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

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Abstract

A statutory minimum wage has been introduced in Germany, in the face of business opposition but abetted by union support. The political coalition in favour of minimum wage regulation brought together the centre-left and the centre-right with the argument that regulation is needed to prevent dysfunctional interaction between low wages and the social security system. Thus the dualization which characterises Germany's inegalitarian form of coordinated capitalism has provoked a corrective political response. The paper traces the long path to government intervention and assesses why employers were unable, or unwilling, to pre-empt intervention by maintaining the coverage of collective bargaining. It is argued that market liberalization has had a paradoxical effect on employer power: intense domestic as well as international competition has reduced employers' capacity to act strategically to fend off regulation by the government.

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1. Introduction

A number of commentators have traced the elements of continuity and change that have marked German political economy since unification. Dualization is a recurring theme: the labour market has become segmented between a high-wage industrial core and a low-wage service sector periphery (Palier and Thelen 2010). Continuity in the core is emphasised: industrial relations at the level of large export sector firms maintain the high-skill orientation that 'varieties of capitalism' (VoC) identified as a key source of German comparative advantage (Hassel 2014). Thelen (2012) traces Germany's 'trajectory of liberalization', showing that sector-level coordination has maintained the viability of the German VoC while producing inegalitarian outcomes compared with countries with stronger state capacities.

In keeping with the VoC approach, these accounts ‘put employer interests at the centre of the analysis’ (Hall and Thelen 2009: 11). As Hall and Thelen go on to explain, the centrality of employers’ interests stems from their structural power under capitalism: ‘the institutions and practices of capitalist political economies can rarely be sustained over time without the active support of at least some powerful segments of capital.’ This perspective suggests that the German trajectory of liberalization is stable: capitalism thrives, and a weak state cannot promote more egalitarian outcomes.

The recent introduction of a statutory minimum wage (SMW) in Germany stands as a challenge to this view. It suggests that dualism, with an unregulated secondary labour market, may be economically robust but not politically sustainable. A key issue for successive governments was that the interaction between low wages and the social security system produced dysfunctional outcomes. Low-paid workers did not earn enough to join the social insurance system; furthermore, they often needed top-ups from in-work benefits to reach a minimum living standard. A centrist political consensus gradually emerged that this situation had to be remedied by setting minimum wages, and when employers and unions proved unable to do this themselves, the government acted. The SMW introduced in January 2015 was set at €8.50 per hour, well below the European leader, France (€9.61), but high enough to have a significant impact. Such has been the rapidity of Germany’s move up the low pay league table (Carlin et al 2014: 92) that it is estimated that the SMW could be binding on more than 15% of the workforce.¹

The implication is that a stable political economy needs not only viable capitalism but also a sustainable relationship between work and welfare. This is not a new issue for Germany: adverse interactions between employment and social security were central to the travails of the 1990s, when the labour market parties externalised adjustment costs onto the social security system, particularly through the heavy use of early retirement schemes (Trampusch 2005). Attempts by successive governments to negotiate reforms with the labour market parties were only partly successful. In the early 2000s, the Hartz reforms to unemployment benefits and employment service administration were pushed through unilaterally by the government, which abandoned corporatist policy concertation and reduced employer and union influence over labour market policy.

The Hartz reforms indicated that, despite continuity in sector-level corporatism, the macro politics of interactions between employers, unions and political parties in government had changed markedly since the heyday of German corporatism (Streeck and Hassel 2003). In its heyday, tripartite concertation resolved public policy problems that were beyond the capacities of Germany’s ‘semi-sovereign’ state to resolve (Katzenstein 1987). Streeck (2003) gave a despairing account of the policy stasis that resulted when corporatist concertation failed in a weak state, but his account proved to have underestimated the capacity of coalitional politics to overcome decision-making blockages in the political system.

¹ Using 2011 data, Brenke and Müller (2013: Table 1) arrive at a figure of 17%. This is hedged with a number of caveats about the quality as well as the timeliness of the data.

This is not to claim that Germany has acquired the public sector capacities characteristic of egalitarian capitalism (Martin and Thelen 2007). A minimum wage is a minimal measure: employers have to accept a floor to wages, but otherwise enjoy considerable power and flexibility in wage-setting. They retain, of course, the structural power of exit: if the wage is too high, employment will decline. Nonetheless, the political agreement to intervene suggests that the VoC perspective gives an exaggerated account of the stability of Germany's political economy. While trade unions stand accused of colluding with employers to defend insider interests in the domain of industrial relations (Hassel 2014), the unions have campaigned vigorously against dualism in political venues. They framed their campaign around the stress that low pay put on the welfare state, facilitating the formation of a broad political coalition of support.

