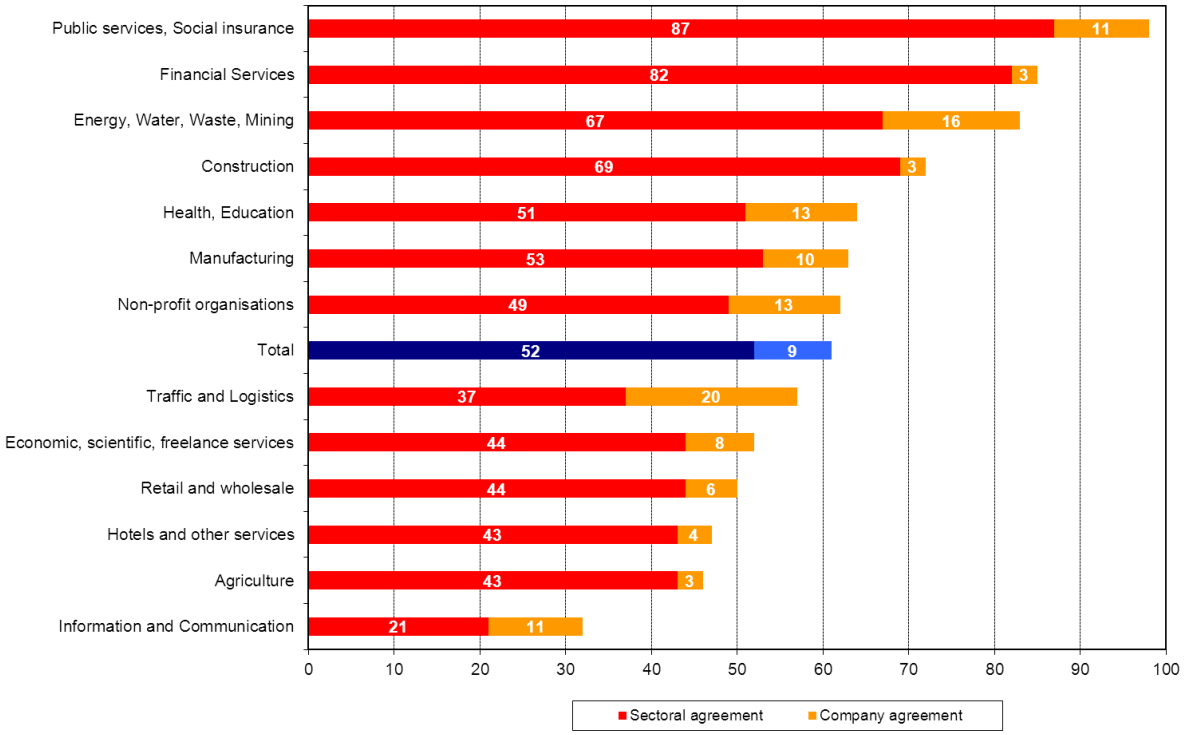
Traditionally, bargaining at company level is uncommon in Germany and formally the works councils are not considered bargaining agents. They may, however, negotiate the terms and conditions as to how sectoral agreements are implemented at company level, reach agreements on issues not covered at sectoral level, or agree upon terms and conditions that exceed those negotiated at sectoral level. Hence, in some plants works councils traditionally succeed to negotiate higher wages than the collectively agreed industry standard. In principle, company agreements must not deteriorate from sectoral ones ('principle of favourability'). Although the legal framework has changed very little, social partners frequently introduce opening clauses (or hardship clauses) into sectoral collective agreements that allow actors at the company level to renegotiate provisions agreed upon at higher levels and inferior terms and conditions of employment from those determined at sectoral level. The possibility of using opening or hardship clauses is often subject to certain circumstances as specified by the sectoral agreement, such economic or financial difficulties of the company (Bispinck, *et al.*, 2010). In 2005, 13 per cent of all companies were covered by an agreement with an opening clause employing 53 per cent of the workforce in Western Germany and 50 per cent in Eastern Germany. Roughly more than half of these companies covering 52 per cent of employees had made use of opening clauses (Kohaut and Schnabel, 2006).

This increased pressure for flexibility of collective bargaining arrangements that led to the introduction and use of opening clauses is part of a trend that has been described as 'organised decentralisation' (Traxler, 1996). Moreover, this has an impact on actors at company level, in particular works councils (see below). As a consequence, the proportion of companies bound by collective agreements is constantly decreasing. Nevertheless, data show that sectoral collective bargaining still sets the terms and conditions of more than half of the German workforce (52 per cent, see Figure 5.1). Another 9 per cent are covered by company agreements.

There are considerable sectoral differences. Whereas coverage exceeds 80 per cent of all employees in some sectors, for instance public and financial services, it stands below one-third in information and communication. The latter might partly be explained by the structure of the sector that is characterised by newly established companies. Other research finds that the decrease in coverage is primarily due to new establishments not opting into collective agreements, rather than old ones opting out (Kohaut and Ellguth, 2008). The same authors also find that there is no general trend towards company agreements.

The UK has experienced the most drastic changes in collective bargaining of the three countries under study here and in the period covered. Unlike France and Germany, there is little legal regulation of collective bargaining in the UK. The principle of voluntarist industrial relations and the resulting fractional role of legal intervention in collective bargaining (at no point in time was collective bargaining compulsory or collective agreements legally binding) make it difficult to depict the process of 'typical' collective bargaining, as presented for the other countries. Therefore, the structure adopted in the section on the UK differs slightly from the discussions on Germany and France. It will provide a brief historical sketch of collective bargaining in the UK in the period under study supplemented, where appropriate, by statistical data. Finally, some reasons for the erosion of collectivism will be presented.

Figure 5.1 – Collective bargaining coverage by sectors, in % of employees (2009)



Source: Bispinck, et al. (2010)

It is widely agreed that industry-wide collective bargaining was the most dominant form for the determination of terms and conditions of employment in the UK before the early 1980s. In that period, employers and their associations engaged in negotiations not only because organised labour was strong enough to enforce collective bargaining, but also to 'take wages out of competition', as the traditional phrase goes. Moreover, even a number of companies without affiliation to an employers' association would opt into agreements for their sector

(Brown, *et al.*, 2009). The "collapse of collectivism as the main way of regulating employment" (ibid: 22) is described to have developed in two steps; decentralisation and contraction (Marginson, 2012; Katz, 1993).

In the UK context, decentralisation refers to a shift from multi-employer to single-employer bargaining or, more generally, from comprehensive industry-wide agreements to arrangements applicable to smaller bargaining units.[63] This development is described to have started as early as the 1950s and "[b]y 1978 the dominance of single-employer over multi-employer agreements in manufacturing had already become clear, and it was also evident that single-employer bargaining was preponderantly at establishment as opposed to higher divisional and company levels" (Brown and Walsh, 1991: 178). Nevertheless, collective bargaining maintained its dominance in determining terms and conditions of employment.

The latter changed with the second step of the development; the contraction of collective bargaining. Contraction is characterised by an increase in unilateral management authority, the derecognition of trade unions as bargaining agents (or the refusal to recognise unions in newly established workplaces), and the gradual reduction of issues that management is willing to negotiate with organised labour (the latter has been termed 'implicit' or 'partial derecognition' (Brown, *et al.*, 1998: iii)). Contrary to expectations, the "[s]ubstantial and largely sympathetic legislative intervention and favourable macroeconomic circumstances" (Brown and Nash, 2008: 102) under the New Labour government (1997–2010) did not reverse this trend, but collective bargaining coverage continued to decline, as we shall see below.

It is noteworthy, however, that these developments have mainly been concentrated in the private sector. In the public sector, terms and conditions of employment are to a large extent determined by the so-called Pay Review Bodies. These institutions exist for each professional group in the public sector and consist of a small number of members appointed by the government. The members may hear written or oral evidence from social partners or other experts, and can conduct fieldwork and other research on their own in order to make a recommendation on terms and conditions of employment for the professional group concerned. The final decision lies with the government. Although some degrees of flexibility

[63] Although this is a fairly general definition of decentralisation, it is distinct from organised forms of decentralisation through opening clauses in sectoral agreements (Germany) or the decentralisation through enforcing the rights of workplace institutions through law and thus shifting the bargaining authority from sectoral to company level (France).

have been introduced into public sector pay (Bach, 2010) and pressure for decentralisation remains (for instance Thornley, 2006; Smedley, 2012) the system appears relatively stable in comparison to the private sector, as data in the next paragraph will show.

Table 5.1 and Table 5.2 provide data from several editions of the Workplace Employment Relations Study (WERS) on the percentage of all workplaces covered by some form of collective agreement. In order to ensure some comparability over time, the tables exclude workplaces with fewer than 25 employees (Table 5.1) and ten employees (Table 5.2). Information provided illustrates the developments discusses above in this section. In 2011, collective bargaining on pay was used in only 11 per cent of all private sector workplaces with at least 25 employees (8 per cent of those establishments with at least 10 employees). This is a decline of 36 percentage points since 1984. It has been pointed out earlier that there were considerable sectoral differences (Brown, *et al.*, 2009). The analysis here that uses fairly broad sectoral distinctions suggests that there are signs of convergence at very low levels in the private sector, in particular when smaller workplaces are taken into consideration (Table 5.2). Moreover, it is noteworthy that further analysis of WERS 2011 suggests that most of these agreements are local company agreements since less than 4 per cent of private sector workplaces with 25 or more employees (less than 3 per cent with 10 or more workers) are covered by some form of multi-employer collective bargaining.

Table 5.1 – Workplaces with at least 25 employees covered by some collective bargaining on pay, 1984–2011, in %

Sector	1984	1990	1998	2004	2011
All	66	52	40	32	27
Private	47	38	24	16	11
Manufacturing and extraction	55	44	35	32	17
Services	43	36	21	13	10
Public	99	86	84	82	75

Source: own calculations with data from Department for Business, et al. (2013) and Forth, et al. (2008)

Table 5.2 – Workplaces with at least 10 employees covered by some collective bargaining on pay, 1998–2011, in %

Sector	1998	2004	2011
All	30	23	18
Private	17	11	8
Manufacturing and extraction	26	17	7
Services	15	10	8
Public	83	78	71

Source: see Table 5.1

Finally, coverage of collective bargaining (including pay review bodies) is also on the decline in the public sector although substantial differences with the private sector remain. In 2011, the terms and conditions of employment for public sector employees were still determined collectively for a large majority of public sector employees, although coverage is now far below its quasi-universal status in the early 1980s.

Observers have identified a number of reasons for these developments. Structural changes in the economy, in particular the decline of large-scale manufacturing and other strongholds of strong trade unions and collective industrial relations in the UK economy, 'anti-union legislation' under the Thatcher government that weakened organised labour and their capacity to impose collective bargaining, and increased international competition in UK product markets (Brown, *et al.*, 2009). Marginson (2012) takes a comparative perspective and argues that although the former might well explain parts of the phenomenon other countries have experienced similar exogenous impacts on their industrial relations systems, but did not see the same decline in collectivism. Therefore, he adds to the equation the "the strategic choices made by the bargaining parties" (Marginson, 2012: 344).

This section discussed the general patterns of collective bargaining in three countries. It was found that in France, there is a high and relatively stable coverage of collective bargaining due to strong institutional support for sectoral agreements, in particular through extension mechanisms. On the other hand, some observers raise doubts about the quality of some of these sectoral agreements. In Germany, bargaining coverage remains substantial in spite of continuing trends towards decentralisation through opt out of collective agreements and opening clauses. The voluntarist system of centralised collective bargaining in the UK collapsed to a large extent. If present terms of conditions are negotiated collectively, this is likely to happen at company level.

In conjunction with the discussion embedded within Chapter 2, it is expected that the existence of collective agreements has a negative impact on the incidence of labour court claims in two ways. First, employers and employees negotiate a range of rules and norms, by which the workplace is governed. These rules are expected to serve as a mechanism to constraint potentially conflictual behaviour from both sides. Moreover, agreements are also expected to mitigate conflict as they might increase employees' acceptance of management's prerogative to rule the workplace in exchange for participation rights. Second, the rules agreed in the agreement apply to a very large proportion of the workforce within a company.

Thus, agreements decrease inequalities among the workforce, which, in turn, decreases the potential for unfair treatment. Finally, it is expected that agreements at a higher level, i.e. at sectoral level, have a stronger negative impact on the manifestation of conflict because these agreements have a higher coverage and, thus, reduce intra-industry inequalities, and actors at sectoral level, in particular trade unions, have stronger means to demonstrate their bargaining power through the threat of industrial action.

Company agreements may have a similar impact on the externalisation of conflict if they are used as an addition to sectoral agreements and either provide generally more favourable terms and conditions of employment than a higher-level agreement or regulate the implementation of terms on conditions into workplace policies. Finally, there might be differences in the expected relationship between countries. In both France and Germany, agreements are legally enforceable through the court system whereas UK agreements are often described as 'gentlemen agreements' that are not legally binding.[64] It can thus be expected that the effect of the former is stronger than that of the latter.

Employee Workplace Representation

The second institutional feature that is of importance for this argument is employee representation within the workplace. In both France and Germany, employee workplace representation has a strong juridified institutional basis. France is characterised by a complicated system of parallel institutions of employee workplace representation with significant differences between the public and the private sector. In the private sector, there is a dual structure of union and employee representation. German works' councils are strongly regulated by law and formally separated from the unions. They are the single channel of influence at company level. In the UK, legal regulation of employee representation is very limited and has only been introduced recently. The system of workplace representation is mainly voluntary and based on negotiations between management and labour leading to a high degree of fragmentation.

Union representation in France is ensured by institutionalised trade union workplace representation (*délégués syndicaux, DS*). Union representatives are not elected, but nominated by their union. All representative unions are entitled to delegate DS. Traditionally, the status of being representative was granted to five unions at the national level whereas all

[64] Indeed, this presumption is enshrined in legislation, namely Section 179 of the Trade Union and Labour Relations (Consolidation) Act 1992.

other unions had to prove their representativeness. A recent 2008 reform changed these rules so that all unions have to gain 10 per cent in workplace elections in order to be given the status and, in turn, nominate representatives in a workplace (Bevort, 2012). In contrast to all other forms of employee workplace representation, DS are nominated for an indefinite duration. These particular arrangements are supposed to ensure their independence from the employer (Béthoux and Meixner, 2012). Union delegates fulfil three main roles. First, they represent their union against the employer. Second, and arguably more important, DS are usually the only actors within the workplace that are allowed to negotiate and sign company agreements on behalf of the workforce (Bevort and Jobert, 2011). Third, they also play an important role in nominating union candidates for the election of the employee representation institutions.

There are, with exceptions, three such institutions to represent all employees at the workplace; staff representatives (*délégués du personnel*, DP), works councils (*comités d'entreprise*, CE) and the so-called Committees for Hygiene, Safety and Working Conditions (*comités d'hygiène, de sécurité et des conditions de travail*, CHSCT). Employers with more than ten employees are obliged to organise a ballot for staff representatives. They are elected by all employees for a four-year term (if not stated differently in a collective agreement). Their main role is to hear both individual and collective complaints from the workforce and to discuss them with the employers. DPs also have the right to call the labour inspectorate. In workplaces with fewer than 50 employees they assume, in addition, the role of the CHSCT (see below) and may also take over the responsibilities of other institutions if these are not present in the company (Béthoux and Meixner, 2012; Bevort and Jobert, 2011).

In addition, workplaces with a workforce of at least 50 employees must organise elections and provide a budget for a works council. The CE is the central actor in the information and consultation process. French policy-makers have substantially extended the role of CEs since the early 1980s, in particular with regards to company restructuring (Didry, 1998; Didry and Jobert, 2010). Thus, CEs have to be heard on issues such as mass redundancies, redundancies for economic reasons and transfer of undertakings. The consultation is, however, in no way binding upon the employer's decision (Bevort and Jobert, 2011). In order to ensure an effective information process of CE members, works councils may, since 1982, hire external consultants at company expense. Finally, CEs may provide a range of social activities for the employees and their families.

In workplaces of 50 to 200 employees, CE and DP may merge, under certain conditions, their activities into a single representation body (*délégation unique du personnel*, DUP). The last institution is the CHSCT, which is set up in workplaces with at least 50 employees (or smaller, if imposed by the labour inspectorate). Its main role is to ensure employee participation in issues around occupational health and safety and, more broadly, working conditions.

Although all these institutions are formally independent, accumulation of offices is allowed and common. Union representatives, for instance, may also take responsibilities in other institutions. In 2005, for instance, 76.5 per cent of all CE members were elected from a union list (Jacod, 2007). Furthermore, Bevort and Jobert (2011) cite research that shows that trade union involvement in works council activities is a good predictor for the effectiveness of its activities. In general, all employee or union representatives enjoy special employment protection and may claim training allowances from the employer.

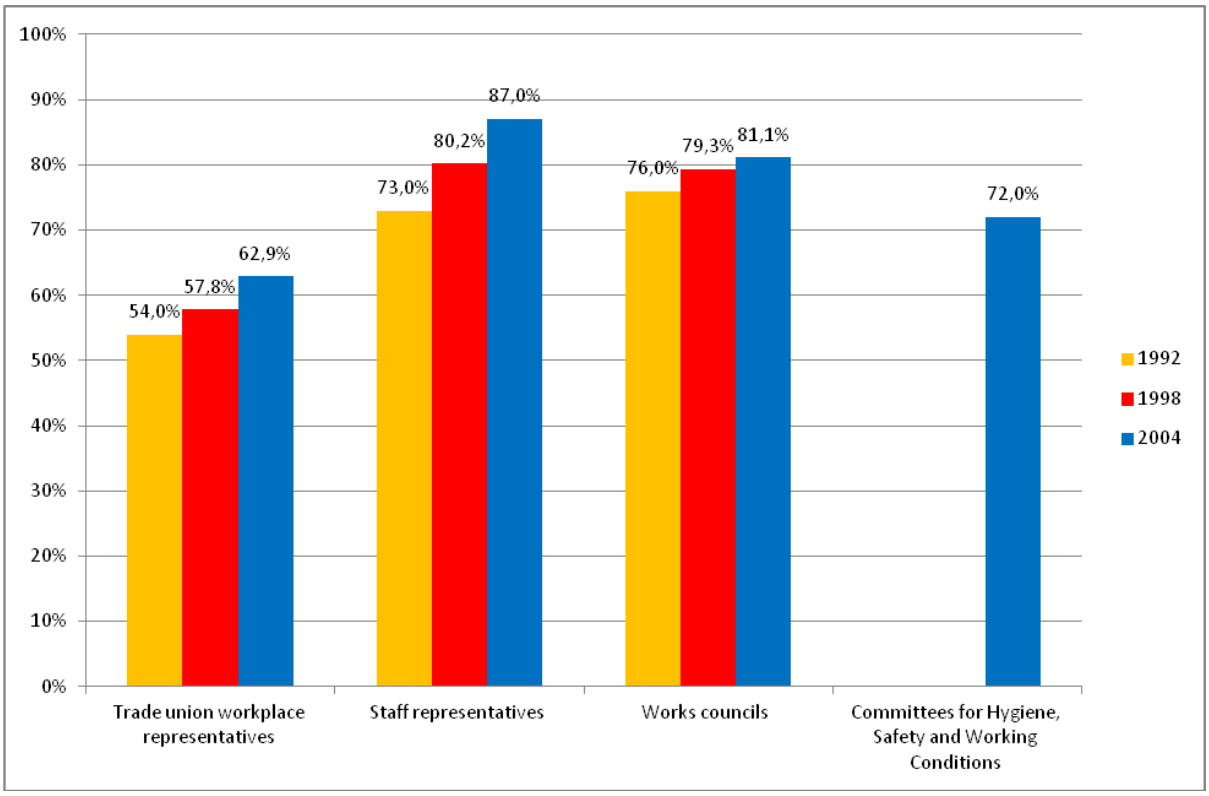
In spite of extensive legal regulation for all these institutions, coverage is high but does not include all workplaces. In 2004, 77 per cent of all workplaces with at least 20 employees reported the existence of at least one form of institutionalised employee representation. For companies with more than 50 workers, the figure increases to 93 per cent. There are considerable sectoral differences (Amossé, 2006; Combault, 2006). Figure 5.2 provides information on the presence of different types of employee representation over time. As the data show, the presence of all institutions is rising. This might partly be the result of decentralisation of French industrial relations to the company level, as discussed above. Amossé (2006), for instance, finds that most of the new trade union workplace representatives were established in order to negotiate the implementation of the 35-hour working week.

Employee representation in the public sector is characterised by a range of very different institutions than the private sector. These are discussed here very briefly since civil servants may not file claims to the regular labour courts (see above). Bevort and Jobert (2011) identify three main institutions of public sector workplace representation. Joint administrative committees (*commissions administratives paritaires*, CAP) consist of members of the administration and, to equal parts, trade union delegates. Union delegates are elected for a three-year term. CAPs exist in different parts of the public sector, at different levels, and for different categories of civil servants. The body is responsible for career issues such as

recruitment, promotion or, more generally, discipline. Second, technical committees (*comités techniques*, CT) are similar to CAPs and deal with issues regarding the professional status of civil servants.

Finally, the High Council for the Civil Service (*conseil supérieur de la fonction publique*, CSFP) exists at three different levels; state, regional and for the public hospital sector. CSFPs consist of members of the respective administration and union delegates, although parity was abandoned in 2010. The body deals with issues of a general nature, such as policy initiatives concerning the status of civil servants.

Figure 5.2 – Proportion of Workplaces with Institutionalised Workplace Representation



All workplaces with more than 50 employees
Source: Amossé (2006)

In general, there is little dispute that these institutions are considerably less powerful than their equivalents in the private sector. The main reason for this is the strong role of the law and government decrees in regulating the employment relationship in the public sector and, in turn, the subordinate role of collective bargaining. As a consequence, research by Amossé (2006) has shown that public sector employees show little interest in employee representation bodies.

In contrast to France, Germany has a single body of employee workplace representation, the works council (*Betriebsrat*) that has a strong juridified institutional basis similarly to employee representation in France. According to the Works Constitution Act (*Betriebsverfassungsgesetz*[65]) establishments with at least five employees have the right to establish a works council (section 9). The statutory minimum size of the works council is determined by the number of employees,[66] for instance one works councillor for 5–20 employees, three for 21–50 employees, five for 51–100 employees, etc. Larger establishments with at least 200 employees have the right that one or several works counsellors are released from their regular duties in order to commit themselves to the work as an employee representative (section 38). In addition, the Works Constitution Act establishes a range of provisions concerning employee representation, for instance election mechanisms for the works council. Moreover, it defines a range of co-determination rights and thus, more generally, the works councils' *modus operandi*.

Thus, a works council represents all employees in the workplaces with the only exception being senior executives (*leitende Angestellte*). Officially, the works council is separated from trade unions although a significant proportion of works councillors are union members. In 2010, 73 per cent of all works councillors were members of a union affiliated to the German Trade Union Confederation (DGB) (Greifenstein, *et al.*, 2011). The law also describes the relationship between works' council and management, stating that the "employer and the works council shall work together in a spirit of mutual trust" (section 2).

Indeed, it is often reported that, in practice, relations between the two parties are characterised by "the dominating principle of 'trustful cooperation'" (Keller, 2004: 231). This principle also includes another 'peace obligation', which forbids works councils, among other things, from calling for strikes (section 74). This institutionalised cooperation between employee representatives and management is unique in the three countries under study. In addition to works councils, employee representation at workplace level is also manifested, under certain circumstances, in their representation on the company's supervisory board.

Empirical research shows that in 2009 only 10 per cent of all establishments had a works council, but these establishments employed 44 per cent of all workers in Western Germany and 36 per cent of all workers in Eastern Germany. Moreover, there are substantial sectoral

[65] English translation published by the Federal Ministry of Justice (Bundesministerium der Justiz, nd-b).
[66] Only employees with voting rights are counted.

differences. In waste management, water supply, energy and mining 86 per cent of the employees in the West and 65 per cent in the East were covered by a works council, whereas this is only the case for 12 per cent and 16 per cent of all employees in the hotel, restaurants, catering, and other services sector in 2011 (Hans Böckler Foundation, 2012).

With regards to individual labour disputes German works councils have two significant roles. First, according to section 102 of the Works Constitution Act, the employer must inform the works council before a dismissal takes place. This applies to statutory and extraordinary notices of dismissal.[67] If the works council is not informed, the dismissal is legally void. Once the works council is informed, it may issue an objection if it concludes that the dismissal is unfair. In a case where the employee is dismissed anyway and decides to take legal action against the employer, the latter has, once the notice period has expired, to continue the employment relationship with the employee concerned until the court case is closed. This only applies to statutory notices of dismissal and under conditions that the claim has a realistic chance of success and is not abusive, the works council's objection is justified, and the ongoing employment does not place an undue financial burden on the employer.

Second, the Works Constitution Act sets out the right for every employee to "make a complaint to the competent bodies in the establishment if he feels that he [sic] has been discriminated against or treated unfairly or otherwise put at a disadvantage by the employer or by other employees of the establishment" (section 84). If a works council is present at the workplace, it is obliged to hear all claims brought forward by an employee and, if justified, to discuss the issue with management. In cases where the two parties, works council and management, do not reach an agreement, the works council has the right to appeal to the conciliation committee (*Einigunsgsstelle*) in order to settle the conflict.

According to section 76, the conciliation committee consists of an equal number of members delegated from management and the works council, and an independent chair. If the committee fails to reach an agreement, either side can take the case to a labour court. Irrespective of the outcome of the conciliation hearing, the employee concerned may also take legal action against his/her employer. In practice, observers report that the initiation of a

[67] According to section 626 of the German civil code (*Bürgerliches Gesetzbuch*), "The service relationship may be terminated by either party to the contract for a compelling reason without complying with a notice period if facts are present on the basis of which the party giving notice cannot reasonably be expected to continue the service relationship to the end of the notice period or to the agreed end of the service relationship, taking all circumstances of the individual case into account and weighing the interests of both parties to the contract" (translation provided by the Bundesministerium der Justiz (nd-a))

conciliation committee meeting "is the exception rather than the rule" (Dribbusch, 2010). An analysis of data from the 2005 WSI Works Counsellor Survey[68] shows that 14 per cent of the surveyed workplaces with a works council had experienced the initiation of a conciliation committee in the previous two years.

Similar to the section on collective bargaining above, the section on the UK departs from the usual structure on employee workplace representation. The reason for this is that there is no comprehensive legal framework for ongoing representation and no structure similar to those in France or Germany. Rather, there is a great variety of institutions that may represent the interests of the workforce, or parts of it. The section reviews existing legislation before discussing employee representation through trade unions and briefly referring to non-union workplace representation.

As discussed earlier, there has been very little regulation of employee representation at the workplace in the UK before the 1990s. In 1995, the Conservative government, in reaction to a ruling of the European Court of Justice, introduced some provisions to designate employee representatives if no union is recognised in order to inform and consult them about planned redundancies and transfers of undertakings (Hall, 1996). Further impetus from the EU came through the implementation of the Working Time Directive (1998) and the Parental Leave Directive (1999) that simulated 'workforce agreements' to implement national law into workplace practice (Terry, 2003). More stable legal mechanisms for consultation are in place with regards to health and safety in union and non-union workplaces.

Substantive legislation for compulsory trade unions recognition for collective bargaining on pay, hours and holidays at the workplace was passed in 1999. If unions succeed to prove to the independent Central Arbitration Committee (CAC) that they are independent and that a majority of employees in the 'bargaining unit'[69] wants to be represented, the employer is compelled to recognise the union. The latter has to be assured either through a ballot in which more than 50 per cent of the employees must vote in favour of union recognition and these 50 per cent must represent at least 40 per cent of all the employees concerned, or through proof that more than half of the employees in the bargaining unit are members of the applicant union(s).

[68] See German data analysis in Section 5.3 for more information on the survey.
[69] The bargaining unit is the group of workers concerned. This may be a workplace, parts of a workplace, or several workplaces within one company. Provisions only apply to employers with 21 or more employees.

In practice, legislation was mainly to convince employers to recognise unions voluntarily rather than through statutory procedures involving the CAC. Research by the British Trade Union Congress (TUC) shows that out of almost 1,200 cases in which unions won recognition between 2000 and 2005 only 90 local union representatives were granted recognition by the CAC (cited by Fulton, 2011).

Another major development in the legal framework for employee representation in the UK was the transposition of the 2002 European Directive on information and consultation into the Information and Consultation of Employees (ICE) Regulations 2004. The law states that 10 per cent of the workforce (at least 15 and not more than 2,500 workers) may request negotiations between management and elected employee representatives on information and consultation arrangements within the company. If no agreement is reached, legislation sets out standard provisions for information and consultation on the present or future of the company's economic situation (information only); employment, including planned restructuring and redundancies (information and consultation); and decisions affecting work organisation (information and consultation 'with a view to reach an agreement') (Hall, 2009). Commentators have argued, however, that "the legal framework has proved largely peripheral" (Hall, *et al.*, 2013: 377).

Finally, the 1994 European Works Council (EWC) Directive was extended to the UK in 1997 and implemented into national legislation in 1999. Regulations touch upon the installation and functioning of transnational employee representation institutions within Multinational Companies (Waddington, 2011). Hence EWCs do not primarily deal with issues relevant to the everyday management of the workplace and are, thus, less relevant to this research.

Having briefly reviewed the legal provisions on employee representation in the UK, the discussion now turns to some stylised forms of involvement. Traditionally and arguably still today, the most important form of employee workplace representation is based on trade union delegates, shop stewards or trade union representatives. Since UK industrial relations legislation does not provide any 'rights and duties' for shop stewards there is a variety of roles that these actors can take.

At least two general observations can be made. First, trade union representatives depend on the recognition of the employer. As discussed above, compulsory recognition has only been introduced recently and is substantially less comprehensive than in France or Germany.

Second and unlike the French personnel delegates or the German works councils, shop stewards are primarily concerned with and act on behalf of union members in their undertaking (Terry, 2003). Strictly speaking, they do thus not qualify as *employee* representatives.

Table 5.3 and Table 5.4 show data from different editions of the Workplace Industrial/Employment Relations Survey (WIRS/WERS) on trade union presence. There are distinct sectoral patterns of employee workplace representation. Union recognition is over the entire period considerably higher in the public than in the private sector. In the latter, coverage has decreased dramatically; by two-third between 1980 and 2011. The collapse is more pronounced in manufacturing and extraction than in the services where the rate was traditionally lower. Looking at data for workplaces with 10 or more employees, both sectors seem to converge at a low level.

Table 5.3 – Workplaces with at least 25 employees with recognised trade unions, 1984–2011, in %

Sector	1980	1984	1990	1998	2004	2011
All	64	66	53	41	38	36
Private	50	48	38	24	22	17
Manufacturing and extraction	65	56	44	28	38	26
Services	41	44	36	23	19	16
Public	94	99	87	87	87	92

Source: own calculations with data from Department for Business, et al. (2013) and Forth, et al. (2008)

Table 5.4 – Workplaces with at least 10 employees with recognised trade unions, 1998–2011, in %

Sector	1998	2004	2011
All	33	26	23
Private	20	14	10
Manufacturing and extraction	31	22	12
Services	18	13	10
Public	83	81	87

Source: see Table 5.3

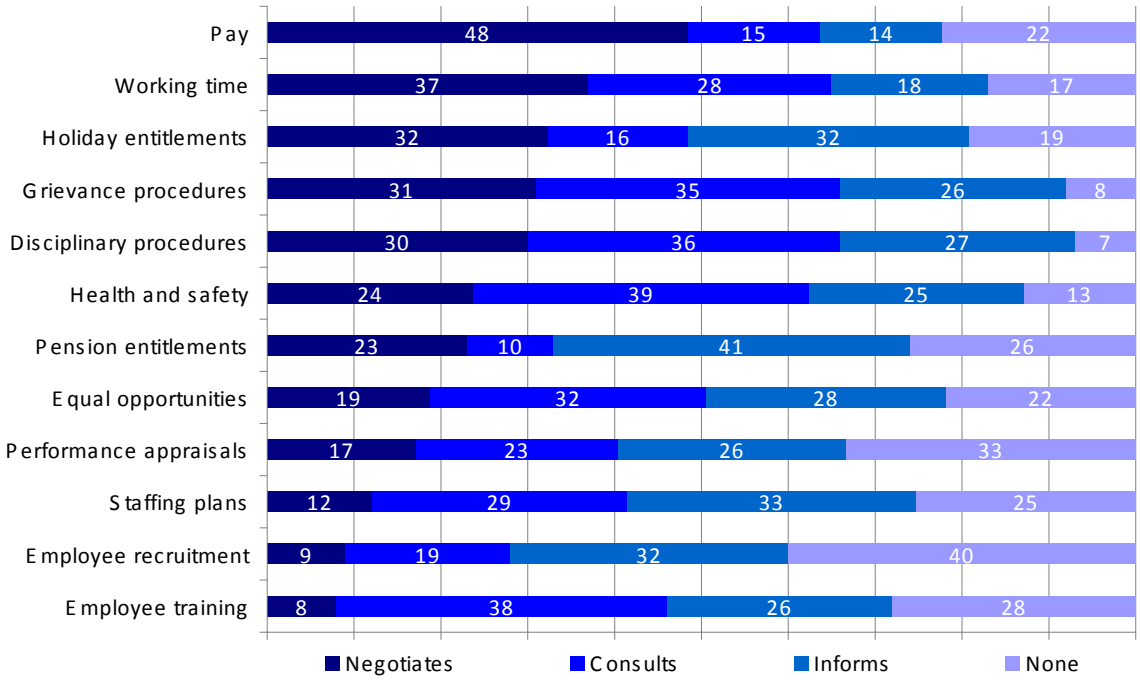
As mentioned above, the rights and responsibilities of employee representatives are not detailed in UK legislation, but have to be negotiated between unions and management. In very general terms, the role of a trade union representative is to "discuss any concerns you have about your employer, go with ('accompany') you to disciplinary or grievance hearings with management, represent you in negotiations ('collective bargaining') over your pay and terms and conditions of employment, meet with your employer to find solutions to workplace

issues, [and] develop the best possible health and safety procedures with your employer", according to Government information (GOV.UK, 2013). Figure 5.3 shows data from WERS5 (2004) on the role of trade union reps (Kersley, *et al.*, 2006).

