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The Minimum Wage in Germany: What Brought the State In?

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1. Introduction

A political system with high consensus requirements due to the presence of veto players is fertile ground for self-regulation by associations such as employers' organisations and unions. As Scharpf (1997: 204) emphasised, they perform their regulatory functions 'in the shadow of the state'. The government could intervene if there was a political consensus at odds with the regulatory choices made by the associations, but this is unlikely. An agreement reached between representatives of the main social classes can be expected to be close to the consensus political position. In any case the transaction costs of developing an alternative political position are high.

In this light, the recent introduction of a statutory national minimum wage (SMW) in Germany poses two puzzles: how were the main political parties (the Christian Democrats and the Social Democrats) able to agree, and why did employers and unions fail to make their own agreements? Successive governments clearly preferred the self-regulatory alternative, and went to some lengths to create a framework which would allow employers and unions to determine sectoral minimum wages. Only when these initiatives were clearly seen to have failed did the Social Democrats switch their position to a statutory measure, and ultimately carry the larger party, the Christian Democrats, along with them.

Political deference to corporatist bargaining is not without its critics. While Katzenstein (1987) lauded the stability generated by the preference of politicians in Germany's 'semi-sovereign state' for promoting self-regulation by associations, Streeck (2003) advanced a withering critique of the pursuit of private interests by the labour market parties and the incapacity of the political system to pursue public interest-regarding reforms. Hardly had Streeck published his account when the government embarked on the Hartz reforms, a succession of social security and employment measures developed with limited involvement of the representatives of labour and capital, pushed through by a government that was notionally a Red-Green coalition but in practice a grand coalition (following Schmidt's (2002) use of the term), relying on centre-right support to navigate the obstacles of the political process.

Some commentators saw this as a profound shift in German political economy (Vail 2003), but many assessments were more muted. Social partner governance of public institutions (notably the Federal Employment Agency) was curtailed, as was the

‘externalisation’ of employment adjustment costs onto the social insurance system (Trampusch 2005). Otherwise, the main thrust of the measures was to reduce statutory regulation of terms and conditions of employment, without impeding the rights of the parties to make their own agreements on how the new ‘flexibilities’ would be utilised. The result was dualisation: negotiated protection of the conditions of the core, organised workforce alongside a substantial expansion of peripheral employment where employer prerogatives held sway. Palier and Thelen (2010) argue that dualisation explains the political feasibility of reforms: corporatist bargaining prevailed but in a more limited domain than before. The result was, in many ways, business as usual (Hassel 2014).

What had changed, however, was the capacity of the parties to regulate the peripheral labour market. This was hardly a pressing issue when the thrust of government policy was liberalising and deregulatory: there was no shadow from the state. The main trigger for re-regulation was an emerging problem of fiscal externalities. The expansion of low-paid employment and the proliferation of ‘mini-jobs’ lacking social insurance coverage led to financial pressures on both social insurance and social assistance. A robust rate of job creation partly covered the trail of these costs, but implicit subsidies to low paid jobs increasingly became the target of political criticism in the 2000s.

While fiscal externalities were the concern of the state rather than the labour market parties, successive governments nonetheless tried to promote a self-regulatory solution. Until 2009, both the Christian Democrats and the Social Democrats favoured establishing minimum wages in low-wage sectors through collective bargaining. Employers and unions would make collective agreements and the government would render them universally applicable, binding all firms in the sector whether or not they were party to the agreement. The motive for employers to cooperate was that this process would regulate competition. The favoured legal instrument was the 1996 Posted Workers Act, which had been introduced to ensure that workers on sites in Germany had to be paid minimum wages agreed by German employers, even if they were employed by firms based outside Germany in countries where lower wages prevailed.

This paper examines why it was apparently not possible, or not adequate, to lend the authority of the state to the social partners to facilitate self-regulation and secure minimum wages based on collective agreements. Employers may seek to conclude these agreements in order to regulate competition, but this requires a consensus on the desirability of such regulation as well as mechanisms to prevent defection from the agreement. The competition-regulating motive for setting minimum wages could not gain traction in the intensified competitive environment that emerged after reunification. The inability of employers and unions to collude sufficiently to preserve *Tarifautonomie* (independence in wage-setting) in the face of political pressure shows the limitations of Germany’s vestigial corporatist institutions.

The approach taken in the following discussion emphasises strategic interaction between employers, unions and the government in the making of policy. The central idea is that both employers and unions have incentives to ‘self-regulate’: to reach agreements on wages and working conditions that do not provoke the intervention of the government.

However, the strength of these incentives depends on the nature of the threat of government intervention. Culpepper (2011: 183) proposes that, in areas such as wage determination, which are salient to voters but primarily left to the market ('informal rules' in Culpepper's taxonomy), the social partners share an interest in making compromises in order to prevent intervention. This does not depend on calculations about the likely nature of government intervention, but rather on a common desire to preserve autonomy and reduce political risk. If employers believe that the government's stance is likely to be broadly neoliberal and deregulatory, they have less incentive to reach agreements with unions – but then the unions in their turn have more reason to make concessions to sustain self-regulation. If unions believe that at least some of their goals will be achieved by statutory regulation if negotiation with employers fails, they have more reason to adopt an intransigent bargaining position, but it is then the employers' turn to recognise the threat and make concessions. If the parties have common information, they should evaluate threats in a similar way and be able to reach agreement.

It follows that, if government intervention happens, it must either be because of miscalculation, or because, despite their recognition of threat, the parties have been unable to behave strategically. The discussion below shows how intensified competition undermined employers' capacity for strategic action, and this in turn limited the opportunities for unions to promote self-regulation.