The discussion below shows that, because of intense domestic as well as international competition, employers failed to support repeated attempts by successive governments to raise the coverage of collective agreements and promote the 'self-regulation' of low pay. This suggests that market liberalization may have a paradoxical outcome: as employers' market power is enhanced, their political influence declines, because competition between firms weakens employers' associations and undermines their ability to act strategically in the face of political pressure.

The discussion proceeds as follows. The next section traces the path to the SMW from the first steps taken by the government to facilitate self-regulation in the mid-1990s. Successive reforms were partly triggered by the obstructive tactics of the umbrella association of employers, the BDA. Section 3 takes the analysis of employers' positions further, showing how both competitive pressure on the export sector and intensified competition within once-sheltered sectors impeded coordination and weakened employers' capacity to pre-empt the threat of state intervention. 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 during the 2000s. 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). Finally, I offer some brief concluding reflections on what the case shows about how the political influence of employers is affected by market liberalization and the intensification of competition.

2. The path to the statutory minimum wage: A brief legislative history

The reluctance of governments of any political hue to intervene directly in wage-fixing in Germany is indicated by numerous reforms undertaken since the mid-1990s to sustain the coverage of collective agreements in the face of competitive pressures. These pressures arose first from the opening of the European single market to cross-border competition through the 'posting' of workers employed under terms and conditions prevailing in another member state. Construction, traditionally at the heart of the 'sheltered' sector, was the first area to be affected. Subsequently, competitive pressure has also extended into the services sector due to employment deregulation, which has allowed the increased

use of temporary agency workers and extension of outsourcing. Public sector reforms, such as the breakup of the postal service monopoly and the introduction of competitive contracting in some public services, have further intensified domestic competition.

In the 1990s, construction firms from other member states sought a slice of Germany's post-unification building boom, and they were highly competitive, as they could bring in posted workers from states where prevailing wages were significantly lower. Rulings by the Court of Justice of the European Union confirmed that these firms were validly exercising the freedom to provide services in the internal market, and indicated that host states could insist only on compliance with minimum wages and working conditions which applied uniformly across the sector in question.

The Posted Workers Act (*Arbeitnehmerentsendegesetz* 1996, the PWA) created a framework within which unions and employers in the construction sector could conclude a collective agreement which could then be made generally applicable to all construction activity on German soil. The Act as first passed envisaged that the process of universal application would be conducted according to the terms of the law on collective bargaining (the *Tarifvertragsgesetz*, TVG, section 5). Under this procedure (called 'Allgemeinverbindlicherklärung', AVE), employers who were not parties to the original agreement could be bound under certain conditions, notably that the employer and union sides 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).

It was clear from the start of the legislative process that the peak association of employers, the BDA, was opposed to making collective agreements universally applicable in the construction sector. The BDA expressed concern that relatively high construction sector wages would spill over into wage pressure on other sectors, and it also noted that the burden of high construction costs was borne by other branches of industry, and could dampen investment and employment. For their part, construction industry employers favoured making and extending an agreement. However, the BDA enjoyed an effective veto in the Tarifausschuss. The first attempt by the construction industry to achieve universal application under the new Act failed because of this. The industry was forced to open a second round of negotiations with the unions. A lower minimum wage was agreed, and this gained the assent of the BDA (Menz 2001/2).

In 1998 the Red-Green government reformed the PWA to remove the BDA's veto power. By making an executive order (*Rechtsverordnung*, RVO), the Ministry of Labour could extend agreements without the unanimous support of the Tarifausschuss. The previous AVE procedure also remained in place: thus the parties seeking to extend a collective agreement could make a choice about which mechanism to use. In 1999, a new construction industry agreement was made. The parties initially sought the approval of the Tarifausschuss, but again the BDA blocked the measure. This time, the sector parties turned to the state, and the agreement was extended by executive order.