Indeed, bargaining on pay, working time and holidays are the primary issues on which shop stewards have negotiation rights. Moreover, more than 90 per cent are in some way involved in grievance and disciplinary procedures, and some 87 per cent deal with health and safety. It must be noted, however, that union representatives are only present in some 30 per cent of all workplaces with significant sectoral differences. Moreover, shop stewards are more likely to be found in long-established and large workplaces (Kersley, *et al.*, 2006).

In addition to the traditional model of representation through trade unions, increased attention by both academics and practitioners is paid to alternative arrangements for employee involvement. The key concepts are non-union forms of employee involvement and mechanisms to allow employees to express any issues directly to management (so-called 'direct voice' in contrast to 'representative voice' with trade unions as an intermediate actor) (Bryson, 2004).

Figure 5.3 – The Role of Shop Stewards Depicted by WERS2004



Source: Kersley, et al. (2006)

Not surprisingly, the varieties of alternative forms of employee involvement are substantial and an extensive review is beyond the aim of this chapter. There is, however, a considerable and growing body of literature that deals with the topic and most observers are rather sceptical about the efficiency of such arrangements (for instance Terry, 1999; Butler, 2005). Empirical results presented but Bryson (2004: 234), on the other hand, seem to suggest that "nonunion voice is more effective than union voice in eliciting managerial responsiveness in British workplaces, and direct voice is more effective than representative voice (whether union or nonunion)".

This section has shown the different institutional settings through which employee interests are represented at workplace level. France is characterised by strong regulation and a number of parallel employee voice institutions with different and sometimes overlapping responsibilities. Germany's works councils are a single channel for employee representation and formally separate from the unions. Although rules for their establishment and functioning are detailed by law, there is in contrast to France no legal obligation to have a works council. The voluntarist system in the UK is not strongly regulated and is largely fragmented. Trade union workplace representation is the most common form of representation.

In general, it is expected that the existence of any of the employee representation bodies has a negative impact on the likelihood of a claim to the labour court. Since these bodies serve different purposes, their impact might also different. In France, it has been noted that there is little research on the actual functioning of these institutions within the workplace (Béthoux and Meixner, 2012). The likely effects are, thus, mainly derived from the institutional setup of these bodies. As discussed above (Section 4.3), the role of trade unions is expected to be ambiguous since they might serve as an arbiter, but also inform employees about their rights, eventual breaches and the possibilities for legal remedies. In this case, however, there are two reasons why the negative impact on the likelihood for a claim should be stronger than the positive ones. First, the legal mobilisation argument predominantly applies to unions that have difficulties organising effective workplace representation.[70] Second, it is reported that trade union presence increases the activities and effectiveness of other employee representation bodies (Bevort and Jobert, 2011), which may, in turn, counterbalance any

[70] The German case is particular in that respect because works councils are formerly separate from the unions. The high unionisation rate among works councillors, however, guarantees some involvement of the union movement in workplace representation.

potential legal mobilisation effects. Thus, the presence of unions is expected to have a negative impact on the incidence of a court claim.

In theory, the ideal conflict resolution bodies in France are the staff representatives since they are designed to settle individual disputes. It has been argued, however, that their role in workplace employment relations tends to be weak as they are often in between the unions and the works council, in particular since the rights for CEs have been extended (Béthoux and Meixner, 2012). Nevertheless, DPs are expected to have a negative impact on the incidence of court claims, although the magnitude of that effect might be cushioned by their institutional weakness. This implies the importance of works councils whose extended rights in information and consultation, in particular on issues around redundancies, should decrease the reliance on labour courts. This effect might be mitigated by their relatively weak role in actual decision making due to the lack of co-determination rights. The weakest effect of all representation bodies is expected from the CHSCT although their role in occupational health and safety might increase workplace safety and, in turn, lower the number of claims concerning such issues.

In addition, it has been argued that the effectiveness of workplace representation institutions largely depends on the resources available to these bodies, and on their institutional involvement (Ires-Dares, 1998). Whereas it is difficult to measure the former given the available data, the latter can be assessed. If a cumulative effect is assumed, the likelihood for a court claim should decrease with the number of employee representation bodies in the workplace.

German works councils have a strong role in the articulation and settlement of work-related conflict. In particular, they are expected to have an impact on conflict avoidance and conflict settlement. In general terms, conflict avoidance occurs because works councils have a strong constitutional position and are thus expected to restrain abusive or unfair management behaviour. In terms of dismissals, the works council's right to object might lead the employer to evaluate the justification for the dismissal more carefully. With regards to conflict settlement, German legislation provides employees with the right to be heard by their works council, and the works council with the right to be heard by the employer (Works Constitution Act, section 74), either informally, through their regular meetings, or, in exceptional cases, through a conciliation committee. Hence, not only the existence of a works council is expected to be important, but also its role in managing the workplace. In particular,

we will look at the extent to which the prescribed ‘spirit of mutual trust’ (Works Constitution Act, section 2) is implemented into workplace policies. In other words, a works council that operates in a trusting cooperation with management is likely to be more successful in limiting the externalisation of conflict (see Frick, 2008 for a similar argument).

The largely fragmented situation of employee representation in the UK makes it difficult to formulate precise predictions. In general, it is expected that trade union representation has a stronger negative impact on the incidence of employment tribunal claims than non-union form of representation because the literature suggests that the former is more efficient than the latter (Terry, 2010; Butler, 2005). Since there is a wide range of different forms of employee representation, the points about resources and relations to management made for France and Germany are expected to apply to an even greater extent to the UK. Hence, it is likely that we see a stronger negative effect on the likelihood for employment tribunal claims in companies with well resources trade union representation and a good working relationship with local management.

5.2 Descriptive Data Analysis and the Juridification Argument

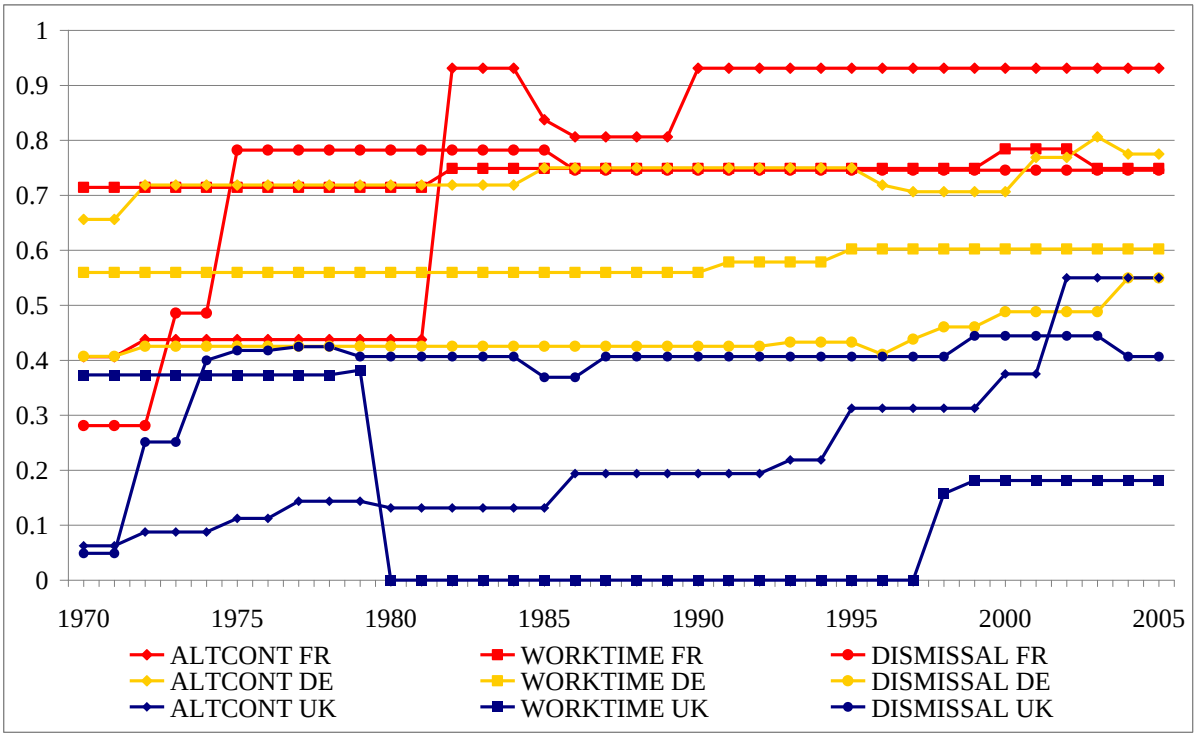
This chapter uses country data employed for the regression analysis presented in Chapter 4 to explore country patterns for the three selected states in greater detail, in particular to shed light on the juridification argument, and to analyse data in their national institutional context. Therefore, we will use the labour regulation index developed by Deakin, *et al.* (2007a). It is argued that juridification appears to be an interesting explanation complementary to those presented above.

We use longitudinal data compiled by Deakin, *et al.* (2007a) that consist of 40 variables covering five aspects of labour regulation; atypical employment, dismissal, working time, employee representation and industrial action. The indices take into account both formal source of 'hard' law and self-regulatory instruments and mechanisms of 'soft' legislation. Since this research focuses on individual labour law only the three first indicators are used (ALTCONT, WORKTIME, DISMISSAL). Measures concerning collective regulation are excluded because our analysis is focused on the enforcement of individual legislation. Moreover, a distinction is made in the analysis between those forms of regulation that are enforceable through the tribunal system and the 'softer' forms because the latter can obviously not impact the incidence of labour court or employment tribunal claims. Selected developments in national labour law as depicted by Deakin, *et al.* (2007a) are shown in Figure 5.4. The authors challenge the assumption of a 'strong' legal origins hypothesis since they find substantial differences between common law countries (UK, United States and India, but the scores for the latter are not reported here), and modest signs of convergence between the groups.

Based on the extract of indicators and countries presented, it is possible to identify three distinct patterns (see Figure 5.4). For most of the period covered, France has the strongest regulation of individual labour law, followed by Germany and the UK. Over most of the period covered by the data, Germany and the UK record similar levels of dismissal protection but overall, regulation in Germany remains stronger. Although scores differ substantially throughout the whole period, a process of juridification since 1970 is particularly visible in France and the UK. Both countries record substantial increases in dismissal legislation in the first half of the 1970s, whereas Germany records relatively few changes. Whereas juridification in France takes place through few reforms with great impact, the development in the UK is characterised by gradual changes.

With regards to alternative forms of employment, France reports a steep increase in regulation in the early 1980s whereas regulatory framework in the UK developed gradually, to some extent as a result of European legislation on atypical employment. In Germany, on the other hand, both indicators developed gradually with only a mild upward trend. The patterns for working time regulation are slightly different. Both France and Germany record slight and gradual increases over the period covered. In the UK, on the other hand, working time regulation existed through collective bargaining until the early 1980s. After the collapse of these provisions, working time remained largely unregulated until the UK Government opted into the EU Social Chapter and implemented the Working Time Directive. This is an interesting case in point for juridification and is therefore discussed in greater detail in the concluding remarks of this chapter.

Figure 5.4 – Developments in Individual Labour Law, 1970–2010



Source: Deakin, et al. (2007a)

Before analysing the impact of juridification on labour court claims, it is worth reemphasising that the claims data reflect slightly different national systems of employment law enforcement. As previously touched upon, the institutional configuration of labour courts and employments tribunals are not identical. As has been argued, German courts have the most substantial coverage, i.e. they cover both individual and collective issues from the public and

private sector. Therefore, to a certain extent, the data presented reflect national idiosyncrasies, which slightly limit cross-country comparability. This does not, of course, apply to the analysis of changes over time within one country.

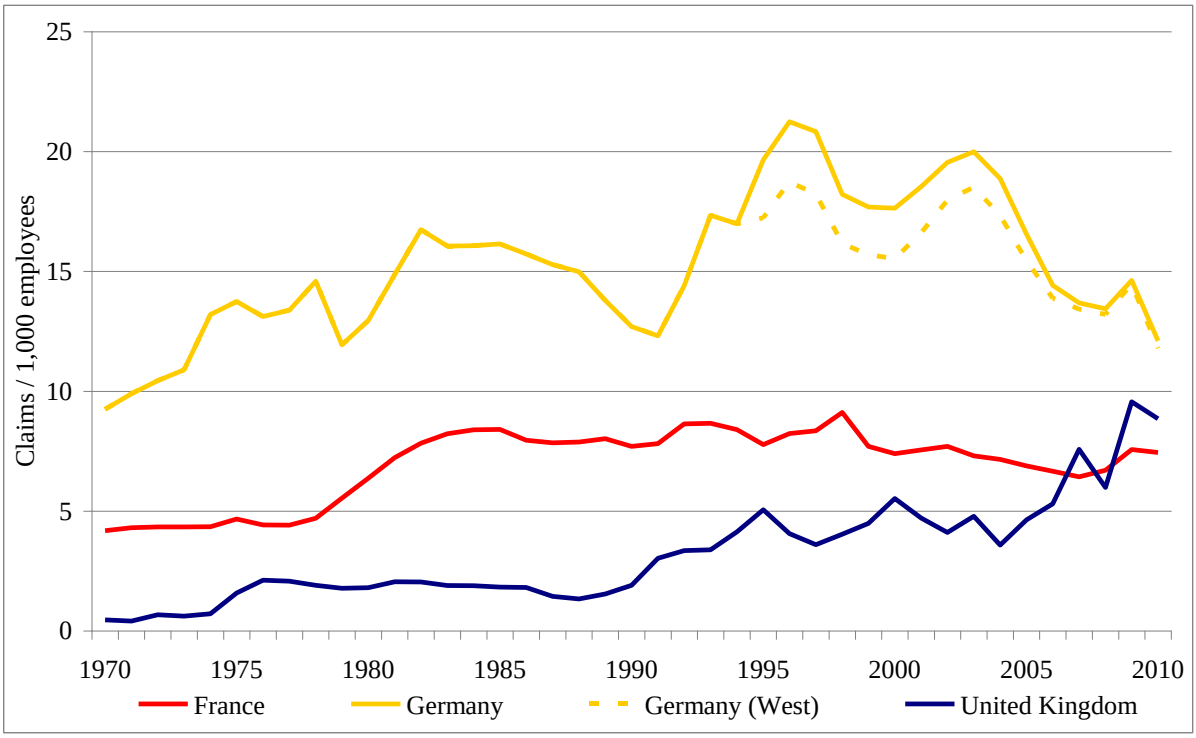
For the graphical analysis conducted here, data for France, Germany and the UK have been collected for a longer period (1970–2010) than for the statistical analysis in Chapter 4, for two reasons. First, it allows coverage of a period of interesting legal changes in the 1970s, especially in the UK. Second, data on legal developments exist for the years 1970 to 2005 and a longer time series permits exploring the relationship in more detail. Figure 5.5 shows the claims ratio for the three countries over the extended period. Since it has been argued that the likelihood for labour court claims in East Germany were, controlling for labour market conditions, significantly more likely than in the West (Schneider, 1999) the dotted line continues the West German series up until 1995, when data on East Germany entered official statistics.

Although it has been argued above that cross-country data comparability is limited, some trends can be identified based on the data presented in Figure 5.5. First, the country with the strongest regulation, France, is not the one with the highest rate of claims, but Germany is. Although detailed data are not available, it seems unlikely that the substantial difference between the two countries is only due to more comprehensive legal responsibilities of the German courts. On average, France received 7 and Germany 15 claims per 1,000 employees. Differences in economic conditions do not appear to sufficiently explain the gap either since France records, over the same period, higher average levels of unemployment (7.5 per cent) than Germany (6.4 per cent), although the latter reports stronger volatility in unemployment than the former (coefficient of variation of 0.45 and 0.34, respectively). As discussed above, however, both countries show remarkable differences in industrial relations institutions with virtually complete collective bargaining coverage in France and, although institutionally weaker, a higher proportion of workplaces covered by institutions representing the interests of employees. We will assess this argument in more detail in the next sections.

The UK, finally, has the lowest average rate over the period covered (3 claims per 1,000 employees) but at the same time the most impressive rates, of increase so that it took over second place from France in 2007, 2009 and 2010. Over the whole period, the rate of claims has increased by the factor 1.8 in France, 1.3 in Germany, and 19.3 in the UK. Although this indicator masks important variations in the countries within this period, as Figure 5.5

demonstrates, it gives an idea of the constant increase in the UK whereas more volatile developments are recorded in France and Germany. The aggregated scores for the three individual employment regulation indicators increased by a factor of 2.3 in the UK, 1.7 in France and 1.2 in Germany. The difference is even more pronounced when working time regulation through non-enforceable collective agreements in the UK is excluded. In that case, the individual employment law indicators have risen by the factor 10.2 over the period. Hence, the increase of the claims ratio in the UK is almost twice as high as the increase in employment legislation (19.3 and 10.2, respectively). These first findings already suggest that developments in the legal framework have some explanatory power for the incidence of labour court claims over time. Detailed cross-country comparison, on the other hand, would require similar data for a larger country sample in order to have sufficient data points to include the information in a regression model as presented in Chapter 4, and thus to account for other institutional factors.

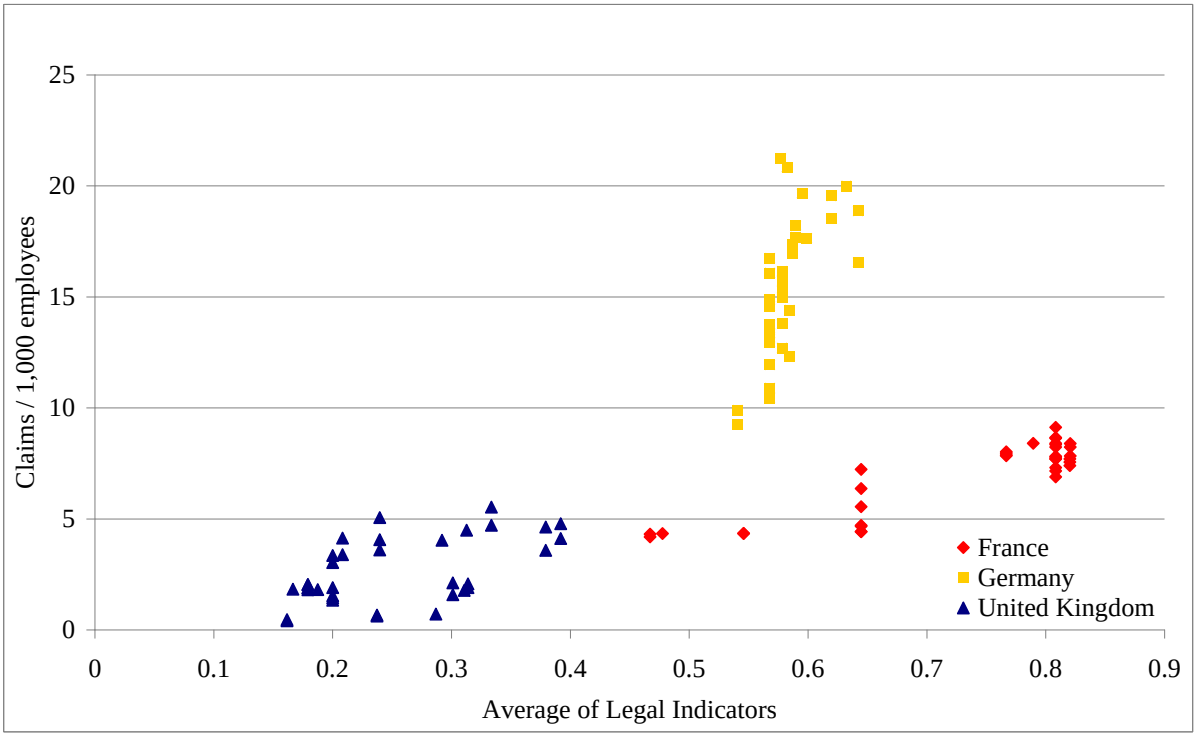
Figure 5.5 – Labour Court Claims per 1,000 employees, 1970–2010



A more complex picture becomes evident when both data sets are combined. Figure 5.6 shows a scatter plot with the average of the three legal indicators on the x-scale and the claims ratio on the y-scale. The theoretical propositions made above led to the expectation that stronger regulation results in higher caseloads for labour courts and employment tribunals. Hence, we would expect a linear relationship between the legal indicators and the

claims ratio. The figure shows, however, that only France and the UK react in accordance with our hypothesised relationship. Both countries show a roughly linear and consistent correlation, which support the claim that changes in the legal framework might well account for different levels of court claims. Germany, on the other hand, shows a particular pattern since it combines relatively few changes in its legal framework (or little variance on the x-scale, cf. Blankenburg and Rogowski (1986)) with high volatility in labour court claims (or pronounced variation on the y-scale). Hence, it is not juridification alone that provides a sufficient explanation for the incidence of conflict externalisation over time, and dynamics may differ between countries.

Figure 5.6 – Average of Legal Indicators and Claims per 1,000 employees, 1970–2010



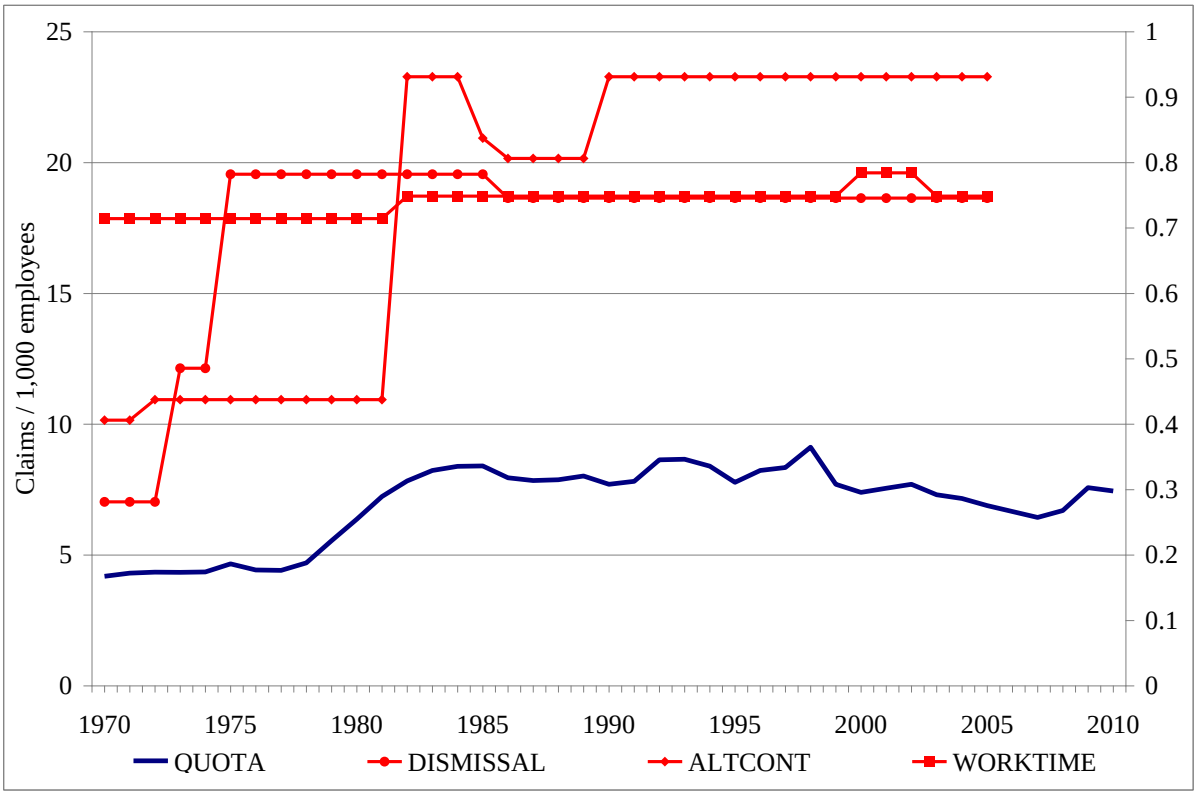
The subsequent section analyses the individual countries in greater detail in order to account for the specific dynamics. Therefore, at least two graphs are presented for each country. The first set of figures plots the court claim quota against the legal indicators on individual employment law for each country separately, but in a way that allows cross-country comparison. In order to account for country-specific dynamics, a second graph presents the number of claims per country supplemented with data from a range of different sources. The focus is placed on legal changes. Unemployment is used as a proxy for the argument on economic conditions, and to illustrate the interplay of different explanations; reference to the industrial relations argument is only made sporadically. If not stated differently, information

on changes in the legal framework are taken from Deakin *et al.*'s comprehensive data annex (Deakin, *et al.*, 2007b).

France

Data on France are shown in Figure 5.7 and Figure 5.8. The development of labour court claims in France is characterised by a period of relative stability between 1970 and 1977 (mean of 4.4 claims, red line in Figure 5.8) and little volatility (standard deviation of 0.14 and coefficient of variation of 0.03), followed by a significant 90 per cent increase between 1977 and 1985, and subsequently by another relatively stable period thereafter. Between 1985 and 2010, claims range around a mean of 7.7 applications per 1,000 employees (red line in Figure 5.8). Volatility in that period was substantially higher than between 1970 and 1977 (minimum: 6.4 claims in 2007, maximum: 9.1 claims in 1998, standard deviation: 0.65, coefficient of variation: 0.08), but still modest compared to Germany and the UK.

Figure 5.7 – Labour Court Claims and Legal Developments in France, 1970–2010

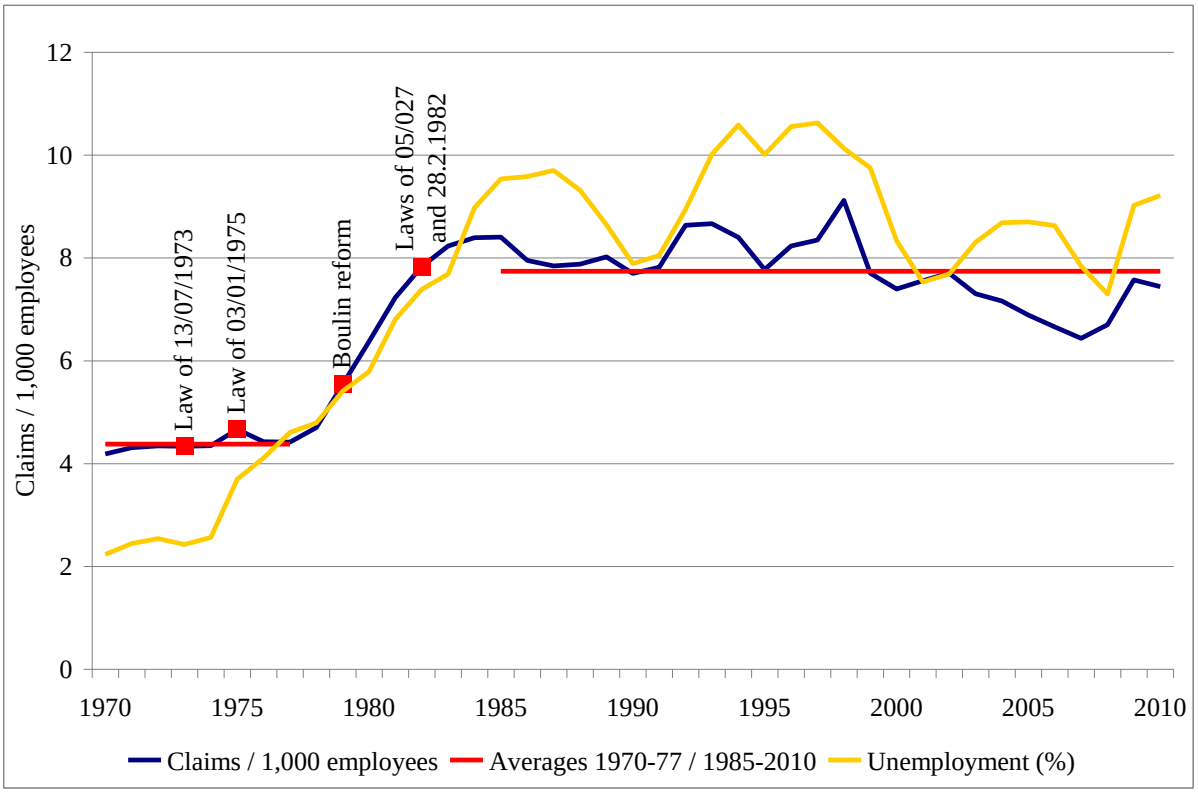


Juridification in the period under study took place in two steps (see Figure 5.7). In the mid-1970s, dismissal protection was substantially improved. In 1973, standards for unfair dismissal were introduced as well as procedures to be followed to render a dismissal justified, and dismissal compensation was doubled. Further reforms in 1975 regulated dismissals for

economic reasons and introduced, among other things, selection criteria for economic dismissals, compensation mechanisms, and the requirement to be granted permission from the state authorities (changed to notification in 1986).

The second step in 1982 raised standards for atypical employment contracts and included a range of equal treatment measures for part-time, fixed-term and agency workers, legitimate grounds for limiting the duration of employment contracts, and the restriction of agency work. The organisation of the labour court system changed in 1979 with the Boulin reform discussed in the previous section that extended courts' competences and increased geographical coverage making justice generally more accessible.

Figure 5.8 – Labour Court Claims, Changes in the Legal Framework and Unemployment in France, 1970–2010



Source for unemployment data: OECD

At first sight, reforms starting in 1973 appear to be followed by a substantive rise in court claims in the subsequent period. This impression is put into perspective when unemployment, which spiked after the 1973 oil shock, is added to the equation (Figure 5.8). Since the relationship between unemployment and court claims has been found to be highly significant in the analysis in Chapter 4, the precise impact of juridification remains unclear. Rather, the number of applications to the *prud'hommes* closely follows the development of the

unemployment rate with the exception of the period from 2002 to 2004 when unemployment peaked and court claims declined.

It is unlikely, however, that the increase in court claims would have been as extensive as it was without changes in the legal system in previous years. As discussed above, rising unemployment is associated with or caused by higher rates of dismissal and, in turn, an increased amount of potential conflict. The provision of stronger protection mechanisms since 1973 that allowed employees to attack perceived unfair treatment was a necessary precondition for the rise of claims in the subsequent period. Without such a legal framework, the close association between unemployment and court claims would not be possible.

