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‘Activation’ as a Change of the ‘Unemployment Regime’

Implications for the German Employment System at large

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1 Introduction

After 16 years of conservative-liberal rule, a social democratic-green coalition came into office in 1998. Though having declared the successful combating of unemployment the principal yardstick for his government's performance, Chancellor Schröder actually stood back until mid-2001, expecting the favourable business cycle to resolve the problem. Contrary to his expectations, the 'New Economy' boom brought the German unemployment rate only down from 12.7% (1997) to 10.3% (2001), according to the national administrative count.¹ Only then a modest reform inspired by the 'activation' discourse² was placed smugly into the downward turning economic tide of early 2002.

Only two months after this reform took legal effect, misleading and 'massaged' placement statistics of the Public Employment Service (PES) became scandalised by the Federal Audit Bureau. In the run-up to federal elections due in the autumn of 2002, the 'placement scandal' called for immediate political reaction. The government appointed a commission of individuals from business, consultancy, trade unions, politics, and academia headed by then human resource director of Volkswagen, Peter Hartz. The commission's official assignment was to draw up a master plan for reforming the PES according to the principles of New Public Management in order to enable it to deliver 'Modern Labour Market Services' – the title of both the Commission and its report. The commission, however, broadened its ambitions towards actually making suggestions for reducing unemployment by two million within three years. The public presentation of the commission's proposals in August 2002 assisted the red-green coalition to win a majority again in September despite rising unemployment. But then, the subsequent implementation of the Hartz reforms in four legislative steps exacerbated tensions both between and within the coalition parties and, ironically, drove up the unemployment count to an all-time high in early 2005.³ Feeling unable to sustain the full legislative term and to wait for the business cycle to turn again in his favour⁴, Chancellor Schröder deliberately organised his own parliamentary defeat in May, 2005, in order to have premature elections called for by the Federal President. As a result of these, his party is now (September 2006) the junior partner in a 'grand coalition' led by Christian Democratic chancellor Merkel.

Both from a political point of view and with regard to their most obvious effect on the labour market, the Hartz reforms have failed to have the intended effect. On the other hand, in terms of regime and governance changes, the fourth step of the Hartz reforms

¹ Internationally comparable figures are 9.1% (1997) and 7.4 (2001). (European Commission 2005)

² Legislation was then called 'JobAQTIV' – Activation, Qualification, Training, Information, Placement (*Vermitteln*).

³ The average number of registered unemployed people in 2005 was 4,89 million or 11.8%, according to the national definition. By ILO standards, average unemployment level in 2005 was 3.99 million or 9.3%. The ILO count is not only smaller by about 900,000, but the two groups are partially disjunct.

⁴ The labour market situation is actually improving in 2006 – which would have been just in time to figure in the federal election if it had been held after a full term in September 2006.

was the most far-reaching transformation of German labour market policy since the introduction of unemployment insurance and a national PES in 1927.

This article aims to explore both the systemic or ‘regime’ implications of the reforms and the reasons for their paradoxical effects. Its central argument is that within a national welfare regime there may be distinctly different ‘sub-regimes’, like ‘Bismarckian’ social insurance regimes, state-regulated private insurance schemes, and regimes of basic income support.⁵ A move for reform meant to be path-breaking and ‘radical’ but not informed by a vision for the future of the regime it endeavours to reform is likely to borrow its principles from another existing regime. By doing so, the reform will inherit the path-dependencies of the regime borrowed into, thus incurring unintended and unexpected outcomes and not turning out to be so radical and path-breaking after all.

The following chapter (2) will place the institutional changes in the framework of the Hartz reforms as a whole. Chapter (3) will explain the reform of the benefit system as a change of the social policy regime applicable to workless people without contribution-based benefit claims. Chapter (4) will explore the regime change in four directions: (a) implications for the German breadwinner model, (b) the impact of the transformed unemployment regime on the labour market order, (c) shifts of the financing of social security between contributions and taxes, and (d) governance changes tied to the regime changes. This then sets the stage to sketch the impact of the new governance on activation in chapter (5). Chapter (6) concludes with a focus on the regime aspects.

⁵ The regime concept will be developed further on p. 10.

2 From the ‘Hartz Commission’ to ‘Hartz IV’ legislation

The basic idea underlying the Hartz Commission’s report (2002) was to reduce the level of unemployment by shortening individual unemployment spells through activation and more effective and more rapid job placement. The report’s focus was thus on using labour market ‘churning’ to the better of the unemployed. Considerations of macro economic and employment policies that would increase labour demand were outside the commission’s scope. Triggered by a ‘placement scandal’, the improvement of placement services was at the forefront, although the exact significance of job placements in an information society⁶ was not discussed. The balance between the delivering of better services ‘for’ the customers and the initiating of customer’s own activities was not addressed. Of the three outstanding features of the long-term unemployed – age, health impairment, and migrant background – , the first was only addressed in terms of financial incentives, the second by mentioning ‘health counselling’ as an example of services to be delivered in Jobcentres, and the third did not figure at all in the commission’s report.⁷

The commission’s communications were characterised by a benevolent but moralising and patronising tone,⁸ which is characteristic of the German discourse on ‘activation’ in general. Its central ‘mantra’ (Schulze-Böing 2002), older than the Hartz proposals, goes ‘*Fördern und Fordern*’, which would translate like ‘promoting and obliging’, reminding of the way teachers would characterise a certain pedagogical approach.

The reforms that followed the Hartz Commission’s report can be grouped into six elements:

- (1) Modernisation of the governance, controlling and customer management of the Federal Agency for Work (*Bundesagentur für Arbeit*), a body of public law traditionally responsible for administering unemployment benefits, counselling and job placement services, and implementing active labour market policies⁹.

⁶ Actually, part of the ‘placement scandal’ had been the counting of matches effected through self-service IT resources provided in the PES offices as ‘placements’. An agenda of self-activation would encourage even more extensive and effective use of such facilities, which renders ‘placements’ an outdated benchmark for PES performance.