In the 2000s, this process became dominant: the government, rather than the peak associations represented in the Tarifausschuss, imposed universal application. Furthermore, other reforms to the Act expanded the sectors covered, including some where competition between domestic firms rather than the presence of posted workers was at issue. Thus the PWA was ‘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 preamble 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 executive order 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 procedural issues addressed in successive reforms, its efficacy in establishing sectoral minimum wages had limitations 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 was that there were often severe delays in making agreements universally applicable. As section 4 below explains in more detail, 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 trade unions and employers 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. The Grand Coalition of 2005-9 initiated reforms intended to make the sectoral alternative work, including addressing problems caused by conflicting collective agreements. It also pursued another route. Under the 1952 Minimum Working Conditions Act, a committee could investigate whether a minimum wage was required when no collective agreement was in place. In 2007, the government reformed this Act to give the Federal Ministry of Labour and Social Affairs a larger role, over the objections of employers and some unions (Thelen 2014: 56).

The right-wing coalition of Christian Democrats and the market-liberal 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 the SMW in the coalition agreement. However, the history of attempts at self-regulation left its mark on the legislation, which is, somewhat paradoxically, entitled ‘Law to strengthen collective bargaining’ (Tarifautonomiestärkungsgesetz). Reforms to extension procedures are included in the legislation, and the Posted Workers Act is no longer confined to specified

sectors. Furthermore, the government's reluctance to override agreements in force means that the application of the statutory 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, as the risk that there would be a SMW became clear. 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 2014.²

3. Employers' preferences and strategies

The conflict documented above, between construction industry employers and the BDA over the regulation of posted workers, gives a preliminary indication of how employers' interests in wage regulation are divided. The reason for employers in the construction industry to support universal application of their collective agreement was evident: it would protect the industry from external low-wage competition. For industries which purchase goods and services from the protected sector, the effect is to inflate their costs. The outcome of this conflict of interest among employers depends on the intensity of purchasing firms' deregulatory preferences and their ability to pursue those preferences in the wage-fixing process. As Afonso (2011: 707) showed, this ability depends on the aggregation of preferences by employers' associations, as well as on the strategic interactions between employers, organised labour and the state. In this section I show that, not only did the BDA tend to side with the export sector, but also the coordinative capacity of employers generally fell, reducing their capacity to take a strategic approach to interactions with organised labour and the state.

The export sector in Germany has displayed intense deregulatory preferences. Faced with the erosion of competitive advantage due to innovation and lower costs in other countries, German industry has relied on aggressive cost-cutting and outsourcing to maintain its competitiveness. Outsourcing has been more heavily used than in (for example) the Nordic countries, and it gives German firms a competitive edge that is not revealed by direct wage comparisons (Dustmann et al 2014; Carlin et al 2014: 84-5). Firms under competitive pressure 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). Divisions among employers over wage bargaining policy became apparent. One important division was between large firms and their smaller suppliers 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 smaller 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.

² <http://dip21.bundestag.de/dip21/btd/18/009/1800910.pdf>

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*'). While this stemmed the flow, it also pointed to a loss of capacity on the part of the associations. As Hall and Thelen (2009: 19) observed, employer defections reduced bargaining coverage, and 'seriously compromised coordination in industrial relations despite the fact that the formal institutional apparatus for negotiation itself remains intact.' Specifically, it meant that associations lacked the capacity to take up the government's invitations to establish minimum wages.

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. As noted above, 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 the executive order (RVO) procedure, where the BDA did not have a veto, and in 2010 a collective agreement was made and extended (Bosch and Weinkopf 2010: 20). However, the employers' association in the cleaning sector supported a national 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). Minimum wages with sectoral coverage did not regulate competition between in-house and external providers.

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 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 expeditiously for once, 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 (Heitzler and Wey 2010). This example

illustrates how employer divisions could impede the establishment of sectoral minimum wages. These divisions arose when competition intensified, whether because new entrants sought market share or because incumbents preferred to compete without constraints on wages and the organisation of work (for a discussion of the latter situation in the retail sector, see Thelen 2014: 53.)

The original idea of the PWA was that German employers could reach agreements to protect themselves from competition from cross-border providers. The prospect for agreement might be thought to be high in such conditions, since the competitive threat came from firms that were not members of German employer associations. However, intensified competition between domestic firms impeded agreement. Section 2 outlined how the preferences of the export sector against the limitation of domestic competition were reflected in the resistance of the BDA to universal application. But even after the blocking power of the BDA was reduced, intense competition among German firms in supposedly sheltered sectors stymied agreements. The balance might have been tipped in a regulatory direction if unions had been able to impose substantial pressure on employers to make industry-wide agreements. But the opposite happened: faced with high employer resistance and local pressure to save jobs, unions accepted more decentralised bargaining, with implications that are discussed further in the next section.