Germany

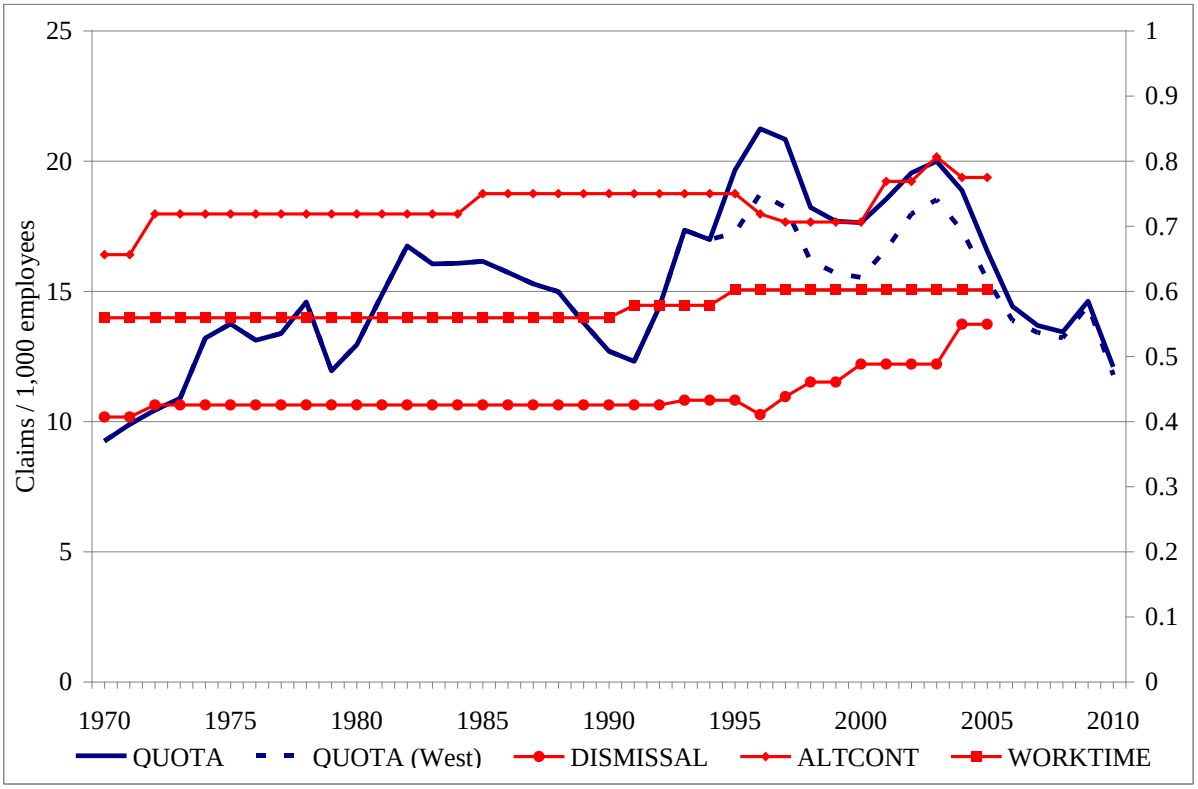
German statistics show quite a different picture from the ones depicted for France. As discussed above, the rate of claims to German labour courts is substantially higher and more volatile than their French counterparts, although the employment relationship is reported to be more strongly regulated in the latter (see Figure 5.5). It seems, however, that a certain pattern is common to both France and Germany although developments take place at different moments in time. Most notably, the introduction of comprehensive individual labour legislation in Germany started earlier than in France and is thus not covered by the data provided by Deakin, *et al.* (2007a).

The *Act against Unfair Dismissal* was introduced in 1951, some dismissal protection for atypical employment in 1960, statutory salary continuation in case of illness in 1956 and 1961, and measures to improve occupational health and safety in 1968. The legal indicators depicted in Figure 5.9 reflect, for the early period, the introduction of the 1972 Works Councils Act that regulates the statutory notification of the works council in case of dismissal,[71] and the Temporary Employment Act (*Arbeitnehmerüberlassungsgesetz*) from the same year that restricts the use of agency work. In the period starting in the mid-1990s all three indicators show signs of slight increase. This not, however, associated with increasing levels of labour court claims.

[71] It should be noted that the 1972 Works Constitution Act and the 1976 Co-Determination Act also allow works councils to bring claims concerning collective issues to court, which may account for some of the developments in that period (Malmberg, 2009, see above).

When a similar graph as the one on France (see Figure 5.8) is replicated for Germany and extended to earlier years, a certain similarity appears (Table 5.9). Similarly to France, there is a period of relatively low levels of claims and low volatility from 1957 to around 1969 (mean: 8.59, standard deviation: 0.73, coefficient of variation: 0.09). Between 1969 and 1975, the claims quota rises by some 70 per cent. Thereafter, data show a series of peaks and troughs at higher levels than in the earlier period (mean: 15.84) with considerable variance (standard deviation: 2.59, coefficient of variation: 0.16). There is, however, no clear trend towards more claims in general. Rather, claim rates drop in the late 1970s and reach pre-1975 levels in 1990–1991 and 2007–2010 (with the exception of 2009).

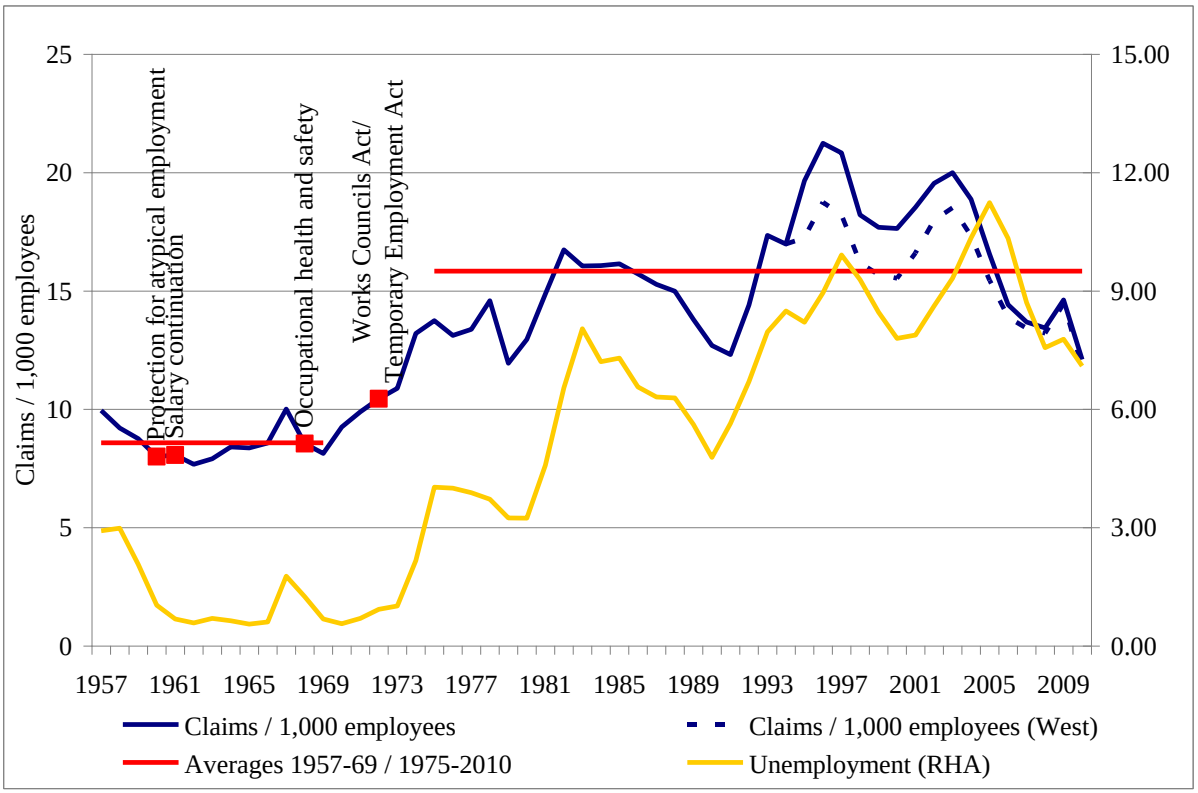
Figure 5.9 – Labour Court Claims and Legal Developments in Germany, 1970–2010



At the other extreme, the rate of court claims peaked in the years 1996 and 1997 with more than 20 labour court applications per 1,000 employees (21.2 and 20.8 in Germany and 18.7 and 18.2 in the West), and in 2002 and 2003 when claims rates hit twenty again (19.5 and 20.0, 18.0 and 18.5, respectively). Again, as Figure 5.10 shows, similarly to France, the rate of court claims closely follows the rate of unemployment. The average rate of people without employment between 1970 and 2010, however, is slightly lower in Germany than in France (6.4 per cent and 7.5 per cent, respectively), but the former shows stronger volatility (standard deviation: 2.84 and 2.57, coefficient of variance: 0.45 and 0.34). This

finding is in line with the argument made above that unemployment is a useful explanation for developments over time, but in this case it does not sufficiently capture differences between the two countries.

Figure 5.10 – Labour Court Claims, Changes in the Legal Framework and Unemployment in Germany, 1957–2010



Source for unemployment data: OECD

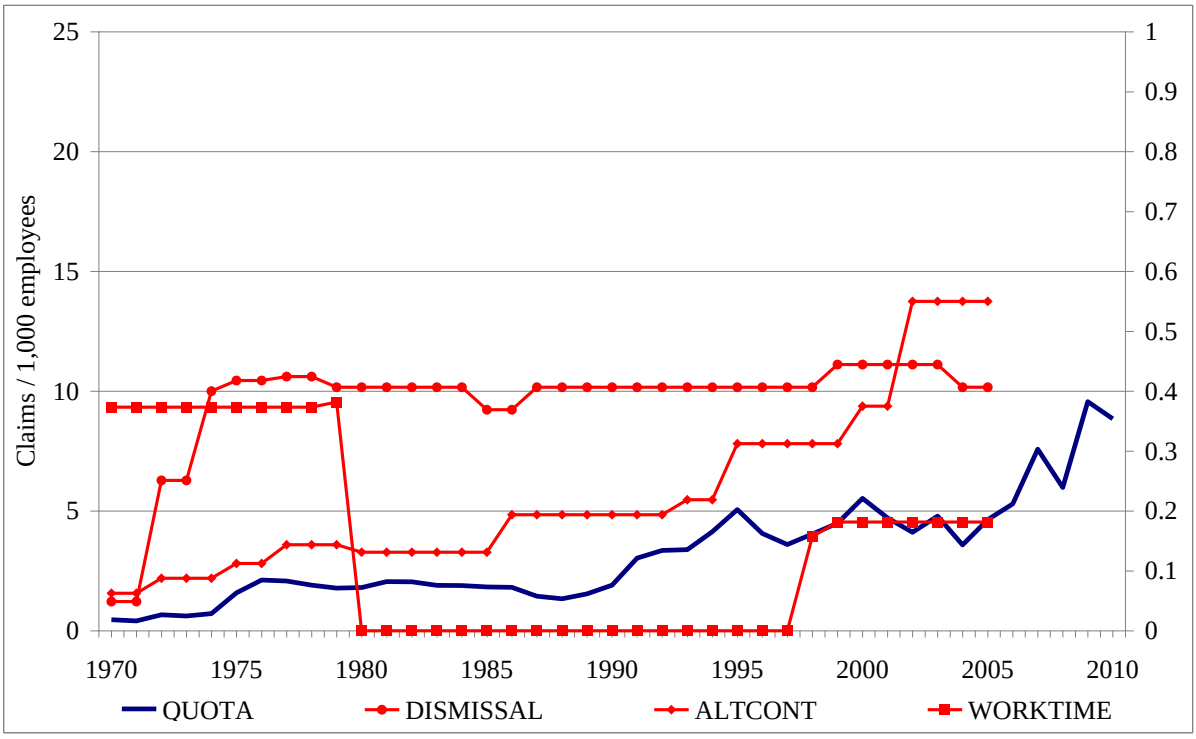
United Kingdom

Regulation of the employment relationship in the UK is substantially different from the other two countries. At the beginning of the period covered by the data, only rudimentary employment protections were in place. Working time regulation was achieved through collective agreements, which are not legally enforceable through the employment tribunal system. Subsequent years, however, have seen substantial changes in the legislative framework. The major innovation of unfair dismissal legislation was introduced with the Industrial Relations Act 1971 that included, among other things, standards for fair dismissal, and largely re-enacted in the Trade Union and Labour Relations Act 1974 and the Employment Protection Act 1975. The regulation of atypical employment progressed more gradually over the period, as Figure 5.11 shows. Applications to the employment tribunal system, on the other hand, have increased constantly over the period covered, from 0.5 claims

per 1,000 employees in 1970 to 8.8 claims in 2010. The remainder of this section will shed light on these developments and explore further particularities.

Most notably, the post-1973 peak in unemployment was more pronounced in the UK than in the France and Germany. Nevertheless, the rate of claims to employment tribunals remains relatively stable from 1973 to the late 1980s (Figure 5.12). This disparity changes slowly with the dip of unemployment in the late 1980s and the subsequent rise in the early 1990s. The developments of the two lines converge slowly ever since and the claims rate seems to follow unemployment more closely in recent years.

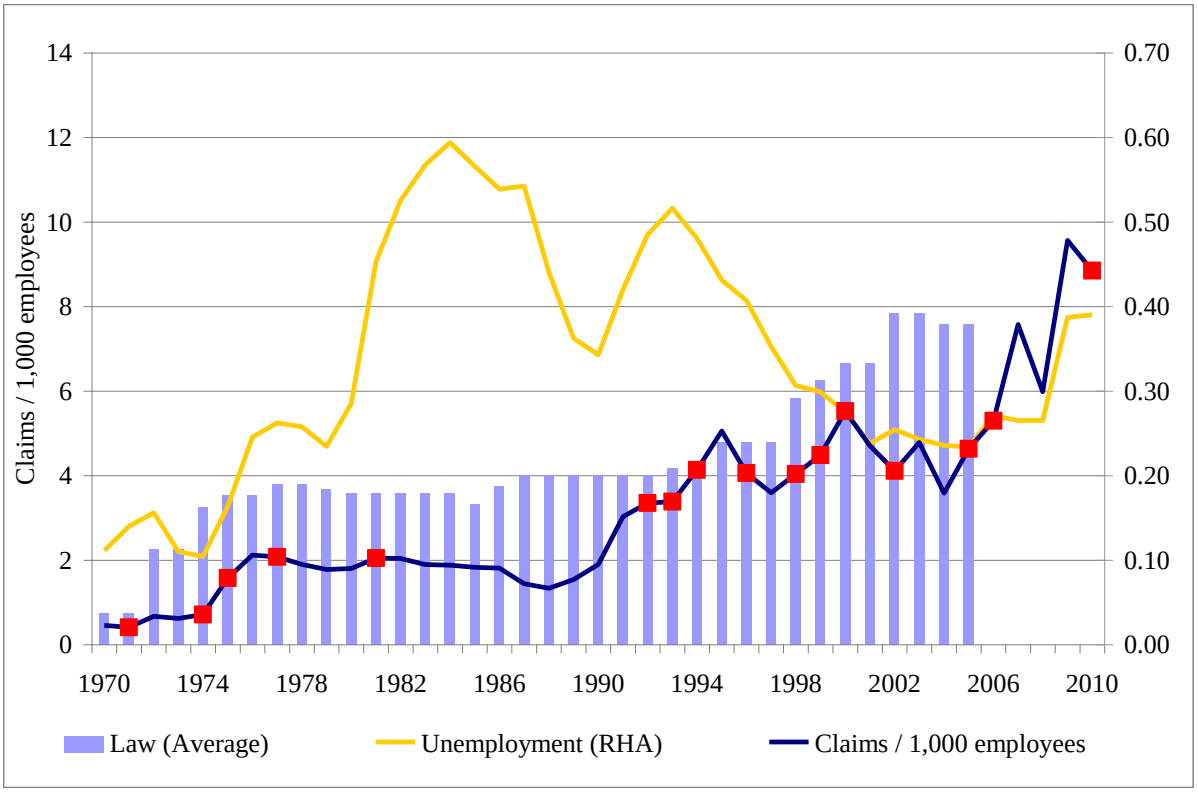
Figure 5.11 – Labour Court Claims and Legal Developments in the UK, 1970–2010



In order to explain this atypical behaviour, it is worth taking a third variable into account. Since the mid-1980s, the regulation of the employment relationship, as depicted by Deakin, *et al.* (2007a), increased through a number of substantial reforms (light blue bars in Figure 5.12). The red squares denote the introduction of new laws over which employment tribunals have jurisdiction, some of which are not covered by the data on labour regulation. An overview of the most important acts of the first half of the 1970s, most of them are now repealed, and the ones on which grounds employees may apply to an employment tribunal are given in Table 5.5 (repealed acts in italics).

The situation in the UK provides a slightly more complex situation than in France and Germany. In order to shed light on the dynamic, we discuss the development for two roughly equal periods, from 1970 to around 1990 and from 1990 to 2010. In the first part, we see a similar effect to that observed in France and Germany. Mainly as a result of three major reforms, the Industrial Relations Act 1971, the Trade Union and Labour Relations Act 1974, and the Employment Protection Act 1975, a rise in individual employment legislation is recorded in the UK. Thereafter, we see a substantial increase in tribunal claims between 1974 and 1976, preceded and followed by periods of relative stability until around 1990 (and no major changes to the legal framework). In these first twenty years, the rate of tribunal claims and the rate of unemployment follow rather different patterns.

Figure 5.12 – Labour Court Claims, Changes in the Legal Framework and Unemployment in the United Kingdom, 1970–2010



In the early 1990s, the UK had not only stronger employment regulation than ever before, but at the same time the influence of trade unions had decreased significantly, sectoral collective bargaining in the private sector had largely collapsed and bargaining coverage had decreased from 72 per cent in 1980 to 51 per cent in 1991 (Visser, 2011b). By the early 1990s, a number of reforms reinforced individual labour law, as depicted by the blue bars and red dots in Figure 5.12, and by Table 5.5. At the same time, the developments of unemployment and

the rate of tribunal claims seem to follow increasingly similar patterns. These results lead us to suggest that there might be conditional effects of the different indicators. The relationship between unemployment and court claims grows stronger as the amount and complexity of labour law increases and as the provision of collective employee voice through trade unions disappears from large parts of the economy.

Table 5.5 – UK Employment Regulation Enforced Through the Tribunal System

Year	Name
1971	*Industrial Relations Act (repealed)*
1974	Health and Safety at Work Act
1974	*Trade Union and Labour Relations Act (repealed)*
1975	Colleges of Education (Compensation) Regulations
1975	*Employment Protection Act (repealed)*
1975	Social Security Pensions Act
1977	Safety Representatives and Safety Committees Regulations
1981	Transfer of Undertakings (Protection of Employment) Regulations
1992	Trade Union and Labour Relations (Consolidation) Act
1993	Trade Union Reform and Employment Rights Act
1994	Deregulation and Contracting Out Act
1994	Notification of Existing Substances (Enforcement) Regulations
1994	Sunday Trading Act
1996	Employment Rights Act
1996	Employment (Industrial) Tribunals Act
1996	Health and Safety Consultation with Employee Regulations
1998	National Minimum Wage Act
1998	Public Interest Disclosure Act
1998	Working Time Regulations
1999	Control of Major Accident Hazards Regulations
1999	Disability Rights Commission Act
1999	Employment Relations Act
1999	Maternity and Parental Leave Regulations
1999	Transnational Information and Consultation of Employees Regulations
2000	Part Time Worker (Prevention of Less Favourable Treatment) Regulations
2002	Fixed Term Employees (Prevention of Less Favourable Treatment) Regulations
2002	Flexible Working (Procedural Requirements) Regulations and Flexible Working (Eligibility, Complaints and Remedy) Regulations
2002	Maternity and Parental Leave (Amendment) Regulations
2002	Paternity and Adoption Leave Regulations
2002	Tax Credits Act
2005	Road Transport (Working Time) Regulations
2006	Equality Act
2010	Agency Workers Regulations
2010	Equality Act

Source: justice.gov.uk (2012), amended; repealed acts in italics

Discussion

This section discusses the development of tribunal claims in the three core countries in more detail, and shed light on the juridification argument, given the data available. Although the analysis has shown that the juridification argument has some merit in explaining the incidence of labour court claims, it has also reemphasised the importance of an interdisciplinary approach drawing on literature from law, industrial relations and economics. As discussed, however, data on labour law are relatively scarce and there are some problems associated with a largely graphical analysis presented here. In particular, it is very difficult to account for the multitude of factors from the different approaches, and it is impossible to quantify the effect of a particular explanation or indicator.

For instance, it is not entirely clear why overall levels of the claims ratio are substantially higher in Germany than in the two other countries. A possible explanation might consist of different elements. First, parts of the high claim levels are accounted for by the more comprehensive responsibilities of the German labour courts, which were discussed above in this chapter. Second, data have shown that in comparison to France the coverage of employee voice institutions is lower in Germany, and shows a downward trend.[72] Compared with the UK, Germany has a longer tradition of comprehensive legislation and enforcement mechanisms. Finally, the country juridified earlier than the two others and records the closest relationship between claims ratio and unemployment over the entire period that is covered by the data.

In addition, we have speculated about interaction between different arguments that should be corroborated with more comprehensive data and more sophisticated methods. Nevertheless, three types of the juridification argument are suggested here. All of them appear somewhere in the data and they are not mutually exclusive, but complementary.

The first variant of this argument can be considered to be the strongest one as it describes a *direct causal relationship* between a newly introduced regulation and claims made under this jurisdiction. Such a relationship is most evident when substantive new rules have been introduced, or existing rules have been changed significantly. It is possible, however, to give examples and the UK Working Time Regulations (WTR) 1998 is an interesting case in point. As discussed above, no legally enforceable working time regulation existed in the UK before

[72] Although the German Works Councils have more comprehensive rights than their French counterparts.

1998. After the Blair Government had opted into the EU Social Chapter in 1997, the EU Working Time Directive (93/104/EC, updated in 2000 and 2003) was implemented into national legislation in the following year. New legislation also allowed employees to file complaints at employment tribunals against perceived breaches of the act (WTR, part IV, regulation 34).

Figure 5.13 shows the introduction of the regulation and its impact on Deakin, *et al.*'s working time regulation index. At the same time, the figure shows the number of claims made under the new jurisdiction. Within its first year in existence, there were just about 1,300 claims concerning working time, but this number increased quickly peaking at above 110,000 in 2010. It should be noted, however, that the figure included 10,600 cases of British Airways pilots that were resubmitted every six months totalling some 42,400 extra cases per year. Nevertheless, the example shows the direct impact of new regulation on the caseload of UK employment tribunals.

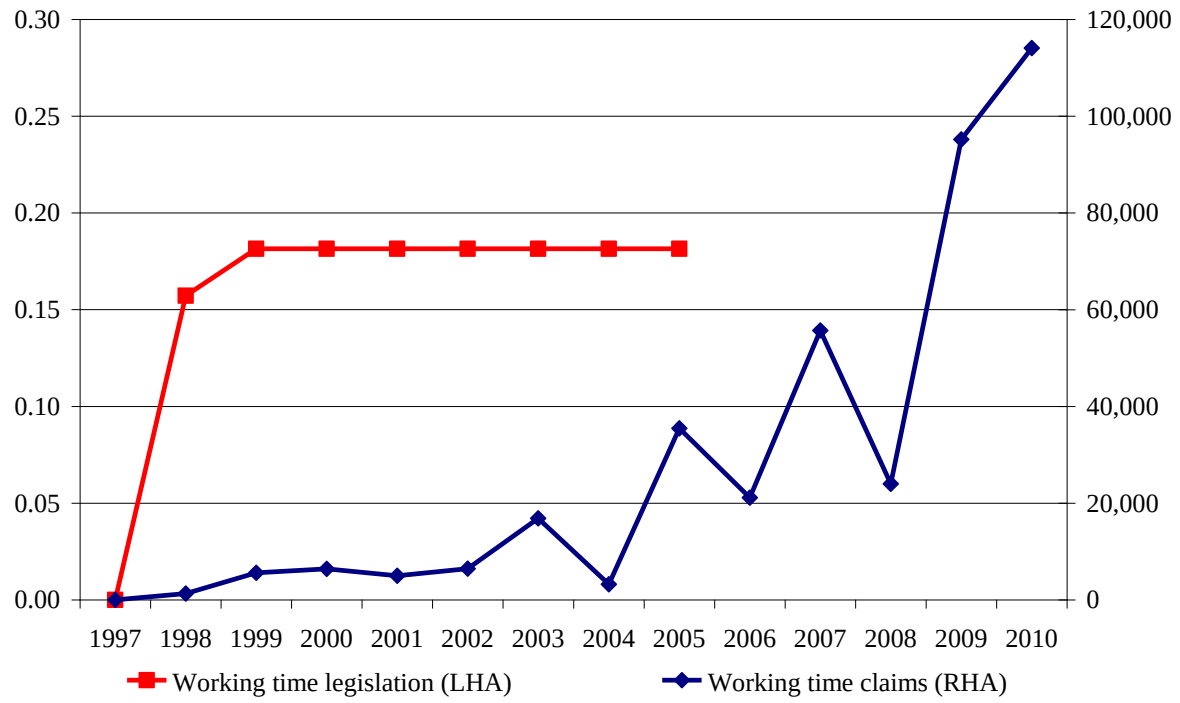
The second, slightly weaker version of the juridification argument is visible in the analysis of all three countries and has been described above. It is argued that the introduction of new regulation, ceteris paribus, *shifts up the average* level of court claims. Figure 5.14 shows this relationship schematically. New regulation is introduced at the end of the period t_1 that shifts up, after a transition period, the average of court claims to the level recorded for t_2. We have identified such effects for all three countries under study,[73] but only in such cases in which t_1 and t_2 were sufficiently long and no other factors had impacted upon the incidence of claims.

More data would be needed to control for the existence of further shift effects. Existing research discussed in Chapter 2 has attempted to use econometric methods to identify shift effects in the UK and Germany (Brown, *et al.*, 1997) and in Germany and Spain (Frick, *et al.*, 2012), and found, controlling for a few economic indicators only, some weak shift effects in Spain, but not in the UK or Germany. Their approach, however, differs from the one adopted here since they fit regional panel data models for all countries and use dichotomous variables for changes in the legal framework. A more sophisticated coding of the regulation indicators might help to shed more light on the phenomenon.

[73] In France, this took place in the second half of the 1970s, in Germany in the first half of the same decade, and in the UK between 1974 and 1976, and again though less distinct, in the late 1980s.

The third and weakest form of the juridification argument sees the existence of a comprehensive legal framework as a necessary precondition for the externalisation of work-related conflict. Following this logic, the relationship between industrial relations institutions or the cyclical economic developments, and the incidence of labour court claims might only be established if sufficient rules and procedures are in place, which allow employees to enforce their rights through the court system. Again, the UK is a case in point to illustrate this reading of the argument. As we have seen above (Figure 5.12), the developments of unemployment and the rate of employment tribunal claims adopted similar patterns parallel to the development of comprehensive labour regulation. This reading of the juridification argument would suggest that that there is a relationship between hostile conditions on the labour market and the incidence of tribunal claims, given the existence of comprehensive regulation and enforcement mechanisms. Since the latter only develop over time the relationship becomes more visible.

Figure 5.13 – Working Time Regulation Indicator and Claims in the UK, 1997–2010

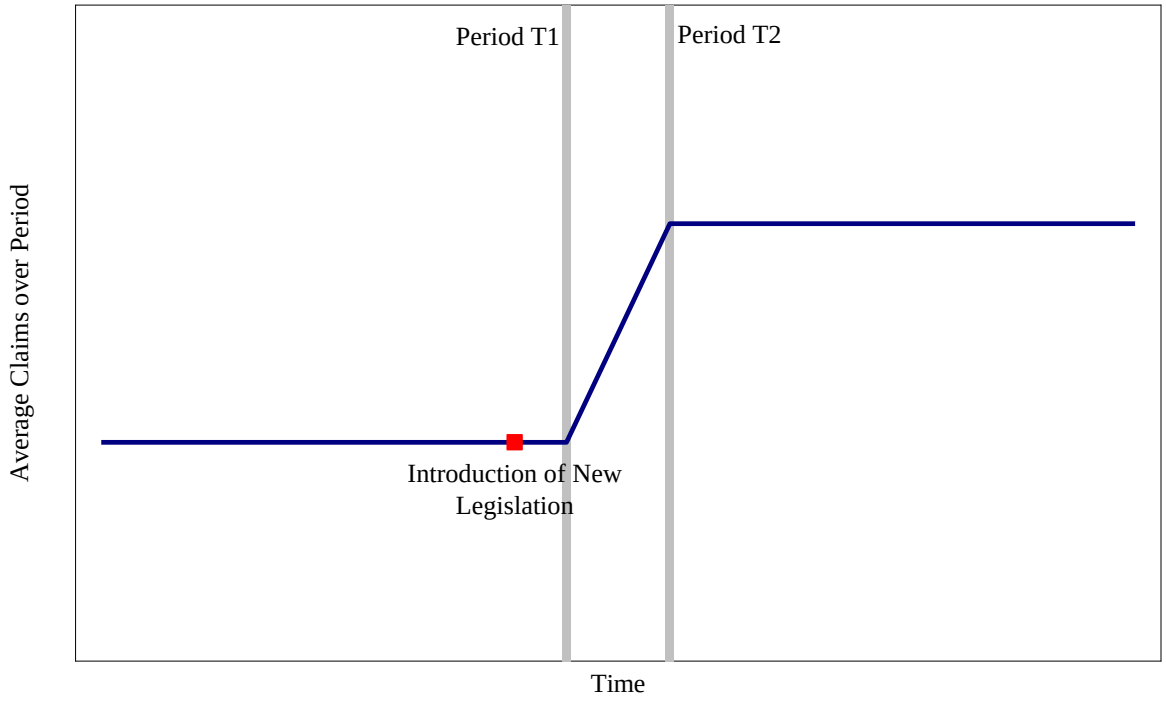


Source: Deakin, et al. (2007a) and Tribunals Service (various years)

As argued above, these three ways of reading the juridification argument are far from being mutually exclusive, and the discussion suggests that we can find elements of all three in the data on France, Germany and the UK. It has also been pointed out, however, that more cross-country data would be needed to analyse these propositions in greater detail. More generally,

this section has shown the explanatory power of the juridification argument in a descriptive way for the three countries under study. Although some of the evidence corroborates the theoretical propositions made above, it has also been demonstrated that juridification as a single explanation is insufficient and that the interdisciplinary approach adopted is necessary to gain a more comprehensive understanding of the incidence of labour court claims. Hence, the subsequent sections will draw on national survey data to explore the role of industrial relations institutions and labour market economics in the three countries in greater detail.

Figure 5.14 – Schematic Depiction of Shifting Average Through Juridification



5.3 Country Data Analysis

This chapter uses national survey data from France, Germany and the UK to shed light on the role of workplace institutions and economic conditions on the incidence of employment tribunal claims. Since data sources and methods of analysis differ between countries, the operationalisation, analysis and results are presented separately. Survey data from France and the UK show some similarities, however, and are fitted into similar models. Therefore, this section departs from the usual alphabetical order in which countries are presented. The analysis starts with Germany, and is followed by the UK and France. A concluding section discusses the main findings of the analysis.

Germany

Data and Methods

There are only a few micro datasets for Germany that allow analysis of the incidence of labour court claims in more detail. Probably the most comprehensive is compiled by the Institute of Social and Economic Research in the Hans Böckler Foundation (WSI). The research institute conducts a regular telephone survey among German works councillors in establishments with at least 20 employees in both the private and public sector. The incidence of labour court claims was included in the 2005 edition of the survey. The 2005 dataset contains information from 2,007 interviews.

In addition to data on the incidence of labour court claims, the WSI dataset also contains a range of information on workplace characteristics. There is, however, a major disadvantage. In contrast to data used for France and the UK, the survey only covers establishments where a works council is present. This means that the hypothesised effect of a works council cannot be analysed, as a control group is missing. Moreover, as discussed in Section 5.1 above, companies with works councils are systematically different from other companies in terms of size, sector of activity or age of the establishment (Hans Böckler Foundation, 2012). Therefore, the findings might only be generalised for workplaces with at least 20 employees in which a works council is present, and not for the economy as a whole. Nevertheless, the WSI survey is the most comprehensive data source available.

Table 5.6 lists the variables used for the statistical models. The independent variable (CLAIMS) was calculated in such a way that it provides information on whether or not the

establishment has experienced a labour court claim within the past two years. About one third of the surveyed councillors (weighted and non-weighted average) report that they have had a claim in this period. Although the survey also contains information on the number of claims, these data show little variance (see Figure 5.15) and a high proportion of missing values, and are thus not fit for more sophisticated linear regression models. Therefore, it was decided to code the independent variable dichotomously.

The independent variables are classified into three categories; industrial relations, economics, and control variables. The industrial relations information consists of five sets of variables, and a range of sub-variables. First, we want to analyse the effect of the existence of a collective agreement. This is measured by the variable COLAGR. As Table 5.6 shows, some 74 per cent of the population (88 per cent of the surveyed companies) report to be covered by an agreement.[74] This figure is substantially higher than the overall coverage of collective bargaining in Germany (61 per cent in 2009). This reinforces the point made above that the sample may not represent all companies in the economy and that, not surprisingly, workplaces with works councils are more likely to be bound by terms and conditions of a collective agreement. Available data allow the disaggregation of this information into whether a sectoral (MULTCA) or a company agreement (SINGCA) is present.