⁷ The unemployment rate of aliens in Germany is twice the overall rate. While the foreign population is small in the Eastern part of Germany, aliens account for almost one quarter of the West German customers in the new regime created as a result of the Hartz proposals. Almost every fifth alien in Germany is dependent on basic income support. – These data are based on citizenship; data on migrant background in a wider sense have only recently been produced for the population at large (Statistisches Bundesamt 2006 9% foreign citizens plus 10% German citizens with migrant background). For claimants of basic income support for jobseekers, migrant background in the wider sense has just been surveyed but not published yet.

⁸ In a preliminary presentation of the commission’s proposals, Peter Hartz promoted ‘quick and privileged placement for family fathers’.

⁹ It should be noted here that the trilogy recommended by the OECD (2001) – placement and counselling, payment of unemployment benefits, and management of labour market programmes – have been in one hand in Germany since the beginnings of a national PES in 1927. It should also be noted that ‘active’ measures have always been delivered mostly by third parties – ‘privatisation’ in the

- (2) Introduction of some new instruments of active labour market policy, and the fine-tuning of others¹⁰.
- (3) Once more, after so many times before, an overhaul of the tax and contribution privileges for ‘small jobs’.
- (4) Cuts of the maximum periods of eligibility for unemployment benefits for older workers with long contribution records from 32 to 18 months, thus bringing them closer to the general standard of 12 months.
- (5) Reshaping of the benefit system for those workless people who have exhausted their contribution-based benefit claims or have failed to earn such (together referred to as the ‘non-insured’ hereafter) by merging two previous benefits administered by the municipalities and the PES, respectively, into one, which was seen as the prerequisite for implementing single gateways of higher effectiveness.
- (6) Missing, nevertheless, the ‘one stop’ objective, thus creating a completely separate new regime and governance structure for the non-insured and, by doing so, taking the majority of the customers out of the reformed system of service delivery characterised under (1). As a result, there are now two echelons of public employment service, and the new second level is institutionally fragmented.

The remainder of this article will focus on the regime and governance implications of elements (5) and (6), which came together as the fourth piece of the Hartz legislations, or, in the political jargon of Germany, as ‘Hartz IV’. In everyday language, this term has come to signify a piece of legislation, a type of benefit, a social status associated with it, and an epochal break leading to a new regime. By contrast, the legal term ‘*Grundsicherung*’ (basic income support, *minimum sociale*) has not really taken root in public and private discourses. This signifies that the new unemployment regime is not perceived – and, in fact, never was advocated – as a new achievement of social citizenship but as a retrenchment measure.

The failure to meet the target of improved one-stop services was highlighted in mid-2006 by the removal of the semantic hallmark of the Hartz concept, the *Germanglish* term ‘Job-Center’, from the legal text, only 18 months after its introduction. The official justification for this step in the draft bill (Fraktionen 2006) translates like this:

The obligation of the local agencies for work¹¹ to establish ‘Job-Centers’ as single gateways for all has not worked well in practice. Because of the

form of further ‘outsourcing’ could therefore not be on top of the agenda. Something was done in this respect in the sense of commissioning private job placement providers and issuing ‘placement vouchers’ to jobseekers.

¹⁰ Official evaluations (Bundesregierung 2006; Kaltenborn et al. 2006) have shown little effect especially for the original ‘Hartz inventions’, and some of them are already abandoned or in disuse now, three and a half years after their introduction.

¹¹ ‘Agency for Work’ is the new label for the regional employment offices, the district organisation of the Federal Agency for Work.

restructuring of the agencies for work, as well as because of the heterogeneous structure of the consortia¹² and the licensed municipalities¹³ have prevented the implementation of a universal organisational model. Therefore, this clause shall be removed.

Since the ‘Job-Center’ was the centrepiece of the Hartz Commission’s activation strategy, the above justification can be read as the official acknowledgment of the failure of the German approach towards activation. The new service organisation for the non-insured now comes in three variants – consortium (*Arbeitsgemeinschaft*), licensed municipality (*zugelassener kommunaler Träger*), or, by default, as separate operations of the local Agency for Work (*Arbeitsagentur*) and the municipality –, and a uniform brand name for it is lacking. Some local units have adopted the term ‘Jobcenter’ which has then become the name for the lower one of two gateways rather than the name for a single gateway, as the Hartz Commission had intended.

¹² In most cities or counties, the ‘Hartz IV’ system is delivered by so-called consortia (*Arbeitsgemeinschaften*) established between the agencies for work and the municipality.

¹³ For an experimental period extending until 2008, 69 cities and counties have been licensed to deliver the new benefit, service and regime on their own, without entering a consortium with the local Agency for Work.

3 The ‘integration’ of unemployment assistance and social assistance

Until the end of 2004¹⁴, Germany had three benefits relevant to unemployed claimants:

- (1) Contribution-based unemployment benefits (*Arbeitslosengeld*), defined as a percentage of former net income (60% and 67% for unemployed without or with dependent children respectively), without means-testing but of limited duration of normally 12 months¹⁵;
- (2) subsequent to the exhaustion of the eligibility period for (1), there was tax-funded unemployment assistance (*Arbeitslosenhilfe*) at a lower percentage of former net income (53% and 57% respectively), open-ended (!) but means-tested;
- (3) the third tier was tax-funded social assistance (*Sozialhilfe*), flat-rate, open-ended, means-tested, and open to all persons unable to support themselves – i. e., not restricted to people regarded or registered as unemployed.

Benefits (1) and (2) were dependent on availability for work and, since 1998, on actively seeking work, and they were administered by the PES, while benefit (3) was administered by the municipalities (counties and the larger cities which are independent of counties). Increasing difficulties of labour market entry as well as increasing precarisation and volatility of working lives had led, in tier (3), to growing caseloads of people of working age and able to work. Where benefits of type (1) and – more often – type (2) were below subsistence level because previous earnings from which they were calculated had been low, those concerned had to supplement their unemployment benefit or assistance payments by claiming additional social assistance. Therefore, they had to visit two offices, neither of which would take full responsibility for their integration into employment. According to the figures cited in the Hartz Commission’s report¹⁶, this problem of institutional overlap applied to only 7% (270,000) of the registered unemployed of then, but it figured as the central justification in the Hartz Commission’s report (Hartz et al. 2002: 126) and the subsequent legislation (Bundesregierung 2003: 96ff.) for integrating the benefit system. When the reform took effect, the number of persons who had received both benefits was established as 210,000 (Kaltenborn / Schiwarov 2006). It was argued that in order to create a single gateway for jobseekers, the two tax-funded benefits (2) and (3) must be integrated, and the remaining two benefits should be uniformly administered by the modernised Agencies for Work who would re-organise their front offices as ‘Job-Centers’. For

¹⁴ The roots of this system date back to 1918 and 1927. In post-war (West) Germany the three-tier-system of benefits for the workless has been legally re-established in 1956.