4. The unions' change of heart

In the course of the 2000s, the idea of setting a single statutory minimum wage gradually attracted the support of the majority of unions in the umbrella association, the DGB. The campaign was initiated by the Food and Catering Workers Union (Gewerkschaft Nahrung-Genuss-Gaststaetten, NGG), which struggled with low membership, high casualisation, and employer resistance to negotiation. The support of other unions, notably Verdi and then IG Metall, came as the coverage of collective agreements declined and bargaining became increasingly decentralised. This section traces the spread of decentralisation and explains why the SMW was eventually embraced as a response.

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 have been severely under-represented (Häusermann 2010: 228).

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).

This vulnerability became evident after the shock of reunification and the intensification of service sector competition in the 1990s. National unions struggled with pressures for local concession bargaining to save jobs. IG Metall had to give way on allowing local derogations from collective bargains, regularising these in the Pforzheim agreement (Carlin et al 2014). 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. Works councils played a leading role in cooperating with employers to bring about the reorganisation of production to save jobs, including accepting the extension of outsourcing and use of temporary agency workers. 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.’

Under pressure in wage bargaining, national unions sought ‘revitalisation’ by adopting political strategies. IG Metall 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). Metall responded with 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 revitalisation was Verdi, which was formed in 2001 by a merger of five service sector unions. 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 increased engagement in political as well as industrial action, linking to other ‘social movement’ campaigns. Verdi’s political capacity increased as a result of the merger of constituent unions (Annesley 2006).

Verdi and IG 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: long term benefit 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). Müntefering’s offer can be

seen as a challenge: unions claimed that their opposition to the Hartz reforms stemmed from their concern about the welfare of the worst-off and the lowest-paid, but how far did this go? A SMW would primarily benefit workers who did not belong to unions. Häusermann (2010) has argued that, when presented with policies responding to ‘postindustrial’ societal change, German unions retreated to protection of their core members’ interests, causing a widening rift between the unions and the SPD.

When the unions debated the minimum wage in response to Müntefering’s challenge 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 Minimum Working Conditions Act, which had more potential to address situations where there was no collective agreement in place. And a third group of unions, led by 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’ - presumably 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, against 20% who were negative. In 2003, just 23% had been positive; 45% had held a negative view (Bispinck and Schulten 2014: 8).

While the DGB endorsed the principle of a national SMW in 2006, unions remained ambivalent and divided, as did members of the SPD (Dostal 2012). As noted in section 2, the 2005-09 Grand Coalition took up the alternatives endorsed by IG-BAU and Metall respectively, of more extensive use of the posted workers procedure and revival of the 1952 Act. But there were difficulties and delays in establishing sectoral minimum wages in that way, which lent support to the argument that a single statutory minimum wage was the most viable policy.

5. The minimum wage in the welfare state

The union-led campaign for a minimum wage was supported by favourable public opinion³ and a degree of cross-party support in principle, but this hid important reservations about the level at which the wage should be set. Both centrist parties had a similar initial reaction to the union campaign, which started in 2006 with a bid for a SMW of €7.50. Some members of the SPD backed a counterproposal for a SMW of €6.00, and CDU/CSU politicians who were prepared to countenance statutory intervention also declared for the lower rate. This section examines how the debate evolved to achieve political acceptance of the principle on which the initial bid of €7.50 (revised to €8.50 in 2010) was based. The principle was that the minimum wage should be set such that a single person working full-time would earn enough not to require additional support from social assistance.⁴ The SMW was framed as a measure to regulate the subsidisation of low pay by the welfare state, a frame that drew in a wide range of political interests.

If we were able to assume that the centre-left SPD is aligned with the unions, and the centre-right CDU with the employers, then it would be easy to read off political support for the minimum wage from each party's producer group affiliation. However, these affiliations were far from secure. The SPD had embraced employment-promoting activation in the Hartz reforms, against union opposition. Provisions allowing the rejection of low-paid work were removed, and benefit recipients were encouraged to take up whatever work was available by a more permissive approach to combining work with benefit receipt, creating a work incentive by allowing some earnings to be disregarded (Seeleib-Kaiser and Fleckenstein 2007). This 'combi-wage' model was advocated by economists as a way of promoting employment while using the benefit system to secure basic living standards.⁵ The CDU-CSU also supported activation and the combi-wage approach. So long as the parties held to this view, they might support the principle of a SMW, but neither would endorse the level advocated by the unions.