The second set of industrial relations variables covers trends towards decentralisation that have been discussed above, in particular the use of opening clauses. OPECLA scores 1 if the company makes use of opening clauses in collective agreements. There are nine subindicators that cover the issues of departing from an agreement through opening clauses (see Table 5.6). We expect the use of opening clauses to increase the level of workplace conflict following the argument developed by Hassel (1999: 500):

> "[S]ince management usually has to negotiate with its work-force on the introduction of flexibility measures, the delegation from central collective agreements might actually generate plant-level conflict."

In order to account for actors and institutions, the third and fourth items measure the relationship between management and the works council and thus its institutional involvement. As hypothesised above, a better relationship is expected to decrease the likelihood of a claim. The variable OBSTRU measures, on a three-point scale, the perceived

[74] Information on the distribution of the variables is given in columns 4-7 of Table 5.6 and are only reported in the text when necessary.

obstruction of works council activities ranging from “never” to “sometimes” to “often”. The item INFPOL reflects the employer’s information policy towards the works council. Employee representatives were asked whether, in order to receive information, they “have to ask several times”, “usually have to ask once and “usually unrequested”. This approach is adopted from Frick (2008) who used the same dataset.

Finally, COCOME indicates whether a conciliation committee meeting, as described above, has taken place in the past two years. Following Pfarr, *et al.* (2005) a works council’s objection against a dismissal that leads to a conciliation meeting might affirm the employee’s perception of unfair treatment and, thus, increase the likelihood for a claim. In addition, this indicator might also measure the existence of overt conflict within the workplace.

Economic indicators may be separated into two categories. ECOSIT, REDUND, RESTRU and PROPAY cover the economic situation of the establishment. ECOSIT reflects the general economic situation. The indicator is the average of the scores that works councillors attached to the order situation (ECOORD), the establishment’s turnover (ECOTUR), and its profit (ECOPRO); all on a four-point scale ranging from “bad”, to “rather bad”, “rather good” and “good”. REDUND and RESTRU provide information on whether or not there have been redundancies or restructuring in the past two years, respectively (yes/no coding).

Finally, PROPAY depicts whether there have been problems related to pay in the same period. All these variables are general indicators for the general economic condition of the company. In addition, they might be read as indicators for the situation of the local economy and on the local labour market. As discussed in the theoretical Chapter 2, it is expected that both the existence of conflict and its manifestation are expected to increase with deteriorating economic conditions.

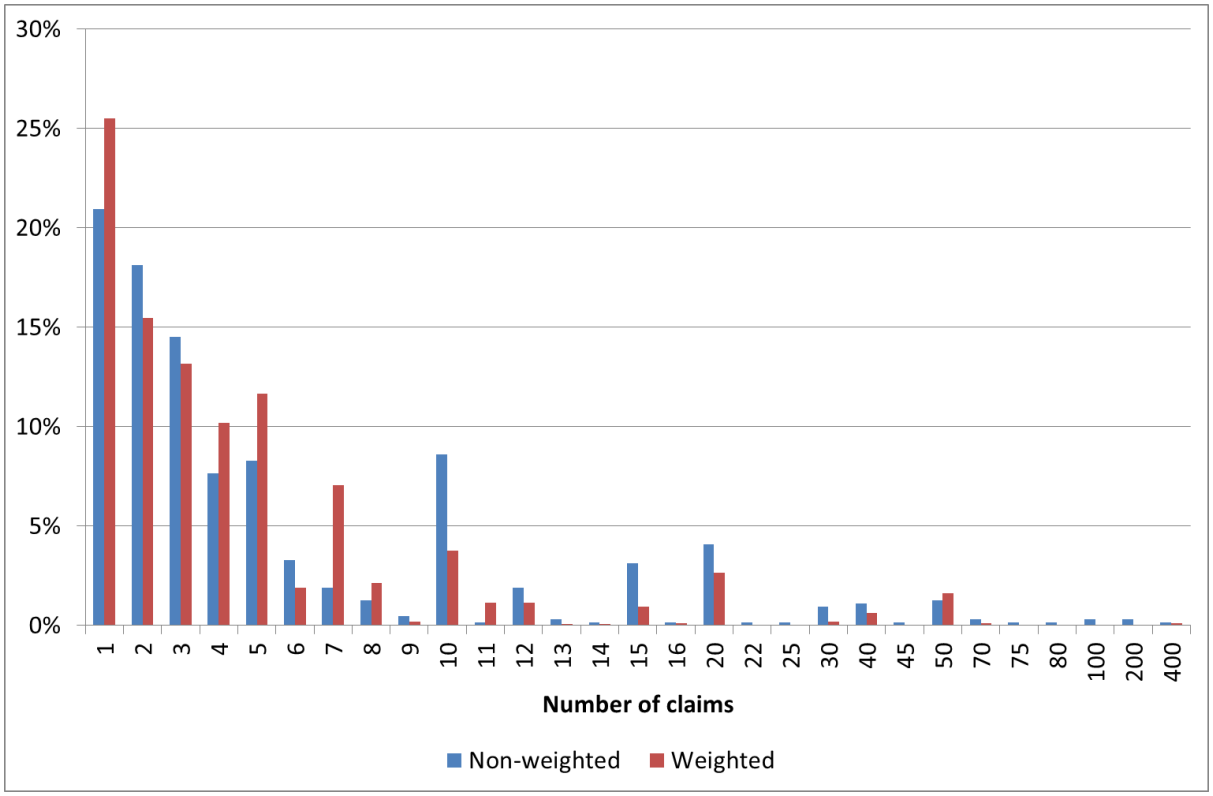
Table 5.6 – List of Variables

Name	Description	Codes/ range	Sample (non-weighted)		Population (weighted)	
			Avg/%	SD	Avg/%	SD
CLAIMS	Labour Court claim in the past two years	No/Yes	32.8%		31.2%	
Industrial Relations Variables						
COLAGR	Collective agreement	No/Yes	87.7%		73.8%	
MULTCA	Sectoral agreement	No/Yes	74.3%		60.3%	
SINGCA	Company agreement	No/Yes	20.9%		19.2%	
OPECLA	Use of opening clauses	No/Yes	73.8%		74.4%	
OCLGEN	General opening clauses	No/Yes	8.0%		4.5%	
OCLWT1	Temp. working time	No/Yes	14.4%		14.8%	
OCLWT2	Variable working time	No/Yes	53.5%		51.1%	
OCLWT3	Lengthening of working	No/Yes	27.6%		26.3%	
OCLINT	Interruption of collectively agreed provisions	No/Yes	11.9%		11.6%	
OCLWA1	Lowering collectively agreed basic wages	No/Yes	4.8%		8.4%	
OCLWA2	Wages for newly hired	No/Yes	16.4%		19.7%	
OCLBON	Reduction of bonus	No/Yes	15.6%		17.4%	
OCLHOL	Reduction/interruption of holiday pay	No/Yes	6.4%		6.3%	
OBSTRU	Obstruction of works	1–3	0.6	0.6	0.7	0.6
INFPOL	Information policy	1–3	2.1	0.8	2.0	0.8
COCOME	Conciliation committee meeting in the past two	No/Yes	14.7%		19.3%	
Economic Variables						
ECOSIT	Economic situation	Average	3.2	0.8	3.0	0.8
ECOORD	Order situation	1–4	3.3	0.9	3.1	1.0
ECOTUR	Turnover	1–4	3.3	0.9	3.0	1.0
ECOPRO	Profit	1–4	3.0	1.0	3.0	1.0
REDUND	Redundancies since 2003	No/Yes	55.2%		55.5%	
RESTRU	Restructuring since 2003	No/Yes	59.7%		49.2%	
PROPAY	Problems related to pay	No/Yes	3.0%		2.3%	
EMPLOY*	Numbers of employees		849	1,670	347	860
FITEMP	Temporary employment	No/Yes	70.5%		54.1%	
PATEMP	Part-time employment	No/Yes	79.9%		72.7%	
MINMID	Mini/midi jobs	No/Yes	33.1%		34.1%	
AGEEMP	Agency workers	No/Yes	48.9%		37.5%	
OLDEMP	Proportion of employees	%	10.7	9.0	10.9	10.7
Control Variables						
REGION	Region (West/East)	West/Eas	14.0%		15.2%	
SECTOR	Sectoral dummies (9)	No/Yes				

* *Regular employment figures are given here, the regression models below use logarithmic numbers.*

The second set of economic variables gives some information about the workforce structure, in particular whether employees with atypical work contracts are employed in the establishment. FITEMP reflects the use of fixed-term contracts, PATEMP the existence of part-time employment, MINMID the employment on mini or midi job contracts (Keller and Seifert, 2012), and AGEEMP captures whether or not agency workers are employed. All variables are measures on a dichotomous yes/no scale. The theoretical discussion in Section 2.4 has predicted that these forms of employment are expected to be more conflict-laden than regular employment arrangements. These variables are all dichotomous. An item that asks for the number of workers on such contracts exist, but all variables record a very high proportion of missing values and their inclusion would significantly weaken the statistical model.

Figure 5.15 – Distribution of Number of Labour Court Claims in Germany



Source: Own calculations, WSI Works Councillor Survey

The percentage of older employees investigates the hypothesised increased conflict potential for this group. The reasons for this have been discussed in Section 2.4. Since we do not have information on individual applicants, these indicators serve as proxies. Finally, the EMPLOY

item serves as control variable for enterprise size since larger workplaces are, ceteris paribus, more likely to receive a claim and thus score 1 on the dependent variable.[75]

Finally, the third last set of indicators includes control variables. REGION measures whether the workplace is situated in West or former East Germany since previous research (Schneider, 1999) and our analysis on 'old' and 'new' Member States in Chapter 4 has pointed towards differences between the two. Sectoral dummies (SECTOR) enter the equation as control variables.

Since the dependent variable is dichotomous, all data were fitted into regular *logit* models. In order to analyse the effect of collective bargaining and opening clauses in greater detail, two broad model specifications are presented. As the existence of a collective agreement is a necessary condition for the use of opening clauses and we want to investigate the use of the latter in more detail, two separate models are estimated. *Model 1* includes all establishments from the survey for which sufficient data are available (N=1,754). The specification allows controlling for the effect of collective agreements more generally because it includes workplaces with and without agreement. *Model 2* includes only those establishments that have a collective agreement in place (N=1,502). This model, ceteris paribus, investigates the impact of opening clauses on the independent variable. Within these two general models, a number of estimations are specified that show different levels of aggregation of the dependent variables. In addition, all estimations are calculated twice, with and without sectoral dummies.

Results

Results from the regression models are reported in Table 5.7 and Table 5.8. In order to increase the readability of the results odds ratios are reported. Hence, coefficients can take values from 0 to positive infinity. Odds are defined as the ratio of the probability of success (i.e. the probability that the dependent variable scores 1 and that the workplace has experienced a court claim in the previous two years) over the probability of failure (i.e. that the dependent variable scores 0 and that the workplace has not experienced a claim). Results below 1 denote a negative relationship, values above a positive one. For instance, an odds ratio of 1.5 for variable X would mean that the presence of variable X increases the odds for

[75] Therefore, the dichotomous coding of the dependent variable is not unproblematic and the UK and French chapter offer an alternative approach. For the German data, however, other approaches do not seem feasible due to a high proportion of missing values. Moreover, the data structure for Germany is more homogenous and thus less problematic.

the independent variable Y to score 1 by 50 per cent. An odds ratio of 0.6, for instance, denotes a 40 per cent decrease. The latter can also be read as a 67 per cent increase in odds if X is *not* present (i.e. 1/0.6).

Table 5.7 shows the general impact of collective agreements. As predicted, the existence of collective agreements (COLAGR) has a negative impact on the incidence of labour court claims. Specifications I to IV in Model 1 show that the likelihood of experiencing a claim is roughly one-third below the chance for companies without agreement (or the chance of experiencing a claim is 50 per cent higher for workplaces without an agreement). Although this result controls for a number of industrial relations indicators, it only covers workplaces with works councils and we might expect an even stronger relationship when taking into account all workplaces. If the indicator is disaggregated in order to differentiate for company or sectoral agreement, the coefficients are no longer significant.

With regards to the application of collectively agreed provisions, Table 5.8 shows the results of the regression analysis on opening clauses. Although the coefficient indicates a positive relationship, the indicator fails conventional significance tests in all specifications (I–IV). The disaggregated indicators, on the other hand, show a strongly positive and statistically significant correlation between opening clauses that lower collectively agreed wages (OCLWA1). Hence, the odds that workplaces that use such provisions experience a labour court claim is some 115 per cent higher than for those who stick to agreed provisions. This corroborates the findings on collective agreements made in the previous paragraph and in the cross-country section, and supports the argument by Hassel (1999) that the use of opening clauses might increase workplace conflict. On the other hand, statistically negative relationships that are significant are found from opening clauses reducing wages for newly hired employees (OCLWA2) and, in two of the four specifications, the reduction or interruption of holiday pay (OCLHOL). The former might be read in conjunction with the six-month qualifying period for employees before they may file an unfair dismissal claim. Still, a negative effect is surprising as it is for the latter.

The variables OBSTRU and INFPOL are used as proxies for the relationship between management and works councils. The obstruction of the works council by management has a positive impact on the incidence of labour court claims over all specifications in both models, although the indicator marginally fails the 10 per cent significance test in the estimations II and V (i.e. when the accumulated economic situation indicator is used and dummies are

included). The result indicates that a one-point increase in perceived obstruction of works council activities (on a three-point scale) increases the odds ratio for experiencing a claim by some 23 per cent. Similarly, the incidence for a labour court claim is negatively correlated with the perceived quality of the information policy from the employer, although the relationship is statistically significant in five out of eight specifications in Model 1 and significance disappears in Model 2. Nevertheless, the findings provide some evidence for lower claim rates from companies with good management-works council relations.

The indicator that measures the appearance of a conciliation committee meeting (COCOME) has by the far the strongest correlations and significance levels. Looking at the data in more detail, we see that all workplaces that have experienced such a meeting (14 per cent in the sample and 19 per cent in the population, respectively) also report court claims. We can only speculate that these are the same cases; that is that those employees whose concerns were discussed in these meetings were also those who later made a claim. These findings seem to confirm the evidence from earlier research that these meetings reinforce the employee in his/her position that rights have been breached and lead, as our results suggest, almost automatically to a legal complaint (Pfarr, *et al.*, 2005).

In addition to the industrial relations indicators, a range of the economic variables show significant results. The aggregated economic situation indicator (ECOSIT) shows, as expected, a negative relationship although only significant when not controlling for sectoral differences (except for model 2, specification VI). The situation of orders (ECOORD) is negatively and statistically significant correlated to the dependent variable indicating that difficult economic conditions increase in particular conflict emergence. The effect seems to be generally stronger in companies with collective agreements, as the higher significance levels in Model 2 suggest. In the latter, however, the turnover indicator shows a positive relationship suggesting that a one-point increase in the scale assessing turnover increases the odds ratio of a claim by some 20 per cent. This is contradictory to our expectations, but might suggest that distributional conflicts increase with turnover and lead to higher levels of disputes over compensational issues.

Contrary to expectations, the regressions do not provide evidence that companies that underwent restructuring (RESTRU) in the past two years are more likely to experience labour court claims. Although all signs are positive, none of the results are significant. Redundancies in the past two years (REDUND), on the contrary, are a robust positive predictor for the

incidence of external grievances. Hence, odds ratios for a claim increase by some 42 per cent. Results are significant for both models and all specifications. Similar results are recorded from the item that measures problems related to pay (PROPAY) although the relationship is even stronger in terms of both coefficients and significance levels.

None of the employment structure indicators show systematically significant results although in Model 2, the use of part-time (PATEMP) and agency workers (AGEEMP) show some significantly negative coefficients suggesting that the use of these forms decreases the incidence of labour court claims. Although this is generally against our predictions, the phenomenon might be explained by problems with the eligibility of these groups to bring a claim. Alternatively, it could also reflect higher compliance with unilateral management prerogative in order to increase the chance of permanent or, in case of involuntary part-time, full-time employment. Both points are discussed in greater detail below.

Finally, the findings provide some evidence to suggest that, all else being equal, workplaces in the East are more likely to experience a claim. This effect, however, is only significant when we control for sectors and disappears when only companies with collective agreements are taken into account (Model 2).

Conclusion

The section has generally confirmed findings from the cross-country analysis. Although data availability did not permit analysis of the effect of a works council, we broadly found the expected relationships for collective agreements and established a more elaborate understanding of the role of industrial relations institutions. Thus, it was demonstrated that although the existence of a collective agreement is important, its undermining through opening clauses mitigates its positive effect when the company shifts downwards away from sectorally agreed wages. This result confirms Hassel's (1999) proposition on increased conflict through opening clauses.

Moreover, we shed some more light on the role of German works councils as actors in internal conflict resolution, and provided evidence for the proposed link between management policy towards employee representation and labour court claims. In general, the findings suggest strongly that the implementation of 'mutual trust' lowers the incidence of conflict externalisation. Similarly, the analysis also confirms the relationship between

economics and labour court claims: in general, hostile economic conditions increase both the emergence and articulation of conflict.

Other findings are less clear. Most notably, the indicators on employment structure do not show the expected results. Although this might partly be a data issue, most items measures the presence in a dichotomous way and not actual proportions, and information on personal characteristics of claimants are not available, the analysis presented here does not allow a comprehensive assessment of this argument. Another finding that might need more thorough empirical investigation is a German particularity, the role of conciliation committee meetings in the process of internal conflict settlement.

The remaining two sections of this chapter present the results of a similar exercise conducted for France and the UK in order to corroborate the findings from the section on Germany. In addition, we identify country-specific dynamics of the role of institutions in conflict settlement that might not be captured by a large-scale cross-country analysis, nor by one individual country case study.

Table 5.7 – Regression Results for Model 1

	Dependent variable: CLAIMS							
	I	II	III	IV	V	VI	VII	VIII
COLAGR	0.651**	0.670**	0.647**	0.666**				
	(0.11)	(0.12)	(0.11)	(0.12)				
MULTCA					0.792	0.817	0.787	0.812
					(0.12)	(0.13)	(0.12)	(0.13)
SINGCA					1.013	0.976	1.009	0.969
					(0.16)	(0.16)	(0.16)	(0.16)
OBSTRU	1.225*	1.193	1.233*	1.202*	1.228*	1.194	1.235*	1.203*
	(0.13)	(0.13)	(0.13)	(0.13)	(0.13)	(0.13)	(0.13)	(0.13)
INFPOL	0.862	0.849*	0.868	0.854*	0.855*	0.842*	0.861	0.847*
	(0.08)	(0.08)	(0.08)	(0.08)	(0.08)	(0.08)	(0.08)	(0.08)
COCOME	18.504***	18.132***	18.558***	18.127***	18.308***	17.992***	18.383***	18.004***
	(3.64)	(3.61)	(3.66)	(3.61)	(3.60)	(3.58)	(3.62)	(3.58)
ECOSIT	0.866*	0.906			0.863*	0.905		
	(0.07)	(0.07)			(0.07)	(0.07)		
ECOORD			0.817**	0.825**			0.817**	0.826**
			(0.08)	(0.08)			(0.08)	(0.08)
ECOTUR			1.133	1.155			1.130	1.153
			(0.11)	(0.11)			(0.11)	(0.11)
ECOPRO			0.929	0.943			0.928	0.942
			(0.07)	(0.07)			(0.07)	(0.07)
REDUND	1.443***	1.469***	1.436***	1.460***	1.418***	1.450***	1.412***	1.441***
	(0.19)	(0.19)	(0.19)	(0.19)	(0.18)	(0.19)	(0.18)	(0.19)
RESTRU	1.171	1.175	1.156	1.159	1.172	1.180	1.159	1.165
	(0.15)	(0.15)	(0.15)	(0.15)	(0.15)	(0.16)	(0.15)	(0.15)
PROPAY	2.078**	2.108**	2.031**	2.059**	2.082**	2.109**	2.035**	2.061**
	(0.70)	(0.71)	(0.68)	(0.70)	(0.69)	(0.71)	(0.68)	(0.70)
EMPLOY	1.108*	1.101*	1.107*	1.101*	1.109*	1.098	1.109*	1.098
	(0.06)	(0.06)	(0.06)	(0.06)	(0.06)	(0.06)	(0.06)	(0.06)
FITEMP	1.107	1.085	1.109	1.085	1.105	1.086	1.108	1.087
	(0.15)	(0.15)	(0.15)	(0.15)	(0.15)	(0.15)	(0.15)	(0.15)
PATEMP	0.837	0.855	0.830	0.845	0.837	0.855	0.830	0.845
	(0.13)	(0.13)	(0.13)	(0.13)	(0.13)	(0.13)	(0.13)	(0.13)

	Dependent variable: CLAIMS							
	I	II	III	IV	V	VI	VII	VIII
MINMID	1.206	1.144	1.210	1.148	1.215	1.149	1.219	1.153
	(0.16)	(0.15)	(0.16)	(0.15)	(0.16)	(0.15)	(0.16)	(0.15)
AGEEMP	0.880	0.907	0.881	0.912	0.868	0.897	0.870	0.902
	(0.11)	(0.12)	(0.11)	(0.12)	(0.11)	(0.12)	(0.11)	(0.12)
OLDEMP	1.004	1.003	1.003	1.003	1.003	1.003	1.003	1.002
	(0.01)	(0.01)	(0.01)	(0.01)	(0.01)	(0.01)	(0.01)	(0.01)
REGION	1.304	1.345*	1.317	1.356*	1.278	1.332*	1.291	1.344*
	(0.22)	(0.23)	(0.22)	(0.24)	(0.22)	(0.23)	(0.22)	(0.23)
Sectoral dummies	No	Yes	No	Yes	No	Yes	No	Yes
Constant	0.333**	0.198***	0.342**	0.206***	0.284***	0.177***	0.291***	0.184***
	(0.15)	(0.10)	(0.16)	(0.11)	(0.13)	(0.09)	(0.14)	(0.10)
N	1,754	1,754	1,754	1,754	1,754	1,754	1,754	1,754
Pseudo R^2	0.2000	0.2110	0.2010	0.2130	0.1980	0.2100	0.2000	0.2110

Logistic regression with odds ratio coefficients and standard errors in parentheses.

** significant at 0.10 level; ** significant at 0. 05 level; *** significant at 0.01 level*

Table 5.8 – Regression Results for Model 2

	Dependent variable: CLAIMS							
	I	II	III	IV	V	VI	VII	VIII
OPECLA	1.113	1.131	1.110	1.130				
	(0.17)	(0.18)	(0.17)	(0.18)				
OCLGEN					0.875	0.907	0.860	0.885
					(0.22)	(0.24)	(0.22)	(0.23)
OCLWT1					0.834	0.820	0.836	0.820
					(0.16)	(0.16)	(0.16)	(0.16)
OCLWT2					1.094	1.148	1.107	1.162
					(0.15)	(0.16)	(0.15)	(0.16)
OCLWT3					1.270	1.223	1.248	1.214
					(0.19)	(0.19)	(0.19)	(0.19)
OCLINT					0.832	0.825	0.825	0.819
					(0.18)	(0.18)	(0.18)	(0.18)
OCLWA1					2.169***	2.142**	2.172***	2.158**
					(0.65)	(0.64)	(0.65)	(0.65)
OCLWA2					0.717*	0.694*	0.732*	0.707*
					(0.13)	(0.13)	(0.14)	(0.14)
OCLBON					1.358	1.336	1.345	1.328
					(0.27)	(0.27)	(0.27)	(0.27)
OCLHOL					0.611	0.611	0.604*	0.603*
					(0.18)	(0.19)	(0.18)	(0.18)
OBSTRU	1.260*	1.228*	1.277**	1.242*	1.266**	1.235*	1.282**	1.250*
	(0.15)	(0.15)	(0.15)	(0.15)	(0.15)	(0.15)	(0.15)	(0.15)
INFPOL	0.880	0.870	0.891	0.878	0.887	0.876	0.897	0.885
	(0.09)	(0.09)	(0.09)	(0.09)	(0.09)	(0.09)	(0.09)	(0.09)
COCOME	18.567***	18.166***	18.857***	18.293***	20.053***	19.487***	20.382***	19.673***
	(3.87)	(3.83)	(3.94)	(3.86)	(4.26)	(4.18)	(4.35)	(4.24)
ECOSIT	0.820**	0.868			0.818**	0.858*		
	(0.07)	(0.08)			(0.07)	(0.08)		
ECOORD			0.801**	0.810**			0.795**	0.796**
			(0.08)	(0.09)			(0.09)	(0.09)
ECOTUR			1.205*	1.218*			1.196	1.217*
			(0.13)	(0.13)			(0.13)	(0.14)

	Dependent variable: CLAIMS							
	I	II	III	IV	V	VI	VII	VIII
ECOPRO			0.845**	0.871			0.853*	0.873
			(0.07)	(0.07)			(0.07)	(0.08)
REDUND	1.354**	1.403**	1.338**	1.381**	1.394**	1.454**	1.380**	1.434**
	(0.19)	(0.21)	(0.19)	(0.20)	(0.20)	(0.22)	(0.20)	(0.21)
RESTRU	1.107	1.120	1.091	1.101	1.073	1.079	1.058	1.061
	(0.16)	(0.16)	(0.16)	(0.16)	(0.15)	(0.16)	(0.15)	(0.16)
PROPAY	3.068***	2.999***	2.963***	2.911***	3.361***	3.364***	3.275***	3.290***
	(1.13)	(1.12)	(1.10)	(1.09)	(1.28)	(1.29)	(1.25)	(1.26)
EMPLOY	1.122*	1.102	1.122*	1.103	1.121*	1.099	1.123*	1.102
	(0.07)	(0.07)	(0.07)	(0.07)	(0.07)	(0.07)	(0.07)	(0.07)
FITEMP	1.276	1.245	1.280	1.248	1.270	1.237	1.273	1.239
	(0.19)	(0.19)	(0.19)	(0.19)	(0.19)	(0.19)	(0.19)	(0.19)
PATEMP	0.740*	0.772	0.736*	0.762	0.757*	0.779	0.752*	0.768
	(0.12)	(0.13)	(0.12)	(0.13)	(0.13)	(0.13)	(0.13)	(0.13)
MINMID	1.204	1.150	1.207	1.152	1.216	1.166	1.218	1.168
	(0.17)	(0.17)	(0.17)	(0.17)	(0.18)	(0.17)	(0.18)	(0.17)
AGEEMP	0.777*	0.776*	0.775*	0.779*	0.787*	0.795	0.788*	0.800
	(0.11)	(0.11)	(0.11)	(0.11)	(0.11)	(0.11)	(0.11)	(0.12)
OLDEMP	1.005	1.003	1.004	1.002	1.005	1.003	1.003	1.002
	(0.01)	(0.01)	(0.01)	(0.01)	(0.01)	(0.01)	(0.01)	(0.01)
REGION	1.131	1.176	1.145	1.186	1.199	1.246	1.217	1.260
	(0.22)	(0.23)	(0.22)	(0.23)	(0.23)	(0.25)	(0.24)	(0.25)
Sectoral dummies	No	Yes	No	Yes	No	Yes	No	Yes
Constant	0.234***	0.148***	0.231***	0.151***	0.225***	0.156***	0.224***	0.159***
	(0.12)	(0.09)	(0.12)	(0.09)	(0.12)	(0.09)	(0.12)	(0.10)
N	1502	1502	1502	1502	1502	1502	1502	1502N
Pseudo R^2	0.208	0.217	0.211	0.220	0.216	0.226	0.219	0.228

Logistic regression with odds ratio coefficients and standard errors in parentheses.

** significant at 0.10 level; ** significant at 0. 05 level; *** significant at 0.01 level*

United Kingdom

Data and Methods

The most comprehensive data source for analysing the incidence of employment tribunal claims in the UK is the Workplace Employment Relations Study (WERS). WERS is a representative sample of workplaces with 5 or more employees in the UK.[76] The study contains five different instruments each of which consists of a questionnaire that is filled in with information from different actors (managers, employees, employee representatives). The item on whether or not the workplace has experienced an employment tribunal claim in the past twelve months is covered in the management questionnaire (MQ). Information resulting from face-to-face interviews with "the most senior manager who deals with employment relations, human resources or personnel and staff at the workplace" (van Wanrooy, *et al.*, 2013: 42). The dataset includes data from 2,680 interviews. In addition to the information on employment tribunal claims, WERS includes rich information on, among other things, industrial relations, economic conditions, and conflict articulation and management within the workplace. These are presented below.

An alternative source of survey data for the analysis of employment tribunal claims in the UK is the Survey of Employment Tribunal Applications (SETA). SETA data have been presented throughout the discussion and provide a large range of characteristics of both claimants and employers. Its major disadvantage is that the survey only includes employees and employers that have experienced a tribunal claim. Hence, it is not possible to control for workplaces or individuals with and without tribunal experience. In technical terms, there is no control group. Previous studies have used SETA data and drew on data from other sources to compare the frequency of characteristics between the sources (Peters, *et al.*, 2010; Saridakis, *et al.*, 2008; Schulze-Marmeling, 2009). Some examples of such an analysis have been presented in Chapter 2. Nevertheless, these techniques are limited to the comparison of means and do not allow the use of more sophisticated statistical models. Therefore, the analysis conducted here uses WERS instead of SETA.

As with the other countries, the experience of an employment tribunal claim for a workplace is measured in a dichotomous way. Thus, the variable CLAIMS scores 1 if the workplace has had a claim in the previous 12 months, and 0 if it has not. The data show that some 4.3 per

[76] The threshold to be included in the sample was lowered from 10 to 5 or more employees for the 2004 edition; prior to 1998 only workplaces with 25 or more employees were included.

cent of all workplaces report a tribunal claim (weighted average). Since the survey methodology oversamples large companies that are more likely to experience a claim, the unweighted average of the claims indicator is significantly higher (24.7 per cent).

The dichotomous approach that simply captures whether or not a workplace has experienced a claim does not seem to depict appropriately the phenomenon that we would like to measure. In the cross-country section in Chapter 4, we constructed a claims ratio that depicts the relative frequency of claims per country. In this section, an ideal indicator would measure the same by workplace. The structure of the data on the frequency of tribunal claims, however, does not permit such an approach. As Figure 5.16 shows, less than 14 per cent of the observations record a result different from no (76.6 per cent) or one tribunal claim (9.6 per cent). In other words, the intragroup variance for companies with claim experience is, compared to the population, too small to conduct meaningful analysis. Therefore, we draw on a small subsample of only those workplaces that have been subject to an ET claim in the past 12 months and for which data on the number of claims are available. The number of claims is then divided through the number of employees yielding an indicator that may be read as a claims ratio per workplace (CLAPRO). Hence, this item measures the relative frequency of employment tribunal claims excluding workplaces with no ET application in the past twelve months.

In the remainder of the section, we present findings for both indicators, although it is argued here that more weight is given to results from the second model using relative frequency on a sub sample. The main reason for this is that the indicator measuring the incidence (CLAIMS) treats all companies in the same way, irrespective of their size. On the other hand, a claim must be more likely to arise from a large company, all other things being equal. In this respect, the second claim indicator (CLAPRO), which puts the incidence into relation to the number of employees, is much more appropriate and reliable in delivering robust results.

A fictional and simplified example may illustrate the point. Given two companies, A and B, with A being a relatively large workplace with 2,000 employees and B a relatively small one with 20 workers. For the small company, we could reasonably expect that the existence of institutions of employee representation limit the likelihood of a claim to a minimum. In company A, on the other hand, it might be overstated to assume that the presence of comprehensive employee voice mechanisms lead to no claims at all, but we may see that the number of ET applications is reduced. For instance, if we assume that both A and B have

experienced a tribunal claim the logistic model would treat them the same in terms of the dependent variable CLAIMS (i.e. both would score 1). The alternative CLAPRO indicator, on the other hand, would assign a claims ratio score of 0.0005 to company A (1 claim per 2,000 employees, i.e. 1/2000) and a score of 0.05 to company B (or 0.05 and 5 if expressed as a percentage).

Assuming that both workplaces have employee voice institutions (EVI), the dichotomous coding of the variables would contradict our hypothesis since both cases have nevertheless experienced a claim. In our second example, it is necessary to compare the claims ratio to a reference value, which is the sample mean from the actual dataset (0.01). Hence, we see that company B still contradicts the hypothesis since the claims ratio for this workplace that has employee voice institutions is above the sample average that takes into account all workplaces (0.05 > 0.01). The claims ratio of company A, on the other hand, is far below the average and, thus, supports the hypothesis. Table 5.9 summarises the example.

