Origins of the German Welfare State: Social Policy in Germany to 1945

Michael Stolleis

1 Introduction

1.1 The Cultural Conditioning and Changeability of Social Protection

This book provides a historical survey of the development of social protection in Germany up to 1945.[1] It is based on the realization that the modern, complex "system" of social protection is an "evolved" one and can be best understood by knowing how it came into being. It has layers of historical growth and is a far cry from the kind of rigor one expects of "systems" in the scientific or philosophical sense. But in the professional discourse of social theory and social law it may well be referred to as a "system," and this can be useful to the historian if he is asked to specify the past phenomena he is searching for and in which he expects to find a bridge to the present.

Of course, a look back at history can be useful also in that can provide today's actors clues to how much of the past is preserved in the various structures that exist today. If something should or must be changed, it pays to examine the long-term developmental trends. Many declarations of political intent and reform projects have failed simply because they underestimated the inertia of historically evolved material. Long-term trends can be reversed only if one has detailed knowledge about the forces driving them. In this limited sense, historical information – in conjunction with sociological, economic, and legal frameworks – can also serve to lay the groundwork for innovations. Especially in the transition to one of the most difficult periods of social policy in the first decades of the new millennium, it could prove an urgent necessity to regard also the older legacies and institutions as "historically evolved." This entails two things: one, like everything that has

[1] The best overview is by Scherner (1996).

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grown slowly, they are fairly stable; second, as history demonstrates, they are never immovable, but can be changed and adjusted to changing needs.

1.2 Chronological Parameters

This historical survey does not begin with a striking turning point, but it concludes with one: 8 May 1945 was a "new beginning" (what the Germans refer to as "Stunde Null" – "zero hour") at least in terms of politics, military affairs, and state law. A morally discredited regime had collapsed and its army had surrendered (Stolleis 1987, §5). Even critics of this metaphor concede that it was a "zero hour" in this regard. But they point out that there were strong continuities in many other spheres of life. Against the backdrop of the well-known external conditions of 1945, work was simply resumed or continued as best as possible. This was especially evident where tasks of a largely material nature had to be performed and the ideological overlay from National Socialism could be easily cast aside or at least suppressed. Social law was one such area. The material misery of the years after 1945 virtually cried out for a restoration of the social safety net. And the way that rebuilding unfolded, first in the occupation zones and then in the two German states, would have been unthinkable without individuals with the necessary expertise, the structures that still existed, and the assets that were left. Every step into the future was a step out of the past, but it was possible only because of the existence of accumulated knowledge and practical experience from "care" (*Fürsorge*), "youth welfare" (*Jugendwohlfahrt*), "social insurance" (*Sozialversicherung*), and the "provisioning system" (*Versorgungswesen*).

Beyond this somewhat trite justification of the need for a prehistory, there are, however, connections between the past and the present that go back much further and make it advisable to probe the past as deeply as possible. Our modern sense of time is an accelerated one. We experience the world as dynamic and in movement. Changes follow in rapid succession and also seem to overtax us. The social protection of the next generation, especially the future of traditional social insurance, is threatened. While a look at the past cannot allay these anxieties, it does show, first of all, that our current system constitutes a mixture of historically evolved forms of security. All forms of provisioning against risk and its consequences that we know and practice simultaneously can be assigned to specific chronological stages: from family and neighborly help to co-operative self-help, the formation of foundations as the bearers of charitable institutions, the emergence of funds that are meant to ensure against conventional risks – all the way to the modern protection systems that encompass nearly the entire population.[2] Some of these

[2] According to Axel von Campenhausen (1997, p. 12) "the oldest member of the Association of German Foundations (*Bundesverband Deutscher Stiftungen*) is the hospital foundation in Wemding in the Ries, which has been operating an a old-age and nursing home for indigent residents with funds donated back in 917."

institutions go back to the early Middle Ages (Schilling 1997). Others can be assigned to the period of the emerging cities, to the beginnings of trade, and the formation of the first large fortunes in the fifteenth and sixteenth centuries, such as urban hospitals, charitable foundations, or social housing projects like the *Fuggerei* in Augsburg. Others are the products of the society-shaping powers of the churches in the early modern period and especially of the early-modern territorial state, which implemented a new notion of "work," combated "idleness", and created penitentiaries and workhouses. This development has been much discussed in recent years under the heading of "social disciplining" (Schilling 1997). Scholars now realize that this was a highly complex phenomenon, involving the participation in equal measure of the slowly emerging state, the churches that depended on the disciplining of their members, but also the faithful and subjects themselves in rural and urban communities, in guild or church, who acquiesced or resisted. In modern historical scholarship, the hard-working and adjusted individual who eventually emerged from this process is seen as the necessary precondition for the launch of the industrial age.

The modern-day institutions of social protection arose only in the Industrial Revolution, after the high point of Liberalism had already passed (Stolleis 1989). The main pillars of our system of insurance are no more than a 130 years old, counting from Bismarck's new departures in domestic politics between 1878 and 1881. But older forms of safety merged into this new system, and not only as relics, but possibly also as the potential for future social policy.

Of course, what functioned before the Industrial Revolution under very different conditions cannot and should not be revived. But it is at least conceivable that the post-modern world will draw upon the pre-modern world. In recent years, a good deal has been said and written about shifting responsibility back to the individual, the family, and the neighborhood. Even the legislature has made a small attempt in that direction (§3a BSHG), and it will have to make further attempts. The more difficult is becomes to finance the large-scale safety systems, the stronger the trend toward a reprivatization of risks could become, and there is no way one can predict how such a process will affect a society that has not been geared toward "self-provisioning" for generations. To be sure, the revitalization of idealistic, voluntary commitments is conceivable, as is the revitalization of ascetic, meditative, and charitable ways of life. Even today, not all forms of social security are monetarized and open to economic analysis. But it is revealing that all previous attempts at an "exit" from the evolved ensemble of social security more or less explicitly expected that the state and society would provide a guarantee against failure. A return to past forms of security would be conceivable only if the social context also changes accordingly, a literal "Renaissance," in other words, which is not very likely.

The future is open, however, and it holds no guarantees about the survival of "tried-and-true systems," as for example the concurrence of social security, provision, and social welfare in the modern form. The framework conditions are constantly changing, as are the safety systems themselves. If industrial society, which once began with the life-long factory work of the male employee, is rebuilt some day into a globally interconnected, mobile information and service society, the

preconditions especially of social insurance are no longer in place (Stolleis 1998a). In that sense there exists, alongside the purely historical motivation, also a vital interest in those phenomena that lie outside the narrow purview of our current times. Anyone who, under the pressure of day-to-day business, stares transfixed upon today's background data or is guided only by the horizon of the current legislative session, cannot see social protection as a structural problem shared by pre-industrial societies, industrial society, and future ways of life. Such a perspective will be necessary, however, if, as indications suggest, we are entering into an age that will differ in crucial ways from the classic industrial period of the nineteenth and twentieth centuries.

This raises the question about the historical moment from which we can speak, using anachronistic terminology, of "social security," the "social state," and "social law." The transition to the industrial world was undoubtedly a decisive turning point. The suggestion that we "see the origins of the modern social state in those regulations by which the mobility of the productive factors was restricted again during the course of industrialization" (Hockerts 1996, p. 28) has the advantage of clarity. It places the emphasis on the "modern" social state and presupposes the existence of a "state." Moreover, it creates a close connection with the "socio-economic transition to the industrial world" (Hockerts 1996, p. 31), which we can date with a fair degree of precision: in Central Europe, it was the century between 1750 and 1850.

However, if one understands the protection against the typical risks of life as the ongoing, basic challenge in human society, everything that humans have ever thought of and practiced to ward off the dangers of poverty, illness and disability, old age and death can be seen as "social protection." This view has the great disadvantage that its historical dimension is essentially unlimited, and that it blurs the turning point of the transition into the world of industrial society – for the fact is that the political and economic dynamic to create the forms of safety so typical of today was generated only by the population growth and productivity gains of modernity. Whether that entailed a quantum leap, such that the transition to the compulsory state insurance of industrial workers launched an entirely new era, which is the perception, for example, of the German tradition of social law, should be at least open to discussion. In other industrialized states of the western world, this era began later, or never really got off the ground, which makes it doubtful that these countries will now – in the twilight of the system of social insurance – pursue this path at all.

Opening up the historical perspective has other advantages, as well: as I have already indicated, it is clear that we today are practicing forms of safety of varied provenance side by side, among them some from the period before industrialization. Those include not only the care for people who have no income or are unable to earn one, that is, the old communal or "state" poor relief and the charitable activities of the churches, but also the old-age care for state employees and discharged soldiers along with their widows and orphaned children. To understand these forms of safety, we must go back to the time before 1800. This is a practical arguments, though one in which the contemporary state of affairs shapes the historical perspective.

Of greater importance is probably another aspect, one that transcends Europe: the modern intertwining of the western industrialized states with regions of the world in which industrialization is just beginning or yet to arrive, confronts western companies and developmental aid programs with forms of social protection that have already vanished in our own world. Precisely the absence of the kind of social protection that is customary in the West is one of the strongest economic incentives for shifting industrial production to these regions. Companies that do so enter – "historically" speaking – into regions that are comparable to the early nineteenth century in Central Europe when it comes to social protection. For example, the fact that it is customary to take de-commissioned tankers to Bangladesh, the poorhouse of the world, to have them scrapped by workers that include children and youths working under the most abysmal conditions, attest to the coexistence of different layers of time, and to the impossibility of isolating the development in Central Europe during the last two centuries also historiographically.

1.3 The Formation of Society and Social Protection

It is in this sense that a broader, comparative cultural history of "social protection" can be conceived and perhaps even written, a protection, namely, that rested on solidarity with others. Understood in these general terms, we are dealing with a phenomenon of human history. Provisions to protect against risks are so old that their traces get lost in the mist of history. The dangers of hunger and disease, injury and death are the companions of all living beings. Already the formation into groups, which demands a minimum of organization, constitutes a certain protection. And the specialization of warriors, priests, healers, farmers, and traders serves, in a wider sense, to safeguard human groups against risks, because specialists are more effective in their respective areas. Experience-based provisions against the risks that are normal for any cycle of life or help after the fact through collectively maintained institutions are thus cultural phenomena – just like human society, as such, and the subsystems of religion, law, culture, and economy that emerge from it.

Embedded within the developmental stages of social formations, the dominant ideas about the risks that should be born by the individual and those that should be born by the collective thus also change. Hunters and gatherers, nomads, farmers, city dwellers, blue and white-collar workers in industrialized societies are confronted by very different life problems and have varying degrees of "sensitivity" to suffering – for suffering, beyond concrete physical pain and needs, is also socially mediated. Especially the physical strain from work has changed through the Industrial Revolution. Extremely hard and extended labor, daily hikes on foot to the workplace, activities that are highly deleterious to health, and child labor have been largely eliminated in the western industrialized states. An entire palette of technical aids and devices ease our burden. Today, most would already regard the workload and privations that were imposed upon the individual as "normal" two or three generations ago as intolerable. In addition, food and its preparation have

undergone a profound transformation. The rhythm of our lives during an average work day is no longer comparable to that of our ancestors. We cover vast distances in a few short hours, live in continuously heated and lit rooms, and have global possibilities of entertainment and communication of which even the previous generation would not have dared to dream. The standards of public health and medical care in western industrialized societies are extraordinarily high at the beginning of the twenty-first century. The same is true for the consumption of energy and natural resources, and of the absolute and relative level of social protection. This is where comparative yardsticks fail: on the historical time scale, the situation today is without precedent; in terms of a contemporary comparison across societies, the cultural expectations, the varying ways in which state and society interact, and – not least – the objective possibilities are so divergent that comparisons must always begin by noting the fundamental differences.