After a preliminary outline of the various institutional mechanisms for setting minimum wages in Germany, the paper proceeds by examining in turn the strategies adopted by the three parties: employers, unions and the government. The puzzle about employers is why they did not give more support to the collective bargaining system, and thereby pre-empt the threat of state intervention. This is discussed in section 3, while section 4 turns to the unions, and asks why their endorsement of the SMW became more wholehearted and less confined to the unions in the weakest bargaining position. As with employers, unions have an interest in maintaining the autonomy of collective bargaining. However, they are also able to operate as political actors, and their political opportunities and capacities increased in the 2000s relative to their diminishing industrial strength.

The political environment in its turn became more receptive because of the emerging problem of low pay linked to welfare reform (section 5). Yet the two main parties were some distance apart on minimum wage policy, and the chances of agreement looked remote right up until the 2013 election. Both the principle of establishing a single national minimum wage and the initial level for the wage (€8.50 per hour) were agreed politically: a striking contrast with the UK, where the setting of the initial level was delegated to a Commission (Mabbett 2014). However, the moment of political agreement was evidently not expected to last: power to determine future increases has been delegated to a commission of union and employer representatives. The concluding section briefly speculates on how this new commission will function and draws out some implications for the analysis of German corporatism.

2. The recent history of minimum wage regulation in Germany

The main procedure for establishing sectoral minimum wages in Germany was initially established for the construction industry through the transposition of the European Union's Posted Workers Directive in 1996. The Directive was largely a response to German pressure to create a mechanism for host state regulation of the terms and conditions of workers employed under contracts made in another member state, who were temporarily engaged elsewhere in the EU. This was a pressing concern in the construction industry in the post-reunification building boom, when workers from other states took up jobs at wages lower than prevailing unemployment insurance levels for German workers. The Directive allowed member states to declare minimum wages in collective agreements universally applicable, binding all workers on their soil.

As the discussion below explains, the sectoral coverage of the Posted Workers Act was subsequently extended, and its procedures proved more accessible than those provided by other legal instruments. Before 1996, two mechanisms existed to establish sectoral minimum wages in Germany, but one was in abeyance and the other was little used. The 1952 Minimum Working Conditions Act (Mindestarbeitsbedingungengesetz, MiArbG) created a procedure for situations where there was no collective agreement in place. On application from employer associations, unions or Land governments, a committee could investigate whether a minimum wage was required. If so, an expert committee of employers and union representatives with an independent chair could determine a generally-applicable minimum wage. The procedure was reformed in 2009, increasing the representation of government officials on the relevant committees and giving the Federal Ministry of Labour and Social Affairs (BMAS) the power to establish a committee on its own initiative to assess the situation in an industry and choose an existing collective agreement as the standard for extension. The procedure is limited to sectors where unionisation rates are low, and the consent of the social partners is not required. After the 2009 reform, investigations took place, but without any quick results (Bosch and Weinkopf 2010:4).

There is also a mechanism in the law on collective bargaining (the TVG, section 5) to give collective agreements application across a sector, binding employers who were not parties ('Allgemeinverbindlicherklärung' AVE). Agreements have to be made in accordance with the TVG, at least 50% of employees have to be covered by the employers party to the agreement, and the employer and union sides have to agree that an extension would be in the public interest. A council of representatives of the peak organisations of business and labour, the 'Tarifausschuss', hears submissions from the parties and makes a (consensual) recommendation to the government (Heitzler and Wey 2010: 20). Use of this mechanism declined after 1990. The employers' association, the BDA, estimates that some 500 out of 70,000 collective agreements are currently declared generally binding in this way.¹

The Posted Workers Act (Arbeitnehmerentsendegesetz 1996, the PWA) enabled unions and employers in a sector to conclude a collective agreement which could then be made universally applicable by executive order (Rechtsverordnung, RVO). This bound posted workers so long as their home state wages and conditions of employment were inferior to

¹ http://www.arbeitgeber.de/www/arbeitgeber.nsf/id/DE_Allgemeinverbindlicherkla

those in the agreement; of course it also bound all German workers in the sector. The scope of terms and conditions that could be extended is limited to those specified in the European directive; most importantly, only minimum wages are extended, not the whole wage structure that is often specified in collective agreements.

On first application for extension under the Posted Workers Act, the application has to be considered by the Tarifausschuss (see above). Initially, the BDA enjoyed the same veto power over extensions as it has for AVE applications under the TVG. However, in 1998 the Red-Green coalition amended the Act to remove the veto power of employers. This provision is criticised by the BDA, which argues that the use of RVOs overreaches appropriate bounds, whereas the AVE procedure is (correctly) constrained by being subject to the agreement of the social partners.² Other reforms to the Posted Workers Act expanded the sectors covered, and a major amendment in 2009 addressed some problems caused by conflicting collective agreements, discussed further below.

The procedure of making RVOs under the PWA became the dominant method for establishing sectoral minimum wages. Many commentaries assert that it is the only effective method available, and argue that the Act ‘is increasingly used to regulate wage competition internally.’ (Grimshaw et al 2014: 486). Heitzler and Wey (2010: 20) claim that ‘the Act’s main purpose has become to enforce minimum wages in several service sectors on domestic firms.’ But of course the distinction between domestic and cross-border competition cannot necessarily be made clearly. The opening clause of the PWA states that it is intended to regulate cross-border work, but also to regulate competition more generally and to maintain the collective bargaining system. The text of the recent RVO in meat processing (see below) draws attention to the presence of posted workers from abroad in the sector, and also to the employment of women at very low wages. In short, a boundary between regulating migrants and regulating internal competition was not established.

While constraints on the sectoral coverage of the PWA were eased, and other procedural limitations also eased in successive reforms, its efficacy in establishing sectoral minimum wages had constraints that could not be surmounted by legislation. Some low-wage sectors had no Germany-wide agreement eligible for extension, while others had several agreements made with competing unions, including agreements of doubtful validity under the TVG. One consequence of the latter tendency was that there were often severe delays in making agreements universally applicable. These conflicts and delays were a factor in drawing the unions towards support for a single SMW, where the stronger unions had previously favoured extension of collective agreements.