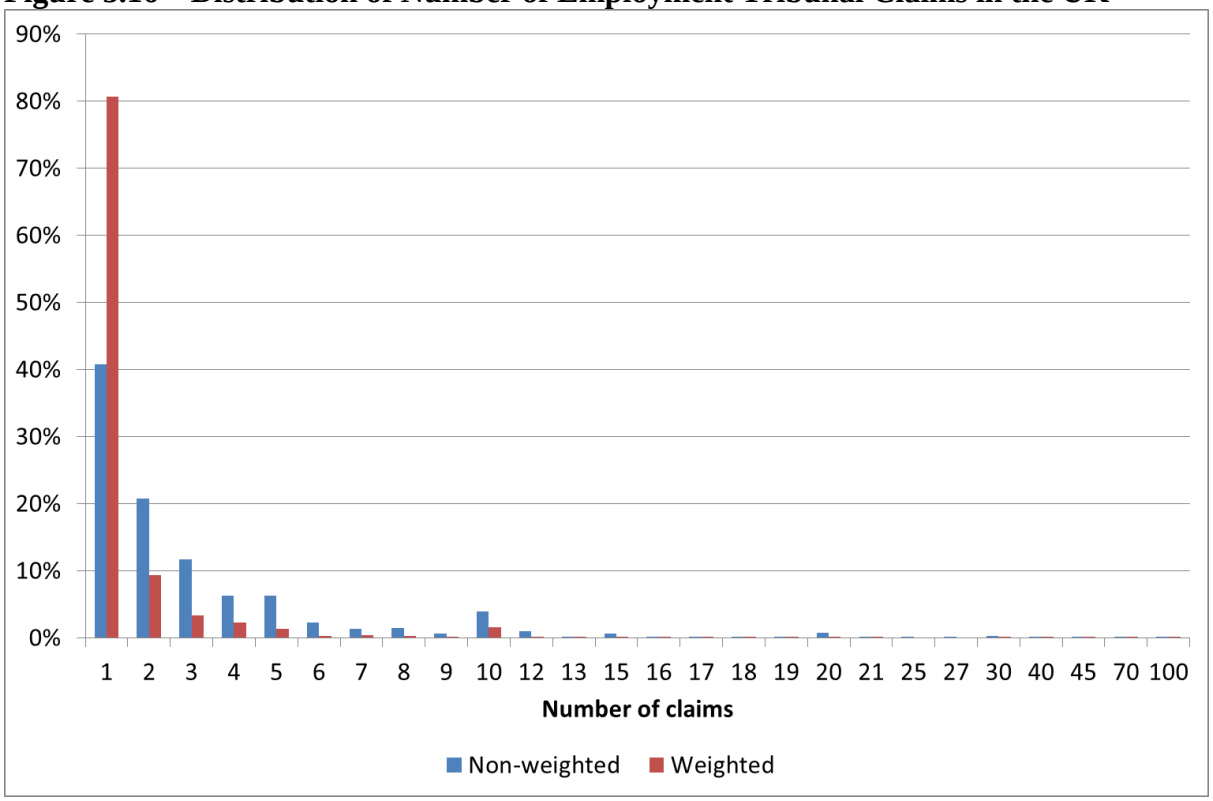
Table 5.9 – Scores and Results for the Fictional Companies A and B

Company	**Workforce**	**EVI**	**CLAIMS**	**CLAPRO**
A	2,000	1	1	0.0005
B	20	1	1	0.05
Reference				0.01
	Logistic coding (CLAIMS)		**Claims ratio (CLAPRO)**	
Hypothesis	If employee voice institutions are present, the *likelihood* of a claim decreases		If employee voice institutions are present, the *frequency* of a claim decreases	
Result	Both cases contradict the hypothesis		Company A supports the hypothesis (CLAPRO < Reference) Company B contradicts the hypothesis (CLAPRO > Reference)	

Hence, the CLAIMS indicator tends to produce oversimplified and misleading results since it gives the same weight to both workplaces, although we have shown that their relative claims ratio is substantially different. Therefore, it seems reasonable to give more weight to the results from model 2. This is particularly the case for indicators that have a strong size effect in such a way that they correlate with the number of employees at the workplace. As data show, the latter applies to all industrial relations institutions, which are more likely in large workplaces. Nevertheless, the second model only draws on a small subsample of companies, namely those that have experienced an ET claim in the past 12 months. Strictly, any findings from that analysis could only be generalised to that population. All results should be read in conjuncture with the caveats discussed here.

Table 5.10 provides an overview of all variables used in the regression models. The independent variables may be divided into four subsections; industrial relations, economic conditions, internal dispute settlement, and control variables. The information on industrial relations captures data on the most important institutions as defined in the theoretical sections (in particular Section 2.2), and a number of indicators that reflect the relationship between management and the workforce. The indicator COLAGR captures if there is any form of collective bargaining that determines pay and working conditions of any occupational group at the workplace. MULTCA and SINGCA disaggregate this item into multi-employer and single-employer agreements. The UNION variable measures if any trade union or independent staff association is present at the workplace and NEGPAY captures it they are recognised for negotiating pay or conditions of employment. In addition, it has been outlined above that the presence of a trade union representative or shop steward is expected to decrease the likelihood of an employment tribunal claim (SHOPST) whereas no clear prediction could be formulated on the role of non-union representatives (NUREP). Finally, EMPASS captures whether or not the employer is a member of an employers' association.

Figure 5.16 – Distribution of Number of Employment Tribunal Claims in the UK



Source: Own calculations, WERS 2011

It has been argued above that the relationship between managements and the workforce, as well as its representatives, is expected to be of importance. In general, a positive workplace

climate might be less likely to lead to a tribunal claim. More particularly, a positive relationship between management and trade unions and employee representatives might reinforce the role that is expected from the latter. Nevertheless, the items measuring these features are not suitable for the regression models since they only cover workplaces with such institutions and record, furthermore, a high proportion of missing values. Therefore, we have to limit our analysis to a 5-point ranking scale that reflects the relationship between management and employees (MERELA). It should be noted, however, that this assessment is made by management respondents to the questionnaire and is thus inherently subjective and might be biased. The high average of 4.3 and 4.5 (non-weighted and weighted mean, respectively), for example, suggests that management views the relationship as largely positive.

Finally, we include an indicator that measures the information policy of management towards their employees. The indicator INFPOL may score from 0 to 3 and increases by 1 when management shares with its workforce information on the financial situation of the company, staffing policies or internal investment plans. The aggregation of the three subindicators is necessary because the items are highly correlated among each other, which violates the assumptions of the regression model. The composite indicator does not permit analysis of the effect of different information policies separately, and implicitly assumes that each of the three items has the same importance since they are all given the same weight.

The set of economic variables may be further divided into the company's financial situation, and structural indicators about the workforce, its developments and management. The former is again based on management's assessment. FINPER, LABPRO and QUAPRO reflect the workplace's financial performance, labour productivity and quality of products or services provided in comparison with the industry average. A higher score indicates better performance. It is expected that a positive performance decreases the likelihood of a claim. On the contrary, the IMPCRI item measures the impact of the current economic crisis and the following recession on the company. Higher scores reflect stronger adverse effects on the workplace. The probability of a claim is expected to increase with the impact of the crisis. As argued above, redundancies and dismissals are, for a number of reasons, expected to have a substantial impact on the likelihood of an employment tribunal claim. DISMIS and REDUND thus measure the proportion of the workplace that has been dismissed or made redundant in the past twelve months.

Table 5.10 – List of Variables

Name	Description	Codes/ range	Sample (non-weighted)		Population (weighted)	
			Avg/%	SD	Avg/%	SD
CLAIMS	Employment Tribunal claim in the past year	No/Yes	21.3%	0.4	4.6%	0.2
CLAPRO	Number of ET claims as a proportion of the workforce	No/Yes	1.2	2.8	5.2	6.1
Industrial Relations Variables						
COLAGR	Workplace covered by collective agreement	No/Yes	34.4%	0.5	13.2%	0.3
MULTCA	Multi-employer agreement/pay review body	No/Yes	21.2%	0.4	8.7%	0.3
SINGCA	Single-employer agreement	No/Yes	15.0%	0.4	5.2%	0.2
UNION	Any trade union/independent staff association at workplace	No/Yes	52.7%	0.5	24.6%	0.4
NEGPAY	Trade unions/staff associations recognised for negotiating pay or conditions of employment	No/Yes	30.3%	0.5	8.2%	0.3
SHOPST	Presence of a shop stewards	No/Yes	32.1%	0.5	6.9%	0.3
NUREP	Non-union employee representative	No/Yes	15.1%	0.4	7.7%	0.3
EMPASS	Company member of employers' association	No/Yes	13.6%	0.3	6.5%	0.2
INFPOL	Management information policy towards employees	0–3	2.0	1.0	1.7	1.1
MERELA	Assessment of relationship between management and employees	1–5	4.3	0.7	4.5	0.6
Economic Variables						
FINPER	Assessment of workplace's financial performance	1–5	3.6	0.8	3.5	0.8
LABPRO	Assessment of workplace's labour productivity	1–5	3.6	0.7	3.6	0.7
QUAPRO	Assessment of workplace's quality of product or service	1–5	4.0	0.7	4.0	0.7
IMPCRI	Impact of the crisis on company	1–5	3.3	1.2	3.2	1.2
DISMIS	Dismissals in the past 12 months	%	1.4	3.4	1.6	4.6
REDUND	Redundancies in the past 12 months	%	1.9	5.8	1.5	5.5
FEMEMP	Female employees	%	51.5	28.5	52.9	30.8
YOUEMP	Young employees (18–21)	%	7.0	13.2	9.0	15.4
OLDEM	Older employees (55+)	%	25.4	16.8	23.7	20.3
ETHMIN	Employees are from a non-	%	8.1	15.0	6.6	14.8

Name	Description	Codes/ range	Sample (non-weighted)		Population (weighted)	
			Avg/%	SD	Avg/%	SD
	white ethnic group					
DISEMP	Employees with permanent disability	%	1.5	4.1	1.4	4.8
FITEMP	Employees with fixed-term contracts	%	6.9	17.7	6.9	20.7
PATEMP	Part-time employees	%	27.4	26.8	30.7	29.5
AGEEMP	Agency workers	%	2.6	8.0	1.5	7.3
SAMPAY	Same pay for employees in largest occupational group	No/Yes	18.5%	0.4	20.3%	0.4
STACON	Use of standard employment contract	No/Yes	94.9%	0.2	96.7%	0.2
EMPLOY	Numbers of employees		333	997.7	30	117.5
Internal Dispute Settlement Variables						
GRIWRI	Requirement for employees to set out in writing the nature of the grievance	No/Yes	93.2%	0.3	89.5%	0.3
FORMEE	Formal meeting to discuss grievance	No/Yes	99.0%	0.1	98.3%	0.1
THIPAR	Mediation by an impartial third party included in grievance procedure	No/Yes	63.5%	0.5	59.1%	0.5
INDGRI	Employees who raised a matter through the grievances procedure in the past 12 months	%	1.6	4.2	1.5	4.9
Control Variables						
PUBLIC SECTOR	Public sector employer	No/Yes	27.0%	0.4	12.2%	0.3
	Sectoral dummies (17)					

Note: The statistics only take into account observations that do not record any missing values and are thus included in the regression models (N = 1842 except for CLAPRO)
Descriptive statistics for numeric variables are presented in their normal form, but enter the regression models as logarithmic numbers.
% signals that the indicator depicts the given phenomenon as a proportion of the workforce

The discussion above has touched upon the personal characteristics of employees (including their employment status) and how these might affect the likelihood of a claim. Therefore, eight proxy indicators enter the equation that measure the proportion of the workplace's employment that is female (FEMEMP), is between 18 and 21 (YOUEMP) or over 55 years old (OLDEMP), is from an ethnic minority (ETHMIN), has a permanent disability (DISEMP) is working on a fixed-term or part-time contract (FITEMP and PATEMP), or is hired through a temporary employment agency (AGEEMP). Finally, two indicators are included to measure the equal treatment of employees at the workplace, since inequalities are expected to increase

conflict and, in turn, the reliance on ETs. SAMPAY scores 1 when the largest occupational group at the workplace receives the same amount of pay and STACON captures whether or not the company makes use of standard employment contracts.

Finally, we include a variable for the number of employees at the workplace (EMPLOY). This indicator is crucial to give explanatory power to the first logistic regression model. As discussed above, the CLAIMS variable used for the latter, only captures whether or not the workplace has experience of a tribunal claim and excludes any notion of relative or absolute frequency. Therefore, the employment item is expected to compensate to a degree for the size effects of other independent variables, and mitigate the shortcomings of the dichotomous coding of the dependent variable.[77] Although a strong positive correlation is expected this must not be read as evidence that managements at large workplaces are *per se* more likely to be brought to an employment tribunal. The second set of model specifications that draws on the claim-experienced subsample and uses a relative frequency measure of claims (CLAPRO) does not require the inclusion of the employment item.

The third set of indicators includes three institutional and one empirical measure of inter workplace grievances. GRIWRI measures if there is a requirement for the employee to set out in writing the nature of their grievance. Whether a formal meeting to discuss grievances is compulsory is captured by FORMEE. THIPAR includes information on whether mediation by a third party is included in the grievance procedures. These indicators measure to what extent internal dispute provisions are successful in settling workplace conflict internally. INDGRI, on the other hand, includes the proportion of the workforce that has raised a matter through grievances procedures in the past twelve months. If the regression result is positive that would indicate that higher levels of internally raised grievances would still lead to an increased likelihood of a tribunal claim and, thus, suggest that internal procedures do not perform overly well in resolving conflict.

Finally, the control variable PUBLIC measures whether the workplace is part of a public sector employer, and 17 sectoral dummies enter the equation. As touched upon in the French section above, data are fitted into two different regression models. The first set of estimations is calculated using an ordinary logistic regression model on the dichotomous dependent variable (CLAIMS) with the full sample for which sufficient data are available (N = 1,842). The second series of specifications uses the same set of independent variables with the

[77] The general shortcomings of the dichotomous coding remain nevertheless.

exception of the EMPLOY item (see above) on the subsample of workplaces that have experienced an employment tribunal claim (N = 384). The independent variable CLAPRO was transformed into its logarithmic form to ensure that is fulfils the requirement of an approximate normal distribution. Estimations were conducted using a regular ordinary least square (OLS) regression model. Since there is a high degree of multicollinearity among the industrial relations variables,[78] we have developed five independent models that estimate the effect of each of these variables separately.

Results

Results from the regression models are reported in Table 5.11 and Table 5.12. Results in Table 5.11 are reported as odds ratios. A brief explanation of how to read odds ratios is provided in the results section on Germany on page 163. Table 5.12 shows 'regular' regression coefficients that mean that a positive relationship is denoted by a positive sign and a negative correlation by a negative one. In order to make coefficients comparable all dependent variables except for the dichotomous variables enter the equation as standardised values. In addition, numeric indicators were transformed into their logarithms in order to satisfy the technical requirements of the regression models (approximately normal distribution, in particular). Therefore, it is possible to compare the strength of the relationship between coefficients. On the other hand, it is difficult to make meaningful predictions on the individual effect of each determinant.

Table 5.7 shows that none of the institutional industrial relations variables shows a significant correlation in the full model. It is noteworthy, however, that most of the indicators (COLAGR, UNION, NEGPAY when including sectoral dummies, SHOPST) indicate a negative relationship, as expected. The technical problems of the logistic model have been pointed out above. In combination with our second model on the smaller subsample, we might be able to assess these findings in the light of the discussion above. Hence, most institutional industrial relations figures are highly significant and report a negative correlation in model 2 (Table 5.12). The strongest significant impact on the incidence of tribunal claims is recorded from workplaces in which a shop steward or trade union representative is present. The same item also shows the strongest, though not significant, negative correlation in model 1 (specifications IX and X). Similarly, the presence of a collective agreement (COLAGR) or

[78] That means that independent variables are correlated among each other. For instance, the existence of collective agreement and a union recognised for negotiating pay often appear together. Multicollinearity affects the explanatory power of individual indicators.

a trade union (UNION) is significantly associated with fewer tribunal claims in the second model and the relationship is negative and not significant in the first one (specifications I, II, V and VI). The same is true for the specifications VIII that control for the recognition of a trade union for negotiating pay and working conditions and includes sectoral dummies.

Some of the other findings on industrial relations institutions vary in direction between the two models. Most notably, the disaggregated collective bargaining items (MULTCA and SINGCA), the variable on the existence of a non-union form of employee representation (NUREP), and the indicator that measures whether or not the company is a member of an employers' association (EMPASS) yield no significant but positive results in model 1, but negative and partly significant correlations in model 2. The effect of a single-employer collective agreement (SINGCA) strongly predicts a decrease in the number of claims, whereas the effect of a multi-employer agreement (MULTCA) is weaker and not statistically significant. These findings are against our expectations formulated in Section 2.2, although they do not generally contradict any hypothesis.

The existence of non-union representation has a negative impact throughout all specifications of model 2, but it only passes the significance test in three cases. Moreover, the coefficient is weaker for NUREP than for SHOPST throughout all specifications and also in the estimations that control for both (IX and X). This result indicates that union reps have a stronger mitigating impact on the externalisation of conflict than non-union forms of employee representation. Further analysis that is not reported in the tables sought to find a possible interaction between the two, but the (rare) occurrence of both institutions does not produce significant results and the stronger effect of union representation remains. The last institutional industrial relations indicator, the employer's membership of an employers' association (EMPASS), is strongly significant and shows a negative relationship with the frequency of tribunal claims throughout the different specifications.

Although there is some ambiguity in the results, we can conclude that the direction of the hypothesised relationships has been confirmed by the analysis of most of the industrial relations indicators. Moreover, it was argued above that more weight should be given the second model, which strongly confirms the importance of industrial relations institutions. Some caveats on these findings and a more general assessment will be presented in the conclusions.

In addition to the institutional items, the two indicators of the relationship between management and the workforce, on the other hand, show ambiguities in the opposite direction. In model 1, management's information policy (INFPOL) shows a lower probability for claims when more information is shared with the workforce with significant correlations in four out of ten cases (specifications I, III, IV and VII). An even stronger relationship is recorded from the item capturing management's assessment of its relationship with its employees. This finding suggests that good working relations decrease the probability of a tribunal claim. The results are highly significant across all ten specifications.

With regards to the set of economic predictors, the cyclical impact seems to be less pronounced than in the German case. As expected, we see negative correlations for financial performance, which are significant in eight out of nine specifications in model 2, but not in model 1. In the latter, on the other hand, a stronger impact of the crisis on the workplace is significantly associated with the likelihood of a tribunal claim. Surprisingly, the quality of the product or service provided shows a positive and mildly significant correlation indicating that companies producing high-quality goods are more likely to be brought to an ET. Finally, both models show that the likelihood and the frequency of an ET application increases with the proportion of the workforce that has been made redundant for economic reasons in the past year. Unexpectedly, the indicator that measures dismissals due to the fault of the employee does not provide any significant results.

The structural employment indicators are to some extent contradictory between the two specifications. The proportion of female employees (FEMEMP) is negatively correlated in model 1, but no significant result occurs within the second set of specifications. More consistent results are reported from the indicators that measure the employment of older workers (OLDEMP) and fixed-term employees (FITEMP). Both coefficients indicate a negative relationship in both models, but only deliver significant results in model 2. The employment of ethnic minorities shows very ambiguous findings in the way that significant results are reported from both models, but in different directions. The positive relationship from model 1 confirms research with an earlier edition of the same survey (Knight and Latreille, 2000a)[79] and it is in line with other research presented in the literature review. The negative findings from model 2 contradict these. The coefficients are, however, only significant in half of the specifications. No systematic findings could be obtained from the

[79] This research has, however, used the same dichotomous indicator.

items that capture youth employment (YOUEMP), the proportion of workers with a permanent disability (DISEMP), or the use of part-time employees (PATEMP) and agency workers (AGEEMP). Similarly, granting the same pay for employees in largest occupational group (SAMPAY) and the use of standard employment contracts for the whole workforce did not deliver robust results.

Finally, the internal dispute settlement indicators suggest that none of the formal mechanisms that are taken into account lower the incidence or frequency of tribunal claims. The introduction of a third party into the conflict settlement process (THIPAR) even has a significantly positive impact in two specifications in model 2. Moreover, the number of grievance procedures is a strong positive predictor in both models. Thus, the more employees raise a matter through the company's grievances procedure, the more likely it is that the company receives claims. The strength and consistency of these findings might lead to the conclusion that these procedures are not very effective since an intensive use is associated with more claims. This phenomenon is discussed in some detail below.

Conclusion

In spite of technical difficulties in modelling the incidence and frequency of tribunal claims, most of our findings generally support the hypotheses generated in Chapter 2. It has been pointed out that there is vast range of different forms of employee representation since the role, duties and responsibilities of employee representatives is subject to negotiations with management (Terry, 2010). Unlike France and Germany, there is no 'rulebook' (a labour code, for instance) that spells out which rights must be assigned to an employee representative. Similar points can made with regards to collective bargaining and other institutional arrangements. Nevertheless, we find that the impact of these institutions is not substantially different (i.e. weaker) than the one of Germany and, more importantly, the findings on France presented below.

Hence, we can conclude that we have found some convincing evidence that supports the hypothesis that industrial relations institutions may contribute to the reduction of conflict externalisation. 'Traditional' institutions seem to have a stronger impact than more recent non-union forms of employee representation. Given the variety of different institutional settings, on the other hand, we might have expected that the indicators measuring the relationship between managers and employees show stronger results than they did since it could be assumed that employee voice is stronger in workplaces with a good working

relationship between management and labour. On the other hand, we have pointed out that the workplace atmosphere can only be measured based on management assessment, which is likely to be biased. Moreover, this argument works on the contested assumption that a partnership approach is more effective than a more traditional, adversarial relationship based on power (Kelly, 1998). It seems that more qualitative research is needed to shed light on how the relationship between unions or shop stewards and management, and conflict externalisation functions in the UK.

The results of the cyclical economic indicators point in the expected direction, but results seem to be less clear than they were for Germany. In the introduction to the comparative country analysis (Chapter 4), we established that the impact of unemployment on tribunal claims is historically less pronounced in the UK than it is in France and Germany. A possible explanation of this situation was that this relationship requires a certain level of development of both the employment law system and its enforcement mechanisms. Hence, it was shown that the relationship between cyclical economic conditions and tribunal claims grows stronger over time with the development of these institutions. Given the available data, we cannot assess any time-dependent effects, but the finding that the relationship between economics and tribunal claims is weaker in the UK than in Germany and France is not surprising, in the light of the earlier findings.

With regards to the structural characteristics of the workforce, some of the findings deserve more discussion. Most notably, we hoped to shed more light on the effect of gender. Although the results are not completely consistent, it is reasonable to say that a higher proportion of women in the workforce lower the likelihood of a claim. This confirms other UK findings of lower claim rates for women (Peters, *et al.*, 2010; Lucy and Broughton, 2011). The employment of older workers has a similar relationship to that for women, although the same sources report that older workers are more likely to claim to an employment tribunal. A possible explanation could be that workplaces with a high proportion of older workers also have policies in place that facilitate working conditions for older workers. In that case, we would need to consider whether our proxy measures something else than intended. Finally, the results show that the use of fixed-term employment contracts lowers the frequency of tribunal claims. The latter might be explained by issues of eligibility to claim for people on short-term arrangements. A similar argument has been made in the section on Germany.

Finally, we could not find any positive impact of internal dispute settlement in the way that it helps to reduce the externalisation of conflict. Similar to the evidence presented for German conciliation committees, which play the role of an internal grievance mechanism, the role of dispute settlement procedures might actually be the inverse of the intended functioning. Serverin (2007) proposes an interesting explanation. She argues that internal grievance might reinforce the employee' view that their rights have been breached since it provides them with some kind of formal acceptance of the legitimacy of their claim and, in turn, increase the likelihood that the employee makes a claim. Our results support such suggestions.

Table 5.11 – Regression Results for Model 1 (Logistic Regression)

	Dependent variable: CLAIMS									
	I	II	III	IV	V	VI	VII	VIII	IX	X
COLAGR	0.995	0.967								
	(0.19)	(0.19)								
MULTCA			1.138	1.073						
			(0.27)	(0.27)						
SINGCA			1.071	1.079						
			(0.22)	(0.23)						
UNION					0.980	0.945				
					(0.21)	(0.22)				
NEGPAY							1.032	0.969		
							(0.21)	(0.22)		
SHOPST									0.743	0.741
									(0.15)	(0.16)
NUREP	1.243	1.188	1.246	1.189	1.244	1.190	1.244	1.189	1.237	1.183
	(0.23)	(0.23)	(0.23)	(0.23)	(0.23)	(0.23)	(0.23)	(0.23)	(0.23)	(0.23)
EMPASS	1.018	1.015	1.011	1.013	1.018	1.014	1.018	1.014	1.017	1.013
	(0.21)	(0.22)	(0.21)	(0.22)	(0.21)	(0.22)	(0.21)	(0.22)	(0.21)	(0.22)
INFPOL	0.866*	0.864	0.861*	0.858*	0.867	0.865	0.864*	0.864	0.878	0.873
	(0.08)	(0.08)	(0.08)	(0.08)	(0.08)	(0.08)	(0.08)	(0.08)	(0.08)	(0.08)
MERELA	0.824**	0.842**	0.824**	0.843**	0.823**	0.842**	0.823**	0.843**	0.821**	0.839**
	(0.07)	(0.07)	(0.07)	(0.07)	(0.07)	(0.07)	(0.07)	(0.07)	(0.07)	(0.07)
FINPER	1.006	1.005	1.005	1.004	1.006	1.005	1.006	1.005	1.012	1.013
	(0.09)	(0.09)	(0.09)	(0.09)	(0.09)	(0.09)	(0.09)	(0.09)	(0.09)	(0.09)
LABPRO	0.950	0.918	0.953	0.921	0.950	0.920	0.951	0.919	0.950	0.920
	(0.09)	(0.09)	(0.09)	(0.09)	(0.09)	(0.09)	(0.09)	(0.09)	(0.09)	(0.09)
QUAPRO	1.121	1.155*	1.121	1.155*	1.121	1.157*	1.122	1.154*	1.113	1.150
	(0.09)	(0.10)	(0.09)	(0.10)	(0.09)	(0.10)	(0.09)	(0.10)	(0.09)	(0.10)
IMPCRI	1.159*	1.166*	1.158*	1.167*	1.158*	1.165*	1.158*	1.167*	1.161*	1.174*
	(0.10)	(0.10)	(0.10)	(0.10)	(0.10)	(0.10)	(0.10)	(0.10)	(0.10)	(0.10)
DISMIS	1.020	1.082	1.023	1.083	1.020	1.082	1.021	1.081	1.018	1.079
	(0.09)	(0.10)	(0.09)	(0.10)	(0.09)	(0.10)	(0.09)	(0.10)	(0.09)	(0.10)

	Dependent variable: CLAIMS									
	I	II	III	IV	V	VI	VII	VIII	IX	X
REDUND	1.209***	1.207**	1.212***	1.21**	1.209***	1.208**	1.21***	1.208**	1.198**	1.199**
	(0.09)	(0.09)	(0.09)	(0.09)	(0.09)	(0.09)	(0.09)	(0.09)	(0.09)	(0.09)
FEMEMP	0.844	0.767**	0.846	0.771**	0.843	0.766**	0.845	0.767**	0.827*	0.761**
	(0.09)	(0.10)	(0.09)	(0.10)	(0.09)	(0.10)	(0.09)	(0.10)	(0.09)	(0.10)
YOUEMP	0.886	0.872	0.889	0.877	0.886	0.873	0.887	0.873	0.881	0.866
	(0.09)	(0.10)	(0.09)	(0.10)	(0.09)	(0.10)	(0.09)	(0.10)	(0.09)	(0.10)
OLDEM	0.972	0.971	0.964	0.967	0.974	0.974	0.969	0.971	0.994	0.981
	(0.11)	(0.12)	(0.11)	(0.11)	(0.11)	(0.12)	(0.11)	(0.12)	(0.11)	(0.12)
ETHMIN	1.322***	1.353***	1.325***	1.356***	1.321***	1.352***	1.322***	1.354***	1.317***	1.351***
	(0.11)	(0.12)	(0.11)	(0.12)	(0.11)	(0.12)	(0.11)	(0.12)	(0.11)	(0.12)
DISEMP	1.108	1.080	1.108	1.078	1.109	1.081	1.107	1.081	1.128	1.098
	(0.09)	(0.10)	(0.09)	(0.10)	(0.09)	(0.10)	(0.09)	(0.10)	(0.10)	(0.10)
FITEMP	0.953	0.895	0.949	0.894	0.953	0.894	0.952	0.896	0.954	0.895
	(0.08)	(0.09)	(0.08)	(0.09)	(0.08)	(0.09)	(0.09)	(0.09)	(0.08)	(0.08)
PATEMP	0.962	0.915	0.959	0.913	0.963	0.916	0.961	0.915	0.962	0.914
	(0.11)	(0.11)	(0.11)	(0.11)	(0.11)	(0.11)	(0.11)	(0.11)	(0.11)	(0.11)
AGEEMP	1.008	1.013	1.008	1.013	1.009	1.015	1.007	1.013	1.018	1.019
	(0.08)	(0.08)	(0.08)	(0.08)	(0.08)	(0.08)	(0.08)	(0.08)	(0.08)	(0.08)
SAMPAY	1.036	1.166	1.037	1.160	1.037	1.166	1.035	1.165	1.073	1.194
	(0.21)	(0.25)	(0.21)	(0.25)	(0.21)	(0.25)	(0.21)	(0.25)	(0.22)	(0.26)
STACON	0.766	0.706	0.762	0.705	0.764	0.703	0.766	0.706	0.764	0.706
	(0.24)	(0.23)	(0.24)	(0.23)	(0.24)	(0.22)	(0.24)	(0.23)	(0.24)	(0.23)
EMPLOY	7.157***	8.242***	7.080***	8.120***	7.176***	8.281***	7.124***	8.241***	7.685***	8.816***
	(0.91)	(1.13)	(0.90)	(1.11)	(0.93)	(1.16)	(0.90)	(1.14)	(1.04)	(1.28)
GRIWRI	1.863	1.578	1.876	1.591	1.866	1.585	1.867	1.579	1.875	1.589
	(0.79)	(0.69)	(0.80)	(0.70)	(0.79)	(0.69)	(0.79)	(0.69)	(0.80)	(0.70)
FORMEE	1.672	1.874	1.679	1.849	1.670	1.868	1.669	1.872	1.601	1.778
	(2.03)	(2.36)	(2.04)	(2.33)	(2.03)	(2.36)	(2.03)	(2.36)	(1.94)	(2.24)
THIPAR	1.072	1.007	1.078	1.012	1.072	1.008	1.072	1.009	1.080	1.017
	(0.18)	(0.17)	(0.18)	(0.17)	(0.18)	(0.17)	(0.18)	(0.17)	(0.18)	(0.18)
INDGRI	1.892***	1.976***	1.893***	1.973***	1.893***	1.978***	1.893***	1.974***	1.905***	1.988***
	(0.15)	(0.16)	(0.15)	(0.16)	(0.15)	(0.16)	(0.15)	(0.16)	(0.15)	(0.16)

	Dependent variable: CLAIMS									
	I	II	III	IV	V	VI	VII	VIII	IX	X
PUBLIC	1.367	1.017	1.288	0.976	1.373	1.019	1.347	1.016	1.502*	1.110
	(0.30)	(0.26)	(0.30)	(0.26)	(0.30)	(0.26)	(0.30)	(0.26)	(0.32)	(0.28)
Sectoral dummies	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes
Constant	0.047**	0.101	0.045**	0.099*	0.047**	0.103	0.047**	0.101	0.052**	0.109
	(0.06)	(0.14)	(0.06)	(0.14)	(0.06)	(0.14)	(0.06)	(0.14)	(0.07)	(0.15)
N	1842	1842	1842	1842	1842	1842	1842	1842	1842	1842
Pseudo R^2	0.419	0.435	0.419	0.435	0.419	0.435	0.419	0.435	0.420	0.436

Logistic regression with odds ratio coefficients and standard errors in parentheses. Ordinal variables are in standardised form, numerical variables are in logarithmic and standardised form.