To that extent it would be wrong to assume that the category "social protection" allows us to grasp a phenomenon that is eternally unchanging across various social formations throughout the centuries. To be sure, all of these manifestations of social protection contain mechanisms to protect people against typical risks. Mutuality of aid is always presupposed, and there is a universal experience that the community can provide better protection than the isolated individual. But beyond these basic notions unfolds a multifarious and changeable history that is always hastening toward an open-ended future.

The forms of social protection are as changeable as human needs and risks. As soon as differences between poverty and wealth become apparent, "strata-specific" forms of safety also emerge. Property, inheritance law, and family law take on correspondingly divergent forms. Family units change their structures parallel to the material and social conditions of their environment. The elaboration of the transfer of material values to the next generation, whether through special forms of the dowry or the bride price, gift and inheritance law, fiduciary use for the clan, or forms of the *Fideikommiss* (entailed property), can also be understood as social mechanisms to compensate for the capacity to work that is lost or gained, and in the broader sense as material protection against risk. And rules about monogamy or polygamy, the remarriage of widows, and the actual number of children are also important indicators of the extent to which progeny was regarded as a "savings bank" and a protection against the dangers of old age.

In addition to all these factors, the social "place" that the individual inhabits exerts an influence. There are group-specific forms of social protection, as for example mutual support in the neighborhoods or alleys of a city, networks of solidarity among ethnic, linguistic, or religious minorities, support groups against particular occupational hazards such as those faced by sailors and miners, and, finally, the traditional help that women offered each other in childbed and much more.

Of great importance is also the geographical "place." Settlement density, alone, is a crucial factor: if the population is sparse with large distances between farms or nomadic groups, the de facto possibilities of receiving help from the outside are already small. Extreme climates demand either unconditional solidarity, or they

teach a toughness that would be unacceptable in milder climes. The situation has been different – since antiquity, already – in large cities: quick and specialized help is possible here and many individuals usually face the same problems, which means, on the one hand, that external constraints ease, while, on the other hand, the conditions for artfully organized solutions based on solidarity become more favorable.

The latter become possible primarily if a society has an intensive exchange of goods, but above all a money economy and literacy. As the factors time, labor, and the value of goods become convertible into money, individuals in need of protection could set up funds to which they make equal "contributions." From these funds, the individual was to receive support in the uncertain – but statistically not unlikely – case of a stroke of misfortune or some condition that requires help. The return for the contribution lies in the availability of real support, if needed, but also in relief from anxiety and worry.

The discovery of the mechanism of "insurance through contributions" gave rise to both property insurance, for example of a ship against the loss from shipwreck or capture by pirates, and personal insurance, initially in the form of relief funds for members of particularly dangerous professions. Property insurance is the assumption of a specific external threat for a fee, combined with the promise of payment if the risk materializes. The personal solidarity fund, by contrast, is the common property of all participants and is utilized if misfortune strikes any one of them. Both forms of protection are based on a common idea: the risk that is seen as typical and beyond the powers of the individual is placed on an economic footing and is outsourced, either to the insurer or to the fund. The insured party exchanges a contribution that is economically sustainable over the long term for security against the consequences of a misfortune he would be unable to cope with on his own.

Beginning in the Middle Ages, there thus arose the countless fraternities, orders, gilds, corporations, and brotherhoods, which had not only religious, ritual, economic, and political meaning for their members, but also provided social protection.[3] Some were compulsory organizations (corporations), others were voluntary (associations) – if this kind of distinction is meaningful at all (Oexle 1982, pp. 1–44). The hospitals and poor houses they ran, and especially their member funds for the sick, widows, and orphans were largely still in existence in the nineteenth century and were incorporated into the process that gave rise to social insurance.

If our perspective thus includes the time before the Industrial Revolution, semantics also change. "Social law" and "social protection" are modern terms. In the nineteenth century, two meanings of "social law" run alongside each other. One sees social law as the law of organizations, leagues, and associations – the kind of law, in other words, that establishes itself in the view of its champions (G. von Beseler, O. Bähr, O. von Gierke) between the state and the individual and organizes the formation of human society below the level of the state into free, "cooperatives" forms (see Hardtwig 1997). The other meaning of social law, as the "law of social

[3] An overview can be found in Hardtwig (1997); a more specialized essay is that of Fröhlich (1976), Schewe (2000).

protection," established itself more slowly and really only in the twentieth century (Schmid 1981; Stolleis 1990). In this sense, social law is therefore a neologism, which cannot serve as a point of reference prior to the late nineteenth century. Before that we are dealing with different semantic fields, for example help for the poor and the old, for widows, orphans, victims of accident, the sick, and the great mass of people on the move (scholars, craftsmen, entertainers, market visitors, gypsies, discharged soldiers, beggars, and vagrants). To be sure, these fields were aimed not only at premodern "social" help, but also at combating crime and warding off dangers by regulating certain professions. But precisely this phenomenon, the blending of supposedly purely social goals with other goals related to the labor market, the policing of foreigners, warding off danger, or simply reducing costs, is typical for the early modern period and for the "modern state" that arose during it. To that extent the semantic considerations, in particular, and the blending of motives suggest that the older policy of poor relief differed from modern social policy not in principle, but only in means, intensity, and extent. On the other hand, it could be argued on good grounds that the Industrial Revolution, with its migrations, new risks, and enormous acceleration, brought social policy qualitatively into a "new" situation. But like all historical periodizations, this is a construct driven by specific premises. It bears examining whether this construct does not adopt too much of the view that the "new" nineteenth century had of itself.

2 Social Protection in the Middle Ages and in the Early Modern State: Alms, Poor Relief, Care, Social Help

2.1 Christian Poor Relief

Providing material and immaterial care to the poor, the elderly, widows, and orphans, out of pity or a sense of moral-religious obligation, has become the socio-ethical norm and praxis in nearly all cultures. However, Christianity placed a special emphasis on this obligation from the outset,[4] and it shaped the picture of both individual and corporate practical altruism through multifarious and venerable institutions and activities (Liese 1922; Isensee 1995, §59). For the churches, to use the words of the Federal Constitutional Court, "the fulfillment of the works of altruism through the gift of the individual member of the church is an essential part of the practice of the Christian religion," that is to say, it is a "fundamental function of the church."[5]

[4] For example: Mt. 5.43ff; 7.12; 10.40ff.; 22.37ff.; 25.40. – Mk. 12.29ff. – Rom. 13.9f.; 1 Cor. 13. – 1 Jn. 4.11.

[5] BVerfGE 24, 236 (248). This line of court decisions has not changed since. See Hollerbach (1981, pp. 218–283, esp. 225–227). However, in recent years emphasis has been placed on the obligation to "the law that applies to all" (Art. 137 III WRV) and on the need for stronger state control over a multitude of faith-based activities.

The dominant place of religion and the church in the public and private life until well into the nineteenth century was thus mirrored by the important role that Christian poor relief and care for the sick played vis-à-vis efforts to relieve suffering that were driven by secular motives (Uhlhorn 1895; Ratzinger 1868; Neukamm 1987, pp. 610–618). However, that role changed gradually in the wake of the slow rise of secular powers since the thirteenth century. Just as military conquest and religious mission had been constantly interconnected since antiquity and the Early Middle Ages, with the former sometimes leading the way and sometimes following, secular powers during the European Middle Ages pushed increasingly into spheres that had previously been a matter of the church (Padoa-Schioppa 1997). As population density increased, poverty became a problem also for urban and territorial authorities. The latter not only recognized the socio-revolutionary potential of poverty, they were also interested in a settled and prosperous population for reasons having to do with the ability to control their territories and exact a steady levy of taxes and dues. Beginning in the sixteenth century, these authorities began to take initiatives legitimatized by the claims that it was their duty to ensure "good order" (Maier 1980; Palme 1991; Gömmel 1991; Stolleis 1996; Jütte 1995). While this order was grounded in Christianity, it also contained from the outset admixtures of secular purposes. The emerging early modern state increasingly emphasized these worldly purposes, eventually using Christian terminology merely as a rhetorical garb for its directives. The more the state succeeded in disciplining the poor and itinerant strata through the intensified use of its "good governance" (*Policey*) (Schlumbohm 1997), the more the state itself gained orderliness and the power to exert control. These worldly goals gradually marginalized the religious approaches. At the end of the eighteenth century, the church's work of charity was left with only an auxiliary function. The emphases did not shift again until the nineteenth century, which, under the banner of liberalism, pursued the withdrawal of the state from "welfare work."

In the countryside, the itinerant and the local poor could – since the early Middle Ages – turn to the monasteries for help. The latter were not only centers of education and culture, but also constituted the economic strongholds of entire – still thinly settled – regions. In the cities, with their internal social and legal differentiation that had been slowly evolving since the eleventh century, the problem of supporting the poor was distributed among various institutions. First, monasteries were also found in cities, sometimes within the walls, sometimes outside (plague and leper houses). Second, possibilities of distributing alms developed through the urban churches and the donations they received from the laity with the stipulation that the funds from the donations be used not only to read masses, but also to help the poor. The more "citizens and councils" emancipated themselves from their overlords and regulated the affairs of the community autonomously as the city's authority, the more the social institutions also became a matter for the secular government.

2.2 The Early Modern State and the Church

The crisis of the church in the fifteenth century and the emergence of a pre-Reformation, secular church governance were interrelated. The rule of the princes that was slowly taking shape moved into the vacuum of political order created by a church that was quarreling and marked by secularization trends. This trend, already visible before 1517, erupted fully when confessional fragmentation gave rise to sub-churches that had to lean on secular powers to ensure their survival. In the course of the Reformation and the religious wars of the sixteenth century, territorial lords and cities, in a "first secularization," confiscated church property on a massive scale and redirected it into the school system and poor relief (Kreiker 1997). With this, the responsibility for social problems also shifted. It was now the city authorities and the territorial ruler who were admonished by theory and urged by praxis to take the initiative against poverty, and to make sure that the burden of poverty was diminished and transformed into productive labor. This shift of the point of reference from the medieval church to the early modern state demonstrates that this "state" did not appear 1 day ready-made and took on certain tasks. Rather, we are dealing with a process – nearly imperceptible to contemporaries – by which responsibilities, competencies, and material means were transferred. What is called the "state" from about the middle of the seventeenth century (Weinacht 1968) is a political entity that took shape gradually in response to the shortcomings of competing powers (church, nobility, estates), and which created its ways of acting by doing. Especially after the exhaustion from the religious wars in France and Germany, all relevant political forces pushed for a concentration at the monarchical head of the state, as a way of overcoming the economic and social misery of the states through more intensive legislative activity. In other words: henceforth, fighting poverty became a task of the state, whose apparatus and capabilities, however, were still in the formative process (Scherner 1979, pp. 55–99).

These shifts from the religious to the secular side were based on changes in collective consciousness that had been in the works since the thirteenth century. At the same time, they brought about these transformations only after the fact, which means that the awareness registered late what had already happened. One of the great changes in European consciousness is the gradual emergence of the person as an autonomous entity. Beginning at this time, the individual was recognized as such because he spoke with his or her own voice, and he was able to speak more and more because his intellectual and material realms of action were expanding. Slowly, he became responsible for the conduct of his life before God and his fellow humans.