In the 2005 election campaign, the SPD declared that it would introduce a statutory minimum wage if the social partners could not agree minima for all sectors, while the CDU/CSU affirmed its commitment to securing minimum conditions sector by sector through collective bargaining augmented by universal application. As noted above, the Grand Coalition of 2005-9 reformed the Minimum Working Conditions Act and the

² http://www.arbeitgeber.de/www/arbeitgeber.nsf/id/DE_Arbeitnehmer-Entsendegese

Posted Workers Act in an endeavour to make the sectoral alternative work. The right-wing coalition of CDU/CSU and FDP (2009-13) did not take further steps: the FDP stood out in opposition to universal application and other regulatory interventions, insisting that these would cost jobs.

When another Grand Coalition was formed in 2013, the CDU/CSU finally conceded a SMW of €8.50 per hour, which came into force on 1 January 2015. However, the centre-right parties left their mark on the legislation, which is, somewhat paradoxically, entitled 'Law to strengthen collective bargaining' (Tarifautonomiestärkungsgesetz). Reforms to both the AVE and RVO procedures are included in the legislation. The 50% threshold for extension of a collective agreement using the AVE procedure has been relaxed, and the Posted Workers Act is no longer confined to specified sectors. More important, the government's reluctance to override agreements in force means that the application of the €8.50 minimum has been delayed in some sectors, until current agreements run out. Given the difficulties that the unions have had in concluding collective agreements, there must have been some chagrin at the surge in agreements concluded in 2012-14. Particularly notable was the agreement made in the meat processing sector, one of the industries most notorious for low pay, long hours and poor conditions. The agreement was made in January 2014, and extended by government order in March 2014.³

3. Employers' preferences and strategies

One question presented by the narrative above is why employers were not more willing to promote the protectionist use of minimum wages to regulate competition in sectors exposed to competition from providers in other EU states. The explanation lies partly in the preferences of employers, and partly in the aggregation of preferences by employers' associations. Employers' preferences were divided: some expected to benefit from regulation while others preferred open competition. This section explains how the preferences of the latter came to prevail, both because of their effect on the coordinative capacity of employers' associations and because of their influence on the peak business associations, the BDA and the BDI.

Firms already exposed to international competition had no interest in sponsoring protectionist regulation in response to migration and service sector liberalization in Europe. Indeed, they could benefit by obtaining ancillary services in more competitive markets. In the early 1990s, the dominant tenor of the times in Germany was that wage concessions were needed in firms that had suffered a loss of competitiveness due to innovation and lower costs in other countries. Firms under competitive pressure used 'opening clauses' in collective agreements to pay sub-agreement wages. They also reached agreements with their core workforces on cost-cutting measures involving subcontracting peripheral services, thereby driving wages down in those sectors. Palier and Thelen (2010) document the rising share of temporary workers on inferior contracts, and the pressure placed on small firms by the large firms they supply. These aggressive outsourcing and cost-cutting strategies were not so evident in (for example) the Nordic countries, and they gave Germany a competitive edge that is not revealed by direct wage comparisons (Dustmann et al 2014).

³ <http://dip21.bundestag.de/dip21/btd/18/009/1800910.pdf>

The German model before reunification was characterised by export sector wage leadership, along with coordination among industrial employers to comply with industry collective agreements and avoid competitive bidding-up of wages to attract skilled labour. The counterpart of this coordination was that firms could train workers in the confident expectation that they would not be poached by other firms in the industry. Institutions to ensure high investment in specific skills were a key source of Germany's comparative advantage. In the conditions of the 1990s, this coordination was less important, as 'negative drift' (payment of wages below collectively agreed levels) became more prevalent. Furthermore, divisions between employers over wage bargaining policy became apparent. The key division was between large firms and SMEs in the export sector. Hassel (2007a: 260-1) documents how large firms were better able to bear wage increases than small ones, due to their greater ability to reorganise production to achieve productivity gains. Large firms were also better equipped than small firms to externalise adjustment costs onto the social insurance system, particularly through the use of early retirement. One consequence was that firms removed themselves from coverage by collective agreements: the share of employees covered in the metal sector fell from more than 75% in the 1970s and 1980s to 55% in the mid-2000s.

To avoid coverage, firms had to leave the relevant sectoral employers' association. Associations responded by trying to attract members back on different terms: specifically, by offering the opportunity to belong without signing up to the collective agreement (membership '*ohne Tarif*' or OT). While this stemmed the flow, it also pointed to a loss of capacity on the part of the associations. No longer could they regulate wage bargaining. For most, this was of limited importance given that prevailing wage pressures were downwards, but it meant that associations lacked the capacity to take up the government's invitations to establish minimum wages. Two examples illustrate the issues.

The cleaning sector provides an example where some employers favoured making a collective agreement to regulate competition and thereby limit low pay. For this to work, universal application was critical. For a group of employers to make an agreement, only to find that it could not be extended to others, would be a competitive disaster. Furthermore, there are strong incentives to free-ride by indicating support for the principle of a binding minimum wage but then taking any opportunity to pay less. Bosch and Weinkopf (2010: 20) note that, while the cleaning sector employers' association supported a minimum wage, 'the strategies and positions of employers [within the sector] are more diverse.'

Before 2008, cleaning was not one of the sectors covered by the PWA, so any extension of a collective agreement would have to be done by the AVE procedure in the law on collective bargaining. The 'blocking tactics' of the BDA in the Tarifausschuss were a barrier to universal application (Bosch and Weinkopf 2008: 309). An amendment to the PWA in 2008 brought the cleaning industry under its procedure, where the BDA did not have a veto, but it still took until 2010 for a collective agreement to be made and extended (Bosch and Weinkopf 2010: 20).