** significant at 0.10 level; ** significant at 0. 05 level; *** significant at 0.01 level*

Table 5.12 – Regression Results for Model 2 (Linear Regression)

	Dependent variable: logCLAPRO									
	I	II	III	IV	V	VI	VII	VIII	IX	X
COLAGR	-0.539***	-0.409***								
	(0.13)	(0.13)								
MULTCA			-0.191	-0.007						
			(0.16)	(0.16)						
SINGCA			-0.542***	-0.456***						
			(0.13)	(0.13)						
UNION					-0.448***	-0.546***				
					(0.16)	(0.16)				
NEGPAY							-0.339**	-0.472***		
							(0.14)	(0.14)		
SHOPST									-0.831***	-0.836***
									(0.13)	(0.13)
NUREP	-0.154	-0.218*	-0.124	-0.202*	-0.111	-0.189	-0.113	-0.189	-0.169	-0.242**
	(0.12)	(0.12)	(0.12)	(0.12)	(0.12)	(0.12)	(0.12)	(0.12)	(0.12)	(0.12)
EMPASS	-0.411***	-0.388***	-0.443***	-0.424***	-0.385***	-0.362***	-0.379***	-0.358***	-0.325***	-0.307**
	(0.13)	(0.13)	(0.13)	(0.13)	(0.13)	(0.13)	(0.13)	(0.13)	(0.12)	(0.12)
INFPOL	-0.079	-0.058	-0.101	-0.074	-0.096	-0.060	-0.095	-0.047	-0.079	-0.056
	(0.06)	(0.06)	(0.06)	(0.06)	(0.06)	(0.06)	(0.06)	(0.06)	(0.06)	(0.06)
MERELA	0.048	0.064	0.055	0.074	0.057	0.072	0.068	0.080	0.020	0.030
	(0.05)	(0.05)	(0.05)	(0.05)	(0.05)	(0.05)	(0.05)	(0.05)	(0.05)	(0.05)
FINPER	-0.099*	-0.090*	-0.100*	-0.094*	-0.118**	-0.108**	-0.110**	-0.095*	-0.073	-0.061
	(0.05)	(0.05)	(0.05)	(0.05)	(0.05)	(0.05)	(0.06)	(0.05)	(0.05)	(0.05)
LABPRO	-0.016	-0.034	-0.009	-0.025	0.007	-0.014	-0.012	-0.032	0.014	-0.003
	(0.06)	(0.06)	(0.06)	(0.06)	(0.06)	(0.06)	(0.06)	(0.06)	(0.06)	(0.06)
QUAPRO	0.013	0.015	0.015	0.021	0.020	0.019	0.007	0.001	-0.012	-0.007
	(0.06)	(0.06)	(0.06)	(0.06)	(0.06)	(0.06)	(0.06)	(0.06)	(0.05)	(0.05)
IMPCRI	-0.003	0.034	-0.021	0.017	-0.011	0.027	-0.016	0.034	-0.007	0.037
	(0.06)	(0.06)	(0.06)	(0.06)	(0.06)	(0.06)	(0.06)	(0.06)	(0.06)	(0.06)
DISMIS	0.078	0.037	0.081	0.039	0.089	0.028	0.085	0.016	0.071	0.018
	(0.07)	(0.07)	(0.07)	(0.07)	(0.07)	(0.07)	(0.07)	(0.07)	(0.07)	(0.07)
REDUND	0.167***	0.162***	0.179***	0.171***	0.176***	0.169***	0.176***	0.164***	0.147***	0.147***
	(0.05)	(0.05)	(0.05)	(0.05)	(0.05)	(0.05)	(0.05)	(0.05)	(0.05)	(0.05)

	Dependent variable: logCLAPRO									
	I	II	III	IV	V	VI	VII	VIII	IX	X
FEMEMP	0.069	0.091	0.045	0.101	0.077	0.101	0.094	0.101	0.027	0.081
	(0.08)	(0.10)	(0.08)	(0.10)	(0.08)	(0.10)	(0.08)	(0.10)	(0.08)	(0.09)
YOUEMP	-0.030	-0.082	-0.025	-0.089	-0.005	-0.057	-0.005	-0.068	-0.042	-0.096
	(0.08)	(0.08)	(0.08)	(0.08)	(0.08)	(0.08)	(0.08)	(0.08)	(0.08)	(0.08)
OLDEM	-0.169**	-0.198**	-0.197**	-0.215**	-0.158*	-0.178**	-0.179**	-0.178**	-0.142*	-0.176**
	(0.08)	(0.09)	(0.09)	(0.09)	(0.09)	(0.09)	(0.09)	(0.09)	(0.08)	(0.08)
ETHMIN	-0.123**	-0.095	-0.116**	-0.082	-0.105*	-0.075	-0.102*	-0.074	-0.096*	-0.063
	(0.06)	(0.06)	(0.06)	(0.06)	(0.06)	(0.06)	(0.06)	(0.06)	(0.06)	(0.06)
DISEMP	-0.045	-0.068	-0.037	-0.071	-0.046	-0.069	-0.049	-0.065	-0.014	-0.041
	(0.06)	(0.06)	(0.06)	(0.06)	(0.06)	(0.06)	(0.06)	(0.06)	(0.06)	(0.06)
FITEMP	-0.140**	-0.185***	-0.151**	-0.183***	-0.140**	-0.188***	-0.122*	-0.165**	-0.120*	-0.158**
	(0.06)	(0.07)	(0.06)	(0.07)	(0.06)	(0.07)	(0.07)	(0.07)	(0.06)	(0.06)
PATEMP	0.014	-0.073	0.011	-0.075	0.004	-0.076	0.015	-0.073	0.001	-0.084
	(0.08)	(0.09)	(0.08)	(0.09)	(0.09)	(0.09)	(0.09)	(0.09)	(0.08)	(0.09)
AGEEMP	-0.044	-0.049	-0.045	-0.056	-0.046	-0.047	-0.051	-0.052	-0.024	-0.037
	(0.05)	(0.05)	(0.05)	(0.05)	(0.05)	(0.05)	(0.05)	(0.05)	(0.05)	(0.05)
SAMPAY	0.129	0.147	0.168	0.179	0.135	0.142	0.124	0.137	0.199	0.182
	(0.15)	(0.15)	(0.15)	(0.15)	(0.15)	(0.15)	(0.15)	(0.15)	(0.14)	(0.14)
STACON	0.258	0.217	0.243	0.196	0.231	0.198	0.247	0.217	0.249	0.206
	(0.19)	(0.19)	(0.19)	(0.19)	(0.19)	(0.19)	(0.19)	(0.19)	(0.19)	(0.19)
GRIWRI	-0.020	0.062	-0.005	0.083	0.052	0.133	0.006	0.066	0.115	0.175
	(0.31)	(0.32)	(0.32)	(0.31)	(0.32)	(0.32)	(0.32)	(0.31)	(0.31)	(0.30)
FORMEE	-0.061	0.283	0.075	0.429	-0.001	0.332	-0.046	0.317	-0.160	0.155
	(1.02)	(1.00)	(1.03)	(1.00)	(1.04)	(1.00)	(1.04)	(1.00)	(0.99)	(0.96)
THIPAR	0.156	0.092	0.164	0.099	0.186	0.101	0.205*	0.123	0.200*	0.129
	(0.11)	(0.11)	(0.11)	(0.11)	(0.11)	(0.11)	(0.11)	(0.11)	(0.11)	(0.11)
INDGRI	0.460***	0.448***	0.476***	0.461***	0.471***	0.446***	0.463***	0.435***	0.461***	0.439***
	(0.05)	(0.05)	(0.05)	(0.05)	(0.05)	(0.05)	(0.05)	(0.05)	(0.05)	(0.05)
PUBLIC	0.137	0.075	0.021	-0.066	0.073	0.054	0.065	0.078	0.210	0.217
	(0.15)	(0.17)	(0.16)	(0.18)	(0.15)	(0.17)	(0.15)	(0.17)	(0.14)	(0.16)
Sectoral dummies	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes

	Dependent variable: logCLAPRO									
	I	II	III	IV	V	VI	VII	VIII	IX	X
Constant	4.020***	4.025***	3.827***	3.905***	3.954***	4.175***	3.857***	3.908***	4.080***	4.092***
	(1.09)	(1.13)	(1.09)	(1.13)	(1.10)	(1.13)	(1.11)	(1.13)	(1.06)	(1.08)
N	384	384	384	384	384	384	384	384	384	384
R^2	0.416	0.479	0.415	0.484	0.400	0.481	0.396	0.482	0.449	0.521

Ordinary least square regression with standard errors in parentheses. Ordinal variables are in standardised form, numerical variables are in logarithmic and standardised form.

** significant at 0.10 level; ** significant at 0. 05 level; *** significant at 0.01 level*

France

Data and Methods

The only comprehensive source of French micro data that includes information on applications to the national labour court system is the Survey on Industrial Relations and Company Negotiations (*Relations Professionnelles et Négociations d'Entreprise*), abbreviated REPONSE. It is a reoccurring study that was conducted in 1992–1993, 1998–1999, 2004–2005 and 2010–2011. Data used here come from the latest 2011 edition. In this latest version, REPONSE covers workplaces with more than 10 employees from the private and semi-private sectors excluding agriculture, public administration, public hospitals, household services, and non-profit education.[80]

Similar to WERS, the survey consists of different instruments, notably face-to-face interviews with managers (4,023 respondents) and employee representatives (2,433 respondents), and a pencil-and-paper questionnaire filled in by employees (18,536 respondents). Although both the management and the employee representatives questionnaire includes information on the incidence of labour court claims, the analysis here draws on the management study in order to increase comparability with the UK results. Moreover, the management study is considerably larger than the sample of employee representatives, which facilitates statistical analysis. Face-to-face interviews for the management study were conducted with the senior professional in charge of labour relations at the workplace. In addition to the information on court claims, REPONSE contains a wide range of items on management policy, industrial relations, and the social and economic climate of the workplace. As for the other country case studies, the variables used for statistical analysis will be discussed in more detail below in this section.

Although REPONSE's overall survey design is fairly similar to that of WERS, the items on labour court claims show an important difference. Both the question on the incidence and the frequency of claims cover a period of three years and not of twelve months, as is the case in the German and UK survey. The indicators are thus not directly comparable across countries. In France, we find that the CLAIMS indicator shows that 28.2 per cent of workplaces report that they have experienced a court claim in the past three years (weighted average). This significant difference to the UK (weighted average of 4.3 per cent) might partly be explained

[80] The threshold was 20 or more employees for previous editions.

by the extended period. In addition, the threshold used in WERS for inclusion is lower as it also covers workplaces with five to ten employees. These factors help to explain why the rate of claims differs significantly between the two surveys, whereas the analysis in the introductory part of the country case study analysis has shown that claims rates are fairly similar in France and the UK at the time of the survey fieldwork. The unweighted average of the French data shows that 46.3 per cent of workplaces in the survey report a court claim (24.7 per cent in the UK).

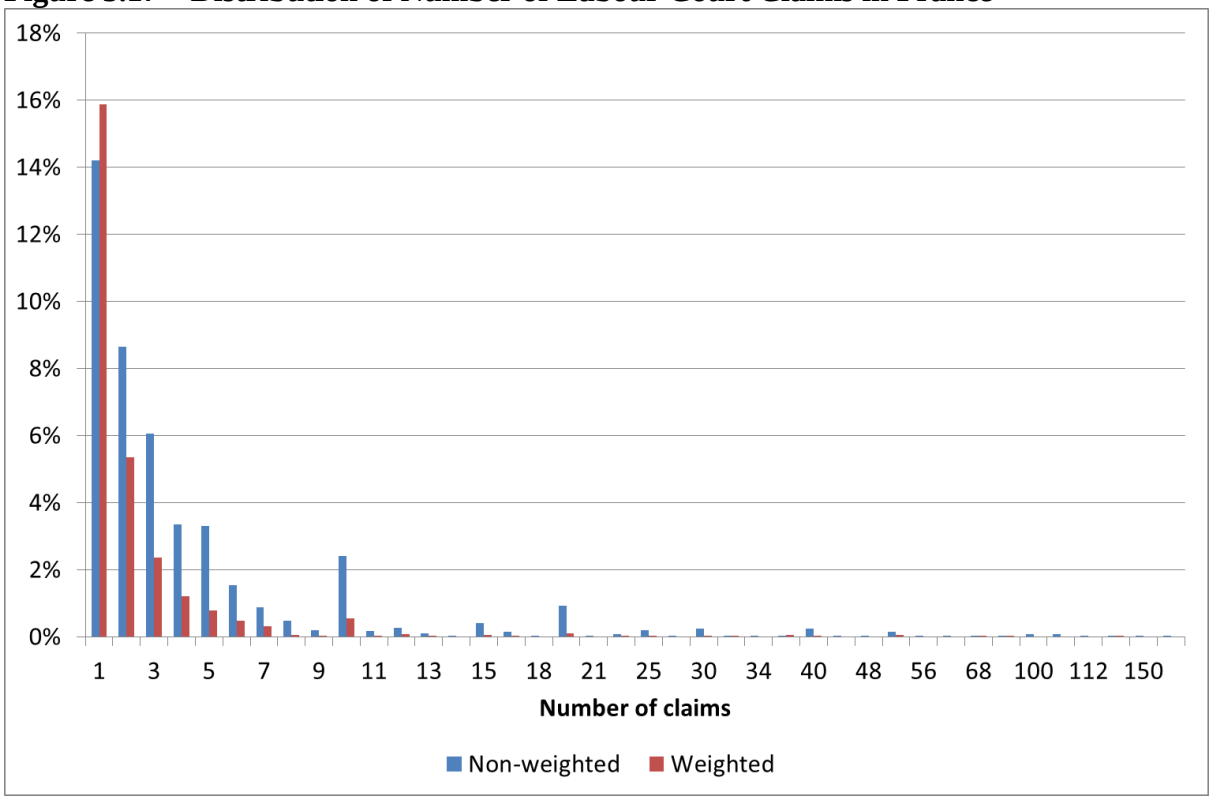
The problems associated with the dichotomous coding of the claims item were discussed in the UK country data analysis. These caveats are even more severe for the French data that cover a three-year period. Consequently, the frequency indicator (CLAPRO) is to be considered the more reliable measure. As in the UK section above, CLAPRO measures the relative frequency of a labour court claim in relation to the number of employees, and may be read as a claims ratio. In accordance with the UK discussion and as shown in Figure 5.17, the unequal distribution of the item (i.e. the overwhelming number of no claim or one claim) makes it necessary to concentrate this part of the analysis on a subsample that excluded all workplaces without a claim. Due to the different variable design and characteristics, however, the number of cases to be included is substantially higher (1,271). The average claims ratio for France is 4.9 per cent and 2.8 per cent, respectively (weighted and unweighted mean).

Nevertheless, the fact that the number of claims is recorded over a three-year period limits strict comparability of the findings with those from the UK. More comprehensive comparative remarks on the three country case studies will be discussed in the concluding section of this chapter. It is worth re-emphasising that although results from both variables are reported, priority is given to those from the frequency indicator (CLAPRO) for reasons discussed here and in greater detail in the UK section above.

All variables used in the regression models are provided in Table 5.13. The usual categories apply. In addition to items on industrial relations and economic conditions, REPONSE contains detailed information on other forms of conflict that were briefly discussed in Chapter 2 above. These are added to the model in order to control for their relationship with labour court claims. As in the model above, COLAGR measures whether the main source of determining pay is a collective agreement. Although coverage in France is almost universal, as discussed in the section on collective bargaining above, our collective item reports a lower score (unweighted and weighted average of 75.9 per cent and 73.3 per cent, respectively).

The explanation for this deviation is that our indicator is strictly not a coverage measure. A workplace may be covered by an agreement and respect its minimum terms and conditions, but still apply different mechanisms to determine wage levels.

Figure 5.17 – Distribution of Number of Labour Court Claims in France



Source: Own calculations, REPONSE 2011

The items MULTCA and SINGCA capture if the agreement determining wages was conducted at sectoral or company level, respectively. The sum of MULTCA and SINGCA may exceed COLAGR since different agreements may determine wages for white-collar and blue-collar workers. Since French collective agreements primarily fix minimum terms and conditions of employment, we expect their impact to be weaker than in the UK and, most notably, Germany.

The indicators UNION, STAREP, WORCOU, CFHSWC and SIREBO capture the existence of the different employee representation bodies as spelled out by the French labour code and discussed in greater detail in the comparative industrial relations section earlier in this chapter. Similar to the UK section, the INFPOL item is a composite measure that records management's information policy towards the workforce. It aggregates a score of 1 when management 'occasionally' circulates information about either the economic situation or the development of staff levels to the workforce. When management informs employees

‘regularly’, the subindicators score 2 resulting in a maximum score of 4 for INFPOL. More general comments about composite indicators of this kind were made in the UK section above. Finally, IRCLIM measures the industrial relations climate at the workplace as perceived by management. The item score from 1 (‘tense’) to 4 (‘quiet’) and was added to the equation in order to account for the relationship between management, the workforce and its representatives.

The economic indicators follow a similar logic as in the other country case studies, with a first set of cyclical items and a second set of structural measures. FINPER and PRODUC reflect the financial performance and the productivity of the workplace, as assessed by management. Similar to the UK analysis, the question is phrased as a comparison with the company’s competitors and ranges from 1 ‘a lot below the competitors’ to 5 ‘a lot better than the competitors’. The item to measure the growth of the company’s activity (GROACT) may take scores from 1 (‘strongly shrinking’) to 5 (‘strongly growing’). Unlike WERS, the French data do not contain comprehensive information on dismissal or redundancies. Alternatively, we use the dichotomous indicator DISMIS, which measures whether or not employees have been dismissed in 2010, and EMPDEV, which reports the developments of staff levels over the past three years from decrease (1), through stability (2) to increase (3).

In addition, we add six structural variables containing information about the workforce that are very similar to those ones used in the UK analysis (FEMEMP, YOUEMP, OLDEMP, FITEMP, PATEMP, and AGEEMP). Unlike WERS, REPONSE does not contain information on ethnic minorities or employees with permanent disabilities. The size of the workplace (EMPLOY) is included in the logistic model in order to control for the obvious size effects associated with the dichotomous coding of the independent variable. The UK country chapter provides further discussion on the inclusion of size control indicators.

The last set of indicators includes four items on other forms of conflict. The first one, ABSENT, reports whether or not absenteeism has been considered a problem by management. As discussed in the section on the concept of conflict, absenteeism is seen as a possible expression of individual conflict. Hence, it is expected that problems with absenteeism reflect conflict-laden employment relations and, in turn, higher claims levels. The second indicator, ACCDNT, scores 1 when the workplace reports repeated accidents in 2010. Repeated accidents, in turn, might be related to poor workplace health and safety, and

can thus be both the source and the result of conflictual employment relations, and we expect that repeated accidents increase the incidence of labour court claims.

Table 5.13 – List of Variables

Name	Description	Codes/ range	Sample (non-weighted)		Population (weighted)	
			Avg/%	SD	Avg/%	SD
CLAIMS	Labour Court claim in the past three years	No/Yes	46.3%	0.5	28.2%	0.5
CLAPRO	Number of LC claims as a proportion of the workforce		2.8	4.7	4.9	6.6
Industrial Relations Variables						
COLAGR	Wages determined by collective agreement	No/Yes	75.9%	0.4	73.3%	0.4
MULTCA	Wages determined by sectoral agreement	No/Yes	56.9%	0.5	59.5%	0.5
SINGCA	Wages determined by company agreement	No/Yes	20.5%	0.4	14.7%	0.4
UNION	Presence of trade union representative(s)	No/Yes	49.6%	0.5	23.1%	0.4
STAREP	Presence of staff representative	No/Yes	62.8%	0.5	45.1%	0.5
WORCOU	Existence of works council	No/Yes	43.6%	0.5	17.1%	0.4
CFHSWC	Existence of committee for hygiene, safety and working conditions	No/Yes	53.3%	0.5	22.9%	0.4
SIREBO	Existence of single representation body	No/Yes	12.0%	0.3	8.3%	0.3
EMPASS	Company member of employers' association	No/Yes	59.9%	0.5	48.6%	0.5
INFPOL	Management information policy towards employees	0–4	3.0	1.1	2.8	1.2
IRCLIM	Social climate at the workplace	1–4	2.4	0.8	2.5	0.7
Economic Variables						
FINPER	Assessment of workplace's financial performance	1–5	2.1	0.7	2.1	0.7
PRODUC	Assessment of workplace's productivity	1–5	2.2	0.7	2.2	0.7
GROACT	Growth of company’s activity over past three years	1–5	2.1	1.0	2.2	1.0
DISMIS	Dismissal in 2010	No/Yes	0.4	0.5	0.2	0.4
EMPDEV	Development of staff levels	1–3	1.1	0.8	1.2	0.7
FEMEMP	Female employees	%	38.5%	0.3	38.8%	0.3
YOUEMP	Young employees (below 20)	%	2.5%	0.1	3.4%	0.1

Name	Description	Codes/ range	Sample (non-weighted)		Population (weighted)	
			Avg/%	SD	Avg/%	SD
OLDEMP	Older employees (55+)	%	10.6%	0.1	10.0%	0.1
FITEMP	Employees with fixed-term contracts	%	11.8%	0.1	12.5%	0.2
PATEMP	Part-time employees	%	19.1%	0.2	20.0%	0.2
AGEEMP	Agency workers	%	3.5%	0.1	2.7%	0.1
EMPLOY	Numbers of employees		258	541	57	157
Other Conflict Variables						
ABSENT	Absenteeism has been a problem in 2010	No/Yes	0.4	0.5	0.3	0.5
ACCDNT	There have been repeated accidents in 2010	No/Yes	0.1	0.4	0.1	0.3
TENSUP	Tensions between employees and their superior(s)	No/Yes	0.3	0.5	0.3	0.5
STRIKE	There has been a strike in the past three years	No/Yes	0.2	0.4	0.1	0.3
Control Variables						
SECTOR	Sectoral dummies (17)					

Note: The statistics only take into account observations that do not record any missing values and are thus included in the regression models (N = 2,835 except for CLAPRO)
Descriptive statistics for numeric variables are presented in their normal form, but enter the regression models as logarithmic numbers.
% signals that the indicator depicts the given phenomenon as a proportion of the workforce

Third, TENSUP reports whether there have been 'strong tensions' between employees and their superior(s). A positive score on this item should increase the incidence of claims. Finally, a strike indicator has been added to the equation (STRIKE). As discussed in Chapter 2 above, the relationship between strikes and court claims is not entirely clear. Nevertheless, we expect that the need to articulate through a labour court is less pronounced when employees take the opportunity to express perceived conflict through industrial action. Thus, the occurrence of strikes should decrease the incidence of court claims. Lastly, sectoral dummies are used that correspond to the company's NACE code.

As in the UK, data are fitted into two broad models; a logistic regression model using CLAIMS as the independent variable, and an OLS model with the relative frequency measure CLAPRO. Like the UK, a range of different estimations are specified that account for different features of the industrial relations explanations. First, separate sets of models are estimated for the existence of collective agreements in general, and for different effects of sectoral and company agreements. Thereafter, the different types of employee representation

institutions are controlled for separately, since their appearance shows high levels of multicollinearity. Results are presented in the subsequent section.

Results

Results from the regression analyses are reported in Table 5.14 and Table 5.15. As in the UK chapter, Table 5.14 shows the odds ratios resulting from the logistic regressions and Table 5.15 provides the coefficients from the OLS regression for the subsample with court claim experience. The increased complexity of the institutional framework in France made it necessary to specify ten different estimations compared to five in the UK. In order to limit the number of pages filled with tables, we only report regression results that include sectoral dummies as they seem more robust than, but not fundamentally different from, those without controlling for the company's activity. As in the previous sections, numeric variables enter the equation as logarithms, and non-dichotomous items as standardised values.

The collective bargaining items show little in the way of significant results. In the logit specifications a company agreement as main source of pay determination (SINGCA) significantly reduces the likelihood of a claim by some 10 per cent (specifications VI to X). This is in line with expectations formulated above. The at best weak effect of collective agreements is equally unsurprising. On the contrary, the employee representation indicators yield some interesting results. In the logit model, union presence (UNION) seems to increase the probability of a claim. This is strongly contradicted by the more robust OLS model. In the latter, all major employee voice institutions predict strongly significant lower levels of court claims. The highest coefficients are reported from committees for hygiene, safety and working conditions (CFHSWC) and works councils (WORCOU) closely followed by trade union and staff representatives (UNION and STAREP). Perhaps surprisingly, small and medium-sized workplaces that have merged activities from works council and staff representation into a single representation body (SIREBO) record higher levels of court claims than workplaces without employee representation, which contradicts our expectations. Finally, the employers' association variable neither produces strong coefficients nor any significant results.

The information policy indicator (INFPOL) suggests that more comprehensive and more regular circulation of information on the employment and economic situation of the company decrease the frequency of claims, although this result is only statistically significant in the OLS model. The opposite applies to the positive assessment of the industrial relations climate

(IRCLIM), which is significantly associated with lower claim probabilities in model 1, but not in model 2.

The cyclical economic indicators show relatively weak results. Neither the company's financial performance (FINPER) nor its productivity (PRODUC) produces significant coefficients. Growing economic activity (GROACT) is only associated with lower claim probabilities in the logit model, although the negative sign also appears in the OLS specifications. The dismissal indicator (DISMIS) yields puzzling results. Whereas the first set of specifications shows that the use of dismissal increases the odds for a claim by a factor of roughly 3.5 and, thus, confirms our expectations, the same item predicts lower levels of conflict externalisation in the OLS model, which is deemed to deliver more robust results. In contrast, a positive development of staff levels (EMPDEV) over the past three years is significantly correlated to a lower claim incidence throughout the two broad models, which confirms our expectations.

The set of indicators that measures the structural composition of the workforce produces a range of interesting findings. The proportion of female employment (FEMEMP) shows no significant correlations and coefficients differ between positive (model 1) and negative signs (model 2). In contrast to the UK, higher rates of youth employment (YOUEMP) are significantly associated with fewer claims over both sets of specifications. Similar to the UK, high shares of older workers in the workforce (OLDEMP) are significantly and negatively correlated to fewer claims, although these results are only significant in the OLS models in both France and the UK. Fixed-term employment (FITEMP) is, on the other hand, shown to be associated with higher claims odds in the logit model, whereas a large proportion of part-time employment (PATEMP) predicts significantly both lower odds and lower frequencies. Fewer claims are also reported from workplaces with higher shares of agency work (AGEEMP).

Finally, the set of indicators that capture other forms of conflict show strong and fairly consistent results across specifications. Problems with absenteeism (ABSENT) are significantly associated with higher odds and higher claims ratios, although the latter are not significant in all estimations. This suggests, however, that absenteeism might be a different form of individual expression of conflict. Moreover, repeated accidents (ACCDNT) increase the likelihood of claims in the logit model, but show no significant results in the OLS estimations although coefficients are positive. Perhaps not surprisingly, strong positive

correlations are recorded from the item that captures tensions between employees and their superiors. These results are highly significant across both broad models. Finally, our expectations of the role of strikes are confirmed. As the regression results show, companies with strike experience (STRIKE) record lower probabilities of being sued and receive fewer claims. Again, the correlations are highly significant across both the logit and the OLS specifications.

Conclusion

As for the chapter on the UK above, the technical challenges in modelling the incidence of labour court claims in France should be borne in mind when reading these concluding remarks. Nevertheless, the linear regression results strongly support the mitigating impact of employee voice institutions on the externalisation of conflict. The strength of the coefficients was different than expectations since the strongest correlations are reported from committees for hygiene, safety and working conditions and works councils, which were not expected to show such a pronounced negative impact. On the contrary, the presence of staff delegates, which are designed to deal with individual conflict and were hypothesised to have the strongest effect on the frequency of claims, show weaker coefficients than CFHSWCs, works councils, and trade union representatives. Nevertheless, findings are still negative and highly significant. This observation points towards a point already made in the section on employee workplace representation (from page 128 onwards). Our hypotheses are based on the institutional design of the employee voice institutions, but little is known about their actual role in everyday workplace management (Béthoux and Meixner, 2012). Therefore, it is difficult to provide a more thorough assessment of the exact effect of each of the different employee representation institutions that exist in France.

The positive correlation reported from the single representation bodies (DUP) is puzzling. Again, not much is known about how these institutions operate and all explanations must remain largely speculative. DUPs were introduced by law in 1993 to assure employee representation in small and medium-sized enterprises by merging the roles of works councils and staff representatives (Amossé, 2006). Hence, they only exist in companies with 200 or fewer employees that are likely to have few resources available and operate less effectively as employee representation institutions than employee voice institutions in larger workplaces. More research is needed, however, to shed light on this phenomenon. Although the functioning of employee voice institutions is spelled out in some detail by French labour law,

the relational indicators yield some significant results and suggest that a positive industrial relations climate and, in particular, the comprehensive and regular provision of information to the workforce are important factors in limiting court claims.

Similar to the UK and different from the German analysis, the cyclical economic indicators show to have less importance than expected. Only the employment development indicator produced unambiguous results suggesting that a shrinking workforce is associated with an increasing externalisation of work-related conflict. The findings from the dismissal indicator remain puzzling and contradictory between the two model specifications. Given the absence of any significant and meaningful results from the economic performance company indicators, and the strong relationship between national unemployment and labour court claims discussed in the introduction of this chapter, we might suggest that the argument that unemployment on the local labour market fuels court claims receives stronger support from the data than the suggested importance of the economy of the firm.

With regards to gender, we have seen that the female employment indicator was not significant in any of the specifications. French administrative data show, however, that women are substantially less likely to bring a claim. As noted above, in 2010, 38 per cent of claimants were female whereas the share of women in the French labour force was 48 per cent (see Figure 2.3 on page 66). The resulting expectation that workplaces with higher shares of female employment produce fewer claims was not supported by the data.

On the other hand, we found strong support for the hypothesis that fewer claims are brought from companies with high shares of young employees. This confirms the suggestions based on UK survey data that young employees are underrepresented in the claimant population. There might be different reasons for this phenomenon. On the one hand, youth employment in France is characterised by high shares of atypical employment. In 2011, roughly half of those in employment and aged 15 to 24 worked on temporary contractual arrangements such as fixed-term contracts (27 per cent), apprenticeships (16 per cent) or as agency workers (7.5 per cent) (Schulze-Marmeling, forthcoming). Many of these atypical contractual arrangements are special measures designed to facilitate the transition into employment for young labour market entrants. Thus, they might not be perceived as ‘typical’ employment contracts and the inherent conflict of the employment relationship might be less visible. In addition, new labour market entrants might simply be less aware of their rights or their possible enforcement mechanisms.

The results on the employment of older workers are less clear. The more robust second model, however, succeeds in producing stronger and more coherent results, which suggest that a larger proportion of older employees in a workforce is associated with fewer claims. The same pattern appeared in the UK section. Although the British evidence suggests that older workers are overrepresented in employment tribunal claims, this finding is not necessarily contradictory. A high share of older workers might also indicate that the workplace has more sophisticated management practices in place that are designed to facilitate the employment of older workers (Mongourdin-Denoix and Schulze-Marmeling, 2011).

The use of fixed-term employees is associated with higher claim rates in the first set of specifications, but fails to produce significant results in the second one. This contrasts with the UK, where the same indicator was negative and statistically significant in the linear models. In France, however, there is no qualifying period, which might facilitate claims from employees on temporary contracts. Part-time employment shows a negative relationship, but significance is weak and, in model 2, not consistent over all specifications. The extensive use of agency work is negatively correlated to claim frequency. A possible explanation is that agency workers would rather bring a claim against the agency than against the hirer, since they are typically employed by the former.

Finally, the other conflict variables have shown strong results with the expected directions. It is necessary, however, to add a few remarks on the different mechanisms of conflict articulation. As noted above, we expected fewer claims from workplaces with strike experience, whereas problems with absenteeism should correlate positively with the claim indicators. Both were categorised as forms of expression of conflict in the conceptual part in Chapter 2, but there are important differences. In the sense of Hirschman's (1970) work discussed in the same chapter, strikes are an explicit form of employee 'voice' to articulate their discontent. Absenteeism, on the other hand, cannot be qualified as such since its reasons might be various, its appearance might not be identified as an expression of conflict, and consequently even a well-disposed employer might not take appropriate action. Hence, the employee could experience a more hostile reaction to their action, which in turn fuels the conflictual relationship. The overall conclusion of this research will make some further remarks on the concept of conflict and its different forms of expression.