By leaving the anonymity of the collective, the individual also become the object of intervention for all efforts of improvement undertaken by the church and the wordly authorities. If the individual is in principle the master of his own fate in both this life and the next, he must exert himself in every way. Should he fail to walk the straight and narrow path, he must bear the consequences, and should he fail, all he can hope for is "mercy." With this, the notions about the role of work underwent a

fundamental change (Schuck 1995). "Labor and pain" were now interpreted increasingly as punishment imposed by God after the Fall. At the same time, however, they also appeared as the most important worldly means to combat vice.[6] *Müßiggang ist aller Laster Anfang* ("Idleness is the beginning of all vice") is a common proverb in Germany. As a result, there now began a systematic poor policy on the part of the authorities, who were deeply convinced that a person could be brought onto the right path through a combination of solicitude and strictness. This meant that a moral differentiation had to be drawn between native and foreign poor, between those who had caused their own misery and those who had not, between those able and those unable to work. The *police orders* (Stolleis 1996; Härter and Stolleis, vol. 1, 1996) that were enacted in all German towns and territories, indeed, throughout Europe, contained a considerable – and until the late seventeenth century steadily growing – number of decrees regulating poverty, alms-giving, and the expulsion and punishment of foreign beggars. The general accepted goal of a state, "*gute Policey*" (good public order), also encompassed care for the poor. However, the emphasis shifted increasingly from the religious motivation behind alms to regulation by the secular authorities, to the suppression of private alms-giving in favor of a disbursement of aid concentrated in the hands of the now emerging "state." In cities and town, this was done through the creation of a "General Fund for the Poor and Alms" (*Allgemeiner Armen- und Almosenkasten*) (Jütte 1984). Alms became an instrument of the state, they were subjected to wordly purposes and used to discipline the recipients. Henceforth we also find a poor administration with an *Armenvogt* (an official charged with ensuring good order), and *Armenbuch* (Poor Book), which took hold of this area of individual charity and subjected it to bureaucratic rules. The subjective gift of alms, prompted by compassion and piety, no longer seemed reliable enough. It is a private decision dependent on the mood of the giver, and can no longer be counted on from an institutional perspective. What emerged alongside the charitable gift was the state that was neither compassionate nor pious, what Hobbes called "the artificial man," for whom poverty was a source of undesired migration, social disorder, and criminality.

The more the state's administrative apparatus developed and solidified, the more it also took on repressive traits in the period from the sixteenth to the eighteenth century (Wright 1977). Beggars turned into a marginal group that deserved to be combatted. The lines demarcating criminality remained blurry. And the authorities were not interested in makes those lines any clearer, lest they unnecessarily constrain their possibilities of intervention. The impetus for precise lines of demarcation emanating from the modern state governed by the rule of law, which the bourgeoisie had to wrest from Absolutism in the eighteenth and nineteenth centuries, was still entirely absent at this time. At any rate, two large groups took

[6] Especially pronounced in Wenzel Linck, Von der Arbeit und vom Betteln. Wie man der Faulheit zuvorkommt und jedermann zur Arbeit anhalten sollte (Zwickau, 1523). Quoted in Sachße and Tennstedt (1980, pp. 59ff.).

shape, which were in turn subdivided: first, the honorable own citizens, the non-excluded *Hausarme* ("house poor"), and the honorable outsiders (travelers who have fallen on hard times, journeymen on the road, whose care was the duty of the guilds). Second, the itinerant, ragged class of former soldiers, gypsies, vagrants of every kind, down to the clearly "harmful folk," that is, criminal individuals or gangs. The second group was unwelcome in every regard: not only because of the threat to material possessions, social peace, and the uncontrolled outflow of monetary funds, which would then unavailable for the *Hausarme*, but also because of health policy, since it was well understood that diseases could be "introduced." To that extent, the drawing of a line to the outside world was clear.

The state, which was not able to make poverty disappear, now pursued increasingly a dual strategy: external defense and discipline through work internally. Inclusion of one group and exclusion of the other complemented each other. Who was part of which group was determined by criteria of utility and by characteristics that defined the "outsiders" in authoritative terms. "Borders" emerged against the outside world and "border officers" were needed; signs warned vagrants of every kind not to enter the territory. The "border policy" toward the "itinerant folk" provides a window onto the great historical process of the early modern period, the emergence of the territorial states that ruled a swath of land with subjects and therefore intensified its border demarcations. Governing this land, warding off all outside influences, was now one right of (external) "sovereignty" (Quaritsch 1986; Stolleis 1997). That the insistence on non-intervention from outside was combined with the practice of deporting undesirable across the borders was, of course, inconsistent behavior, but it was dictated by the selfish self-interest of freeing at least one's own territory of these burdensome people (Schott 1978; Schubert 1983; Schulze 1988).

By contrast, internal sovereignty was directed toward the subjects. According to the general belief, it was the duty of the authorities to encourage people to be diligent, thrifty, and lead a well-ordered Christian life. "Work" took on a new dimension. It became a demonstration of earthly fitness and the precondition for salvation from guilt. A person who did not work even though he was able-bodied was wasting his gifts and committing a sing against his fellow citizens. As a result there was now a duty to work, at least for those individuals who were subject to the reach of the administration.

This long arm of the administration was ambivalent. The markers that had originally been used to identify the deserving poor were slowly transformed into a stigma (Roeck 1993, p. 68f.). Every act of registration became a preliminary step toward exclusion and marginalization. The desire to transform "useless" persons into useful one led to public work projects, the establishment of "useful institutions," or to expulsion. The emerging cameralistic and mercantilist economic theory emphasized a high level of domestic productivity, the processing of native raw materials, and independence from imports. Subjects were supposed to be hard-working, pious, and moderate, and after wars they should also contribute to "peopling" the land. Preaching was done in this spirit, and beggar and vagrant codes were enacted. In the seventeenth and eighteenth centuries, houses of

correction and work were added, drawn from British and especially Dutch models (Howard 1791, 1780, 1784; Kleinschrod 1789; Wagnitz 1791–1794; Saam 1936; Peitzsch 1968). They took in all those subjects the authorities deemed problematic and "in need of correction," but economically usable. That included convicted criminals, and this soon led to a stigmatization of houses of correction and work as a feared penal institution. The place of strict pedagogy was now taken by the exploitation of labor and the idea of deterrence. The construction of fortresses and castles also absorbed entire armies of such forced laborers.

All these measures were essentially born by the early modern princely state. As the political and economic power shifted from the Empire and the cities to the territories in the second half of the sixteenth century, the competencies and practical efforts to contain the socially harmful consequences of pauperism also migrated there. The place of urban beggar codes and Imperial Statutes (1530, 1548, 1551, 1577) was taken by territorial "police codes," which codified the regulatory intentions of the estates and the respective territorial churches, and of the territorial lord. Territorial *policey* now evolved into the most important motor of social engineering through commandments and prohibitions. Its goal was the elimination of abuses and the establishment of "good order" in the city and the countryside, in the market and the home. The early modern doctrine of the purpose of the state, here applied to social reality, included almost without saying measures of social protection in the form of goals, concrete recommendations, directives, and prohibitions pertaining to doctors and apothecaries, public cleanliness and health, the regulation of begging and alms, the duty to work for "strong" beggars, the expulsion or turning away of foreigners at the borders, conscription into public works, and the use of a variety of means of punishment and deterrence (Härter and Stolleis 1996; Simon 1998; Schilling and Schuck 1999).

Of course, the hospitals and other institutions to support the poor in the cities continued, as did the monasteries and ecclesiastical foundations (Reicke 1932; von Moeller 1906, reprint 1972; Jütte 1996). But the sphere within which the towns and the church were active was shrinking and fell completely under state control. As it was, in Lutheran and reformed territories, the territorial rulers' sovereignty over the church had led to a close alignment of the tasks of the state and those of the church. The Protestant consistories or ecclesiastical councils were state bodies with religious tasks. The visitations they carried out extended not only to the state of pastoral care, but also to "moral discipline," drinking and gaming, dress codes, work ethic, and much more.

The reach of "enlightened Absolutism" in the eighteenth century reduced the church's sphere of action also within Catholic territories. In the name of reason, feast days and church customs were now abolished, in Austria during "Josephinism," in Bavaria during the era of reform between 1799 and 1817. Everywhere one could discern pressure from the state to boost the productivity of the land, bind the largest passible number of the vagrant population to work, and discipline them toward a behavior model of the lower middle class with a combination of punishments and pedagogical measures. Especially the manufactures, the proto-industrial precursors to the nineteenth-century factories, seemed well suited

for this purpose: not only did they contribute to the national wealth, but the functioning of the division of labor they practiced required the virtues of hard work, moderation, and punctualness (e.g. de Mandeville 1968, p. 286; Macfarlan 1785; Marperger 1733). There is thus much to be said for the above-mentioned thesis, namely that the social disciplining of the Early Modern Period (the paradigm associated with the names of Norbert Elias and Gerhard Oestreich (Schulze 1987)) contributed to preparing the workers for the industrial age. This is particularly evident, for example, where the religious energies of Pietism and the Enlightenment combined with the techniques of the manufacture system, as in the orphanage that August Hermann Francke (1663–1727) founded in Halle (von Willard 1997). There, the Christian-motivated blend of poor relief, schooling, and mission within the context of the Enlightenment took on traits of the large industrial enterprise. Still, such endeavors revealed the general lack of a "poor policy" that subsumed the state and the church more so than they were able to remedy it.

2.3 The Transition to the Nineteenth Century

As the image of the state became de-mythologized, a process encapsulated in the sober notion of the social contract that was freely entered into and could be dissolved in extremis (Badura and Hofmann 1965; Röhrich 1972), there also grew within the social sphere the optimistic belief that social conditions could be engineered and altered. Under the specific conditions of the Enlightenment in Germany, impulses for social activism came from the educated middle class, for example the reform of poor relief in Hamburg in 1788 (Lindemann 1990; Duda 1982), and from within the sphere of enlightened Absolutism from the top echelons of the state administration. The *Allgemeine Landrecht* (General Law Code) for the Prussian states, which, to be sure, was overtaken and nearly undone by a policy of restoration by the time it took effect (1794) (Schwennicke 1993), for the first time recognized a general obligation to care for the poor in the sense of a "state task," and derived from this the right and duty of the state "to take measures by which the destitution of its citizens could be preempted and excessive waste regulated" (ALR, II, 19, §6). Where special poor funds did not exist, the communities were obligated to support their citizens through the "local poor associations" (*Ortsarmenverbände*). Where no local citizenship relationship existed, as in the case of the "land poor" (*Landarme*), the state assumed the burden of care through *Landarmenverbände*, their institutions for *Landarme,* and through other installations. Anyone who did not belong to the local poor or the land poor was – as during the previous two centuries – deported across the borders.

Count von Montgelas, the minister in charge of these matters in Bavaria, reorganized the poor system in that state along similar lines shortly before this political downfall (1817). He imposed upon local communities "the duty of public care for the poor," though he simultaneously declared that "all subjects resident in and native to a care district (*Pflegebezirk*), without exception" were obligated "to

participate proportionately and contribute to regulating the need of the poor."[7] Of course, the "voluntary charity of individuals" was permitted in addition, "although it must not detract from the general obligations of everyone toward the care of the poor by communities and district, or run counter to the decrees regarding begging."[8] The sovereign state of the early modern period thus retained the overarching competence, and from this position it was also able to guarantee that the institutions of charitable welfare remained untouched and could develop. In Bavaria, this happened shortly thereafter in the Constitution of 1818 (Titel IV, §9).

The initial moves toward elevating all of social policy into the duty of the state, which was evident also in other German states and represented the late political fruits of the Enlightenment and the legislation of the French Revolution regarding the obligatory care of the poor by the state, were lost again at the beginning of the nineteenth century in the battle of the bourgeoisie for participation in political power. With freedom of the soil and liberation from feudal dues (Hedemann 1930; Stolleis 1976), freedom of trade (Steindl 1984; Ziekow 1997, pp. 140ff.), public legal proceedings (Fögen 1974; Alber 1974), and freedom of the press, freedom of association, and freedom of assembly absorbing the mental energy, and the industrial proletariat – later so threatening to the bourgeoisie – not yet representing an organized force, there was little room left for reforms of the system of poor relief. And the contemptuous dismissal of the Enlightenment and its pedagogical efforts to "improve humankind" did the rest.