¹⁵ During the 1980ies, longer durations of up to 32 months for older people with long contribution records were introduced as means of pre-retirement. This has now been reduced to a maximum of 18 months.

¹⁶ For a summary in English, see Hartz Commission 2002. Figures quoted (270,000 persons having to visit two organisations for their benefits) are from the full-length German version, Hartz et al. 2002: 126.

tactical reasons, in order to keep commission members from social partner organisations on board, the Hartz Commission's report was hazy about the regime logic and the level of the new benefit, but it branded its name: "*Arbeitslosengeld II*" (unemployment benefit II).

3.1 Unemployment assistance as an elongation of the Bismarckian insurance regime

In international comparative literature it is to be found that Germany before 'Hartz IV' had two means-tested and tax-funded benefits for non-insured workless people (cf. Adema et al. 2003). The German debate on doing away with this pointless duplication by integrating these two benefits largely followed the same lines (Fels et al. 2000; Hartz et al. 2002). It was generally overlooked or obscured that 'means-testing' had quite different meanings with regard to the two benefits concerned, characterising the two benefits as belonging to different 'regimes'.

Within the regime of *social assistance* – pre-empting a more thorough explanation in the next paragraph – a person's inability to support oneself from own means was the 'trigger' and essential justification for state intervention and support. In other words, means testing was to establish the social status of 'neediness' (*Bedürftigkeit*), which constituted the legal gateway into the regime of social assistance. Benefits were flat-rate, from which own or family/household means exceeding low thresholds were deducted.

By contrast, the gateway into *unemployment assistance* was the previously possessed but now exhausted eligibility for contribution-based unemployment benefits.¹⁷ Though funded from taxes, the eligibility and elementary justification for receiving unemployment assistance rested on once having paid contributions. Quite congruously, unemployment *assistance* benefits were calculated as a percentage of former earnings just like contribution-based unemployment *insurance* benefits, albeit at a lower percentage. In other words, though means-tested, unemployment assistance was a wage replacement, not a poverty relief. This now abolished benefit can thus be understood as the tax-funded elongation of an unemployment insurance scheme following Bismarckian principles of universal contributions and linear relationships between earnings, contributions, and benefits.

Where other countries tend to mix wage-related contributions and tax revenue in the funding of their unemployment benefit schemes, Germany kept the two sources apart and allocated them to different stages of people's unemployment careers. From the point of view of the individual contribution payer this made no difference: By paying unemployment insurance contributions, they bought themselves into a scheme that

¹⁷ There once was a 'direct' gateway into unemployment assistance for new entrants and re-entrants into the labour market. 'Direct' unemployment assistance was calibrated with regard to a hypothetical income depending on a person's skills level. Introduced in times of labour shortage and intended as a job-seeking allowance for new entrants or re-entrants into the labour market, justification for this kind of benefit became questionable when drawn over long periods. Between 1976 and 1999, this was abolished step by step, thus contributing to the growth in the numbers of social assistance claimants.

guaranteed relative status maintenance by exactly mirroring previous net earnings differentials. Perhaps unique by international standards was the open-endedness of such status maintenance – a ‘very German’ concept of social stratification, seen by many as one of the causes of high unemployment hysteresis in Germany. However, the Hartz Commission’s report did not discuss the construction and mechanisms of the benefit and the incentives or disincentives it might set. It centred purely on the impracticality of having two benefits that necessitated two bureaucracies who wouldn’t co-operate. The agenda of increasing the differential between benefits and wages remained a hidden one in the discourse on the Hartz reforms.

Means testing in the regime of unemployment assistance only served as a *limitation* to eligibility, whereas in the regime of social assistance, the absence of means was the *justification* for eligibility. The difference can be illustrated by the case of low earners (the ‘working poor’): Though in a state of need, they would not qualify for unemployment benefit or assistance if working more than 15 hours per week and thus not fulfilling the definition of ‘unemployed’. The fundamental (and dichotomous) attribute of the insurance regime is unemployment (defining employment as the aim of intervention), while the fundamental (and gradual) attribute of the poverty relief regime is neediness (defining a reduction of neediness as the aim of intervention). Within the mechanism of unemployment assistance, neediness only worked as a limitation to entitlement, not as a basis for its establishment.

Being part of the ‘Bismarckian’ system of relative status maintenance, unemployment assistance was regarded by German employees as an integral part of their ‘earned’ rights acquired through employment careers during which contributions had been paid. This explains why the abolishment of unemployment assistance at the end of 2004 was seen as an expropriation or as a negation of lifetime achievements (Ludwig-Mayerhofer 2005) even by those who, after the reform, did not receive less in Euros than before. For them, it made a fundamental difference whether a benefit even of identical monetary value appeared as an earned entitlement or as an allocated allowance. While both mainstream experts¹⁸ and politicians disregarded the difference between *causative* and *limitative* means-testing, the electorate was quite sensitive for it, thus making the reform a political stumbling-stone for Schröder.