Strikingly, in 2008 the employers' association in the cleaning sector supported a SMW rather than an extended collective agreement for the cleaning sector. The key reason was that the sectoral agreement covered cleaning companies, but not employers in other sectors who may have employees 'in house' doing cleaning jobs (Bosch and Weinkopf 2010: 30). There is some evidence that competition between in-house and outsourced provision pushed wages down; for example in the health care sector concessions were made in collective agreements to prevent outsourcing.

A different set of problems marked the regulation of wages in the postal service, where the high-wage incumbent sought to use a sectoral wage agreement to prevent entry by low-wage competitors. The letter market was to be opened up to competition in 2008, sparking concerns that new entrants would undermine wages in the sector. In mid-2007, the Grand Coalition agreed in principle to add postal services to the sectors covered by the Posted Workers Act. The main employer, Deutsche Post, established a Postal Employers Association, and moved quickly to reach a collective agreement with the service sector union Verdi (Vereinte Dienstleistungsgewerkschaft; the united services union). Legislation amending the Posted Workers Act was passed, and, proceeding rather more expeditiously than in some previous cases, the Federal Ministry of Labour declared the agreement generally binding.

Prospective competitors responded to the Deutsche Post-Verdi agreement by establishing their own employers' association and reaching an agreement with a newly-formed union. The competitors' association challenged the minimum wage established by the Federal Ministry in court, claiming that their own agreement should be recognised. This claim was initially successful: the court ruled that a minimum wage could only be imposed on employers and workers not bound by any agreement. However, another court decision established that the new union was not 'tariff enabled' and the competitors' collective agreement was not valid. An appeal from the first ruling held that the decision on universal application had not been made correctly by the Ministry, as it had failed to give the other parties an opportunity to comment. An amendment to the Posted Workers Act in 2009 corrected this and established a procedure for dealing with the situation where more than one collective agreement has been concluded in a sector (Heitzler and Wey 2010).

This case illustrates how employer divisions could impede the establishment of sectoral minimum wages. Traxler (2010: 160) used this example to illustrate the general point that intensified competition between firms will give rise to conflicts of interest, for example between large and small firms, that employers' associations have difficulty mediating. The case also shows that the ability of the government to promote the model of self-regulation was constrained: this model exposed the government to judicial challenges that it would not face if it set a minimum wage using statutory authority. It is also notable that the government's position on the promotion of competition was ambivalent: on one hand, it initiated the liberalisation of the letter market (partly in response to EU-level measures), but on the other hand it insisted that competitive advantage should not be established by 'wage dumping'.

While employer divisions impeded the making and extension of collective agreements, the inclusion of more sectors in the PWA in 2008 did see some agreements made. Unions were often willing to make concessions to secure a continuation of collective bargaining. The agency work sector provides an example: collective agreements in the sector have resulted in wage scales running on average some 25-30% those prevailing for established workers (Eichhorst 2015: 59).

Finally, it is important to note that employers' associations to some extent lacked the appetite, as well as the capacity, for coordinated action. This was evident in the BDA's resistance to universal application under the PWA, which presumably reflected the interests of export sector firms in keeping domestic costs down. It was also apparent in business campaigns for liberalizing reforms. These were led by the BDI rather than the BDA (Kinderman 2005). Hans-Olaf Henkel of the BDI spoke up for the concerns of the *Mittelstand*, whereas the BDA was dominated by large employers who were better placed to adapt to high labour costs. The BDI sought radical reforms to social policy to reduce non-wage labour costs. Attempts to negotiate reforms through corporatist policy channels had produced little result, and the BDI 'demanded that the government act on its own to reverse the trend of the past decade' (Streeck 2003: 16). As noted in the introduction, liberalizing measures were implemented in the early 2000s without corporatist negotiation, under the umbrella of the Hartz reforms.

From an institutional perspective, the ability of the Red-Green coalition to push through these measures indicated that unilateral government reform measures had become more viable, by contrast with received accounts of Germany's 'semi-sovereign' state in which reforms had to be negotiated with employers and unions.. The new-found capacity of the government to engage in deregulatory liberalizing reforms also implied a capacity to undertake re-regulation, but this threat did not detain employers in the early 2000s.

4. The Unions' Change of Heart

Many accounts of German unions from the 1990s and early 2000s emphasise their investment in corporatist institutions and attachment to strategies of externalising costs onto the social insurance system. This has led to vigorous criticism of their role in defending 'insider' interests (Palier and Thelen 2010). Hassel (2007b) described the established unions' failure to recruit new members as 'the curse of institutional security'. DGB unions defended their institutional monopolies against new entrants (although with diminishing success – see Hassel 2007b: 188-9), and failed to find new members among younger workers and women, who are severely under-represented.

To some extent, these criticisms highlight known weaknesses in the capacity of German unions to defend the interests of the working class as a whole. The sectoral basis of bargaining always meant that there was limited 'solidarity' in the Swedish sense, whereby wage settlements for workers with less industrial power caught up with the well-organised leaders. So long as demand conditions were sufficiently accommodating and unemployment was low, wages in the less organised parts of the service sector held up, but 'German trade unions were not strong enough and not sufficiently centralized to

pursue a solidaristic wage policy that would have led to lasting reductions in pay differentials.’ Despite some success in reducing regional differences and extending ‘pacesetter’ gains to weaker sectors, ‘[t]here remained considerable differences.. between the core industries in the export sector .. and many consumer and social services [agreements].. ‘[T]he traditional German model was always vulnerable to a widening of wage differentials.’ (Bosch and Weinkopf 2008: 294).

It took the shock of reunification and the intensification of service sector competition in the 1990s for this vulnerability to become evident. The effects were compounded by the extension of outsourcing and use of temporary agency workers. Trade unions representing the core workforce protected their own jobs, sometimes with wage concessions. They defended their members who became unemployed by upholding their eligibility for extended unemployment insurance and early retirement, even while the non-insurance parts of the social security system were being cut back. They conceded changes which allowed new workers to be brought in on short term and inferior contracts, while protecting themselves against substitution with employment protection rules. These strategies often took shape at the level of the firm or workplace, with works councils playing a leading role. Palier and Thelen (2010: 126) remark that ‘structures.. to enhance labor’s voice at the plant level ironically provided ideal vehicles for fuelling trends towards dualism when economic hard times hit.’