Table 5.14 – Regression Results for Model 1 (Logistic Regression)

	Dependent variable: CLAIMS									
	I	II	III	IV	V	VI	VII	VIII	IX	X
COLAGR	0.927	0.934	0.940	0.939	0.943					
	(0.10)	(0.10)	(0.11)	(0.11)	(0.11)					
MULTCA						1.025	1.021	1.027	1.033	1.030
						(0.12)	(0.11)	(0.11)	(0.12)	(0.12)
SINGCA						0.679***	0.708**	0.715**	0.708**	0.722**
						(0.10)	(0.10)	(0.10)	(0.10)	(0.10)
UNION	1.647***					1.713***				
	(0.20)					(0.20)				
STAREP		1.113					1.133			
		(0.11)					(0.12)			
WORCOU			1.027					1.056		
			(0.12)					(0.13)		
CFHSWC				1.223					1.261*	
				(0.15)					(0.16)	
SIREBO					1.093					1.069
					(0.15)					(0.14)
EMPASS	1.046	1.055	1.055	1.049	1.056	1.028	1.038	1.038	1.031	1.040
	(0.10)	(0.10)	(0.10)	(0.10)	(0.10)	(0.10)	(0.10)	(0.10)	(0.10)	(0.10)
INFPOL	1.043	1.056	1.058	1.052	1.057	1.051	1.065	1.066	1.060	1.066
	(0.05)	(0.05)	(0.05)	(0.05)	(0.05)	(0.05)	(0.05)	(0.05)	(0.05)	(0.05)
IRCLIM	0.897**	0.886**	0.885**	0.886**	0.884**	0.902**	0.890**	0.889**	0.890**	0.888**
	(0.05)	(0.05)	(0.04)	(0.05)	(0.04)	(0.05)	(0.05)	(0.05)	(0.05)	(0.05)
FINPER	1.063	1.065	1.064	1.066	1.066	1.069	1.070	1.070	1.072	1.071
	(0.05)	(0.05)	(0.05)	(0.05)	(0.05)	(0.06)	(0.05)	(0.05)	(0.05)	(0.05)
PRODUC	1.015	1.008	1.008	1.008	1.007	1.007	1.001	1.001	1.001	1.000
	(0.05)	(0.05)	(0.05)	(0.05)	(0.05)	(0.05)	(0.05)	(0.05)	(0.05)	(0.05)
GROACT	0.901*	0.902*	0.902*	0.903*	0.902*	0.904*	0.905*	0.905*	0.907*	0.905*
	(0.05)	(0.05)	(0.05)	(0.05)	(0.05)	(0.05)	(0.05)	(0.05)	(0.05)	(0.05)
DISMIS	3.407***	3.422***	3.420***	3.414***	3.421***	3.399***	3.415***	3.410***	3.406***	3.414***
	(0.35)	(0.35)	(0.35)	(0.35)	(0.35)	(0.35)	(0.35)	(0.35)	(0.35)	(0.35)
EMPDEV	0.903*	0.897**	0.897**	0.897**	0.898**	0.901*	0.894**	0.894**	0.894**	0.895**
	(0.05)	(0.05)	(0.05)	(0.05)	(0.05)	(0.05)	(0.05)	(0.05)	(0.05)	(0.05)

	Dependent variable: CLAIMS									
	I	II	III	IV	V	VI	VII	VIII	IX	X
FEMEMP	1.018	1.034	1.032	1.031	1.031	1.023	1.040	1.038	1.036	1.036
	(0.07)	(0.07)	(0.07)	(0.07)	(0.07)	(0.07)	(0.07)	(0.07)	(0.07)	(0.07)
YOUEMP	0.810***	0.800***	0.799***	0.802***	0.798***	0.810***	0.799***	0.799***	0.802***	0.797***
	(0.04)	(0.04)	(0.04)	(0.04)	(0.04)	(0.04)	(0.04)	(0.04)	(0.04)	(0.04)
OLDEMP	1.109*	1.132**	1.133**	1.128**	1.131**	1.102*	1.126**	1.128**	1.122**	1.127**
	(0.06)	(0.06)	(0.06)	(0.06)	(0.06)	(0.06)	(0.06)	(0.06)	(0.06)	(0.06)
FITEMP	1.147***	1.141**	1.140**	1.143**	1.139**	1.149***	1.142**	1.141**	1.145**	1.140**
	(0.06)	(0.06)	(0.06)	(0.06)	(0.06)	(0.06)	(0.06)	(0.06)	(0.06)	(0.06)
PATEMP	0.922	0.918	0.919	0.921	0.918	0.916	0.913	0.915	0.917	0.914
	(0.05)	(0.05)	(0.05)	(0.05)	(0.05)	(0.05)	(0.05)	(0.05)	(0.05)	(0.05)
AGEEMP	0.989	1.007	1.009	0.999	1.009	0.987	1.006	1.007	0.996	1.008
	(0.05)	(0.05)	(0.05)	(0.05)	(0.05)	(0.05)	(0.05)	(0.05)	(0.05)	(0.05)
EMPLOY	2.164***	2.414***	2.435***	2.300***	2.453***	2.203***	2.465***	2.472***	2.334***	2.511***
	(0.16)	(0.17)	(0.19)	(0.18)	(0.17)	(0.17)	(0.18)	(0.20)	(0.19)	(0.18)
ABSENT	1.269**	1.294**	1.294**	1.297**	1.291**	1.285**	1.311***	1.311***	1.314***	1.308***
	(0.13)	(0.13)	(0.13)	(0.13)	(0.13)	(0.13)	(0.13)	(0.13)	(0.13)	(0.13)
ACCDNT	1.383**	1.371**	1.373**	1.368**	1.376**	1.387**	1.373**	1.375**	1.370**	1.378**
	(0.19)	(0.19)	(0.19)	(0.19)	(0.19)	(0.19)	(0.19)	(0.19)	(0.19)	(0.19)
TENSUP	1.645***	1.671***	1.677***	1.669***	1.677***	1.655***	1.680***	1.687***	1.678***	1.686***
	(0.17)	(0.17)	(0.17)	(0.17)	(0.17)	(0.17)	(0.17)	(0.17)	(0.17)	(0.17)
STRIKE	0.641***	0.691***	0.697***	0.694***	0.708**	0.670***	0.721**	0.727**	0.725**	0.737**
	(0.09)	(0.09)	(0.09)	(0.09)	(0.10)	(0.09)	(0.10)	(0.10)	(0.10)	(0.10)
Sectoral dummies	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Constant	0.191**	0.274	0.287	0.255*	0.282	0.181**	0.267	0.280	0.246*	0.279
	(0.16)	(0.22)	(0.23)	(0.21)	(0.23)	(0.15)	(0.22)	(0.23)	(0.20)	(0.23)
N	2,835	2,835	2,835	2,835	2,835	2,835	2,835	2,835	2,835	2,835
Pseudo R^2	0.268	0.264	0.264	0.264	0.264	0.271	0.266	0.266	0.267	0.266

Logistic regression with odds ratio coefficients and standard errors in parentheses. Ordinal variables are in standardised form, numerical variables are in logarithmic and standardised form.

** significant at 0.10 level; ** significant at 0. 05 level; *** significant at 0.01 level*

Table 5.15 – Regression Results for Model 2 (Linear Regression)

	Dependent variable: logCLAPRO									
	I	II	III	IV	V	VI	VII	VIII	IX	X
COLAGR	0.052	0.046	0.033	0.034	0.029					
	(0.06)	(0.06)	(0.06)	(0.06)	(0.06)					
MULTCA						0.065	0.072	0.046	0.037	0.056
						(0.06)	(0.06)	(0.06)	(0.06)	(0.06)
SINGCA						-0.020	-0.045	-0.015	-0.019	-0.075
						(0.07)	(0.07)	(0.07)	(0.07)	(0.07)
UNION	-0.533***					-0.525***				
	(0.06)					(0.06)				
STAREP		-0.401***					-0.395***			
		(0.06)					(0.06)			
WORCOU			-0.647***					-0.641***		
			(0.06)					(0.06)		
CFHSWC				-0.719***					-0.713***	
				(0.06)					(0.06)	
SIREBO					0.209***					0.201***
					(0.07)					(0.07)
EMPASS	-0.028	-0.042	0.002	0.001	-0.056	-0.028	-0.042	0.001	0.000	-0.056
	(0.05)	(0.05)	(0.05)	(0.05)	(0.05)	(0.05)	(0.05)	(0.05)	(0.05)	(0.05)
INFPOL	-0.114***	-0.131***	-0.121***	-0.107***	-0.141***	-0.112***	-0.128***	-0.12***	-0.106***	-0.138***
	(0.03)	(0.03)	(0.03)	(0.03)	(0.03)	(0.03)	(0.03)	(0.03)	(0.03)	(0.03)
IRCLIM	-0.012	0.004	-0.005	-0.012	0.011	-0.011	0.005	-0.004	-0.011	0.012
	(0.02)	(0.02)	(0.02)	(0.02)	(0.02)	(0.02)	(0.02)	(0.02)	(0.02)	(0.02)
FINPER	0.026	0.024	0.032	0.028	0.030	0.027	0.026	0.032	0.029	0.031
	(0.03)	(0.03)	(0.03)	(0.03)	(0.03)	(0.03)	(0.03)	(0.03)	(0.03)	(0.03)
PRODUC	-0.007	0.010	0.001	-0.008	0.003	-0.007	0.009	0.000	-0.008	0.002
	(0.03)	(0.03)	(0.03)	(0.03)	(0.03)	(0.03)	(0.03)	(0.03)	(0.03)	(0.03)
GROACT	-0.010	-0.010	-0.012	-0.010	-0.016	-0.010	-0.009	-0.012	-0.010	-0.015
	(0.03)	(0.03)	(0.03)	(0.03)	(0.03)	(0.03)	(0.03)	(0.03)	(0.03)	(0.03)
DISMIS	-0.097*	-0.138***	-0.045	-0.045	-0.167***	-0.098*	-0.138***	-0.045	-0.045	-0.165***
	(0.05)	(0.05)	(0.05)	(0.05)	(0.05)	(0.05)	(0.05)	(0.05)	(0.05)	(0.05)
EMPDEV	-0.102***	-0.093***	-0.098***	-0.105***	-0.092***	-0.103***	-0.094***	-0.099***	-0.106***	-0.094***
	(0.03)	(0.03)	(0.03)	(0.03)	(0.03)	(0.03)	(0.03)	(0.03)	(0.03)	(0.03)

	Dependent variable: logCLAPRO									
	I	II	III	IV	V	VI	VII	VIII	IX	X
FEMEMP	0.008	-0.006	0.001	-0.000	-0.005	0.011	-0.001	0.004	0.002	0.001
	(0.04)	(0.04)	(0.04)	(0.04)	(0.04)	(0.04)	(0.04)	(0.04)	(0.04)	(0.04)
YOUEMP	-0.223***	-0.213***	-0.204***	-0.2***	-0.217***	-0.223***	-0.213***	-0.204***	-0.2***	-0.217***
	(0.03)	(0.03)	(0.03)	(0.03)	(0.03)	(0.03)	(0.03)	(0.03)	(0.03)	(0.03)
OLDEMP	-0.092***	-0.131***	-0.108***	-0.078**	-0.159***	-0.092***	-0.129***	-0.108***	-0.078**	-0.157***
	(0.03)	(0.03)	(0.03)	(0.03)	(0.03)	(0.03)	(0.03)	(0.03)	(0.03)	(0.03)
FITEMP	-0.023	-0.031	-0.015	-0.021	-0.038	-0.020	-0.028	-0.013	-0.019	-0.034
	(0.03)	(0.03)	(0.03)	(0.03)	(0.03)	(0.03)	(0.03)	(0.03)	(0.03)	(0.03)
PATEMP	-0.073**	-0.071*	-0.069*	-0.057	-0.081**	-0.073**	-0.071*	-0.069*	-0.057	-0.082**
	(0.04)	(0.04)	(0.04)	(0.04)	(0.04)	(0.04)	(0.04)	(0.04)	(0.04)	(0.04)
AGEEMP	-0.101***	-0.112***	-0.074***	-0.067**	-0.13***	-0.102***	-0.113***	-0.074***	-0.068**	-0.13***
	(0.03)	(0.03)	(0.03)	(0.03)	(0.03)	(0.03)	(0.03)	(0.03)	(0.03)	(0.03)
ABSENT	0.098*	0.092*	0.077	0.073	0.084	0.102*	0.097*	0.079	0.076	0.089*
	(0.05)	(0.05)	(0.05)	(0.05)	(0.05)	(0.05)	(0.05)	(0.05)	(0.05)	(0.05)
ACCDNT	0.006	0.004	0.031	0.016	0.007	0.005	0.004	0.030	0.016	0.007
	(0.06)	(0.06)	(0.06)	(0.06)	(0.06)	(0.06)	(0.06)	(0.06)	(0.06)	(0.06)
TENSUP	0.17***	0.172***	0.139***	0.146***	0.171***	0.171***	0.173***	0.139***	0.147***	0.172***
	(0.05)	(0.05)	(0.05)	(0.05)	(0.05)	(0.05)	(0.05)	(0.05)	(0.05)	(0.05)
STRIKE	-0.191***	-0.227***	-0.144**	-0.191***	-0.286***	-0.182***	-0.214***	-0.138**	-0.184***	-0.271***
	(0.06)	(0.06)	(0.06)	(0.06)	(0.06)	(0.06)	(0.06)	(0.06)	(0.06)	(0.06)
Sectoral dummies	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Constant	0.875	0.743	0.578	0.996*	0.407	0.864	0.722	0.568	0.994*	0.395
	(0.61)	(0.61)	(0.59)	(0.60)	(0.63)	(0.61)	(0.61)	(0.59)	(0.60)	(0.62)
N	1,270	1,270	1,270	1,270	1,270	1,270	1,270	1,270	1,270	1,270
R^2	0.283	0.266	0.313	0.313	0.243	0.284	0.267	0.313	0.313	0.245

Ordinary least square regression with standard errors in parentheses. Ordinal variables are in standardised form, numerical variables are in logarithmic and standardised form.

** significant at 0.10 level; ** significant at 0. 05 level; *** significant at 0.01 level*

Discussion

The first section of this chapter discussed in some detail the role of juridification in explaining the incidence of labour court or employment tribunal claims in France, Germany and the UK. Based on that small country sample, we suggest that juridification adds to explaining the phenomenon in three possible ways, which differ in terms of their strength of impact on conflict externalisation; necessary precondition, shifting average, and direct cause. The analysis suggests that the three explanations are not mutually exclusive, but might appear at different points in time in any country, or even simultaneously. The case of Germany has shown, however, that variance in labour court claims can also appear in countries with a relatively stable legal framework, which supports the suggested need for multiple explanations.

The remainder of the chapter draws on national survey data to analyse in some more detail the role of industrial relations and economic approaches in the incidence of claims in Germany, the UK and France. Our concluding section compares the results of these country case studies in some greater detail, and attempts to embed findings into their country-specific context. Prior to that, however, it is worth noting the differences in data sources and analyses, and to point towards reduced comparability of the findings, which results from the divergences. As Table 5.16 shows, the most striking differences appear between Germany on the one hand, and France and the UK on the other.

Most notably, the population covered by German data is narrower since the survey only covers companies with works councils. As discussed in the German section above, these workplaces are expected to be systematically different from those without institutional employee representation. Strictly, German results are thus only generalisable to this sub-population of the economy due to the absence of a control group. Moreover, as discussed above, German data do not permit analysis of the effect of the existence of a works council, but can only shed light on the impact of its relationship with management. The latter, however, is based on assessments of the interviewed German works councillors, and we might expect that these employee representatives have slightly different views than managers, which are surveyed for the French and UK investigations.

Another difference between the data sources is the size of companies surveyed. As a consequence of its focus on workplaces with works councils, German data only cover

relatively large workplaces with more than 20 employees. Research cited in the comparative industrial relations section has shown that smaller workplaces are considerably less likely to have a works council, although they are legally eligible (Hans Böckler Foundation, 2012). French data coverage is limited by its higher threshold, compared to the UK, for company size, and the exclusion of the entire public sector and companies in agriculture. Finally, German data are slightly dated, but newer editions of the same survey did not include the item on labour court claims.

Table 5.16 – Data Sources and Methods of Analysis

Country	Germany	France	United Kingdom
Survey	WSI Works Councillor Survey	REPONSE	WERS
Year	2005	2011	2011
Population	Companies with works council	All companies	All companies
Size	> 20 employees	> 10 employees	≥ 5 employees
Sectors	All	Private sector without agriculture	All
Interviewees	Works councillors	Managers	Managers
Observations	2,007	4,023	2,680
Methods of analysis	Logit	Logit and OLS	Logit and OLS

The overview only takes into account those parts of REPONSE and WERS that have been used for this study.

A consequence of the different data structures are slightly different modes of analysis. Whereas the dichotomous analysis was argued to be the most suitable and only possible method for the German data, its shortcomings for France and the UK have been discussed, and an alternative approach has been presented and applied to both WERS and REPONSE data. The remainder of this section, which compares the regression results from the three countries, should be read in conjunction with these caveats.

In order to remind the reader of the main findings from the regression models above, Table 5.17 summarises the most important concepts that entered the statistical estimations above, the expected relationship based on the theoretical discussion in Chapter 2 and some more specific debate from the country chapters, and the findings from the regression analyses. A more detailed list of which indicators are associated with each concept is provided in Table 8.1 in the appendices.

Table 5.17 – Overview of Regression Results from Country Case Studies

			E	DE	FR	UK
Industrial Relations	Collective bargaining	Existence of a collective agreement	–	***	ns	ns
		Existence of a sectoral agreement	–	ns	ns	ns
		Existence of a company agreement	–	ns	**	**
		Use of opening clauses	+	**		
	Employee representation	Trade union workplace presence	–		**	**
		Shop steward or staff representative	–		**	**
		Other forms of employee voice institutions	–		**	**
		Non-union employee representation	–			*
	Relational indicators	Management information policy	–	*	**	*
		Relationship management employees	–		***	*
		Relationship management employee representatives	–	**	*	
Economics	Economics of the firm	Economic/financial performance	–	**	*	**
		Productivity	–		ns	ns
		Changes in staff levels	+	**	**	**
	Employment structure	Female employment	–		ns	*
		Youth employment	/		*** (–)	ns
		Employment of older workers	+	ns	+/–	* (–)
		Employment of ethnic minorities	+			+/–
		Employment of disabled workers	+			ns
		Fixed-term employment	+	ns	*	** (–)
		Part-time employment	+	* (–)	* (–)	ns
		Employment of agency workers	+	* (–)	** (–)	ns
		Other forms of atypical employment	+	ns		
Others	Other conflict variables	Internal grievance mechanisms	–	*** (+)		** (+)
		Absenteeism	+		**	
		Accidents	+		**	
		Strikes	–		***	

*** *Strong impact on claim incidence over all (or most) specifications*

** *Medium strong impact on claim incidence over the most important specifications without major contradictions*

* *Weak impact on claim incidence or contradictory results with some tendency*

+/- *Contradictory results*

ns *No significant results*

The column titled with an 'E' denotes the expected direction of the relationship

Correlations that are contrary to expectations are reported in parentheses

An overview of all variables that were taken into account for each of the constructs, see Table 8.1 in the appendices.

With regards to collective bargaining, Table 5.17 shows two quite different patterns. First, in Germany, the existence of a collective agreement is found to be significantly associated with a lower probability of receiving a claim. In addition, the use of opening clauses, which have been described as the main tool for German organised decentralisation of collective

bargaining (Traxler, 1996), is reported to increase the likelihood of receiving a claim when it concerns the deviation from sectorally agreed wages. Hence, Germany seems to fit neatly into our expectations formulated in Section 2.2, since it confirms that strong centralised bargaining limits the extent to which conflict is externalised.

The two other countries, though not contradicting our hypotheses, show a more complex picture. In both countries, evidence suggests that the expected effect only appears when the workplace is covered by a company agreement. In order to understand that finding, it is worth giving closer consideration to the bargaining structure of the three countries. In the respective industrial relations sections earlier in this chapter, we pointed out that only minimum terms and conditions of employment are set by sectoral agreements in France, with a significant and growing number of issues to be negotiated at company level. In the UK, multi-employer bargaining in the private sector is rare and agreements not legally enforceable. In both of these institutional settings, we might assume that company agreements have a stronger impact on employees' working lives, and might thus also play a more important role in the externalisation of conflict.

The latter argument is difficult to assess in greater detail, since we do not have sufficient information on the content of agreements at different levels. If there was evidence to support this claim, however, the theoretical considerations on the role of collective agreements would require some adjustment. Most notably, it would seem reasonable to depart from the idea of bargaining centralisation in terms of the dominant level of agreement, towards a more content-based *measure of proximity*, which reflects the location where decisions are taken that actually change employment conditions for workers. From such a perspective, we could argue that encompassing and comprehensive German sectoral agreements show the expected effect since their direct impact on terms and conditions of employment is substantial. When central agreements are undermined through the use of opening clauses on pay, we could show that this increases the probability of a court claim. In France and, arguably, in the UK sectoral agreements do not have the impact on working conditions since they either set minimum standards only, or they exist rarely to set terms and conditions of employment. In these cases, the impact of a company agreement, if existent, is much greater. As argued earlier in this section, this does not contradict, but rather refines our theoretical debate. There are, however, no sufficient data to assess these propositions in any greater detail.

The role of employee representation bodies is somehow more consistent both with the theoretical expectations and across countries, although the role of German works councils could not be assessed due to data limitations. In France and in the UK, however, we find that all forms of collective voice institutions significantly lowered the frequency of labour court or employment tribunal claims in the linear models.[81] In the UK, our findings suggest that those forms that are explicitly 'non-union' have a similar impact, but this effect is weaker to non-significant.

Moreover, from the data that we have used in our country chapters, there is no evidence to suggest, from a micro perspective, that the legally mandated form of employee representation in France has a stronger effect on avoiding the externalisation of conflict than the voluntarist forms in the UK. Such an effect could only be argued to appear at the macro level since the lack of a legal framework accounts to an extent for the collapse of strong trade union representation in workplaces in the UK (Terry, 2010), and thus, so it is argued here, is at least partly responsible for the rise of applications to employment tribunals in the UK. On the other hand, however, there is also no theoretical reason to suggest that institutionally embedded German works councils with legally assigned codetermination rights do not have the same, or an even stronger, impact on internal conflict settlements.

The established effect of employee voice, however, is only based on theoretical considerations drawn from the literature. Given the research strategy adopted here, we are not able to provide a detailed account of the *dynamics* of these institutions in the process of conflict emergence and articulation. Most notably, we cannot say whether such bodies prevent certain behavioural patterns that lead to an excessive amount of conflict which leads, in turn, to more court claims. Alternatively, these institutions could prove to play a role as successful mediators or arbitrators in the process of conflict articulation, and thus help to settle conflicts internally. Their actual role is likely to be a mix of both and to vary between workplaces, but still the dynamics remain largely unknown due to a lack of qualitative research that looks in detail at the process of conflict articulation within the workplace.

Apart from the institutional settings, we have controlled for the relationship between management and employee representatives (Germany, France), and management and the workforce (France, UK). Some significant results are reported from these dimensions, all of

[81] We concentrate on the OLS models here since the weakness of the logit specifications has been discussed in some detail in the country section on France.

which point in the anticipated direction. In short, positive and productive relations are associated with fewer claims. This finding confirms a modified version of the argument made by Frick (2008)[82] that employee representatives are more effective when they cooperate constructively with management, and vice versa. Although there is no indicator to measure the relationship between *unions* and management in the UK, our results do not suggest that the 'trustful cooperation' that typically describes German industrial relations (Keller, 2004) has a stronger impact on court claims in Germany than they have in France or the UK, where the employment relationship is usually characterised as more adversarial.

The cyclical economic indicators broadly confirm the hypotheses formulated in Section 2.4. Poor economic or financial performance is associated with more claims in all three countries. Similarly, changes in staff levels are found to be a reliable predictor of the incidence of claims. These findings are not only consistent with theory, but also with previous findings presented in the beginning of this chapter, and in our cross-country analysis of Chapter 4, which established the strong relationship between cyclical unemployment and the frequency of claims to labour courts or employment tribunals. These snapshot findings from one edition of the respective surveys do not permit, however, analysis of changing dynamics over time. The discussion on juridification at the beginning of this chapter suggests that the correlation between economic conditions and claims grows stronger with increasing quantity and complexity of labour legislation. We use the UK to illustrate this point since changes in employment regulation are the strongest among the three countries under study. Hence, we might expect that a similar analysis with an older edition of WERS might deliver different results with regards to economic performance of the firm.

The set of indicators that captures the structure of the workforce produced the most unexpected findings in several respects. It worth bearing in mind here, however, that the formulation of the hypotheses was conducted with some caution since there is little knowledge of the effect of personal characteristics, effects might point into more than one direction, and the indicators used might turn out to be ambiguous measures for the phenomenon that we want to capture. The latter points are illustrated in the following paragraphs.

[82] Frick's original argument is that the existence of a works council only has an impact on the likelihood of conflict externalisation when the works councillors assess that their relationship with management is constructive, and when they receive appropriate information.

The argument of different directions may be illustrated with the findings on youth and atypical employment. Whereas we had discussed the possibility of an ambiguous impact of young workers, employees on atypical contracts were expected to produce more claims since there is more conflictual potential inherent in precarious contracts because, for instance, some forms of atypical employment are found to be associated with higher levels of perceived or actual job insecurity, and lower job satisfaction (de Graaf-Zijl, 2008; Jahn, 2013). Thus, we had expected that atypical employment translates into higher claim rates. With the exception of fixed-term employment in France, however, high shares of atypical employment either do not produce significant results or are reported to decrease the incidence of court claims. The same applied to youth employment, which is not significant in the UK and shows highly significant negative correlations in France. The latter is particularly puzzling since young workers are frequently employed on precarious contracts in France, as discussed in the country section above (Section 5.3).

These findings are not easy to explain given the data used in this research. As previously mentioned, the negative correlations reported from the employment of agency workers in France and Germany might be due to the fact that these employees are not employed by the hiring company but the temporary agency, and that eventual claims are filed against the latter rather than the former. Fixed-term employees, for whom the same effect is recorded from the UK data, might often not meet the 12-month eligibility threshold that applied when the survey was conducted. Nevertheless, considerations of eligibility may only explain the overall negative relationship of atypical employment and court claims to an extent, in particular for part-time employment, which is reported to lower claim rates in France and Germany.

We will discuss here two more possible explanations that might help to explain why employees on atypical contracts are generally less likely to claim. Our data do not allow, however, scrutinising either of these approaches and they remain subject to further investigation. First, research has suggested that workers on precarious contracts are less committed to their organisation (Kulkarni and Ramamoorthy, 2005). In turn, lower commitment might lead to weaker perceptions of injustice or disappointment when a conflictual situation with the employers arises. Second, employee reaction to these conflictual contractual arrangements might differ from what we had expected. Since these workers are more vulnerable than their counterparts under well-protected employment arrangements, and

a substantial proportion in all three countries work on atypical contracts involuntarily (for instance Tuchszirer, 2001; Bosch, 2009; Cam, 2012),[83] they might show stronger compliance and obedience in order to increase their chances to be granted more favourable working contracts. The overt manifestation of conflict against an employer, such as a claim to a judicial body, might be seen as a hindrance towards more stable working conditions.

A similar explanation might be applied to the employment of older workers, which shows ambiguous results in France and mildly negative correlations in the UK. In addition, it has been argued in the country sections that the item might capture another unintended phenomenon. It is reasonable to assume that workplaces with high shares of older workers are also more likely to have implemented policies to facilitate their employment. When workplaces are better adapted to the needs of old employees, they might, in turn, produce lower levels of claims. More generally, as cited several times above, we know that older employees are more likely to claim. Adapted workplace policies might be the missing between these two findings, which seem contradictory at first glance.

Just like older employees, we have shown that women are found to claim less often and it is thus expected that companies with high proportions of female employment produce fewer claims. This hypothesis only received weak support from the UK and the results were not significant in France. A possible explanation could be that women are generally more likely to work on atypical contracts (Eurofound, 2012), which are shown to be underrepresented in court claims. The proposed gender-effect might be moderated by contractual arrangements that are more often found for female workers. Finally, we could not confirm findings from Knight and Latreille (2000a) that suggest that more conflict is externalised from workplaces with large shares of ethnic minorities. Furthermore, the employment share of disabled workers did not show any significant results in the UK.

Finally, two more findings from the regression models deserve attention. First and in contradiction of expectations, both German and UK data show that the use of internal grievance mechanisms increases the probability that a claim is filed. Hence, our results provide evidence that both individual and collective grievance procedures are not effective conflict settlement mechanisms, but increase the aggrieved employee's perception of

[83] Bosch argues that in Germany, involuntary atypical employment is particularly frequent among female part-time workers in the East.

pursuing a legitimate claim and, in turn, increase the chance that they will bring a case to court (Serverin, 2007; Pfarr, *et al.*, 2005).

Second, French data have shown that our other conflict indicators are all significantly correlated with the incidence of court claims. We have differentiated between those forms of conflict articulation that are less constructive and least likely to settle the dispute (absenteeism, in particular) and, in turn, increase the claim incidence, and those forms that decrease the externalisation of conflict, most notably strikes. Furthermore, the French analysis has shown, in accordance with theory, that strikes might channel conflict in a different way, although it would go too far to argue that court claims and strikes are two sides of the same coin, as Dix, *et al.* (2008) have convincingly argued.

6 Conclusion

The aim of this study was to explore and explain the incidence of claims to labour courts or employment tribunals across countries and over time. The concluding remarks summarise its main findings and consider how the theoretical and empirical discussions may contribute to the debate in academia, among policy-makers, practitioners and the general public.

The general finding of this research is that the increasing externalisation of work-related conflict to national judicial bodies is not a European trend. Our data have shown that strong increases only appear in five countries; Ireland, Estonia, the UK, Romania, and Latvia. All other EU Member States in our sample either record relatively strong decreases (Slovakia, Greece, Czech Republic), or have experienced moderate fluctuation or stability (15 countries). Among the countries with a clear pattern of growing caseloads, only one Member State, Romania, had risen clearly above EU average by 2010 (claims ratio of 16.8 against EU mean of 10.2). Ireland is just at 10.2, the three other countries are below (8.8 in the UK, 6.3 in Estonia and 1.3 in Latvia).

The sometimes heated debate in the UK about "the escalating demand for tribunal hearings" (Colling, 2004: 555), the perception of a "culture of claiming first, and thinking later" (CBI, 2013: 6), and the apparent threat of the tribunal system as a hindrance "to create a pro-employment landscape" (the CBI's Deputy Director General, Neil Bentley, in BBC, 5 April 2012) might be reconsidered in the light of these findings. It seems that public discussion is mainly informed by the impressive levels of year-on-year increases, but largely ignores the overall claim levels, which are moderate by European standards.[84]

Beyond the UK, the findings of this research enrich the debate about the reasons for different developments in the number of claims in different ways, both theoretically and empirically. The theoretical discussion uses a novel concept of conflict that combines the classical notion of endemic conflict, borrowed from early industrial relations sociologists (Fox, 1966; 1973), and integrates it into a neo-institutional framework of comparative political economy. The main argument suggests that conflict at work is inevitable, but might be channelled through the provision of appropriate institutions. Whereas conflict is universal, the provision of appropriate institutions depends on the institutional and political context that, typically,

[84] Although it is worth re-emphasising that data comparability is limited. In comparison to the UK, for instance, a considerable amount of the higher claims ratios in Germany may be explained by more comprehensive legal responsibilities of German courts, as discussed in chapter 5.

differs from country to country. Such an approach allows for comparison of a large number of aspects of work-related conflict across national institutional settings. The empirical analysis has confirmed the importance of institutions.

With regards to the three conceptual approaches adopted here, the analysis has drawn on a wide range of literature from industrial relations, law, international political economy, and economics in an attempt to combine them under the umbrella of a neo-institutionalist framework (Crouch, 2005). The industrial relations chapter draws heavily on the pluralist frame of reference (Fox, 1966) and the section on employment legislation combines the seminal work on juridification (Simitis, 1984) with more recent accounts of enforcement mechanisms for individual labour law (Malmberg, 2009). The economic section seeks to present a less deterministic understanding of institutions (Jackson, 2010) and introduces an actor-based approach. Departing from classical rational choice theory, the section draws on behavioural economics (Kahneman and Tversky, 1979) to introduce the notion of expected costs that help to predict an individual's preferences.

In a first step, this research sought to assess the effectiveness of the most of such institutions to channel conflict, in particular in the field of industrial relations. It was found that from a macro perspective, centralised systems of *collective bargaining* with a high rate of employees covered are associated with fewer court claims. This finding confirms our theoretical proposition that comprehensive systems with high degrees of coherence, for which centralisation is a rough indicator, are less affected by conflict externalisation.