This reaction is perhaps even better explained by adding that unemployment assistance and contribution-based unemployment benefit belonged to a uniform ‘unemployment regime’, whose subsequent explication will clarify how the term ‘regime’ is being used in this paper. Both benefits were administered by the same bureaucracy – the Federal Agency for Work – in an integrated process without a division of customer flows. Obligations in terms of availability and job search as well as definitions of ‘acceptable’ work were the same, and so were potential sanctions. With few restrictions, the same instruments of active labour market policy were available to both groups of benefit

¹⁸ Actually, over the decades, both regimes had grown their own experts, so there were few who understood both the regime of social assistance and the insurance-based regime in equal depth. This may be one of the reasons why ‘integration’ of the two benefits was approached without understanding the regime implications.

recipients. By being restricted to persons able to work, available for work and with previous payments of unemployment insurance contributions, both benefits implied a status of *worker citizenship* (*Arbeitsbürgerschaft* – Leibfried / Tennstedt 1985), a concept implicit in the Bismarckian tradition and developed much stronger in Germany than concepts of universal social citizenship.¹⁹ Historically, the recognition of worker citizenship was experienced as the emancipation of the (temporarily unemployed) worker from the status of the pauper – which, of course, also implies the exclusion of the non-worker from the Bismarckian welfare state and his reliance on historically older forms of relief. Consequently, the new regime introduced by ‘Hartz IV’ is perceived by workers and the wage earning middle classes as revoking that achievement: ‘You pay unemployment insurance contributions for decades, and if you lose your job, you are on a means-tested flat-rate benefit after only 12 months.’ Potentially inclusive aspects of the reform – like incorporating former recipients of social assistance into the Bismarckian regime by paying pension and health insurance contributions for them – were weakly developed in the discourse and did not offset the overall perception of a threat to one’s social status.

3.2 Social assistance as a regime of poverty relief

Social assistance (*Sozialhilfe*), by contrast with unemployment assistance, was the universal flat-rate benefit for persons unable to support themselves. It was not restricted to claimants of working age, able to work, or available for work, and thus it was not directly part of the unemployment or labour market regime. Historically evolving from charities and municipal poverty relief, social assistance was built on the principles of subsidiarity. This meant that the local community would only be the provider and carer of last resort, after own means, claims against other subsystems of social insurance, after partner and family support one generation up or down²⁰, and after any support by religious or civil society charities.²¹

Subsidiarity also implied the obligation of any claimant to utilise any working ability and opportunity they might have in order to secure subsistence for themselves and their dependents or in order to reduce their neediness and thus benefit payments. So there was always a ‘workfare’ element inherent in the regime of social assistance. Contrary to the regime of worker citizenship characterised above, the universal obligation to work and seek work in the regime of social assistance was not limited by any societal criteria of acceptability of work like observance of collective agreements or legal standards. Limitations of acceptability were only defined with regard to the personal and family sphere: physical or mental ability to do the job, and caring responsibilities with which a

¹⁹ Not accidentally, the influential work by Marshall (1950) was not published in German until 1992, and it is difficult to conceive of a German translation of ‘social citizenship’ that would clearly distinguish the term from the equivalent of ‘nationality’ in the sense of holding a country’s passport.

²⁰ In legal theory at least, consideration of means of the extended family was much more extensive in the social assistance regime than in unemployment assistance, where it was limited to the partner.

²¹ In contemporary practice, the latter clause gave non-profit organisations a priority in the delivery of services, even where the municipality would pay for these services.

job might interfere. Refusal to comply could be sanctioned by reducing the benefit, but, being a means of subsistence, the benefit must not be withdrawn completely.

In theory, this obligation to work applied to any able-bodied household member of working age. There were flat rates for each individual according to their position in the household, so each individual was defined as a claimant and became part of the regime. In the regime of unemployment benefit and assistance, by contrast, only the former contribution payer was defined as the claimant and subjected to rules. If the rest of the family managed to subsist on the former breadwinner's benefit, it was their choice.

Since social assistance was a municipal responsibility supervised by the 16 *Länder*, not a federal responsibility, there is very little representative evidence and evaluation about activation under this regime in practice. However, it would not be going too far to say that the principle of unlimited acceptability of work was not very strongly enforced by the municipalities. The prevailing approach was characterised by the general principle of the *Bundessozialhilfegesetz* (the applicable federal legislation) that the aim of social assistance was 'to enable the recipient of assistance (*Empfänger der Hilfe*) to lead a life in accordance with human dignity'.²² Over the years, a distinct social worker or social administrator style of dealing with social assistance claimants evolved, which was different from the style practiced by the PES. The regime of social assistance was pervaded by benevolent permissiveness, while the regime run by the PES can better be characterised as bureaucratic neglect. The outcomes of both regimes in terms of their ability to re-integrate long-term unemployed people were not too far apart.

To sum up, it might be said that the principle of universal activation was inherent in the regime of social assistance, and that it had a potential for a 'workfare' approach since it was not limited by the rules of acceptability that applied to 'worker citizens' within the regime of unemployment benefit/assistance. 'Hartz IV' reforms can then be understood as an 'activation' of this dormant principle, which was universalised so as to now apply to the majority of workless claimants.

3.3 'Basic income support for jobseekers': the new benefit and regime for non-insured workless people

As of January 1, 2005, unemployment assistance and social assistance²³ became integrated in a new benefit and regime. The regime is called 'basic income support for jobseekers' (*Grundsicherung für Arbeitsuchende*), although a large proportion of recipients are not obliged to seek jobs, dependent children among them. For adults under the new regime, the new benefit is called 'unemployment benefit II', which is also misleading, since the logic and level of the new benefit is closer to previous social

²² It is not by accident that this clause was not carried on into the new legislation on basic income support, though other clauses were taken over almost literally. This again may be seen as an indication that the reform was not meant to expand social citizenship.

²³ Social assistance continues to exist for people in need but permanently unable to work. Since people unable to work will often qualify for other benefits, namely disability pensions, the number of claimants is now small. Generous interpretations of the ability to work have contributed to this result, which shifts the burden of income support from the municipal to the federal budgets.

assistance than to unemployment benefit. Furthermore, roughly 40% of the adult claimants of the new benefit are not registered as unemployed: One group is actually working but earning so little that they have to draw supplementary benefits; the other group is temporarily unable to work because of sickness, or not available for work because of caring responsibilities; the third group is temporarily engaged in 'workfare' schemes (working for the benefit plus an hourly allowance, in community and non-profit projects).