However, support for combi-wages was not secure in either party. Dissent emerged first in the SPD, where supporters of the Hartz reforms were gradually eclipsed by those who sought a new direction to revive the party's flagging electoral fortunes (Dostal 2012: 106-8). The SPD's 2009 manifesto proposed to restrict the scope of combi-wages by introducing a minimum wage rate that would be enough for a single full-time worker to live on. It envisaged a 'fundamental reorganization of the lower income range', with the SMW as the 'anchor' (SPD 2009: 33). The 2013 SPD manifesto was still more explicit in rejecting the low-wage road to job creation that had been taken since the early 2000s. While 'Agenda 2010' (the umbrella term for the Hartz reforms) was defended as having got hundreds of thousands of people off social assistance, the manifesto admitted that in

³ *Die Zeit* ('Auf der Suche nach der armen Friseurin', 10 July 2014) cited a survey by ARD-*Deutschlandtrend* which found more than 90% of respondents favoured the introduction of the SMW. (<http://www.zeit.de/wirtschaft/2014-07/friseur-mindestlohn-bezahlung>)

⁴ This calculation was rather approximate, as the social assistance level comprises a base amount and a rent allowance which varies from place to place.

⁵ The model seems to have originated in proposals from the IFO Institute in 2002; it was then embraced by other parts of Germany's economic technocracy, including the Council of Economic Experts. See <http://www.cesifo-group.de/ifoHome/facts/Aktuelles-Stichwort/Topical-Terms-Archive/Kombilohn.html>

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).

The CDU/CSU stuck with the model of subsidised activation for longer. In its manifesto for the 2009 election campaign, it argued that everyone should have the minimum for a decent life, but 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). But this was by no means a comfortable or ‘natural’ position for the party. It embraced a conservative concept of social citizenship and was resistant to aggressive liberalization (Fleckenstein 2012; Jackson and Sorge 2012: s.3.2). The concept of social citizenship encompasses, alongside social insurance, principles of fair wages and regulated competition. Specifically, the party strongly endorsed the principle that all workers should be covered by collective agreements.

By the 2013 election, the CDU/CSU had shifted ground on combi-wages. The explicit defence of combining work and benefits that had been advanced in 2009 disappeared. 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. While the CDU/CSU persisted in its view that politicians should not determine wages, further initiatives to strengthen self-regulatory processes were floated. A new plan for union-employer commissions to set minimum wages in sectors where no collective bargain was in place featured in the 2013 manifesto, despite some internal dissent (Peel 2011; CDU/CSU 2013: 7).

A key feature of German political economy, which helps to explain the resonance of establishing a minimum wage that would reduce reliance on social assistance, is the strong preference for insurance-based social entitlements, which are at the heart of the German welfare state. Even before the Hartz reforms, employment-promoting measures had increased the number of people working in jobs that did not bring social insurance cover. The high cost of social insurance contributions was seen as a barrier to job creation, and exemptions were created, notably the institution of the ‘mini-job’⁶ where low pay was pervasive. Critics argued that the adoption of measures to ‘make work pay’ through combi-wages in the Hartz reforms worsened this problem, creating a vicious circle of fiscal pressure on social insurance and over-use of social assistance. 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). ‘Activation policies turned out to be a major programme for subsidizing low-skilled employment’ (Hassel 2014: 67). The framing of the SMW built on opposition to the Hartz reforms and resistance to the emergence of a second-class welfare status for workers who could not establish an insurance record.

⁶ ‘Minijobs’ have monthly earnings below the threshold for contributing to social insurance (currently €450).

It would be misleading to suggest that social security issues were the only motives for eventual cross-party agreement on a SMW. Other factors did play a part: public opinion was influenced by media reports of egregious low pay, and also the case for better regulation of the wages of posted workers attracted support from across the political spectrum. The desire to regulate competition from service contractors based in other countries drew out support from CDU and CSU politicians at the state level, as the SMW provided a straightforward way to insist on minimum wages in public contracts.

The diverse motives for eventual agreement are reflected in the preamble to the Act, which bridges the positions of the parties by specifying both the regulation of competition and the welfare anchor as motives for the measure. It stated 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 mixed motives were in play, the implications of low pay for the welfare state were of particular significance. The focus on social assistance formed the basis for agreement on the level, not just the principle, of a SMW. A related campaign advocated that the minimum wage should be tax-free, linking it to the *existenzminimum* which is recognised in the tax system.⁷ Furthermore, concerns about ‘the financial stability of the social security system’ founded a public interest case for statutory intervention, whereas the labour market parties might be expected to reach autonomous agreements on the regulation of competition.