Critics have focused on how differentiated contractual arrangements created an insider-outsider divide, with the unions acting in the interests of their insider members. However, differentiation may, under certain conditions, be a strategy which maximises the total income of the workers affected. Horizontal differentiation between sectors and firms can be thought of as a strategy of ‘price discrimination’ in which each employer is charged a wage that depends on its ability to pay. Similarly, vertical differentiation between low and high skilled workers ensures that workers utilise their bargaining power fully to extract the maximum possible rent from the employer.

A key condition for success in using a differentiation strategy to maximise the wage income of workers is to prevent the employer substituting cheaper labour. A high wage employer might close down and reopen with a new low-wage workforce, or a new employer may come in and employ workers at the lowest wage. Price discrimination is most likely to work in declining high-capital industries with a low threat of new entry, high specific skills on the part of workers and a high unionisation rate. To the extent that these conditions prevailed in parts of German industry in the 1990s, union acceptance of decentralisation was in the best interests of their members. It follows, conversely, that establishing minimum wages may not be a wage-income maximising strategy, because it may undermine the differentiation that raises the share of value-added going to labour.

Differentiation, both horizontally across sectors and vertically in occupational hierarchies, may maximise labour income, but it comes at a price. It sacrifices cross-sectoral solidarity and some dimensions of equality, like equal pay for equal work. Differentiated bargaining also has an institutional dimension: it implies that the ultimate discretion in wage fixing should be at the local level, where bargainers can calculate

precisely what the market (the employer) will bear. It also foregoes any attempt to regulate product market competition: it is a strategy for firms which are not able to pass on wage increases into prices, for example because they sell into competitive world markets. Bargaining for minimum wages may be a better strategy in sectors with limited workplace organisation, low barriers to entry and low specific skills, particularly if there is also the possibility of regulating competition in the final market for output or services.

Furthermore, differentiation may have a lifecycle: in declining industries it will protect incumbent workers, but eventually they will retire and can be replaced more cheaply. Eichhorst and Marx (2009) argue that, while dualization appears to favour the core and help to consolidate the position of 'insiders', it can also have negative repercussions as conditions on the periphery spill over into the core. Agency workers and others on 'flexible' (eg fixed-term) contracts have not been confined to the service sector: they also work alongside core workers in manufacturing, and encroach on employment opportunities. While the interests of older employed workers were protected, they are a shrinking group, and union membership has shrunk with them.

It is therefore not surprising that, in the 2000s, leading unions sought to 'revitalise' themselves, and reconsidered their strategies. IG Metall suffered a defeat in 2003 when it tried to organise a working time reduction in East Germany, and also had to give way on allowing local derogations from collective bargains (the Pforzheim agreement). While the agreement was meant to regularise derogations and improve the union's control over them, in practice it found itself rubber-stamping the agreements of local works councils. Metall also faced a battle in the court of public opinion, as the employers' association, Gesamtmetall, ran a public campaign against the 'inflexibility' of German labour relations (Haipeter 2011). These pressures brought changes of strategy to Metall: local engagement to try to restrain concessions, a membership drive, and a higher public profile, particularly in campaigning against the Hartz reforms.

Another union that explicitly sought to revitalise itself was Verdi, which was formed in 2001 by a merger of five service sector unions, and became the largest union in Germany, overtaking IG Metall. Its base was in the public sector, and it undertook a membership drive to bring in workers in private service sectors, including providers of contracted-out public services, as well as increasing the number of women members. Particularly important for the minimum wage campaign was Verdi's ability to engage in political as well as industrial action, linking to other 'social movement' campaigns. This capacity increased as a result of the merger of constituent unions (Annesley 2006).

Verdi and Metall were leading critics of the Hartz reforms; in particular of the more stringent job acceptance requirements imposed on long-term unemployed workers in Hartz IV. Tighter work-testing meant downward pressure on wages: ALG II recipients could not turn down jobs on the grounds that wages were lower than collectively bargained rates. Unions objected to this measure, which they saw as pulling away the wage floor provided by the welfare state. In response, SPD President Müntefering suggested that a statutory minimum wage could mitigate the effects; however, he insisted

that this would have to be agreed and supported by the unions before the SPD would take the idea forward (Bispinck 2005: 22).

When the unions debated the minimum wage in response to this suggestion in 2004, three options were supported by different unions. IG-BAU, the construction union and pioneer of universal application under the Posted Workers Act, favoured more use of that mechanism. IG Metall supported the revival of the 1952 Act, whereby the lowest negotiated wage in a sector could be declared to be the applicable statutory minimum wage. Where there was no agreement, the agreement for temporary agency workers or another agreement from a comparable area could be used. And a third group of unions, led by the Food and Catering Workers Union (Gewerkschaft Nahrung-Genuss-Gaststaetten, NGG) and Verdi, argued for a SMW (Bispinck 2005).

The preference of many unions for building a minimum wage on universal application of collective agreements can be readily explained. The system retains the unions' central role in negotiating wages, whereas the level of a SMW would be set by the government. The argument is summed up by Laux (2005: 3): '[I]t may be a severe mistake to demand statutory minimum wages and hand this over to a most conservative-liberal government...[which] can implement its own aims' by setting a very low minimum wage, just above subsistence level. The sectoral approach would build on existing bargaining structures; bargaining autonomy would be retained but at the same time a minimum level of remuneration would be guaranteed by law.