The waning of Enlightenment optimism, the absorption of domestic politics by the constitutional question, and the beginning of the Industrial Revolution resulted not only in a reduction of the overall extent of poor relief, but also in a narrowing to the purely material questions of need. Enlightenment's central idea, to remedy unfortunate circumstances long term through the application of pedagogical reason, was now looked upon with the distrust of those who either opted for individual self-help or trusted in the inner dynamic of the historical "development." Similarly, the early liberal state did not accept health care as a social task of the state. At most, it chose to take freedom-restricting measures where conditions were contrary to the entrepreneurial ethic and produced lasting health effects that were eventually noticed by the army's recruiting boards. The beginning of occupational health and safety legislation through the prohibition against child labor in Prussia (1839) was driven by these premises, though it was also intended to lend a hand to the older and now intensified efforts to implement obligatory school attendance.[9]

The poor laws enacted by the various German states before and after 1848 made only minor changes to the basic framework taken over from Absolutism. There were improvements on the local level, for example, by activating voluntary

[7] Decree concerning the system of poor relief, dated 17 November 1816, Kgl. Baierisches RegBl. 1816, p. 780, Article 1.7.

[8] Ibid., Article 24.

[9] "Regulativ über die Beschäftigung jugendlicher Arbeiter in Fabriken v. 9. März 1839", PrGS 1839, p. 156. On this see Gladen (1974, pp. 12ff.), Mors (1986, pp. 217–229).

Armenpfleger (visitors to the poor), as in the so-called *Elberfeld System* after 1817 (Münsterberg 1903; Sachße and Tennstedt, vol. 1, 1980, p. 214, vol. 2, 1988, pp. 23ff.). Other than that, the effort was made to keep pace with social change by adapting the competency regulations: while the problem of "vagrants" had been paramount in the sixteenth and seventeenth centuries, the poor laws of the late eighteenth century could posit a fairly immobile subject against a backdrop of better material conditions. This was still an essentially agrarian and small-town world with little fluctuation. The residents of towns and the countryside, to the extent that they belonged to the third estate, were bound to their localities – that is, they were assigned to a given community – through guild regulations, serfdom, and manorial and feudal structures. In many cases they needed a special permit to become mobile at all. Under these conditions it made sense to link the right and duty of support to the criterion of *Heimatrecht* (right of residence).

However, the perspective changed again with the reforms of the Confederation of the Rhine and Prussia's defeat in 1806. The estate-based society was broken open and was gradually levelled out into a national community formed by the third estate; although differences of estates still existed within this community, they were now under pressure to justify and legitimate themselves. After 1789, the ideas of universal equality and freedom were here to stay. Anyone who wished to restrict them needed special legal titles to do so, and these lay increasingly in the laws passed by the new parliaments. In the *Vormärz* period, these parliaments saw themselves less as legislative organs and more as guardians over the "rights of the people." The freedoms of religion and confession, opinion and the press, assembly and association, were joined by demands for commercial freedom, freedom of the land, freedom of movement, tax equity, and the abolition of the privileges of the nobility and the church. This was the transition to the civic society, which sought to retire Absolutism with its patronizing "law and order policy," primarily in questions relating to the economy and private life, and secondarily also with respect to political participation. The emerging industrial society wanted mobility of capital, a market for land, and people who migrated into the industrial regions or commuted across the borders as seasonal workers. With the acceptance of commercial freedom and freedom of movement, and the abolition of serfdom and manorial dues, the local residency principle as the underpinning of aid to the poor became increasingly questionable. Shifting responsible to the place of origin, which a person had left precisely because of the poor conditions there, created unsolvable problems. Poverty had to be borne where it emerged. A compulsory repatriation of the poor was now out of the question. In 1851/53, the members of the German Confederation agreed to remedy the difficulties in expelling the homeless poor through reciprocal pledges and to regulate medical care for sick and burials for deceased *Landfremde* (outsiders).[10] The place of the *Heimatprinzip* was increasingly taken by the *Unterstützungswohnsitz* (residential right of relief). It was recognized in Prussia in

[10] The Gotha Agreement of 15 July 1851, in von Meyer (1859, pp. 582ff.); additional references in Zacher (1993b, p. 433).

1842, in the North German Confederation in 1870, and extended to Württemberg and Baden after the founding of the *Reich*. Alsace-Lorraine was added in 1910, Bavaria in 1913.[11] The more the internal German borders dissolved in the unification process and a uniform legal sphere with legally guaranteed freedom of movement emerged,[12] the more the previous deportation of the foreign poor across territorial borders ceased. Not only the feeling of nationhood argued against deportations within Germany, statistics and the cost-benefit analysis also showed that it was more cost-effective to treat all Germans in all federal states as locals. As a result, the time a person would have to spend in any given location before becoming eligible for support also grew shorter during the nineteenth century: originally it was set at 7, then 5 years; in 1869 it was reduced to 2 years, in 1908, finally, to 1 year. Such obstacles were no longer compatible with a mobile industrial society.

As before, the states, not the *Reich*, were responsible for setting up the system of poor relief. However, the social conditions of the Ancien Régime were still reflected in the old distinction between *Ortsarme* (local poor) and *Landarme* (poor of the land), a distinction that was rooted in the separation of the medieval city with its own law from the countryside with its law, though now it referred to those who had a residential right of relief and those who did not. Thus, there was a local Charitable Union (*Armenverband*) which combined the competencies for one or more communities or manorial estates (*Gutsherrschaften*), and the territorial Charitable Unions (*Landarmenverbände*), whose expenses, as in Prussia, for example, were borne by the province. This old distinction is still evident today in the jurisdiction of the *Landkreise* and in the distribution of competency between local and supra-local tasks of social aid.

Again following tradition, a binding stipulation about the nature and level of aid was avoided. That the poor had no subjective-legal right to poor relief that was actionable in court went without saying. As a Prussian law stated: "A poor person can never assert a claim to support against a Charitable Union through legal avenues, but only with the administrative authorities, whose task it is not to grant claims that exceed the necessities."[13] However, the same law spoke very clearly about "public support that must be granted in cases of need." It recognized that the state had an objective duty to act.

Characteristic for the state of poor laws before the founding of the *Reich* is the Bavarian law of 1869 that dealt with public poor and sick relief.[14] Public poor relief was supposed to support the needy and counter pauperization; it was a communal

[11] Prussia: PrGS 1843, p. 8; North German Confederation: BGBl. des Norddeutschen Bundes 1870, p. 360, extended to Württemberg and Baden through the law of 16 April 1871. RGBl., p. 391. Final version in the law of 7 July 1908. See also Hesse (1971).

[12] "Gesetz über die Freizügigkeit vom 1. November 1867," BGBl. des Norddeutschen Bundes 1876, pp. 55–58.

[13] "Preußisches Gesetz über die Verpflichtung zur Armenpflege vom 31. Dezember 1842", PrGS 1843, pp. 8, §33.

[14] Bayerisches Gesetzblatt 1868/69, pp. 1093ff.

task. What was granted, only in cases of "demonstrated need," was the subsistence minimum, sick relief, a pauper's grave, and the "necessary educating and training" of poor children. These services were subsidiary and secondary to aid from family members and from charitable poor relief. Recipients of this aid were also obligated to work; conversely, communities were obligated "to create the institutions that are indispensable to local poor relief," or to enter into appropriate agreements with charitable welfare organizations. For the sick, there were to be sickness funds either within larger enterprises or on the community level. Likewise, there is evidence of the first steps toward state job placement and "assignment of work" to "able-bodied persons who, in spite of serious efforts, were unable to find gainful employment."

Although the nineteenth century had to wrestle with the problems of population growth, pauperism, internal migration, and industrial poverty on an unprecedented scale, it did not succeed in reforming the system of poor relief in any profound way (Münsterberg 1887; von Reitzenstein 1887; Roscher 1894). There are a variety of reasons for this. In the first half of the century, the emerging bourgeois society was largely preoccupied with removing the impediments to individual freedom. The political, religious, economic, and social rights of liberty for human beings and citizens were the central political goals, which activists were hoping to enshrine in inviolable constitutional guarantees and political norms (Stolleis 1992, pp. 56ff.). The comprehensive law-and-order policies of Absolutism were now denounced almost unanimously as representing patronizing and excessive government – of course, more in theory than in administrative praxis, which continued to have an interventionist bent. "Law and order" was now to serve essentially only defense against danger (Preu 1983). However, this early-liberal goal soon saw the return of welfare state elements, the more observers recognized that the withdrawal of the state to a night watchman role could imperil its own existence. The constraints on manorial estates, landownership, and in guilds were to be eliminated – and they did disappear, though the trades, at any rate, recaptured a protective position backed by public law in the course of the nineteenth century (Chamber of Trades, master exam, register of qualified craftsmen). A uniform law of property and contracts was sought but only partially achieved, for example, in the case of landed property through the redemption of the *Grundlasten* (basic impositions on the land) over two generations (Habermann 1976).

Because the administrative and mental structures of the eighteenth century thus radiated well into the nineteenth century, specifically in the reform bureaucracies of Prussia and Austria, as a result of which we can certainly speak of a welfare state undercurrent within the dominant liberalism, the system of poor relief did not change in principle. The political pressure to abandon the existing structures was not strong enough. The system of poor relief in its traditional form was not able to deal effectively with "pauperism," but since an organized workers' movement did not yet exist, the problem could be pushed to the margins for the time being. As it was, increasing the mobility of the population toward the industrial centers, which was welcome, was not to be slowed by local measures of support. The rapidly growing rural population could not be supported, rural workers flocked to the cities, where the trades were already suffering from overcrowding. It was only after the

middle of the century that the bourgeoisie can be described as prosperous, while the situation of the proletariate continued to deteriorate before 1848. The slow improvement in material conditions in the course of the nineteenth century had not only a quantifiable economic side to it, but also one of subjective feelings. The two sides did not necessarily change in lockstep, and it would appear that the sense of being excluded persisted longer. The poor, as the lowest stratum of the proletariat, continued to be discriminated against throughout the century politically and in term of social ethics; it manifested itself also in the loss of active and passive suffrage by the recipients of poor relief,[15] a perfectly natural step for theoreticians of early liberalism, who argued that only the person who contributed something to the state could participate in shaping it.

The latent domestic political pressure of the social question led at most to local improvements in the state system of poor relief. Of course, one of the reasons behind this relative stagnation was also that the poverty of the early nineteenth century for the most part manifested itself in the countryside, that is, it was geographically spread out, did not become a revolutionary threat, and could also be hidden more effectively. Moreover, observers noted that the excess population that had fallen onto hard times could be reduced through emigration (Conze 1962; Koselleck 1967). All this was in line with contemporary theory: Robert Malthus's *Essay on the Principle of Population* (1798) had been first translated into German in 1807 and was making quite an impression.[16]

Even if the state did not change the system of poor relief in any real sense before 1848, what did change was the increasingly self-aware society. The more it constituted itself as a civic society separate from the state, the better were the chances for the growth of voluntary social activities. The tradition of civic, mostly urban philanthropy had medieval roots, but beginning in the eighteenth century it grew into a new dimension of sometimes religiously, sometimes more pragmatically motivated concern with the lower classes, whose condition aroused compassion, but increasingly also political fears. Aid associations emerged during wars and epidemics, as well as in misery-stricken regions of mining and industry. They distributed food, set up soup kitchens, orphanages, and warming rooms, supported women in childbed, looked after neglected youths and released prisoners, fought against alcoholism (Pauli 1838), or organized saving. The most diverse

[15] See §35 Constitution of Baden of 22 August 1818, in the version of 24 August 1904; §142 of the Constitution of Württemberg of 25 September 1819, in the version of 26 March 1868; §2, section 3 of the Reich Suffrage Law of 12 April 1849; Article 67 of the Prussian Constitution of 5 December 1848; §3 of the Electoral Law of the Reichstag for the North German Confederation of 31 May 1869. All of these can be found in Huber (1978b/1986). An overview in Aeppli (1988).