Referring to our analysis of the preceding regimes in paragraphs 3.1 and 3.2, the change to the new regime can be characterised as follows, taking the perspectives of different groups concerned:

- For the former claimants of social assistance, the changes are small. The flat-rate benefit is a little higher, but most previously available emergency payments for special circumstances have been done away with. An adult single person now receives 345 € per month (plus full cost of 'adequate' accommodation and heating) from which he or she is supposed to make savings for larger expenditures like a breakdown of the washing-machine etc.
- For many of the former claimants of unemployment assistance, the change to flat-rate implies lower payments. Stricter criteria of means-testing now exclude more persons whose partner is working. Where both partners are workless, now both receive 90% of the single rate, but also both are required to work, which was not the case under unemployment assistance when only one partner was considered to be the claimant. There are lower rates for children. People living together and apparently supporting one another are defined as a *Bedarfgemeinschaft* ('community of needs') regardless of marital status, sexual orientation or kinship.
- After claimants of contribution-based unemployment benefit have exhausted their claim, their subsequent flat-rate benefit will be supplemented for two years in order to ease the transition, with a degression in the second year. However, if means-testing fails to establish their neediness, they will receive nothing, neither the benefit nor the supplement. In a country where saving is regarded and propagated as a fundamental virtue, the obligation to wear down one's savings before qualifying for the benefit creates bitterness.

The fundamental paradox of the reform is that the fiscal costs are exceeding initial expectations, one reason being that more people than expected became eligible for the new benefit, while on the other hand most of the concerned (and even those only potentially concerned) feel that something has been taken away from them. There seem to be no winners.

4 Implications of the reform for the German (un-)employment regime and the governance of labour market policy

4.1 Renouncing the German breadwinner model from below

The traditional male breadwinner model is deeply inscribed in the (West) German post-war employment system (cf. Ostner 1995; Gustavsson et al. 1996). In quite stark contrast to people's actual life arrangements, it remains anchored in the tax and benefit system (Dingeldey 2001), in the availability of child care and in the pattern of 'opening hours' of schools and child care facilities (Esch 2005). In a certain way, the Bismarckian regime of social insurance can be seen as a supporting pillar of the male breadwinner model. Admittedly and positively, if a woman earns the same as a man, there will be no difference with regard to benefits; but if she doesn't – and in most partnerships she doesn't – the male role of being the primary breadwinner is preserved in the case of unemployment.

This was also the case with regard to means-tested earnings-related unemployment assistance. If the male partner were still working, the unemployed female partner, after exhausting her contribution-based claims for unemployment benefit, would often not qualify for assistance because she would not pass the means-testing. This could even happen if the male partner was unemployed, too, but drawing higher benefits. If, however, the female partner was not taking part in the labour market ('housewife'), the male breadwinner role was preserved even in the case of unemployment because wage replacements were attached to the man. In assessing the man's claim for unemployment assistance, any income of his wife would be taken into account, but her status as a non-participant in the labour market would not be questioned.

In the new regime of basic income support, the dormant workfare principle from the social assistance tradition has now been 'activated' – with contradictory consequences for the definition of gender roles. On the one hand, where the male partner has earned income or benefit, the female partner, after losing her job and exhausting any contribution-based claims she may have, will more often than before fail to qualify for an additional benefit because means-testing has become stricter. So in this way the breadwinner model and female dependency are strengthened as long as the (former) breadwinner still possesses the status of 'worker citizen'. On the other hand, when the status of worker citizen is lost and the partnership ('community of needs') as a whole is recognised as being in need, then both partners will be equally obliged to work and to support both themselves and the other partner, even if the woman has never been in gainful employment before. This situation applies, in particular, to housewives of Turkish origin who don't speak German and have no vocational training. So here we see an 'emancipation' of women forced upon them through the benefit system, while the former breadwinner status of the man has been abrogated.

We call this a renunciation of the breadwinner model from below because, in the German system of income tax splitting, the non-working partner of a high earner can subsist on the tax privilege granted to the couple, have free medical care by virtue of the

contributions paid by her husband and enjoy a widow(er)'s pension if the breadwinner dies. While the breadwinner model is supported and subsidised for the upper and middle classes, it is abrogated for the poor – like in the past when marriage was denied to landless paupers.

Given the disruption of relevant statistics due to the far-reaching institutional changes (see more in 4.4 below), little is known about the degree to which 'activation' of previously inactive partners actually takes place in practice. One outcome, however, is manifest: The regime shift created a sudden increase of the unemployment count by roughly 400,000 in early 2005²⁴ because, among other factors, non-working spouses were now obliged to register as unemployed if they were to receive the benefit.

4.2 The new (un-)employment regime

It was already mentioned above that different criteria for the 'acceptability' of a job offer apply in the regimes of unemployment insurance and of poverty relief, respectively. Both the English term 'acceptability' and the German '*Zumutbarkeit*' (reasonability) contain a subjective or moralising slant that obscures the regulative function of limited acceptability. It is for the 'good order' of the labour market if claimants of wage replacements are not obliged to accept a job below the collectively agreed rate or where legal or collectively negotiated rules are being violated. In the insurance regime, wage concessions of 20% are defined as acceptable in the first three months of unemployment and of 30% from the 3rd to the 6th month; after that the benefit itself defines the threshold of wage acceptability.

Under the regimes of social assistance or, as it is now called, basic income support, there is a general obligation to use one's labour power in order to support oneself and to reduce, if not overcome one's neediness. From this principle it follows that any societal limitations of acceptability do not apply. As long as social assistance was an exceptional and emergency system for the unlucky few, this had no damaging effects on the labour market at large. As social assistance caseloads increased, municipal caseworkers' permissiveness had the effect of keeping the principle of unlimited acceptability dormant. Since the integration of the two unequal types of 'assistance', however, the poverty relief type unemployment regime applies to roughly two thirds of officially recognised workless people. Moreover, this regime was introduced with a strong determination to activate, framed in a paternalistic manner: "There is no right to laziness" (Schröder).

Acceptability of any job for recipients of basic income support must be seen against the background that Germany, with a tradition of once strong trade unions and constitutionally guaranteed autonomy of collective bargaining, has no legal minimum wage.. Nowadays, coverage by collective agreements is on the retreat and down to 68% in the West and 53% in the East (Schäfer 2005). Quite contrary to the pervasive

²⁴ The effect on the annual average, including mitigating factors of the reform that took effect only later during the year, is estimated at 300,000.

perception of Germany as a high-wage country, around 21% of the German workforce earned low hourly wages in 2004²⁵ (Kalina / Weinkopf 2006).

