

A year and a half after the US Environmental Protection Agency (EPA) [alleged](#) Volkswagen had installed software to circumvent emissions standards, the company has [plead guilty](#) to three criminal felony counts. Volkswagen (VW) will pay US\$4.3 billion in criminal and civil penalties, and six executives and employees have been indicted.

But the VW scandal is not indicative of systemic problems in the German Corporate Governance system. Rather it highlights huge issues with corporate influence peddling and regulatory capture in Brussels, Washington and Canberra.

The German context

German corporations have faced a number of scandals recently – on top of VW there have been [international bribery allegations at Siemens](#) and [Deutsche Bank's mis-selling of mortgage securities](#) in America.

But these are not examples of a systemic failure in German corporate governance at home, instead they highlight its weaknesses where those rules do not apply and managers feel less constrained. The scandals at Siemens, Deutsche Bank and now VW reveal the difference in scrutiny German managers face at home and abroad.

German corporate governance is built around the principals of co-decision making and social partnership. In [this system](#) (called codetermination) managers are monitored from above by Supervisory Boards and from below by Works Councils.

Supervisory boards feature representatives elected by unions and employees, who sit alongside representatives of ownership. These boards oversee and appoint a second separate board made up of executive directors.

In all but the smallest workplaces, employees can elect a Works Council. Works Councils can't initiate strikes but they have considerable influence over operational issues. In very large companies such as VW there can be a network of Works Councils to represent plants, divisions

and the group overall.

Codetermination [forces](#) German managers to focus on productivity and cooperation [rather than](#) short-termism, cost-cutting and industrial confrontation.

The business and governance model found in [Anglophone countries](#) - the UK, US and Australia, emphasises shareholder value and excludes unions if it can. Other hallmarks include aggressively outsourcing, offshoring and casualisation of labour, and preference for individual contracting arrangements. Even in the cut throat service sector the German approach [results](#) in less precarious employment conditions and greater employee voice.

Germans view codetermination as [an important democratic institution](#) because it [constrains corporate political donations](#). This is what John Keane [calls monitory democracy](#).

Undermining the German system

A number of factors combined to weaken Volkswagen's corporate governance. A feud amongst the Porsche family, who own the majority of VW shares, resulted in controversial board appointments, [reducing oversight over CEO Martin Winterkorn](#). But VW's global production footprint also means that unions and employees could not monitor management in the US. VW attempted to introduce a Works Council style arrangement in the US [but failed](#).

Further, VW's use of a standalone enterprise rather than the standard industry-wide collective bargain agreement has [encouraged a creeping and corrosive Anglo-style bonus and incentivisation culture](#).

In Germany industry-wide collective bargaining between the industry association and union [red](#)

[uces the temptation](#)

for this kind of wage and executive remuneration policy.

Finally European Union (EU) competition law forced the German government to strip away additional layers of governance oversight at VW, allowing the German State of Lower-Saxony to exercise an effective veto over all board decisions. [This veto](#) warned off corporate raiders and stymied the Porsche family extending its influence at VW.

What we can learn

These scandals show that simply adopting Anglophone ideas of governance and labour market reform will not necessarily create better corporate governance in Germany. Rather, they [could spread bad practice](#) increasing inequality and [threatening German democracy](#).

Instead the German system should be bolstered. Regulators should curtail the erosion of industry-level collective bargaining, introduce statutory bonus and salary caps for executives and directors, and severely limit executive and employee share plans. Regulators might also have to scrutinise cross-border mergers that [undermine the strengths of codetermination](#).

There are also some striking similarities between the VW scandal and earlier ones in the car industry ([Mitsubishi](#) , [Toyota](#) and [Tanaka](#)). All these cases involve concerted attempts to either capture the regulator outright, or to mislead regulators who lack the resources or the political support to uphold legislated standards.

Brussels, London, Washington and Canberra are crawling with paid lobbyists on the payroll of corporations. In the VW case, the company (along with other carmakers) [lobbied EU regulators](#) in Brussels to adopt less stringent standards than the US.

In the US it [took an NGO and state regulator](#) to expose the defeat device rather than active policing by an under-resourced and politically hogtied EPA.

What we can all learn from the VW emissions saga

Written by The Conversation

This alerts us to the capture of [EU](#) , [US](#) and Australian regulatory agencies, many of whom are now required to “actively engage” with “industry stakeholders”.

In Australia [this includes](#) staff secondment, appointment of industry insiders to head regulatory agencies and collaboration in the design of regulations and taxation regimes. This lobbying and influence peddling is [likely to accelerate](#) as companies in carbon-intensive industries attempt to delay inevitable policy responses to climate change.

Across the western democracies laws need to be established to restrict or ban corporate political donations, and political lobbying. Reform of regulators is also necessarily, including introducing independent testing and questioning and revisiting the [guidelines](#) that extend representation to “the potentially affected”. This would add an additional layer of safeguards to ensure corporations cannot unduly influence or undermine rules designed to protect the wider public interest.

In this regard the global car industry needs greater scrutiny, not less, as news of scandals [keeps rolling in](#)

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Read more <http://theconversation.com/what-we-can-all-learn-from-the-vw-emissions-saga-71264>