The change of view that was evident by 2006, when the DGB general conference voted overwhelmingly to support a SMW, can be seen as a sign of the weakness of the unions: reservations about the state's role were outweighed by the need to countervail employer power by whatever means, political or industrial, were available. But there were also more positive aspects. The minimum wage was a popular cause with the public, avoiding the taint of special interest that had come to mark public attitudes to the unions in Germany. Public perceptions of the unions improved markedly in the 2000s: more than 40% held a 'positive' view of trade unions in 2012, whereas in 2003 45% had a negative view (Bispinck and Schulten 2014: 8).

In 2006, the DGB endorsed the principle of a national SMW at its annual congress, but unions remained ambivalent and divided, as did members of the SPD. The Grand Coalition offered the alternative endorsed by IG-BAU, of more extensive use of the posted workers procedure. As noted above, there were difficulties and delays in establishing sectoral minimum wages in that way, which confirmed the NGG/Verdi stance that a single statutory minimum was the only viable policy.

5. A public interest in the minimum wage?

The preference of some unions for a minimum wage established by collective bargaining was shared by the CDU/CSU and influential figures in the SPD. During the tenure of the Grand Coalition (2006-9), several steps were taken to facilitate extensions under the PWA. Eight low-wage sectors were brought under the Act, and collective agreements made and extended in most of these. Nonetheless, as the previous discussion has indicated, there were clearly gaps, where no agreement existed, and issues about how to deal with conflicting agreements in the same sector. The CDU/CSU position was therefore vulnerable, because competition (and hence disunity) among employers was impeding the process of making and extending collective agreements.

In the 2009 election campaign, there was a significant distance between the SPD and CDU/CSU positions on one key aspect of the minimum wage debate. On the left, there was a mounting chorus of criticism of ‘combi-wages’ and ‘mini-jobs’, whereas the CDU/CSU defended these policies, emphasising how the number of people in employment had expanded. These policies were the fruit of innovations in the late 1990s and early 2000s as German policy-makers grappled with persistent long-term unemployment. The search for policy solutions initially focused on non-wage labour costs (specifically, social insurance contributions). These created a ‘wedge’ between costs to the employer and take-home pay which, it was argued, strongly affected employers’ demand for unskilled labour and individuals’ incentives to work. Proposals to subsidise low-paid work by meeting some insurance contributions through taxation were discussed in the 1990s and accepted by most parties. From the unions’ perspective, the proposals were acceptable as they did not threaten prevailing wage rates. (Klammer 2000).

The social insurance subsidies and exemptions were effective in promoting job creation in the form of ‘mini-jobs’, but they had high deadweight costs, as people substituted part-time subsidised work for full-time work that would carry full social insurance liabilities. Furthermore, they contributed to the growing problem that many people would reach retirement age without an adequate pension to live on, having not paid sufficient contributions. Critics also argued that they were poorly targeted to helping groups with the highest social assistance entitlements, who faced the greatest risk of income loss when taking up low-paid work.

The combi-wage model was advocated by economists in the IFO Institute in 2002, and embraced by other parts of Germany’s economic technocracy, including the Council of Economic Experts.⁴ They argued that social assistance recipients should have more opportunities to combine work and benefits. Part of their work income should be disregarded in calculating assistance entitlements, and the rate at which assistance abated as earnings rose should be reduced. These measures would provide incentives to enter employment. This policy was incorporated into the Hartz IV reform that created a new basic social assistance benefit (sometimes referred to as *Arbeitslosengeld II*, in reference to the unemployment benefit it replaced, but now more often simply called *Grundsicherung*).

⁴ <http://www.cesifo-group.de/ifoHome/facts/Aktuelles-Stichwort/Topical-Terms-Archive/Kombilohn.html>

As the number of recipients of combi-wages increased, reaching some 1.4m in 2010, the policy was increasingly seen as a cause of Germany's low pay problem rather than a solution (Eichhorst 2015: 63). Critics argued that '[a]ctivation policies turned out to be a major programme for subsidizing low-skilled employment.' (Hassel 2014: 67). The salience of the issue was reflected in the way that the debate about the level of the proposed SMW took shape. The concept of a subsistence minimum achieved striking dominance. In 2006, Verdi led a union campaign for a minimum of €7.50. The basis for this figure was that a single person working full-time at this wage would earn a sufficient income not to require topping up by social assistance.

Initially, some members of the SPD rejected this and advocated a level of €6.00, and CDU/CSU politicians who were prepared to countenance statutory intervention also declared for the lower rate. Others, including the SPD's Müntefering, who had put a minimum wage on the table in 2004, did not commit to a specific level (Hoffmann 2006). In its 2009 manifesto, the SPD proposed that a Commission would fix the SMW, but added that €7.50 was a 'useful orientation mark'. Most importantly, it accepted the principle that Verdi and others were advocating, that the wage rate should be enough for a single full-time worker to live on. It proposed a 'fundamental reorganization of the lower income range', with the SMW as the anchor (SPD 2009: 33).

The 2013 SPD manifesto was more explicit in rejecting the low-wage road to job creation that had been taken since the early 2000s. While 'Agenda 2010' was defended as having got hundreds of thousands of people off social assistance, the manifesto admitted that in the process it also created abuse of temporary work, mini-jobs and low-waged employment. The goal of SPD policy would henceforth be 'to make people independent of transfers and provide access to good, secure and socially insured work' (SPD 2013: 19). To this end, a SMW would be introduced, initially at €8.50; subsequently it would be updated by a Commission.

For its part, the CDU/CSU explicitly endorsed combi-wages in 2009. It argued that everyone should have the minimum for a decent life. A minimum wage would not ensure this: a combination of fair wages and additional state benefits might be needed. The key thing was that people should be better off in work than out of it (CDU/CSU 2009: 29). In 2013, this argument did not appear in the manifesto. Temporary work, mini-jobs and part-time employment were still defended as providing necessary flexibility, but the possibility of abuse was also acknowledged, and the need to ensure decent wages accepted. The CDU/CSU argued that politicians should not determine wages, but they should provide the legal basis to ensure that the social partners could establish minimum wages (CDU/CSU 2013: 7). The main point of difference with the SPD was that the CDU/CSU still envisaged this as a sectoral, differentiated process: the minima should take into account different situations in regions and industries.