The new ‘unemployment benefit II’ contains clauses for in-work benefits²⁶ designed to boost work incentives, which were improved in the direction of lower withdrawal rates for very low earnings as of October, 2005. Even before this change, there were 900,000 low earners drawing additional benefits (Hartmann 2006). In the absence of a bottom line in terms of minimum wage regulation or of limits to acceptability, the new regime of basic income support is developing into a costly subsidy for wage-dumping employers. In-work benefits or, in the going German phrase, ‘combination wages’ (*Kombilohn*) were designed as an incentive for taking up work. However, once settled in such a situation, there is little incentive for either the employer or the employee to (officially) extend hours or raise the hourly wage. Due to the phasing-out of the benefit and of other implicit subsidies²⁷, there is a rather wide range of gross earnings within which only a very small percentage of around 18%) of an employer’s additional outlays will actually arrive in the employee’s pocket.

For those who cannot even find a low-paid job, schemes of ‘working for the benefit’ (*Arbeitsgelegenheiten* – ‘opportunities for work’) have been designed at large scales of 600,000 entries per year, replacing most previous schemes of subsidised waged employment in the ‘third sector’. In addition to the full benefit, participants receive between 1 and 1.50 € for each hour actually present in the workplace. The number of hours offered is usually restricted to a maximum of 30, firstly because participants are supposed to continue seeking ‘regular’ employment for which they need time off the job, and, secondly, because otherwise their net income would tend to exceed their earnings opportunities in the regular labour market (which may nevertheless be the case anyway).

4.3 Implications for the financing of social security

The central threat to the Bismarckian welfare state based on contributions levied on wages is not only a lack of gainful employment as such but, more specifically, the decline of employment subject to contributions. In fact, jobs from which (full) contributions are being paid have been on the decline in recent years while ‘mini-jobs’ and self-employment without employees have been on the rise. Ironically, these trends have been supported by legislation aimed at creating more jobs through increasing flexibility. As fewer jobs are bearing the burden of financing social security, labour

²⁵ This measure follows the standard definition of two thirds of the median, which defines an hourly low-wage threshold of 9.83 € for West and of 7.15 € for East Germany. Comparing only full-time employees, low-wage percentages are 17.1% for West Germany and 19% for the East.

²⁶ There is no system of work-related tax credits in Germany; on taking up low-paid work, part of the benefit is kept instead. This partial benefit is also available for those already in work but earning less than the defined subsistence level.

²⁷ Parallel to in-work benefits, the bottom line for untaxable earnings and privileges for so-called ‘mini-jobs’ (marginal part-time work) with regard to social security contributions effect the intricate relationships between employer’s gross labour cost, employee’s gross earnings and employee’s net pay.

costs for these go up, tipping the balance even more towards non-contributory types of economic activity.

The regime of basic income support is emphasising this trend in two ways:

- (1) By ‘activating’ claimants into any kind of job and by creating new forms of non-waged employment in the third sector, jobs not paying (full) contributions are strongly promoted, and new variants of them are being created.
- (2) With wage replacements relative to previous earnings for only 12 months, the German system of unemployment insurance now, after the reform, belongs to the most unattractive ones in Europe with regard to the relation of input and outtake. Together with the never-ending discussion about the pension crisis and about retrenchments in medical care, this makes non-insured jobs acceptable to young people who don’t expect adequate returns for contributions they would pay.

A system of social security based on contributions and with benefits and contributions related to earnings in a linear way (‘Bismarckian’ system) turns out to be incompatible with increasing wage dispersion, exemption of mini-jobs from contributions (and thus from earning benefit claims), and with a proliferation of self-employment. Growing proportions of tax-based funding of social security seem inevitable, and this is actually being introduced in Germany, although in a haphazard and non-strategic manner. ‘Hartz IV’ is an example for this.

While this is being written, there is an avaricious debate about how to react to the surprise of high surpluses in the unemployment insurance fund. This surplus is only partly due to a recent slight vitalisation of labour demand. To the larger part, it is caused by the integration of unemployment assistance and social assistance into the new regime here described. Until 2004, even though unemployment assistance was tax-funded, its administration, the services of the PES for unemployment assistance claimants, and active measures provided for them were funded from contributions. Now, with the split between the insurance regime and the regime of basic income support, the total cost for the non-insured are borne by the federal treasury.

Furthermore, with the fiscal split between contribution funding and tax funding now deepened as an institutional split (see next paragraph in more detail), the fiscal incentives work against early intervention. The Federal Agency for Work, insofar as it is administering the unemployment insurance fund and not the new system of basic income support (which it does together with municipalities in consortia), has tremendously downscaled its spending for active labour market measures. The ‘good risks’ are being recycled into the labour market without costly measures. On the other hand, it makes no economic sense for the Federal Agency for Work to make larger-scale investments in ‘difficult’ customers because, even in the best of cases, success would only come about after participants would have exhausted their eligibility for insurance claims, so that the financial benefits would not be reaped by the fund but by the federal treasury. As a consequence, potentially hard-to-place customers are not activated when they are new arrivals in unemployment but let pass on into the system of basic income

support. The institutional gap that was intended to be bridged by the Hartz reforms is now wider than before.

4.4 Governance: Municipalisation as a consequence of regime borrowing

It has been briefly mentioned above (chapter 2) that the Hartz Commission's concept envisaged to have both regimes, insurance as well as basic income support, administered by the Federal Agency for Work who would operate 'Job-Centers' as single gateways for both customer groups. The same was foreseen in the draft legislation for the fourth step of the Hartz reforms. However, the outcome of the legislative process was quite different, and the process that led to this end can be read as a model case study in German federalism.