[16] Malthus (1798). First German translation: Versuch über (or ueber) die Beendigung und die Folgen der Volksvermehrung (1807).

"Associations," "Aid" and "Relief Organizations"[17] came into being and formed a "social structure" (Nipperdey 1976, pp. 174–205). The system of Associations and Cooperatives, with its enormous importance to the self-organization of civic society, provided the legal framework also for the private initiatives in poor relief (Hardtwig 1997, pp. 789–829). It is no coincidence that in this climate, "self-government" (local communities, universities, trades, churches, social insurance) become one of the dominant words of the nineteenth century (Heffter 1969; Stolleis 1990). Since the majority were middle class associations, the secondary political goal was more or less to keep workers away from the "temptations of Communist or Socialist agitation." This dual motivation was readily apparent: "A part of the bourgeoisie is desirous of redressing social grievances, in order to secure the continued existence of bourgeois society. To this section belong economists, philanthropists, humanitarians, improvers of the condition of the working classes, organizers of charity, members of societies for the prevention of cruelty to animals, temperance fanatics, hole-and-corner reformers of every imaginable kind" (Marx and Engels 1969, *Manifesto of the Communist Party*, part 2). The competition of the early socialist self-help organizations with their bourgeois counterparts was thus also driven by the political struggle for the allegiance of the working class.

Alongside "private charity" stood that of the churches, especially in the second half of the nineteenth century (Sachße and Tennstedt 1980, pp. 227ff.; Becker 1991) supported by Romanticism and political restoration, the Catholic Church survived the shock of the secularization of 1803 through a respiritualization and a reinvigoration of charitable work through the combined commitment of priests and laity to organize the care of the sick and needy and provide help to women and children, the homeless, and migrant workers. The most important areas of activity for the Caritas associations, the St. Vincent de Paul organizations (*Vinzenzvereine*), Catholic journeymen associations (*Gesellenvereine*), ecclesiastical orders and foundations were care of the sick, education, and the running of homes (E. von Ketteler, A. Kolping). The *Volksverein für das katholische Deutschland* (National Association for German Catholics) was set up in 1890. The *Caritasverband für das katholische Deutschland* (Caritas Association for German Catholics), established in 1897 by Lorenz Werthmann, for the first time combined the social welfare activities of the nineteenth century on the Reich level (Buchheim 1972). This organization continued to grow slowly until the World War (Wollasch 1978, pp. 1ff.). In addition, the Catholic workers' movement had taken shape in the second half of the nineteenth century. Its crucial manifesto was Pope Leo XIII's encyclica "Rerum novarum" of 1891 (Huber and Huber 1983, vol. 3, no. 126).

Developments on the Protestant side paralleled those on the Catholic side. Here, too, older foundations and charitable organizations from the eighteenth century

[17] For example: "Centralverein für das Wohl der arbeitenden Klasse" (since 1844), "Verein gegen Verarmung und Bettelei" in Gablonz (Bohemia), which shaped the so-called Gablonz System of poor relief, and the "Deutsche Verein für öffentliche und private Fürsorge" (1880-) in Frankfurt am Main.

were carried on. The Halle Orphanage (1695) continued to exist. Other initiatives were added in the early nineteenth century through the so-called Revival Movement: the Kindergarten appeared (J.F. Oberlin), along with youth aid, support for education, prisoners, and migrant workers (Th. Fliedner, J.H. Wichern), homes for epileptics and the mentally ill (F. von Bodelschwingh), and much more. Leaders in the professionalization of socio-pedagogical and care-taking professions were Johann Heinrich Wichern (1808–1881) with the "Rauhes Haus" in Hamburg-Horn (1833) and the "Johannesstift" in Berlin (1858), which were devoted to care of young people, and Theodor Fliedner with the founding of the *Mutterhausdiakonie* (charitable organization of maternity houses) in 1836 (Beyreuther 1962, p. 88; Heidenreich and Kohlmann 1983; Becker 1983). It was also Wichern who, in 1848, founded the *Centralausschuss für die Innere Mission der deutschen evangelischen Kirche* (Central Committee for the Inner Mission of the German Protestant Church), at that time still outside of the official churches of the states, which did not yet have an umbrella organization (Wichern 1849; Röper 1998). The Protestant workers' movement developed along similar lines, culminating in 1890 in the formation of a *Gesamtverband der Evangelischen Arbeitervereine Deutschland* (Umbrella Organization of the Protestant Workers' Associations in Germany) (Huber and Huber 1983, pp. 314ff.). Finally, 1917 saw the founding of a *Zentralwohlfahrtsstelle der deutschen Juden e.V.* (Central Welfare Bureau of German Jews) (Scheller 1987).

To this day, strong impulses for state social legislation have come from the two large confessions. The Kindergartens, children's and old-age homes, care and nursing homes, schools, hospitals, and many other institutions set up by the Catholic and Protestant sides have provided models for both the official churches and the state. The same is true of the welfare and educational organizations that emerged out of the workers' movement, though it was not until December 1919 that they combined to form the Social Democratic *Arbeiterwohlfahrt* (Workers' Welfare), on the initiative of Marie Juchacz (1879–1956) (Miller 1974).

To the extent that this work was pioneering, it was later in part equalled and overtaken by the state (for example in the area of hospitals), and in part in took on a permanent function of providing relief and acted as a supplement to state activities. In many areas, initiatives from voluntary charities, the churches, and the state stand side by side. To this day there are mixed forms in which the work on the ground is done by personnel from the churches and other social groups, while the state exercises a certain coordinating and security function.

3 Social Policy in the Empire: The Insurance Solution

3.1 The Idea of Insurance

One of the basic human experiences is that membership in a group affords greater protection. Children, the weak and sick, the poor and the elderly have always depended on solidaristic support from the immediate or extended family as well

as their neighbors. This has given rise to a great diversity in forms of aid and support of every kind. Industrial society at the beginning of the twenty-first century also knows this diversity, and it grounds its functions more or less consciously in these early efforts. However, there is a growing number of living arrangements involving single adults living on their own (probably historically unprecedented in this form) without clear group membership, though their existence depends, of course, on the functioning of many public institutions. The taxes, fees, and contributions generated also by these "singles" help to keep these institutions operating and viable.

Equally as old as the forms of security arising from the family unit are the solidaristic protections of particular endangered groups, especially seamen and miners. Since antiquity there has existed the idea and practice of "coffers" that are maintained by moderate contributions from those affected, which create a fund that is able to cushion the occupation-specific risks of the individual ("all for one"). The payment of such contributions presupposes an economic and social model that has writing, money, and ordered legal conditions, which allow for a higher level of organization that is grounded in institutional confidence. In this way, the typical risks of life (illness, inability to work, old age) or the risk of dangerous work can be economized and spread out among the respective community of solidarity. The individual who joins or is born into such a community agrees tacitly or explicitly to a certain "pact": one pays into an institution borne by all in order to transform individual risk into collective risk and thereby make it bearable. Thus, the central point is not the equivalence of what one receives from the insurance relative to one's own contributions, but the amelioration of the "vagaries of life" that is "bought" by these contributions.

The origins of communities of solidarity forged together by dangers communally endured are unknown. Departing soldiers or ship crews who promised mutual aid as sworn religious bands could be identified as the first traces, as could the groups united to operate common institutions (defense installations, mills, wells, dikes). That is also where we find the first examples of a monetarization of obligatory services. There also emerged occupational groups brought together by a shared education, interests, and religious and feast day rituals. Here, too, we find the basic idea that the common pursuit of certain goals is more effective, that the division of labor and the shift of typical risks onto an institution jointly maintained is advantageous.

3.2 The Old Forms of Security and the Industrial Revolution

This simple idea spawned throughout the European Middle Ages a vast number of orders, guilds, corporations, brotherhoods, confraternities, and the like. In the life of a society that did not know the modern institutional state, they formed – alongside the house community – the real core elements of the human community. The shared exercise of religion was substantially carried by them, but so were the trades,

mining, seafaring, and other common activities that were related to work driven by shared dangers (Stradal 1971a, pp. 1522–1527, 1971b, pp. 1687–1692; Brand 1998, pp. 1792–1803; Oexle 1982; Brück 1994). The early modern period, under the influence of growing secularization and commercialization, saw the emergence of associations, societies, cooperatives, and unions. Each word was part of a different, historically mutable semantic field. There were regular primary and secondary purposes, and the latter usually included caring for members in cases of accidents and in old age. The reason for this is obvious: because members belonged together and felt responsible for each other, this also included solidarity in cases of need.

Although the tradition of these institutions can still be detected today, it has been visibly weakened by the primary trends of modernity – secularization of values and the industrialization of production, and sometimes its traces have been lost entirely. Monasteries and lay congregations, guilds and journeymen associations, where they still exist at all, are marginal phenomena of society. Their function of providing security for broader segments of the population has disappeared. White-collar employees and self-employed tradesmen are today covered by social security. Members of religious orders occasionally find themselves in a situation where their order or the church has to provide supplemental insurance, because the orders are no longer able to take on the task of providing for old age (Schulin 1980; Listl 1994, pp. 841–863). In general, one can observe that the task of the older forms of solidarity of providing security to their members has passed to social insurance. Where these older institutions still exist, they serve the commercial or cultural life as foundations, societies, cooperatives, and associations in the legal forms of the nineteenth century, but they no longer play a central role for the protection of their members against illness and old age. The larger community of solidarity that is the general social insurance system has been superimposed upon and has displaced the older, autonomous forms of security provided by smaller entities.

This shift from smaller to larger entities is a socio-historical and socio-legal process that cannot be clearly dated. But there are reasons to situate the qualitative rupture between the older and the modern forms of protection at the end of the eighteenth and the beginning of the nineteenth century. Of course, the transitions were fluid, nor could it be any other way with transformations that encompass the entire society. Thus, during the last three decades of the eighteenth century there were still countless "cooperative" institutions of the kind mentioned above, but many of them were in crisis. The religious orders – to the extent that they had turned into institutions providing social care – saw themselves threatened by the Enlightenment, the emancipation of the bourgeoisie, and changing ideas about the role of women. At the same time, the rapidly changing economy, which was trying to shake off the mercantilist regime of Absolutism, was destroying many smaller forms of security that originated within the trades. The guilds themselves were ossified and defended themselves as best they could against the rise of economic liberalism. Manorial lordship and landholding in the countryside were being unsettled by demands for reform, and one sensed that the end of personal ties also involved the existing mechanisms of social protection. Clear-sighted conservatives tried to use that argument to prevent all-too-deep ruptures in the existing system.

Reformers were willing to accept the social damages, where these could be foreseen at all, in order to attain what they regarded as the more important goal of personal liberation and the mobilization of the land. As a result, the traditionally organized trades, agriculture, and the lay organizations of the church slid into a parallel crisis, one that also affected the equally traditional systems of "sickness, burial, and aid funds" which had arises out of cooperative self-help. In other words: the last remnants of personal networks from the Middle Ages no longer proved adequate when the Ancien Régime ended, by revolution or evolution, and the Industrial Revolution got under way on a larger scale.[18]

It was thus several, parallel developments of revolutionary character that ruptured the connection to the older forms of protection. The Enlightenment weakened the transcendental relationship between group formation and mutual care; the place of Christian charity and sworn solidarity was taken increasingly by the expected utility and a relationship of financial equalization. The emerging agrarian reform, with its elimination of the three-field system and the commons, ended the dependency of those who worked the land on the manorial lord or landowner. Split ownership (*Obereigentum* – primary ownership, and *Nutzungseigentum* – usufruct ownership or copyhold) was fused into a single concept of property by bourgeois society. With this the hierarchy of estates in the microcosms of rural labor also tended to disappear. The place of the social bonds that tied families in hereditary serfdom was taken by contractual bonds under civil law. The traditional "house" as an economic entity and a unit of life was dissolved into a bundle of work contracts. Workers coming from the countryside flocked to the emerging industrial centers of the textile industry, mining, and steel manufacturing (Hahn 1998). They worked for exceedingly low wages and with minimal social protections. In this way, without knowing or intending to, they provided the real economic boost to the Industrial Revolution. Henceforth, the "workers' question" that arose from this and would accompany the entire nineteenth century also formed the starting point for the counter-forces. Finally, political revolution also destroyed the traditional legitimacy by the Grace of God; its place was taken by the newly legitimated "Caesarian" rule, or by power that was derived from the will of the people. Both forms promised a trend toward material and legal equality, even if they had different views of political participation.