In some ways, the parties were not so far apart. The SPD wanted a statutory minimum, but also advocated that the sectoral mechanism for establishing higher minimum wages through the PWA should be strengthened. The SPD was careful always to endorse the

leading role of the social partners. Yet in another way the two sides were speaking in different terms. The SPD's insistence on uniformity across East and West Germany went with its focus on providing a subsistence minimum and an anchor for the welfare system. It also argued that higher wages were needed to boost demand. These considerations suggested there was a public interest in raising wages that was not necessarily captured in the respective interests of the social partners in wage bargaining.

The preamble to the Bill introducing the SMW bridged the positions of the parties by specifying both the regulation of competition and the welfare anchor as motives for the measure. It states the objectives as being to protect workers against unreasonably low wages, to ensure that competition between firms is based on better quality and service and not done at the expense of ever lower wages for workers, and to remove the incentive for firms to undercut wages while relying on 'top-ups' from social assistance. Thus 'the minimum wage will protect the financial stability of the social security system' (Deutscher Bundestag 2014a: 2). While the CDU/CSU could portray the SMW as a statutory framework that allowed the social partners to establish a wage floor, it was an important concession to accept the starting rate of €8.50, based as it is on the concept of a subsistence minimum, and also to entrench in law the setting of a single standard rate across sectors and regions. The SPD, for its part, conceded delayed introduction of the SMW in sectors where there are currently agreements on lower wages in force, along with other exemptions affecting young and long-term unemployed workers.

6. Conclusion

This paper has advanced two main arguments about the advent of a SMW in Germany. First, a key element in creating a coalition in favour of the SMW was the interaction between wages and social security. The Hartz reforms removed the floor to wages created by unemployment benefits. Neoclassical economists embraced this, and argued that lower wages topped up by benefits would be an engine for job creation. Subsequently, political actors sought to limit this mechanism, seeing it as vulnerable to the capture of fiscal resources by employers. In the late 1990s, it was argued that employers externalised costs onto the social insurance system; by the late 2000s they were accused of externalising costs onto social assistance. In taking steps to protect its fiscal position, the government has restrained the processes that produced a large expansion of low-waged employment.

Second, employers did not use wage-fixing to regulate competition. This was partly because export-sector employers would lose out from such regulation: they benefited from intense domestic competition to provide ancillary services. Some domestic employers did see benefits in regulation, but their efforts were undermined by free riding, the entry of new competitors, and the opposition of the BDA, reflecting export sector interests. The competitive orientation of dominant employers meant that they did not facilitate a protectionist response to the free movement of labour and cross-border provision of services, by contrast with employers in the three countries studied by Afonso (2011). Even if employers had recognised the threat of state regulation, they lacked the capacity to act pre-emptively against it.

The discussion has emphasised that the fiscal concerns of the government are not internalised in bargaining between employers and unions. There is potentially a lack of fit between the 'self-regarding' incentives of the labour market parties and the wider public policy concerns of successive governments. The 'welfare anchor' motive for a minimum wage implies that the SMW should be linked permanently to the social assistance level: uprated in line with the *Grundsicherung*. However, this was not agreed by the coalition partners. Instead, the power to determine future increases has been delegated to a Commission made up of representatives from the unions and employer associations. There are three members from each side, a chair, and two non-voting academic advisors. The chair should be chosen by agreement of the parties, but, if they cannot agree, nominees from the respective sides will hold the position in alternate years.

It is possible that the Commission will generate conflictual and unstable results. The employer side clearly fears that periods of union majority will see the minimum wage substantially ratcheted up (BDA 3 July 2014). To mitigate this risk, the BDA has proposed that the SMW should simply be indexed to overall wage growth. This proposal has been criticised by politicians, who point out that it abrogates the responsibility of the social partners to deliberate and formulate public interest-regarding agreements (Deutscher Bundestag 2014b: 3326 (Zimmer)).

The introduction of the SMW represents a departure from *Tarifautonomie*, while the Commission can be seen as a reinstatement, or rebuilding, of corporatist public policy-making. Whether this new institution will allow the social partners to make decisions which reconcile their 'private' or sectional incentives with public policy objectives has yet to be seen. On the government's side, the decision to delegate, and not to keep wages in the political realm, points to its expectation of high transaction costs to future upratings, whether in the form of conflict within government or blame from the public. The introduction of the SMW has been politically popular: a significant 'win' for the Social Democrats as minority coalition partners, but there may be trouble down the road as the parties struggle to find the basis for future consensus.

References

Afonso, A. (2011) 'Employer strategies, cross-class coalitions and the free movement of labour in the enlarged European Union', *Socio-Economic Review* 10: 705-730.

Annesley, C. (2006) 'Ver.di and trade union revitalisation in Germany', *Industrial Relations Journal* 37(2): 164-179.

BDA (Bundesvereinigung der Deutschen Arbeitgeberverbände) (2014) 'Arbeitgeberpräsident Kramer: Mindestlohn verdrängt Tarifverträge, schafft neue Bürokratie und erschwert Einstieg in Arbeit' Presse-Information Nr. 044/2014, 30 June, Berlin.

Bispinck, R. (2005) 'The Debate on the Minimum Wage', *CLR News* 3/2005: 21-25.