Legislation aimed at integrating benefits and service provision of the two previous systems of unemployment assistance and social assistance inevitably touched upon the responsibilities of municipalities who had, until then, administered social assistance. Municipalities, in turn, are under the legislation and supervision of the 16 *Länder*. For this reason, the fourth stage of the Hartz reforms constituted a piece of 'concurrent legislation', which means that the passing of the bill depended on the approval of the Second Chamber, the *Bundesrat* made up of representatives of the *Länder*, the majority of which were governed by Christian Democrats or by coalitions led by Christian Democrats. There were many interests involved in opposing the plans of the Social Democrat / Green coalition:

- The Christian Democrats took the chance to present themselves as an alternative to the Schröder administration.
- Some Christian Democratic leaders like the Minister President of Hesse, Roland Koch, purported to be convinced that municipalities were better apt to implement activation strategies than the Agencies for Work. Koch was impressed by Wisconsin-type workfare schemes.
- Keeping the municipalities in the game meant propping up the role of the *Länder* in labour market policy, in which any *Land* government, regardless of political colour, had a natural interest.
- County administrations, already having only few responsibilities, were fearful of losing their *raison d'être* if the administration of social assistance was to be taken away from them.
- Professionals of municipal labour market policies, especially in larger cities, were threatened with uncertainty of their professional careers if their customers were to be taken over by the PES.
- Since dismissals in the German public service are in part legally, in part politically impossible, and since transfers between different sections of the public service – here: municipal administrations and a federal agency – are very difficult to manage, the government's draft bill implied the risk of staff surpluses for all municipalities.

- Trade unions were divided: While the Trade Union Confederation defended the centralism of the Federal Agency for Work with its tripartite governance, the Union of Public employees *ver.di* was torn between the concerns of municipal and PES employees, respectively, whom this union both represents.

Given this array, it was easy and almost inevitable for the Christian Democrats to defeat the government in two consecutive parliamentary rounds. Consequently, key features of the reform were shaped in midnight negotiations of the mediation committee of the two houses, a legislative method that notoriously produces illogical and inconsistent results. In this case, the outcome was as follows:

- (1) In fiscal terms, the federal government is responsible for income support, while the municipalities are responsible for housing and heating costs.²⁸
- (2) In institutional terms, the original responsibility for administering income support and labour market related services (like job placement, active measures) lies with the Agencies for Work, while the municipalities are responsible for administering housing allowances and concomitant social services (e. g. psycho-social, drug abuse, and indebtedness counselling).
- (3) Agencies for Work and municipalities are supposed to form ‘consortia’ (*Arbeitsgemeinschaften*) in order to pool their efforts and administer these services together. Since the regional compounds of the 180 district organisations of the Federal Agency for Work and the 444 municipalities do not match and even occasionally overlap, this effectuates complex regional structures. Having their own direction and governance structures and being able to issue legal acts, the consortia are legal entities of their own²⁹ (albeit of theoretically contested nature) and thus much stronger integrated than the French *maisons d’emploi*. On the other hand, employees seconded into the consortia maintain their employment relationship with their original organisation. This implies separate bodies of employee representation, different collective agreements, different job grading and pay, different working time patterns etc. Obviously, such a consortium is quite difficult to manage (Czommer / Knuth / Schweer 2005 and 2006; Wiechmann et al. 2005), which hinders their performance.
- (4) For a period declared as ‘experimental’ and extending until 2008, 69 municipalities have been licensed to administrate the new benefit and activation regime alone. The year 2008 was chosen in order to maintain ample temporal distance from federal elections, which would have taken place in 2010 if the Schröder administration had survived the whole term. Subsequent premature elections in 2005 now put the next

²⁸ With respect to former claimants of social assistance, this was a financial relief for the municipalities because, for this group of customers, they used to be responsible for both kinds of payments. However, this relief is more than offset by taking responsibility for the housing costs of former claimants of unemployment assistance. Therefore, municipalities as a whole are to receive 2.5 billion € annually in compensations. But of course, the adequacy of this sum and its distribution among individual municipalities is an issue of never-ending bickering.

²⁹ Most of them were set up as consortia of public law, a new invention brought about by the parliamentary compromise. In some cases, the partners founded a limited company of private law.

regular elections on the agenda as early as 2009. Therefore, the coalition treaty of the present coalition envisaged an extension of the experiment until 2010, but it is unclear whether the present unstable situation can be sustained for so long.

- (5) For 19 territories for which neither license for full municipal responsibility was applied for or granted nor an agreement on the formation of a consortium was reached, responsibilities according to (2) are fulfilled separately. Here not only two gateways exist, but the majority of workless people actually have to visit both of them in order to collect their means of subsistence.

It can be said, then, that the questions of organisation and governance of the new regime were closely entangled with the power struggle between different echelons of administration, and thus strongly influenced by the debate on the reform of Federalism, which was on the agenda at the same time. It could have been learnt from the Dutch experience how issues of a nation's governance structure can overshadow and distort labour market policy reforms (cf. the excellent analysis by Trampusch 2000). However, other country's examples with reforms towards 'activation' – preferably the UK, the Netherlands, and Denmark – were only picked up in Germany in superficial ways as 'good practice' benchmarks to be imitated, without comprehension of the societal, institutional and political context (for a critical review see Knuth / Schweer / Siemes 2004; Knuth 2005).

Typically, for Germany, the fundamental change of the governance and service structure was envisaged by the legislator to be effected within one juridical second, between December 31, 2004 and January 1, 2005. There was no roll-out strategy, and since the parliamentary struggle lasted until mid-2004, the new units had only few months to prepare themselves for the formidable task of taking over responsibility for more than three million 'communities of needs' (households) with 4.8 million adult claimants and 1.9 million children depending on them. If this was managed without organisational chaos and with only relatively few people having to wait for their correct benefit payments, it goes without saying that other objectives of the reform like activation had to be pushed into the background for the time being.

5 What about activation, after all?

5.1 Why little is known

The profound changes of the German system of social protection for workless people and its governance go along with deep changes and inconsistencies in the administrative data structures:

- (1) In the course of its organisational overhaul, the Federal Agency for Work is replacing IT processes some of which date from 1975. This creates disturbances in important statistical time series, and some annual structural analyses have been abandoned. Consortia are affected by these changes because one of the partners in each consortium is the local Agency for Work.
- (2) A new software had to be introduced to administer the new benefit. This software started with many bugs, and, because of poor specification at the time of tender, it lacks information that would have been needed for statistical monitoring and evaluation.
- (3) For reasons of property rights and data protection, municipalities licensed to be responsible for basic income support on their own are not allowed to use this new software. They continue to work with different kinds of software previously designed for administering social assistance. Some of this software is well suited for case management, but none of it is adequate to serve macro statistical needs. Consequently, data from the 69 licensed municipalities are now largely lacking in central databases.