With the reforms of the Napoleonic and post-Napoleonic period, these developments became intertwined. The social consequences of the economic and political upheavals, of wars on the one side and the new machines (spinning machines, looms, steam machines) on the other, the collapse of the system of rural bonds, and the migratory movement from the countryside into the new centers, formed the starting point of the "social question." The abolition of old forms of social community, which brought enormous gains in terms of economic and

[18] The legal-historical literature can be found in Stradal (1971b), "Gilde", Lentze (1971) "Handwerk," and Luther (1971), "Innung," all in Erler, Adalbert, Kaufmann, Ekkehard (eds.), Handwörterbuch zur Deutschen Rechtsgeschichte, vol. 1 (1971).

personal freedom, the latter flanked by the newly won constitutional guarantees of human and civic rights (Schmale 1997), always entailed losses, as well. They were losses of a sense of responsibility, which, even if it may have been present only in rudimentary form in individual cases, was able, embedded in a religious context, to develop a certain power that restrained egoism. Added was the shift of all processes of social exchange into a law of obligations that was shaped by Roman law. Labor and wages were contractual goods. Initially there was little room for secondary obligations that could have softened the harshness of the exchange, or for limitations on and transformations of contracts through public law. Nineteenth-century legal "Germanists" whose allegiance was to "German law" always lamented the reduction of service relationships and other forms of exchange to the quality of a commodity, and Karl Marx confirmed that this was happening in his own way and with his analytical tools. But what Germanists called upon was an a-historical, romanticizing transfiguration of older legal conditions. Still, the diagnosis that the "prevailing Roman law" at that time favored the tendencies to reduce social relationships to contractual ties was correct. Of course, modern Romanistic scholarship points out that casting the work relationship as a relationship of obligation also brought advantages, for example in the case of the continued payment of wages if it was the employer's fault that work could not be performed (Mayer-Maly 1967; Söllner 1967). All these factors that were at work added up to a problem that threatened the entire society. The population more than doubled in the course of the nineteenth century. The number of people working and living off the land declined steadily. Traditional crafts came under pressure from the new commercial freedom and let workers go. The masses flocked to the cities and industrial centers, unless they had chosen to emigrate (Henning 1978; Zöllner 1981; Tennstedt 1983). It was only around the middle of the century that a gradually solidifying awareness of belonging to a common class took shape within the wage-dependent population. In 1848, the emerging fourth estate already constituted a considerable potential, even if it was not yet able to articulate itself in parliamentary terms.

In March 1848, workers in Berlin demanded from the Prussian King "a ministry for workers, though it may be composed of employers and workers, and its members may be elected only from within these two circles themselves" (Valentin 1947, p. 421). In the Frankfurt *Vorparlament* (Pre-Parliament), Gustav von Struve presented a socio-revolutionary program, whose core demands likewise included remedying the misery of the working class and the middle class, as well as a "ministry of labour" that would secure for labor "its share of the profits of work" (Valentin 1947, p. 472). Although the Left at the Paulskirche could not agree on the details, the welfare of the working classes had been recognized, as the Saxon delegate Bernhard Eisenstuck put it, "as the true and great national question of the present time." The Berlin delegate Nauwerck demanded a "right to maintenance" for "whose who could no support themselves by their own power." All these efforts on the national and individual state level failed along with the revolution as a whole. But with these demands, with the Communist Manifesto (1848), and with the *Allgemeine deutsche Arbeiter-Verbrüderung* (General Fraternization of German Workers) of the same year, which preserved also in its name the old idea of a sworn

union, the social movement had constituted itself out of the working class, just as the bourgeois social reforms in favor of the working class would henceforth devote themselves continuously to the new problem.

The *Allgemeine deutsche Arbeiter-Verbrüderung* was outlawed in 1854 when the old powers staged a comeback. But it was precisely this suppression that consolidated the workers' movement (Grebing 1966). In 1863, Ferdinand Lssalle founded the *Allgemeiner Deutscher Arbeiterverein* (General German Workers' Association), the Social-Democratic Workers' Party took shape in 1869, and in 1875 the two camps merged. With this, the transition to the level of participation at the political – especially parliamentary – level had been carried out.

The reactions of the state and society to the "social" or "workers' question" were initially uncoordinated and aimed at various points. The old charity of the churches was now supplemented with better-organized activities, for example, by church-affiliated aid organizations to combat the dissipation of the youth, alcoholism, and prostitution, by the Kindergarten movement, by "Internal Mission," activities that promoted thrift and savings, and much more. This was essentially an attempt, through mobilizing the willingness of bourgeois circles to help, to directly attack the social harms of the Industrial Revolution without questioning the social order in a fundamental way. These harms presented themselves as the "poverty" of entire social classes. This was not only a threat to bourgeois safety through crime and tensions in everyday life, but also a profound danger to the entire social order. It meant a lack of work and little pay, unhealthy and "immoral" living conditions, a lack of health care for women in childbed, child labor in mines and factories with undesirable consequences for school attendance and the physical health of future recruits. Anyone who wanted to help solve these problems in the nineteenth century typically founded an "aid association" (*Hülfsverein*) or a foundation for which money then had to raised, for example, through charitable events. These were activities that emanated from the middle of society.

The legal forms that were used for that purpose were derived from the "common law" that was in force throughout the nineteenth century, that is, the existence side-by-side of various codes (Bavarian Codex Maximilianeus, Allgemeines Landrecht für die Preußischen Staaten, Code Civil, Austrian Allgemeines Bürgerliches Gesetzbuch, Saxon Bürgerliches Gesetzbuch) (Schlosser 1996, pp. 96ff.), individual laws, and "pandect law" that was regarded as valid law in legal teachings and judicial decisions and was implemented in practice (Wieacker 1967, §23–24). These were the organizational forms of private-law organizations, which grouped around the universal freedom of action that had just recently been won, and by means of which reformers were trying to mitigate the harm that was done by this very freedom, specifically in the form of contractual freedom. Mitigation is all it could be, since the underlying principle of liberty could not be threatened. To that extent it was unavoidable that the efforts at self-healing by a society that regarded itself in principle as liberal could only have a limited reach. They had a built-in brake in the respect for the free market (Wieacker 1953 [in 1974, pp. 9–35], 1966 [ibid, pp. 55–78]). However, the ability of the market to function depended in turn, as it was subsequently discovered, on the market not destroying its own foundation,

that is, avoiding mass misery, and supporting a state that oversaw with sovereign guidance at least the core areas.

Germany in the nineteenth century, however, saw neither a renaissance of the absolutist welfare state, nor the establishment of a purely free-market society. Instead, what is characteristic are transitional forms: from agrarian to industrial production, from Absolutism to parliamentary democracy, and from the state-guided economy to more or less free markets. The dominant forces in the state and society in Germany were by no means supporters of a dogmatic liberalism. The enlightened Absolutism of the second half of the eighteenth century, which was responsible for the welfare of its subjects, was still present in a myriad of ways. In the constitutional battles of the early nineteenth century, the liberal powers still confronted defenders of the Ancien Régime. Though the latter used the catchwords of the day, politically they defended the "monarchic principle" and "legitimacy." The transformation of the princely state into the modern institutional state occurred only gradually. Between 1815 and 1848, as well as in the decade after 1848, bourgeois society was politically fairly unfree and patronized by the state. To be sure, there were considerable differences between constitutional and non-constitutional states, between small and large states, between more liberal "states under the rule of law" and late-absolutist administrative states. And a burgher class that glossed over these differences, thought and acted in larger contexts, and was accustomed to the responsibility of governing, did not exist in sufficient strength. Even in times when economic liberalism seemed dominant (1845/50–1873), the "solicitously patronizing" state had not in fact pulled back. No different from the eighteenth century, it looked after the economy by creating investment incentives, holding fairs, setting up *Realschulen* and technical colleges, or stimulating improvements in quality and "design" (Kaufhold 1982; Gessner 1982). Even state-funded industrial espionage abroad occurred.

In this setting, it appeared self-evident to preserve the old forms of social protection for the time being, to expand and adjust them to the new challenges. It seemed especially sensible to first use the existing potential of the support funds and to expand the circle of the beneficiaries. After the gilds had already fallen in 1810/11 with the introduction of commercial freedom, Prussia in 1848 allowed journeymen, assistants, and factory workers to preserve existing or create new aid funds, and envisioned compulsory enrollment by journeymen and assistants through local ordinances. Since 1849, local communities, using the organizational forms of the old gilds (where they had not disappeared with the introduction of commercial freedom), were able to compel the self-employed to enroll and pay contributions to help "journeymen and helpers who were looking for work, sick, or needy for other reasons," or aid in the "continuing education of apprentices, journeymen, or helpers."[19]

State compulsion to protect the socially dependent within trades and profession was, of course, not very successful, even when in Prussia the right to exert that

[19] "VO betr. die Errichtung von Gewerberäthen und verschiedene Änderungen der allgemeinen Gewerbeordnung v. 9. February 1849", PrGS, p. 93f. (§57).

compulsion passed into the hands of the district governments (1854) and the possibility of compulsory enrollment was extended to workers. Communities had been reluctant to order compulsory enrollment. The system of work-based aid funds was stagnant. The regulatory history of this system, from the commercial code of the North German Confederation (21 June 1869) to the final Aid Fund Act of 7 April 1876,[20] shows an vacillating approach that wavered between interventionism and liberalism. Compulsory enrollment for those ensured and competition between compulsory funds and voluntary funds stood side by side. A comprehensive system of compulsory insurance was still opposed as much by the liberalism that dominated economic theory and the top echelons of the Prussian civil service, as by the reluctance on the part of the working class itself. The latter was understandable: the exclusive financing of the fund system from wage contributions would have further depressed living standards, while the financing from other sources raised fears about new dependencies.

The situation was more favorable in mining.[21] Since mining had always been a special area of production and was accordingly endowed with special characteristics in societal law, labor law, and social law, it provided ideal openings for a development that was tending toward the universal insurance of workers. A Prussian law of 10 April 1854, ordered the establishment of Miners' Associations for all workers in mines, smelting works, saltworks, and processing plants, where these did not already exist.[22] In the form this regulation was then given in the Prussian General Mining Law of 24 June 1865, it became exemplary for compulsory insurance, for the public-law status of social insurance, characterized by the autonomy to issue statutes and the guarantee of self-administration, and for the system of participation by employees and employers and the duty of employers to hand over the contributions. That is why the most important parliamentary initiative before the actual legislation on social insurance, the 1878 resolution by the delegate Stumm on the introduction of disability and old-age funds that was supported by the Conservatives and the Center Party, copied the model of the funds for miners.[23]

A survey of the socio-political landscape in the 1870s reveals extraordinary shortcomings, an assessment also generally shared by contemporaries. The system of aid funds, the system of guild sickness funds, work-based provision that was

[20] "Gesetz über die eingeschriebenen Hülfskassen v. 7. April 1876," BGBl. des Norddeutschen Bundes, p. 125. On the influence that the *Verein für Socialpolitik* exerted in this law see Töpfer (1970, p. 163), Plessen (1975).