The country case studies allowed analysis of the effect of collective bargaining in more detail. The results identify a range of national particularities. In Germany, the existence of an agreement is connected to a lower likelihood of labour court claims. A strong positive correlation was found between the use of opening clauses on pay, which has been described as an organised form of decentralisation (Traxler, 1996) and undermines the provision of sectoral agreements, and the externalisation of conflict. In France and the UK, company agreements are found to significantly lower the frequency of claims, whereas sectoral agreements show no such effect. Hence, we have suggested supplementing the notions of coherence and complementarities with that of *proximity*.

Proximity measures the actual effect that an agreement has on employees' terms and conditions. In France, sectoral agreements are almost universal, but they have been shown to

provide little more than minimum standards, which are sometimes below legal minima (Bevort and Jobert, 2011). In the UK, it was argued that sectoral agreements rarely determine pay and working conditions (Brown, *et al.*, 2003). Hence, we would expect high degrees of proximity for German sectoral agreements without opening clauses, French company agreements that set actual terms and conditions rather than minimum standards, and UK single-site agreements that are virtually the only type of collective agreement that impacts on everyday working lives. This research can, however, only propose such a measure, which would have to be elaborated theoretically and empirically in another series of studies.

The second set of institutions that were tested in this research were *institutions of employee representation*. At the macro level, we used the institutional strength of employee representation bodies and combined it with trade union density, since it was argued that "unions with high density are best able to achieve strong statutory provision for industrial democracy" (Vernon, 2006: 194). Both indicators showed significant results in the expected direction, although the strength of unions is only significant in the old EU Member States. A possible explanation for the weaker role of unions in post-communist countries may be their former alignment with the Communist Parties as a mean to control the workforce, and relatively few new or substantially reformed unions, which may result in lower levels of trust from the workforce.

At the micro level UK employee voice institutions that are still largely underpinned by the principle of voluntarism showed an equally strong mitigating effect on conflict externalisation as their highly regulated French counterparts. Whereas strong rights assure, at the macro level, that the coverage of employee voice institutions is higher than in voluntarist countries, unregulated forms of worker representations do not seem to perform worse than their legally prescribed counterparts. Since the coverage is substantially lower in the UK than in France, however, the macro effect of employee voice is weaker.

Furthermore, this research has only briefly touched upon two important issues, which are considered to be of some importance and could be the subject of further investigation. First, the relationship between tribunal claims and other forms of conflict remains unclear. Two arguments are noteworthy in this context. First, the notion of endemic conflict and the empirical literature presented in Section 2.1 suggests that only a proportion of all disputes are articulated. On the other hand, it has been argued elsewhere that different forms of conflict articulation are not necessarily substitutes for each other (Dix, *et al.*, 2008). We have

provided some evidence for France that supports the assertion of the "cathartic aspect of strikes" (Drinkwater and Ingram, 2005: 379) in a way that strikes are shown to reduce the frequency of court claims. On the other hand, our indicator of semi-overt conflict has shown that high rates of absenteeism increase reliance on the *conseils de prud'hommes*. Hence, it is reasonable to expect that the interrelationship of different forms of conflict is more complicated than a simple substitution or complementation effect. More research would be needed, however, to elaborate our propositions.

Second, the role of internal grievance mechanisms has been briefly dealt with in the UK and German country section. The UK was one of the forerunners in establishing provisions for the establishment of internal grievance procedures. Most notably, the *Acas Code of Practice on Discipline and Grievance* (replacing the repealed *Statutory Dispute Procedures*) was designed to give guidance to companies on settling disputes internally, which employers are urged to follow, as noted in its foreword:

> "A failure to follow the Code does not, in itself, make a person or organisation liable to proceedings. However, employment tribunals will take the Code into account when considering relevant cases. Tribunals will also be able to adjust any awards made in relevant cases by up to 25 per cent for unreasonable failure to comply with any provision of the Code" (Acas, 2009: 1).

Although we do not know to what extent employers in our sample have followed this Code of Practice, the analysis has shown that the number of cases raised through internal grievance mechanisms significantly increases the frequency of tribunal claims. As briefly noted in the discussion of the UK findings, it has been argued that following such a procedure gives a certain legitimacy to the employee's perception that their individual employment rights have been breached, and could reinforce them in the conviction that their case could make a viable tribunal claim (Serverin, 2007).

A similar argument is made about German Conciliation Committee Meetings (Pfarr, *et al.*, 2005), which are a collective means for works councils to deal with individual grievances internally, and have been found to significantly increase the likelihood of a claim. Hence, our findings contest the intended functioning of internal grievance procedures, and imply that their actual impact might be the reverse of the intentions of policy-makers who argued for their introduction.

Due to limited data availability, the juridification argument (Simitis, 1984) and its impact on labour court claims could only be assessed descriptively and, in more detail, on a small sample of our three core countries. At cross-country level, data have been presented using Malmberg's (2009) categorisation of different groups of enforcement mechanisms, which received some support, although intra-group variance remains substantial. More detailed findings from the country case studies suggest three different types of relationship between juridification and labour court claims. The first type, juridification as necessary precondition for the connection between claims and other indicators, makes a direct link to explanations from industrial relations and economics, and stresses the three arguments should be seen as mutually reinforcing, or complementary.

The second type of juridification, the concept of shifting average, has received weak and patchy support from other research (Frick, *et al.*, 2012) although their coding of new legislation seems slightly simplistic, and their country sample is small. Finally, the analysis provided examples of a direct relationship between new regulations and more claims, which we consider to be the strongest form of the argument. Although this proposition, just as with the other two, needs more empirical research to be corroborated, an in-depth quantitative analysis would require detailed statistics on the jurisdiction of individual court cases. Among the three explanations presented here, it appears that the juridification argument has the greatest need for further research; theoretically, methodologically, and empirically. We hope that the discussion in this thesis may be a starting point for further analysis.

Interesting findings could, for instance, be delivered through an analysis of the current economic and financial crisis, which this study can only capture to a very limited extent since it only covers the period up to 2010. In particular, those EU Member States that have been most severely hit by the crisis could form an interesting case for study. Greece, for example, had to apply for international support from the European Union, the International Monetary Fund (IMF) and the World Bank. As a consequence, the country has been forced to dismantle substantial parts of its employment protection mechanisms (Koukiadaki and Kretsos, 2012). Since these measures did not produce the desired effects, the country continues to suffer from high levels of unemployment, whose impact on court applications is discussed below. In such an environment, it might be interesting to analyse interdependencies between declining employment protection and growing unemployment in an unprecedented environment, and the impact of these developments on claims to labour courts.

In order to account for actors' behaviour, the notion of varying amounts of conflict has been introduced. Conflict emergence and manifestation was expected to depend, among other things and in addition to the institutional setup, on the relationship between management, employees and their representatives. Therefore, we introduced some actor-centred variables into our industrial relations models. The findings demonstrate that it is fruitful to analyse actors and institutions in conjunction. The country case studies show that comprehensive information policy from the employer (France, Germany, UK), constructive cooperation between management and the local employee voice institutions, (France, Germany), and a positive assessment of the relationship between management and employees (France, UK) result in decreases in the incidence of labour court or tribunal claims.

Variations in levels of both latent and manifest conflict may be related to cyclical economic indicators, as our cross-country comparison confirmed. Previous research has come to similar conclusions, although based on different conceptual premises (Brown, *et al.*, 1997; Frick and Schneider, 1999; Masso, 2003; Frick, *et al.*, 2012). Hence, a certain degree of volatility of conflict manifestation should be expected, and does not necessarily indicate tendencies towards a 'compensation culture'.

At the micro level of analysis, the strong positive impact of unemployment was confirmed by significant correlations from indicators measuring the economy of the firm and changes in staff levels in all country chapters. All of these items measure cyclical economic phenomena. A slightly surprising finding from the country case studies comes from the UK, where the relationship between unemployment and tribunal claims only grew stronger in recent years. We explained this result by reference to the late development of legal institutions and the historical pivotal role of trade unions in dealing with all wide range of workplace related issues. On the other hand, the residual nature of the welfare state in the UK (Esping-Andersen, 1990) that is less generous than its counterparts in France and Germany would suggest a stronger connection. The section on direct and expected costs in Chapter 2 proposes that the individual costs of the earnings loss are higher in countries with low replacement rates of welfare benefits (Bertola, *et al.*, 1999). Therefore, residual welfare states should record a more pronounced increase in court claims when unemployment peaks than countries with more generous social security provisions where individual costs of earnings losses are lower. It is difficult, however, to isolate individual effects and it would thus take more research to assess the role of the welfare state in greater detail.

Finally, it is acknowledged that individual characteristics and their impact on the likelihood of filing a court claim are not only shaped by economic concerns. Our concept of conflict draws on a modified version of a well-established model of different stages of conflict (Pondy, 1967). The argument presented is that there is a stage of latent (but endemic) conflict and one of manifest conflict. In between, there is a transitional stage that is expected to be mediated by personal characteristics. In other words, those groups that are found to be more likely to experience work-related problems are not necessarily those who file more claims. This research, however, could not provide a satisfying explanation with regards to individual characteristics and more research is needed that controls for a range of personal characteristics at both stages (Lucy and Broughton, 2011), and sheds light on the reasons for unequal outcomes.

The theoretical and empirical contributions of this research have a range of policy implications that may inform the public debate. We use the UK as a case in point to illustrate the most important issues. It was stressed that the emergence of conflict is an inherent part of the employment relationship. As a consequence, the notion of a conflict-free workplace is a myth. Our theoretical discussion and empirical analysis suggest that work environments that record low levels of overt conflict manifestation are characterised by strong institutions to channel the conflicting interests of employers and employees, but not by an absence of conflict.

Recent public and political debate on conflict at work in the UK, on the other hand, is largely characterised by the question of how to restrict access to the judicial system through extended qualifying periods or the introduction of fees, for instance. Such measures, however, only block one route to manifestation, but the underlying conflict does not disappear. Rather, it is likely that other forms of articulation appear more frequently, either in organised overt form, such as strikes, or unorganised and semi-overt manifestations, such as absenteeism, sabotage, or poor work performance. The case of France illustrates this point. This position echoes the conclusion of research by Hebdon and Stern (1998: 218) on the public sector in Ontario, Canada.

> "The central proposition supported by this study is that conflict expression takes a variety of forms, and that the blocking or facilitating of any particular form will affect the rates at which other forms occur. As simple as that proposition sounds, it is only rarely recognized in practice."

The two questions that should guide the debate, it is argued here, are, first, what can be done in order to channel conflict through appropriate workplace institutions and, second, what is the institutional context in which conflict is articulated. We will deal with these issues in the subsequent paragraphs.

The first argument touches upon the notion of fairness at work and constructive workplace relations. From this perspective, an appropriate policy measure to limit the number of claims to the courts or tribunals would thus be to strengthen industrial democracy and employee voice within the workplace through the provision of appropriate institutions to channel conflict. More effective employee voice may be achieved, for instance, through changes to legislation on union recognition (Ewing and Hock, 2003) in order to ensure that a larger proportion of the workforce has access to voice institutions. Given the importance of institutional complementarities and cohesion, such legal changes should be well-embedded into the national system. In addition, it might worth considering training offers for the social partners to act constructively within these institutions.

In order to discuss the issue of the institutional environment, it is worth looking at the situation from a larger, political and historical perspective. The rise in tribunal application accompanied a period of drastic changes to the British industrial relations system. It was the Donovan Commission that popularly argued that large-scale collective action to deal with individual employment issues was disruptive for the productivity of the economy. Subsequent decades have experienced a substantial shift from a collective and strongly unionised system to individual employment relations with stronger individual labour rights. This development is the result of *political choices*, and the increase in the incidence of employment tribunal claims is one of its *consequences*. If there is a political will to strengthen the role of the social partners in managing workplace conflict, there is a possibility to do so.

This is not to say, however, that the UK (or any other country) only has the choice between a revival of the industrial relations system practiced until the 1980s, or a continuing increase in employment tribunal applications and other individual forms of conflict manifestation. Rather, the argument presented here stresses the need for a more holistic and process-oriented approach of how to deal with conflict at work. If the number of ET claims is to be limited, there must be some form of collective voice mechanisms within the workplace (since individual grievance procedures are shown to be ineffective, as this study and other research suggest). Finally, policy-makers and the general public should acknowledge that a certain

amount of overt conflict, whether expressed individually or collectively, is a natural part of the employment relationship.

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8 Appendices

8.1 Appendix 1 – Additional Figures

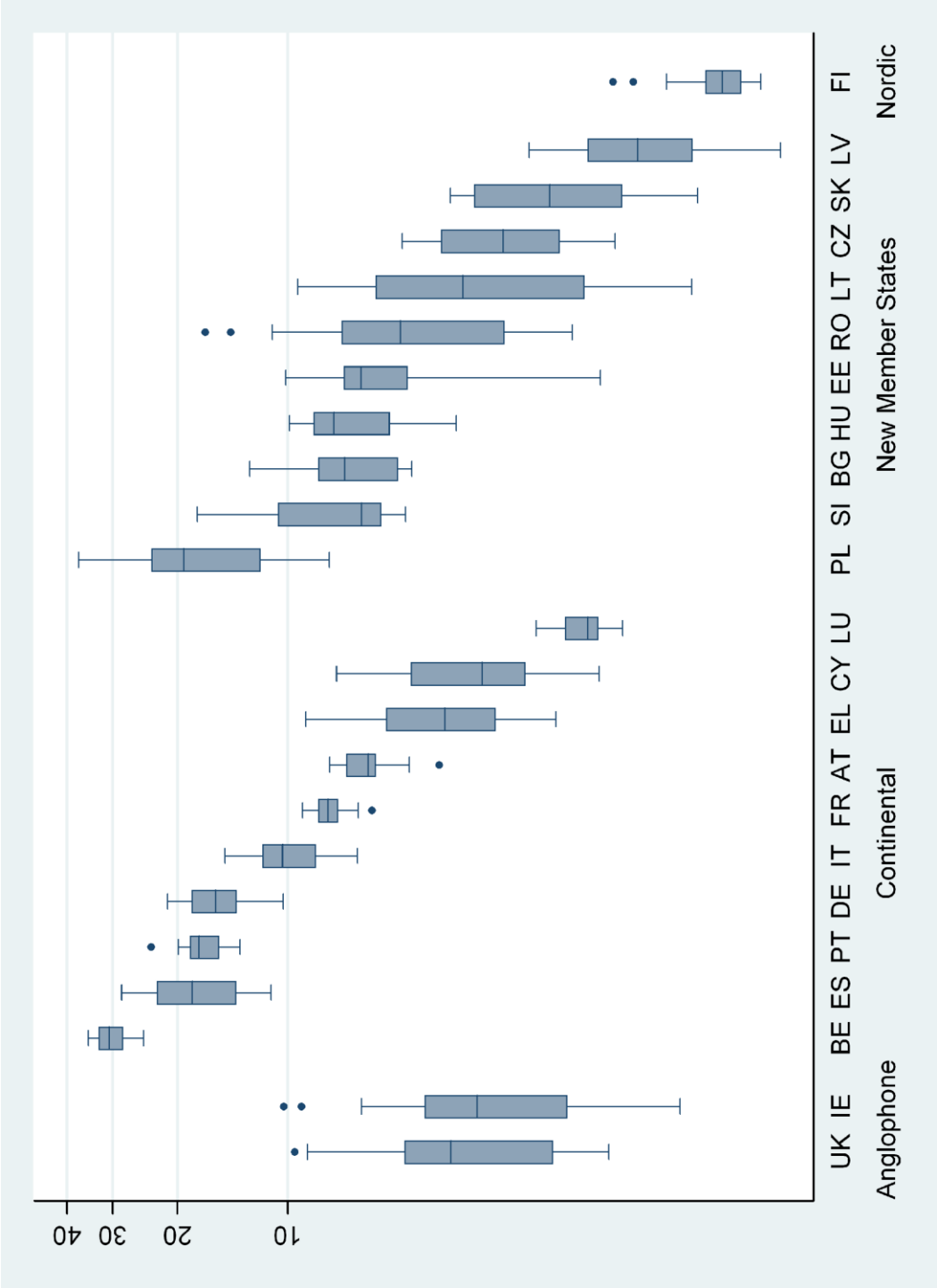

Figure 8.1 – Boxplots for Claims Ratio by Country and System of Enforcement Mechanism

Note: Logarithmic y-axis

8.2 Appendix 2 – Additional Tables

Table 8.1 – Overview of Variables for Table 5.17 (page 209)

			DE	FR	UK
Industrial Relations	Collective bargaining	Existence of a collective agreement	COLAGR	COLAGR	COLAGR
		Existence of a sectoral agreement	MULTCA	MULTCA	MULTCA
		Existence of a company agreement	SINGCA	SINGCA	SINGCA
		Use of opening clauses	OPECLA OCL*		
	Employee representation	Trade union workplace presence		UNION	UNION
		Shop steward or staff representative		STAREP	SHOPST
		Other forms of employee voice institutions		WORCOU CFHSWC SIREBO	NEGPAY
		Non-union employee representation			NUREP
	Relational indicators	Management information policy	INFPOL	INFPOL	INFPOL
		Relationship management employees		TENSUP	MERELA
		Relationship management employee representatives	OBSTRU	IRCLIM	
Economics	Economics of the firm	Economic/financial performance	ECOSIT ECOORD ECOTUR ECOPRO PROPAY	FINPER GROACT	FINPER IMPCRI
		Productivity		PRODUC	LABPRO QUAPRO
		Changes in staff levels	REDUND RESTRU	DISMIS EMPDEV	DISMIS REDUND
	Employment structure	Female employment		FEMEMP	FEMEMP
		Youth employment		YOUEMP	YOUEMP
		Employment of older workers	OLDEMP	OLDEMP	OLDEM
		Employment of ethnic minorities			ETHMIN
		Employment of disabled workers			DISEMP
		Fixed-term employment	FITEMP	FITEMP	FITEMP
		Part-time employment	PATEMP	PATEMP	PATEMP
		Employment of agency workers	AGEEMP	AGEEMP	AGEEMP

			DE	FR	UK
		Other forms of atypical employment	MINMID		
Others	Other conflict variables	Internal grievance mechanisms	COCOME		GRIWRI FORMEE THIPAR INDGRI
		Absenteeism		ABSENT	
		Accidents		ACCDNT	
		Strikes		STRIKE	
Excluded	Excluded variables	Management practices			SAMPAY STACON
		Dummies	REGION SECTOR	 SECTOR	PUBLIC SECTOR

8.3 Appendix 3 – Data Sources

Country	Court System	Comment[85]	Period	Source(s)
Austria	Specialised	Since 1987 Austrian labour and social courts (Arbeits- und Sozialgerichte) are set up as departments of ordinary courts (similar institutions were in place previously). The first instance for claims is at state level. Data presented show the number of first-instance claims in the field of labour law.	1980–2010	Österreichisches Statistisches Zentralamt [Austrian Central Statistics Office] (1983-1993) Statistisches Handbuch für die Republik Österreich [Statistical Handbook for the Republic of Austria]. Vienna: Staatsdruckerei. Österreichisches Statistisches Zentralamt [Austrian Central Statistics Office] (1994-2002) Statistisches Jahrbuch für die Republik Österreich [Statistical Yearbook for the Republic of Austria]. Vienna: Staatsdruckerei. Statistik Austria (2003-2012) Statistisches Jahrbuch Österreichs [Statistical Yearbook for Austria]. Vienna: Verlag Österreich GmbH.
Belgium	Specialised	First-instance courts in Belgium are the local Employment Tribunals (Tribunaux du travail). Data represent the number of claims to these tribunals.	2000–2009	Bureau Permanent Statistiques et Mesure de la Charge de Travail [Permanent Bureau of Statistics and Workload Measures] (2010) Statistiques. http://www.moniteur.be/fr_htm/information/statistiques/tableau.html (accessed on 11/03/2013).
Bulgaria	Ordinary	In Bulgaria, labour disputes are dealt with by the ordinary courts. First instance is at regional level. Data reflect the number of labour code related cases at regional courts.	1993 – 2003	Министерство на Правосъдието [Ministry of Justice], reported by Neykov, I. (2004) Thematic feature - individual labour/employment disputes and the courts. European Industrial Relations Observatory Online. http://www.eurofound.europa.eu/eiro/2004/03/tfeature/bg0403102t.htm (accessed on 08/02/2011).

[85] Information in this column draws heavily on two studies by the European Foundation for the Improvement of Living and Working Conditions (Eurofound, 2004; 2010), and a comparative study conducted by the Global Legal Group (2011).

Country	Court System	Comment[85]	Period	Source(s)
Cyprus	Specialised	Three regional Industrial Disputes Tribunals (Δικαστήριο Εργατικών Διαφορών) deal with labour disputes in Cyprus. The number of claims to these tribunals is reflected by the data.	1997–2010	Data were kindly provided by the Industrial Disputes Tribunals on request.
Czech Republic	Ordinary	In the Czech Republic claims are filed to local ordinary courts. In lack of statistics on the number of claims filed data reflect the number of decisions taken by the courts with regards to employment legislation.	1981–2010	Ministerstvo Spravedlnosti ČR [Ministry of Justice] (1996-2010) Statistický přehled soudních agend [Justice Statistics]. http://cslav.justice.cz/portal/page/portal/cslav_public/cslav_public_rocenky (Accessed on 14/09/2011).
Denmark	Ordinary	The Danish Labour Court (Arbejdsretten) only deals with issues of collective labour disputes. Individual issues are dealt with by ordinary courts. According to the Danish Court Administration (Domstole), there are no data on civil court proceedings dealing with employment legislation.	-	-
Estonia	Both	The Estonian system knows two routes to formal resolution of individual employment disputes; through labour dispute commissions (LDC, Töövaidluskomisjon) or the courts. Although an LDC is formally not a court LDCs are seen as the most commonly used body for individual employment disputes. For this reason, data presented reflect the number of applications to the 11 LDCs in Estonia.	1996–2010	Masso, J., Philips, K. (2004) Thematic feature - individual labour/employment disputes and the courts. European Industrial Relations Observatory Online. http://www.eurofound.europa.eu/eiro/2004/03/tfeature/ee0403102t.htm (Accessed on 14/09/2011). Tööinspektsioon [Labour Inspectorate] (2011) Töövaidlused kvartalite lõikes, 2005-2011 II kvartalAndmed uuendatud [Labour Disputes, quarterly data, 2005 – 2011, second quarter]. http://www.ti.ee/public/files/TVK_2005-2010_IIIkv(1).xls (accessed on 15/09/2011).

Country	Court System	Comment[85]	Period	Source(s)
Finland	Ordinary	The ordinary courts in Finland are responsible for individual labour disputes. The data show the number of claims filed to district courts (Alioikeus) concerning disputes over employment.	1980–2010	Tilastokeskus/Statistikcentralen [Statistics Finland] (1981-1995) Statistical yearbook of Finland. Helsinki: Statistics Finland. Tilastokeskus/Statistikcentralen [Statistics Finland] (2010) Civil cases concluded by District Courts 2004-2010, method of instituting proceedings and conclusions. http://pxweb2.stat.fi/Database/StatFin/oik/koikrs/koikrs_en.asp (Accessed on 14/09/2011).
France	Specialised	French employment tribunals (conseil de prud'hommes) have competencies over all disputes arising from the conclusion, execution and termination of an employment contract in the private sector. The annual data on the number of claims to these tribunals thus exclude disputes arising from the public sector.	1970–2010	Marinescu, I. (2002) Les prud'hommes sont-ils efficaces ? Contentieux prud'homal et conjoncture économique, 1830-1999., p. 54. Paris: École des hautes études en sciences sociales (EHESS). Ministère de la Justice [Ministry of Justice] (1981-1991) Annuaire statistique de la justice [Yearbook of Justice Statistics]. Paris: La Documentation Française. Institut national de la statistique et des études économiques (INSEE) [French National Institute for Statistics and Economic Studies] (2012) Annuaire statistique de la France [Statistical Yearbook of France]. Paris: INSEE.
Germany	Specialised	German labour courts (Arbeitsgerichte) deal with individual labour disputes for all employees except some civil servants (Beamte). Data reflect applications to the labour courts. Disaggregated information that differentiates between individual and collective claims is not available. Data from 1980 to 1994 cover West Germany only.	1970–2010	Statistisches Bundesamt [Federal Statistical Office] (1971-2011) Statistisches Jahrbuch für die Bundesrepublik Deutschland [Statistical Yearbook for the Federal Republic of Germany]. Wiesbaden: Statistisches Bundesamt.

Country	Court System	Comment[85]	Period	Source(s)
Greece	Ordinary	Labour disputes in Greece are the responsibility of the ordinary court system. The number of claims represents the number of decisions taken by ordinary courts with regard to labour disputes.	1980–2009	Εθνική Στατιστική Υπηρεσία [National Statistics Office] (1982-2000) Στατιστική Της Δικαιοσύνης [Justice Statistics]. Athens: Εθνική Στατιστική Υπηρεσία. Εθνική Στατιστική Υπηρεσία [National Statistics Office] (2002-2009) Εκδοθείσες Αποφάσεις Βάσει Των Ειδικών Διαδικασιών [Decisions in Specialised Court Proceedings]. http://www.statistics.gr/portal/page/portal/ESYE/PAGE-database .
Hungary	Specialised	First-instance labour courts in Hungary are organised at county level. The information reported reflects the number of cases submitted to these labour courts.	1990–2010	Központi Statisztikai Hivatal [Hungarian Central Statistical Office] (nd) Number of cases submitted to local courts and labour courts (1990-2010) http://portal.ksh.hu/pls/ksh/docs/eng/xstadat/xstadat_annual/i_zjb001.html (Accessed on 14/09/2011).
Ireland	Specialised	Ireland has a range of institutions to deal with employment disputes. Individual grievances are, in the first instance, usually referred to the Rights Commissioner Service, for which data are included here. No data could be obtained for 1993–1995	1991–2010	Labour Relations Commission (1993-2011) Annual Report. Dublin: Stationery Office.
Italy	Ordinary	Ordinary civil law courts deal with labour disputes in Italy. The number of complaints submitted to the first instance of these courts is reported here.	1980–2009	Istituto nazionale di statistica [National Institute of Statistics] (1981-2012) Annuario statistico italiano [Statistical Yearbook of Italy]. Avellino: RTI Poligrafica Ruggiero.
Latvia	Ordinary	Individual disputes over employment rights are heard by ordinary courts (vispārējās jurisdikcijas tiesas). Data reflect the number of claims to courts of first instance regarding applications for reinstatement in employment, applications for payment of wages and other employment disputes, and applications regarding work-related personal injury.	2002–2010	Data kindly provided by the Central Statistical Bureau of Latvia on request.

Country	Court System	Comment[85]	Period	Source(s)
Lithuania	Ordinary	Cases concerning individual labour disputes filed with first-instance civil courts are reported for Lithuania	2002–2010	Nacionalinė teismų administracija [National Court Administration] (2004-2011) Teismų statistika [Justice Statistics]. http://www.teismai.lt/lt/teismai/teismai-statistika/ (Accessed on 14/09/2011).
Luxembourg	Specialised	Specialised labour tribunals (Tribunaux de travail) deal with individual employment disputes in Luxembourg. Joint tribunals for all workers exist since 2009. For earlier years data reported cover both claims to tribunals for white-collar (régime employé(e)s privé(e)s) and blue-collar employees (régime ouvrier). Annual data cover the period from mid-September to mid-September of the following year. Figures for 2005, for instance, reflect all claims between 15 September 2004 and 16 September 2005.	1998–2010	Administration judiciaire [Justice Administration] (2006-2009) Rapport d'activité Justice [Report of Justice Activity]. http://www.justice.public.lu/fr/publications/index.html (Accessed on 14/09/2011). Administration judiciaire [Justice Administration] (2010-2011) Rapports juridictions judiciaires [Judicial Report]. http://www.justice.public.lu/fr/publications/index.html (Accessed on 14/09/2011).
Malta	Specialised	Individual labour disputes in Malta fall under the responsibility of the Industrial Tribunal for which no systematic data are recorded.	-	-
Netherlands	Ordinary	In the Netherlands employers need to apply, in most cases, for a permission by a magistrate court in order to dismiss an employee. All other labour disputes are dealt with by local civil courts (*Rechtbank*en). Data for labour disputes at these courts are not available.	-	-

Country	Court System	Comment[85]	Period	Source(s)
Poland	Specialised	The labour division of ordinary civil courts at district level are the first instance for individual labour disputes in Poland. Data cover claims to this instance. No data could be obtained for 1995 and 1998.	1980–2010	Główny urząd statystyczny [Central Statistics Office] (1980-2000) Rocznik Statystyczny [Statistical Yearbook]. Warsaw: GUS. Ministerstwo Sprawiedliwości [Ministry of Justice] (2002-2011) Ewidencja Spraw Według Działów Prawa w Sądach Powszechnych [Record of Affairs filed with Civil Courts by subject matters]. http://bip.ms.gov.pl/pl/dzialalnosc/statystyki/ (Accessed on 14/09/2011).
Portugal	Specialised	Claims to the first instance of the Portuguese labour courts are reported.	1983–2010	Data were kindly provided by the Ministry of Justice on request.
Romania	Specialised	Individual labour disputes in Romania were dealt with by local courts in the 1990s. In 2000, however, the responsibility was transferred to the labour litigation department of the county courts. Data reflect all cases concerning labour litigation which entered the courts.	1990–2010	Institutul naţional de statistică [National Statistics Institute] (2012) Anuarul statistic al României [Romanian Statistical Yearbook]. Bucharest: Comisia Naţională pentru Statistică [National Commission for Statistics].
Slovakia	Ordinary	Labour disputes are usually under the responsibility of district courts, some of which have established senates to deal with employment-related issues. In lack of data for filed cases, the number of decisions is reported.	1992–2010	Cziria, L. (2004) Thematic feature - individual labour/employment disputes and the courts. European Industrial Relations Observatory Online. http://www.eurofound.europa.eu/eiro/2004/03/tfeature/sk0403101t.htm (Accessed on 14/09/2011). Ministerstvo spravodlivosti Slovenskej republiky [Ministry of Justice of the Slovak Republic] (2003-2011) Štatistická ročenka. http://www.justice.sk/wfn.aspx?pg=r3&htm=r3/statr.htm (accessed on 14/09/2011).

Country	Court System	Comment[85]	Period	Source(s)
Slovenia	Specialised	Specialised labour courts in Slovenia (Delovna sodišča) exist since 1994; data on individual labour disputes at these courts since 1995. There are three first-instance regional courts.	1995–2010	Kanjuo Mrčela, A. (2004) Thematic feature - individual labour/employment disputes and the courts. European Industrial Relations Observatory Online. http://www.eurofound.europa.eu/eiro/2004/03/tfeature/si0403204t.htm (Accessed on 14/09/2011). Ministrstvo za pravosodje [Ministry of Justice] (2002-2012) Sodna statistika [Case Statistics]. Lubljana: Ministrstvo za pravosodje.
Spain	Specialised	In Spain an application can be made directly to the social courts (Juzgados de lo Social). The figures presented reflect the number of individual labour grievances.	1982–2010	Ministerio de Trabajo [Ministry of Labour] (1983-2012) Anuario de Estadísticas. Madrid: Ministerio de Trabajo.
Sweden	Both	There are two routes to individual labour grievance in Sweden. First, one can apply directly to the labour court (Arbetsdomstolen). This requires, however, the support of either a trade union or an employers' organisation. The second route is an application to the ordinary district court. Individual claimants may appeal against the district court's decision to the labour court. Data are only available for claims made to the labour court, but not on first-instance applications to the civil courts. To ensure consistency, Sweden has been excluded from the sample.	-	-

Country	Court System	Comment[85]	Period	Source(s)
United Kingdom	Specialised	Employment Tribunals deal with individual employment conflicts in England and Wales, and Scotland. Figures reflect the number of claims received by the first-instance tribunals from between 1 April and 31 Mars of the respective years. A similar system is in place in Northern Ireland, which is not covered by the data.	1970–2010	Department of Employment (various years) Industrial tribunals and the Employment Appeal Tribunal. Employment Gazette. Hawes, W.R. (2000) Setting the pace or running alongside? ACAS and the changing employment relationship. In: B. Towers, W. Brown (eds). Employment relations in Britain: 25 years of the Advisory, Conciliation and Arbitration Service, pp. 1-30. Oxford: Blackwell. Employment Tribunals Service (2000-2012) Annual Statistics/Annual Report & Accounts. London: The Stationery Office. Her Majesty's Courts Service (2011) Annual Report and Accounts 2010-11. London.