As a consequence, many previously useful time series and structural disaggregations of unemployed, job seeking or benefit receiving populations are no longer available, and neither are differentiated flow data like outflows from unemployment into gainful and unsubsidised employment. This makes it impossible to assess the impact of the reform on the basis of publicly available indicators.

5.2 Potentials for activation

One of the Hartz Commission's central criticisms with regard to the PES had been that only a small proportion of its 90,000 employees were actually working at the customer frontline, thus effecting caseloads of 600-800 customers per placement officer. Consequently, the central promise of the 'Hartz IV' draft bill had been to cut down caseloads in the new system of basic income support to 75 and to re-define the role of frontline officers as case managers. It was admitted that almost 12,000 additional staff would be needed in order to achieve this ratio (Bundesregierung 2003). In subsequent discussions, targets were soon watered down by saying that a caseload of 75 applied only to the age group under 25 and that otherwise caseloads would be 150 – not per person but per 'community of needs' (household). Due to the institutional fragmentation that resulted from the parliamentary compromise on governance, representative figures on staffing and caseloads are not available. Case study evidence from different stages of

the building-up process of the new service units suggests that there was indeed massive hiring plus internal recruiting from municipal departments where there was a staff surplus.³⁰ However, in the preparation phase of 2004, caseloads to be expected in the new system had been underestimated almost everywhere.³¹ As a result, even the reduced targets for caseloads per staff are rarely met. Still, caseloads of 300 adults per officer, as found in case studies, are no doubt an improvement compared to the situation before the reform.

Whereas the grounds of the draft bill for the 'Hartz IV' legislation, following the wording of the Hartz Commission's report, called frontline staff 'case managers', the law itself used the term 'personal contact person'. The reasons for a last-minute change in the wording of the law is probably that municipalities allot much higher job grades to their case managers than the Federal Agency for Work to their job placement officers. The legal introduction of case management would thus have had a huge impact on salaries in the Agencies for Work. Now there is a vast confusion about what case management actually means and for which categories of customers it is needed or appropriate (Kolbe / Reis 2005). According to a recent survey answered by 382 out of the 444 regional service entities, only 26% are practicing universal case management (IAW 2006). This proportion is much higher among the licensed municipalities (68%) than among the consortia (18%), reflecting the different traditions and philosophies brought into the new regime by Agencies for Work and by municipalities. At any rate, it can be assumed that with more frontline staff, somewhat lower caseloads and at least vague ideas of case management, there should now be more interaction with customers addressing issues beyond benefit claims.

According to the law, a back-to-work agreement (*Eingliederungsvereinbarung*) is supposed to be concluded with each claimant able to work, and it is to be renewed every six months. Of course, this could not be done with all the new customers at once. However, since sanctions are only legally possible if a person's conduct constitutes a breach of the back-to-work agreement, the latter is crucial in the activation process. According to a report of the Federal Audit Bureau based on findings in 90 regional service units in the second half 2005 and the first quarter of 2006, half of the customers had not (yet) signed a back-to-work agreement. On average, they had to wait for three months for the first substantive consultation with their responsible frontline manager and for four months for a back-to-work agreement. Where there was such an agreement, its provisions were not monitored in 40% of cases, and potential breaches of the agreements were not followed up in 60% (Bundesrechnungshof 2006). Statistical data on sanctions imposed are not available for the regime of basic income support.

³⁰ Of course, staff from graveyard administrations etc. was not adequately trained for the job, and time for any training was scarce due to case overload.

³¹ The overall estimate in the autumn of 2004 was 2.86 million 'communities of needs' consisting of 5.97 million individuals of which 3.44 would be able to work. Actual figures in January 2005 were 3.33 million communities of needs consisting of 6.12 million individuals, of which 4.5 million were considered able to work (SVR 2005: 123)

Of course, one would like to know what difference all this makes for labour market outcomes, but due to the reasons explained above (5.1) even simple descriptive data like exits from unemployment into employment are not available for licensed municipalities. For consortia, these flows y have slightly picked up in 2005 and 2006, but this may not be more than reflecting the more favourable business cycle or the increase in working-for-the benefit schemes, since data do not differentiate for ‘proper’ gainful employment.

6 Summary and conclusion

It is perhaps inevitable that the introduction of ‘activation’ labour market policies would not be applauded by all those directly affected. However, the German case goes far beyond expectable resistance from those on whom the reform would have an immediate negative effect. Unlike any other country opting for ‘activation’, Germany combined this move with a fundamental change of the benefit system. Benefits were not only lowered for many, but their logic was changed from a Bismarckian logic of earned entitlement to wage replacement and relative status maintenance to basic income support. This was perceived as an expropriation of acquired social rights by contribution payers, and by doing this without being able to give any justification, the former German government put the legitimacy of the reform into jeopardy in the eyes even of many not directly concerned. By borrowing the principles of the new benefit system from another regime, i. e. poverty relief, the government provoked an unintended fragmentation of what once was the PES. This fundamental restructuring of organisations and governance, in turn, created so much friction and took up so much energy that the activation agenda as such was pushed into the background for yet another two or three years. Since the new institutional structure is only ‘experimental’ and provisional, new interferences of politics into activation policy are to be expected.

In their endeavour to break the path-dependency of the Bismarckian unemployment regime (see above, 3.1), but without possessing an alternative paradigm of their own³², the red-green ‘modernisers’ fell trap into another path-dependency. By borrowing from the legacy of poverty relief, which had always been a municipal prerogative in Germany, they put the handle of the emergency brake directly into the hands of the conservatives who then forced the reform into the path of municipalisation. Historically, the reform has not led beyond Bismarck, as the modernisation discourse would have it. Quite contrary, in the absence of a broad and inclusive concept of social citizenship, it has revived and proliferated a regime that existed *before* the arrival of the Bismarckian paradigm in the field of labour market policy.

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³² Historically, German Social Democracy has failed to develop a distinct conception for social policy of its own. Bismarckian social policy was aimed *against* social democracy, and the foundations of the post-war welfare state were laid by the Christian Democrats. Subsequently, these foundations have been continually repaired by ‘Grand Coalitions’, be they formal or informal.

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