[21] A comprehensive account of the development of mining law in the nineteenth centuries given by Winkler (1979); on social protection in mining law see Thielmann (1960), Lingnau (1965).

[22] "Preußisches Gesetz betr. die Vereinigung der Berg-, Hütten-, Salinen- und Aufbereitungs-Arbeiter in Knappschaften, für den ganzen Umfang der Monarchie, v. 10. April 1854," PrGS, p. 139.

[23] As already in Drucksache des Reichstags des Norddeutschen Bundes 1869, no. 132 d, which led to the "Reichshaftpflichtgesetz" of 7 June 1871. The bill was presented again in 1878 (Reichstagsdrucksache 1878, no. 9) and debated on 27 February 1879. A year later, Stumm once again requested a response from the government (Reichstagsdrucksache 1880, no. 17).

taking shape only in major industry (Krupp, Zeiss, Stumm), the incomplete liability in cases of accidents in the workplace ("Reichshaftpflichtgesetz vom 7. Juni 1871") – all of this together did not form an adequate protection against the misery and risks faced by factory workers. Commercial self-help was still in its infancy. The discriminatory poor relief and the slowly spreading church-based work of charity fought merely the symptoms, and because of their underlying motivation alone – reflecting in part the authoritarian state and in part a mixed political-charitable interest – they were not able to attack the causes of the workers' misery at their core.

3.3 Reform Attempts

In the wake of the first large miners' strike in Lower Silesia (1869), Bismarck, as the Prussian Minister President, thought about "giving those new formations that are presently – following the elimination of the old, defunct commercial corporations – crystallizing out of the mass that is now in flux, once again a corporative form, to the extent possible, and place them into a reciprocal exchange with corresponding organs of the state."[24] This was aimed at reviving the old system of cooperatives, which was now intended as an entity representing equally employers and employees. It was to be tied as closely as possible to the state, for example, through state factory inspectors. This approach was not only thwarted by the Franco-Prussian War of 1870, but it also encountered resistance at home.[25]

Still, the issue was pondered further in spite of the founding of the Reich. There were discussions about measures against the Socialist "International" and about improving the condition of the workers. Bismarck was hoping that "with the proper intervention by the state it will be possible at this time to reconcile the majority of the workers with the existing order of the state, and to bring the interests of workers and employers once again into harmony."[26] But there was disagreement and controversy over how to get there. While some, like Bismarck's adviser Hermann Wagener, opted for vigorous state intervention, others sought to limit state measures to the absolute minimum in order to stimulate the self-organization and self-help of the working class (Th. Lohmann) (Rothfels 1927; Machtan 1995). But at least a consensus emerged about a long catalog of urgent issues.[27] In November 1872, Prussia and Austria talked about their positions at a conference. But the *Kulturkampf* soon overshadowed the constructive elements of social policy,

[24] Born et al. 1993–1997: Quellensammlung zur Geschichte der Deutschen Sozialpolitik 1867 bis 1914, 18 volumes. Quote from vol. 1, p. 182. An extensive review is by Ritter (1997).

[25] Officials within the Prussian Ministry of Trade were concerned about competition between the commercial cooperatives and the existing aid funds. See the verdict by the Minister of Trade v. Itzenplitz on 2 April 1870, in Born et al. (1993–1997, vol. I, 1, pp. 188–197).

[26] Bismarck to Itzenplitz, 17 November 1871, in Born et al. (1993–1997, vol. I, 1, p. 249f.).

[27] "Denkschrift Stüve", in Born et al. (1993–1997, vol. I, 1, pp. 253–256).

especially since Bismarck believed that he could detect the "collaboration of Jesuit and Socialist agitation."[28] With that, Bismarck could not hope for the Center Party as his allies. Moreover, the repressive forces in penal and commercial law, labor law, the law of assembly and association vis-à-vis the growing social democratic movement led to a further alienation of the working class.

After the outbreak of the economic crisis of 1873, the doubts about economic liberalism, the so-called Manchester Theory, grew stronger. The "state" once again moved into the center. It was to intervene preemptively, on behalf of both the affected sectors of industry and the workers, to prevent social unrest. The "state Socialist" Hermann Wagener now pushed for a "genuine solution to the social question."[29] As he saw it, the state should seize the leadership in economic and social policy and not relinquish the field to big capital.[30] State intervention, long known and practiced in Germany in any case, no longer seemed out of the question, but the forms it would take were still unclear. There were discussions about creating jobs through state contracts, the intensification of communal building activities, and protective tariffs, on the one hand, and through a fundamentally new, "positive" social policy, on the other. Although the latter was only beginning to emerge in rough outline, it became increasingly urgent as mass job cuts were exacerbating the situation of the workers (Spree 1978).

Bismarck exploited the two attempts on the life of Emperor Wilhelm I in May and June of 1878 in truly Machiavellian fashion to immediately step up the repression of the social democratic movement, though he simultaneously activated the idea that these measures had to be supplemented in a "positive" way. The Geheime Regierungsrat Robert Bosse articulated this idea,[31] and via the Prussian government it made it into the center of the deliberations, which already revolved around a new economic, agricultural, and social policy. Yet a new political program became feasible only within a new constellation of the political parties, especially through the incorporation of the Center Party.

Essential driving forces behind the new direction came from the sectors of the economy that were suffering. In opposition to the free-trade camp, a protective tariff was demanded, which was regarded as a temporary aid during the start-up phase, until national industry was strong enough to stand up to the competition of global trade. Advocates believed that the country would simply have to put up with the losses in the export economy. Bismarck, who now also took over the Prussian Ministry of Trade, was charting a course of "moderate, sensible state socialism,"[32] specifically for old-age and disability provision of the working class. He believed that the monopoly on tobacco was suitable as a source of financing.

[28] Decree by Bismarck dated 27 January 1873, in Born et al. (1993–1997, vol. I, 1, p. 436).

[29] "Denkschrift Wagener v. 31. Juli 1873", in Born et al. (1993–1997, vol. I, 1, pp. 457ff.).

[30] "Denkschrift Wagener v. 1. November 1875", in Born et al. (1993–1997, vol. I, 1, pp. 465ff.).

[31] Born et al. (1993–1997, vol. I,1, p. 504).

[32] Born et al. (1993–1997, vol. I,1, p. 598).

Objections from the liberals came immediately: by opening himself up to state socialism, they charged, he was preparing the way for Socialism – his talks with Lassalle were brought to mind. He was creating a "centralistic state bureaucracy," a "state insurance juggernaut," and a "system of state pension" for do-nothings. All that seemed antiliberal, patriarchal, and incompatible with the principles of progress and freedom. Moreover, critics argued that the financing was unsound and that the risk were not manageable in actuarial terms.

The latter point was certainly true from the private-sector perspective. However, if one pursued a cooperative solution that administered the risks of sickness, accident, and old age separately, incorporated the affected groups of workers gradually, raised benefits carefully, and worked with state subsidies, as Albert Schäffle proposed,[33] the enterprise did seem feasible. Thus, industry, as well, pushed for the introduction of compulsory old-age and disability insurance for all factory workers, "on the model of the miners' associations."[34]

A better solution to the stagnating system of aid funds also seemed increasingly important. The transformation of the older aid funds into "enrolled aid funds" was not really progressing. Evidently it was more than local communities could handle if the local industrialist did not favor this solution. Moreover, the communities of solidarity were too small and thus vulnerable to risk. Finally, the Reich Liability Law of 1871, with its obsolete focus on personal "fault," had not stood the test of time. In the case of industry-typical accidents, jurists and social politicians therefore advocated the principle of "liability," until the breakthrough to the modern principle of strict liability around 1880 (Esser 1969; Barta 1984). In 1880, Bismarck after reading a "well-written memorandum from Kommerzienrath Baare in Bochum," stated that one would have to take the path of an "insurance," indeed, one would have to "arrive at the proposal of a Reich or state insurance."[35] In that sense it is accurate to see the real beginning of social legislation not in the Anti-Socialist Law (21 October 1878) or in the Emperor's Message (17 November 1881), but in the problems with cases of harm in industry that had been articulated since 1868.[36]

3.4 Bismarck's Social Insurance

3.4.1 The Political Background

It was thus the interaction of various factors from social, economic, and political-institutional history that made Germany the pioneer in state-initiated and

[33] Born et al. (1993–1997, vol. I,1, p. 676).

[34] Interpellations by Karl-Ferdinand Stumm, 11 September 1878, and 12 February 1879. On this see Hellwig (1936, pp. 185ff.).

[35] Stürmer (1978, p. 169f.). Bismarck was referring to Baare (1880). On Baare see Däbritz (1953).

[36] Born et al. (1993–1997, vol. I, p. 2 [1993], XXI).

state-guaranteed social insurance. Heavy and textile industries, the agrarian world, the workers' movement, the churches, scholarship, and – above all – the ministerial bureaucracy in Prussia and the Empire had been influencing one another since the 1860s, and against the backdrop of changing party constellations they created the climate in which the decision to seek a "large," primarily state-determined solution could arise. As time has passed, scholarship has described this interaction in ever greater detail.[37] A large edition of documents added a wealth of new information in recent years.[38] All this had made it a good deal easier to interpret these events, as the picture we have of them has become sharper and many a legend has been exploded. Still, the interpretation depends crucially on the questions that are asked. The hypothesis shapes the perception, just as, conversely, fundamental a priori attitudes influence the articulation of hypotheses. Much depends on whether one sees Bismarck's social legislation as a political maneuver against the socio-revolutionary workers' movement, or as an expression of welfare state, Christian paternalism, or whether one sees it as an element of the "inner founding of the Reich," a historically "necessary" transition to "organized capitalism" and thus a mutual supportive action on the part of capitalism and constitutional monarchy. It is also crucial what weight is accorded the socio-economic conditions and interests, the creative power of the ministerial bureaucracy and the party apparatuses, and, finally, the dominant statesman of the age, Bismarck – provided this kind of "weighting" is methodologically articulated instead of being implicitly packaged in value judgments.

3.4.2 "Idea" and Motive

"Bismarck's workers' insurance" combined very heterogeneous motivations and driving forces, something that is quite evident from the laws themselves. Yet the laws were always conceived of as a single entity, as expressed by the Emperor's Message of 1881. To be sure, the genesis of this bundle of laws[39] shows many obstacles and stoppages, specifically on accident insurance, and the original intentions of Bismarck, but also of Lohmann, were in the end not attained. Still, after initial uncertainties, it was a project that was based on a stabilizing "idea," but it did not rule out a variety of secondary purposes. The idea that it was imperative, in the wake of two attempts on the life of Wilhelm I in 1878, to supplement the intensified repression of the party of the workers' movement with something "positive," for example, with a reform of the commercial code, the system of aid funds, and protection against occupational accidents, appeared from the fall of 1878 and gradually grew stronger. In the spring of 1879, Bismarck himself was finally

[37] Craemer (1940), Vogel (1951), Ritter (1983, 1998c), Mommsen (1993, pp. 624–665), Wehler (1995, pp. 907–915).

[38] See also Born et al. (1993–1997).

[39] Peters (1978), Rückert (1990), Köhler (1990).

determined to take this path. What followed were planned campaigns against free trade and the Progressive Party. In 1880, Bismarck using the accusatory word of his political opponents, argued in favor of a "moderate, reasonable state socialism."[40] The shrugged off warnings from the liberal side against too much state influence; on the contrary: he was precisely interested in the influence of the state. He wished to demonstrate that the repressive state, which he did not want to yield even an inch, was perfectly compatible with controlled "state socialism." That is why, unlike Theodor Lohmann, he argued against too much self-help and self-participation. What he envisioned was the worker as a materially secure "small state pensioner." He would have preferred to do away entirely with contributions from the workers.