6. Conclusion

While this account of the adoption of a SMW builds on features of Germany’s changing political economy that have been traced and analysed in an abundant literature, it casts a new light on the trajectory of liberalization. It suggests that it is wrong to see dualization as a stable outcome of the intensified competition and liberalization that has occurred in the German economy since unification. Instead, it appears that dualization creates its own pressures for further change. The unions’ redeployment of their resources into political campaigning, and the government’s own concerns for the viability of the welfare state, led eventually to the SMW.

The account given here has emphasised the apparent loss of self-regulatory capacity on the part of employers, which has led to statutory intervention. We might see this as indicating a loss of influence on the part of employers in the political domain, but two other interpretations are possible. One is that the SMW will revitalise social partnership, as it brings the parties together in the commission that will set minimum wages in the

⁷ The *existenzminimum* defines the personal allowance for income tax (although social insurance is payable at lower income levels). It is currently (in 2015) below the income level of a full-time minimum wage earner, who does therefore pay some income tax. There is a campaign to raise the personal allowance and ensure that minimum wage work is tax-free.

future: the *Mindestlohnkommission*. This institution can overcome the competitive barriers that have impeded sector-level agreements. The other interpretation is that employers have deliberately brought about the demise of corporatist concertation because they see the alternative of unilateral government action as likely to be more beneficial to them.

The notion that the *Mindestlohnkommission* will be a venue for future social partnership has been actively promoted politically, particularly by CDU/CSU parliamentarians, but also by the SPD Minister of Labour, Andrea Nahles, who described the commission at its launch as an instance of ‘the vibrant social partnership in Germany’, and claimed that the employers’ and unions’ equal representation on the Commission would be a basis for cooperation that goes beyond collective bargaining.⁸ In the Bundestag, it was insisted that, the government having taken the initial step, the future was in the hands of the social partners. One reason to think that they might embrace the new institution is that both the DGB and the BDA have been weakened by membership losses, and the Commission will allow them to promote their organisational interest in having a role in policy-making.

Against this, however, there is widespread pessimism that the two sides will be able to agree on future adjustments to the SMW, leaving the chair, which will rotate between employers and unions, with the casting vote. Anticipating that this will make settlements volatile and unpredictable, the BDA has canvassed the possibility that the parties might simply agree to index the SMW to the prevailing level of wage increases. This ‘passive’ strategy drew criticism in the Bundestag, where it was pointed out that it would abrogate the responsibility of the social partners to deliberate and formulate considered agreements (Deutscher Bundestag 2014b: 3326 (Zimmer)). It seems quite likely that the trade unions and employers will fail to live up to the hopes pinned on them by CDU/CSU politicians.

What of the contrary view, that employers have, in failing to self-regulate, deliberately exploited their ‘power of inaction’? Without collective agreements, they are able to make individual contracts, and are freed from the constraints on their ‘right to manage’ imposed by union bargaining. Obviously, this carries the risk that the government will intervene in pursuit of its own public policy objectives, imposing regulations that are more detrimental than those that could have been agreed with the unions, but if employers believe that they exercise a high degree of political influence outside the framework of tripartite concertation, this risk will be assessed as slight.

Does the introduction of the SMW show this calculation to be wrong? Arguably, the SMW imposes a minimal burden on business and may even reduce the workplace influence of trade unions because workers feel less need to join. However, this has not been the tenor of employers’ public response to the measure, which has been very hostile. Furthermore, the case suggests that the balance of relative political influence of employers and unions in an open political contest may not be advantageous to employers. The unions conducted an effective political campaign, and also promoted a frame of wage adequacy relative to social assistance that was more effective in a political venue than it would have been in bilateral bargaining with employers.

⁸ <http://www.bmas.de/DE/Service/Presse/Pressemitteilungen/milo-kommission-erste-sitzung.html>

We are left, then, with the likelihood that the outcome is not the result of strategic calculation by employers, but rather reflects their loss of strategic capacity. Changes that have enhanced employers' labour market power have at the same time reduced their political influence. Favourable outcomes in the domain of industrial relations have not extended to the domain of 'macrocorporatist' interaction between employers, unions and governments over public policy. The adoption of a minimum wage in Germany is a reminder that political economy has to pay attention to developments at the political level as well as tracing the evolution of competitive advantage in firms and sectors.

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