- Bispinck, R. and Schulten, T. (2014) 'Wages, collective bargaining and economic development in Germany: Towards a more expansive and solidaristic development?', WSI-Diskussionspapier, No. 191.
- Bosch, G. (2012) 'Transnational labour markets and national wage setting systems in the EU', Proceedings of the 16th ILERA World Congress (<http://ilera2012.wharton.upenn.edu/RefereedPapers/BoschGerhard%20ILERA.pdf>).
- Bosch, G. and Weinkopf, C. (2008) *Low-Wage Work in Germany*, New York: Russell Sage Foundation.
- Bosch, G. and Weinkopf, C. (2010). National Report Germany. EC Project - Minimum wage systems and changing industrial relations in Europe. IAQ, University Duisberg-Essen.
- CDU/CSU (Christlich-Demokratische Union/Christlich-Soziale Union) (2009) *Wir haben die Kraft. Gemeinsam für unser Land. Regierungsprogramm 2009 – 2013* Comparative manifesto project (<https://manifestoproject.wzb.eu/countries/Germany>).
- CDU/CSU (2013) *Gemeinsam erfolgreich für Deutschland. Regierungsprogramm 2013 – 2017* Comparative manifesto project (<https://manifestoproject.wzb.eu/countries/Germany>).
- Culpepper, P. D. (2011) *Quiet politics and business power: corporate control in Europe and Japan*, Cambridge Cambridge University Press.
- Deutscher Bundestag (2014a) Entwurf eines Gesetzes zur Stärkung der Tarifautonomie (Tarifautonomiestärkungsgesetz), 28 May, Drucksache 18/1558 (<http://dip21.bundestag.de/dip21/btd/18/015/1801558.pdf>).
- Deutscher Bundestag (2014b) Erste Beratung des von der Bundesregierung eingebrachten Entwurfs eines Gesetzes zur Stärkung der Tarifautonomie (Tarifautonomiestärkungsgesetz), Plenarprotokoll 18/39, Drucksache 18/1558 (<http://dip21.bundestag.de/dip21/btp/18/18039.pdf>).
- Dustmann, C., Fitzenberger, B., Schönberg, U. and Spitz-Oener, A. (2014) 'From Sick Man of Europe to Economic Superstar: Germany's Resurgent Economy', *The Journal of Economic Perspectives* 28(1): 167-188.
- Eichhorst, W. (2015) 'The unexpected appearance of a new German model', *British Journal of Industrial Relations* 53(1): 49-69.
- Eichhorst, W. and Marx, P. (2009) 'Reforming German Labor Market Institutions: A Dual Path to Flexibility', *IZA Discussion Papers* 4100.

- Grimshaw, D., Bosch, G. and Rubery, J. (2014) 'Minimum wages and collective bargaining: What types of pay bargaining can foster positive pay equity outcomes?', *British Journal of Industrial Relations* 52(3): 470-498.
- Haipeter, T. (2011) 'Unbound' employers' associations and derogations: erosion and renewal of collective bargaining in the German metalworking industry', *Industrial Relations Journal* 42(2): 174-194.
- Hassel, A. (2007a) 'What does business want? Labour market reforms in CMEs and its problems', in B. Hancké, M. Rhodes and M. Thatcher (eds), *Beyond Varieties of Capitalism: Conflict, Contradictions, and Complementarities in the European Economy*, Oxford: Oxford University Press.
- Hassel, A. (2007b) 'The curse of institutional security: The erosion of German trade unionism', *Industrielle Beziehungen* 14(2): 176-191.
- Hassel, A. (2014) 'The Paradox of Liberalization: Understanding Dualism and the Recovery of the German Political Economy', *British Journal of Industrial Relations* 52(1): 57-81.
- Heitzler, S. and Wey, C. (2010) 'Raising rivals' fixed (labor) costs: The Deutsche Post case', Discussion papers of the German Institute for Economic Research (DIW, Berlin), No.1008.
- Hoffmann, A. (2006) 'SPD setzt weiter auf Mindestlohn', *Süddeutsche Zeitung* 27 February.
- Katzenstein, P. J. (1987) *Policy and Politics in West Germany: The Growth of a Semi-Sovereign State*, Philadelphia: Temple University Press.
- Kinderman, D. (2005) 'Pressure from without, subversion from within: The two-pronged German employer offensive', *Comparative European Politics* 3: 432-463.
- Klammer, U. (2000) 'Low pay - a challenge for the welfare state', *Transfer* 00(4): 570-591.
- Laux, E.-L. (2005) 'Statutory Minimum Wage versus Generally Applicable Collective Minimum Wages', *CLR News* 3/2005: 25-31.
- Mabbett, D. (2014) 'The end of the low-wage road? The minimum wage in the United Kingdom' Center for European Studies, Harvard, 19 November 2014
- Palier, B. and Thelen, K. (2010) 'Institutionalizing Dualism: Complementarities and Change in France and Germany', *Politics and Society* 38(1): 119-148.
- Scharpf, F. (1997) *Games Real Actors Play*, Boulder, Colorado: Westview.

SPD (Sozialdemokratische Partei Deutschlands) (2009) *Sozial und Demokratisch. Anpacken. Für Deutschland. Das Regierungsprogramm der SPD*, Comparative manifesto project (<https://manifestoproject.wzb.eu/countries/Germany>).

SPD (2013) *Das Wir Entscheidet. Das Regierungsprogramm 2013-2017* Comparative manifesto project (<https://manifestoproject.wzb.eu/countries/Germany>).

Streeck, W. (2003) 'From state weakness as strength to state weakness as weakness: Welfare corporatism and the private use of the public interest', MPIfG working paper, No. 03/2.

Trampusch, C. (2005) 'Institutional Resettlement: The Case of Early Retirement in Germany', in W. Streeck and K. Thelen (eds), *Beyond Continuity: Institutional Change in Advanced Political Economies*, Oxford: OUP.

Traxler, F. (2010) 'The long-term development of organised business and its implications for corporatism: A cross-national comparison of membership, activities and governing capacities of business interest associations, 1980–2003', *European Journal of Political Research* 49: 151-173.

Vail, M. (2003) 'Rethinking corporatism and consensus: the dilemmas of German social-protection reform', *West European Politics* 26(3): 41-66.