The project was conceived as "the completion of the laws to protect against the social-democratic strivings,"[41] and as the Imperial Message of 17 November 1881 put it, it was borne by the conviction "that the healing of the social harms will have to be sought not exclusively through the repression of social-democratic excesses, but equally so through the positive promotion of the welfare of the workers."[42] The basic idea of removing from the state the odium of class rule and blunting socio-revolutionary efforts by providing material security characterized the bundle of laws that was passed between 1883 and 1889. In that regard, social insurance was a "response" in several directions. It reacted to the domestic political pressure exerted by the social-democratic movement through the ballot box and strikes, but also to the needs of industry, which wanted a predictable solution that was shaped with input from its organizations. It drew the lesson from the experiences with the fragmented system of sickness funds, the visible shortcomings of accident protection, and the lack of old-age and disability insurance for industrial workers. The feeling of entering unknown territory is palpable among all the actors. Still, official government rhetoric emphasized the traditional, the connection between the laws and Christianity, which commanded positive help for the weak and the needy, and with the previous system of poor relief – indeed, it was said "the measures that can be taken to improve the state of the unpropertied class are, in truth, merely a further development of the idea underlying the state system of poor relief."[43] However, this statement conceals the fundamental innovations that had now been introduced: a shift from the old system of poor relief to future pension rights backed by a legal entitlement, from voluntariness to compulsory participation, from the communal to the Reich level. Very different from before, the "state" now became the focus – or more precisely: the social monarchy in the sense of Lorenz von Stein (Blasius 1971; Forsthoff 1972, pp. 549ff.; Saile 1958). As a neutral power, this monarchy was

[40] Born et al. (1993–1997, vol. I, p. 598).

[41] Opening speech in the Reichstag, 4th legislative period, IV. session 1881.

[42] Tennstedt (1981, pp. 663–710). The original printing of the draft and the message in Zeitschrift für Sozialrecht (1981, pp. 711–728, 730–735). See also Kafka's literary treatment in Kafka (1961). On Kafka as a jurist of social insurance law see Kafka (1984).

[43] "Amtliche Begründung zum 1. Entwurf eines Unfallversicherungsgesetzes 1881", Reichstagsdrucksachen 1882, p. 31.

supposed to smooth out class differences, to take a step toward modernity in order to preserve itself. In this appeal, "monarchy" was a metaphor and its political neutrality a fiction; the king was to take the initiative and set a worker-friendly development in motion. That view was in line with the constitutional situation. The government depended on the king, not on the political powers in parliament. In that regard, Lorenz von Stein, who wanted to achieve social progress, was aiming in the right direction. Of course, in real political terms the monarchy was neither neutral nor independent. Within the spectrum of party politics, it was oriented toward a slice ranging from the old-Prussian Conservatives to the National Liberals.

The Social Democrats were completely familiar with this perspective, which is why they were also suspicious of this policy. Bismarck's intent of driving a wedge between the social democrats and the workers was obvious. The policy of repression had not been abandoned, it had not even been moderated. The unions were not recognized and the instruments of civil and criminal law to contain labor struggles continued to be used. The fact that the workers' movement was right in seeing in Bismarck, who had never made a secret of his deep aversion to the political and social emancipation "from below," not a true ally, but a Machiavellian arch-conservative, made them look at this entire endeavor with suspicion. Since its intent was to divide the working class and the political party, workers' insurance remained, at least during the process that gave rise to it, an undertaking of the ruling class.

The bourgeois camp became increasingly receptive to reformist ideas that affirmed the capitalist economic system, but wanted to cushion its negative social consequences through state interventionism. These ideas had to defend themselves against both dogmatic Liberalism and the still predominantly Marxist social democratic movement, and in 1872 they created a widely regarded platform for themselves in the *Verein für Socialpolitik* (Association for Social Policy) (Gustav Schmoller, Lujo Brentano, Adolph Wagner, Wilhelm Roscher, Albert Schäffle, and others) (Töpfer 1970; Lindenlaub 1967). In 1874 the *Verein* published expert opinions and the resolution "On old-age and disability funds for workers," 1879 saw the publication of Brentano's work "Die Arbeiterversicherung gemäss der heutigen Wirschaftsordnung" ("Old-age insurance in line with the economic system today") and in 1881 came his piece that was sharply opposed to Bismarck "Der Arbeiter-Versicherungszwang. Seine Voraussetzungen und seine Folgen" (Berlin, 1881). The topics discussed by the *Verein* in the first decade (1872–1882) and its connections to members of the legislature[44] show how general the conviction had become that unfettered economic liberalism was a threat to the system by provoking revolutionary pressure from below.

There was an unavoidable blending of motivations (Born 1960). A social ethos grounded in the role of the territorial ruler and in Christianity, the visible failures in the police suppression of the social democratic movement, and the promise of

[44] Töpfer (1970, pp. 158ff.). The economist Albert Schäffle was directly involved in the social insurance legislation.

"positive" social legislation that Bismarck gave when the anti-Socialist laws were enacted in 1878, the switch of the formerly free-market farmers and their parliamentarians to a policy of protective tariffs (1879), finally, the publications of the liberal press, the churches, and the economists mentioned above – all of this, taken together, made possible the bundle of insurance laws that constitute, alongside the Civil Code, the most important legislative achievement of these years.

The appeals to the Reichstag to come together and pass "positive" social legislation extends from the King's Speech in February 1879,[45] to the King's Speech in February 1881,[46] to the actual Imperial Message on 17 November 1881. The latter, carefully edited by Bismarck (Tennstedt 1981, pp. 663–710), reiterated once again the basic idea that "the healing of the social harms will have to be sought not exclusively through the repression of social-democratic excesses, but equally so through the positive promotion of the welfare of the workers. We regard it as out imperial duty to once more recommend this task warmly to the Reichstag." The legislative program was now: revising the draft of 8 March 1881, for accident insurance and the bill about the "consistent organization of the commercial system of sickness funds." "But also those," the text continued, "who become unfit to work through age or disability have a justified claim against the whole for a higher degree of state care than could be provided them until now." This open formula was supposed to make it possible to pursue various options, though the text went on to single out among them the unification of the "real powers" of national life "in the form of corporative cooperatives under state protection and promotion" as the goal. This was a reassuring signal for those who had previously spoken out against a purely "state-socialist" direction.

3.4.3 The Constitutional Situation and the Social Question

The constitutional dimensions of what transpired are impossible to miss. National and social questions came together in a half-finished state structure[47] and necessitated an intensive linkage of domestic and foreign policy. Observers rightly pointed out that the "incompleteness and uncertainty, the ongoing problems of the new Reich, the dangers it faced at home and abroad" (Rothfels 1962, p. 166) led to the typically Bismarckian "policy of external risk, and the creation of internal alliances of heterogenous forces internally through the ostracism of a minority" (Hofmann 1977, pp. 77ff.). In spite of the broad support of the middle class for the establishment of the Reich and the legitimacy it conveyed, Bismarck always remained conscious of the fragility of the entity that was created in 1871. In the

[45] Stenographischer Bericht Reichstag 4. Legislaturperiode, 2. Session 1879, vol. 1, pp. 1–3.

[46] Born et al. (1993–1997, vol. I,2, p. 550).

[47] See Rodbertus (1880, p. 84) who stated that the Paris Commune was "a providential warning that the German state is called upon to address also the social question after it has solved the national one."

end, he left unresolved the fundamental problems of the German Reich, which had become apparent in 1878 in concentrated form: "the internal dynamic of the unfinished nation state, the discrepancy between economic-political modernization and a lack of democratization, and the strain on European politics that flowed from Germany's role as a great power" (Stürmer 1978, p. 45f., 1983).

This attempt at bringing together the "social monarchy" in the sense of Lorenz von Stein (Stolleis 1990) with the new interventionist forces from industry, church-based social work, and the reformist middle class, while at the same time preserving the idea of corporative self-help, was quite a balancing act. It demanded a lot from everyone involved: the Liberals had to give up their cherished basic principles, the economy had to accept being tied into and co-financing a state-dominated system of social protection, and the Center Party had to cooperate with a state which had just now relented in the *Kulturkampf*. Concessions also had to be made by champions of Christian-motivated corporative self-help, like Theodor Lohmann, or advocates of the idea of a corporative organization of the economy, like Albert Schäffle. In the end, nobody was quite happy; indeed, Bismarck himself regarded the result as a "parliamentarian and privy-councilor changeling" disfigured by the bureaucracy. It was no coincidence, Lothar Gall concluded, "that Bismarck, in his memoirs, did not say one word about this complex of laws, which was completed in 1889 with passage of old-age and disability insurance, and which represented in substance the most important legislative accomplishment of the last decade of his term in office" (Gall 1980, p. 648).

In spite of the verdict that social insurance was a failure because it did not achieve Bismarck's goal, the political integration of the working class, social insurance has unquestionably become a monumental achievement (Zacher 1979; Köhler and Zacher 1981). The path that was embarked upon at that time has held up for a long time. The institutions erected by it and thanks to it have survived two World Wars and two periods of ruinous inflation. Over the past century the effects it triggered, the medicalization of society along with an extension of the average life expectancy by around a generation, the drastic cut in industrial accidents through the work of the occupational cooperatives, finally, the securing of the greatly extended old age of broad segments of the population, have taken deep roots in the social structures. Without a doubt: a state-guaranteed compulsory insurance of dependent workers, whose assets are administered separately from the state budget, was obviously the appropriate response to the typical side-effects of the Industrial Revolution as they manifested themselves in Germany from the middle of the nineteenth century. The forms of labor had an enormous effect on social structures (Hahn 1998). The bonds and forms of support typical of agrarian societies – the family, neighbors, the village community – eroded, just as the independent protections of the trades (guilds, "aid funds") proved too weak and fragmented. Moreover, the help that the entire society mustered, especially through the churches, was based too much on voluntariness and good sentiments to be sufficiently effective in and resistant to crisis. Finally, the system of state poor relief that was tied to the local communities and rural districts (*Landkreise*) was not suitable for solving the great problem of the "social question." In that sense, the social

insurance created between 1881 and 1889, for all its diversity in detail, was a uniform response to a socio-political challenge.

3.4.4 Modernity and Traditionalism

By European standards, that response was especially early. That is surprising, since Germany is considered a "latecomer nation" (*verspätete Nation*) (Plessner 1969) when it comes to industrialization and national unity. But that seeming contradiction dissolves if one considers that this step into modernity could succeed only because elements of pre-liberal statehood were better preserved in Germany than elsewhere. Social insurance, established as compulsory insurance under public law, with "self-administration" reminiscent of the earlier guilds and financed by contributions and state subsidies, represented a mixture of half-authoritarian and autonomous structures. Here, solicitous coercion, on the one hand, and self-organization, on the other, came together in a way that is also evident in Bismarck's system of government itself. This leads us back to the deeper roots of Prusso-German history.

Modern scholarship on the "older state and administrative doctrine" (Maier 1986; Härter 1993) of the Ancien Régime has shown how intensively the traditions of the princely state articulated there had been carried over beyond the French Revolution well into the nineteenth century. The pronounced Christian notion of office and service, the expectation toward authority that it would ensure the realization of "happiness" and "good order," the penchant, finally, to reform the administrative apparatus rather than overthrow the state – all this did not really change even in the age of liberalism. If we look at the history of public law, we can see, also after the transition to the nineteenth century, the dominance of the administrative theorist over the state theorist, the continuation of "*Policeywissenschaft*" (science of public policy) as part of legal education, and the combination – so typical of Germany – of state administration and self-governance, federal structures, and a pronounced sense of social responsibility.

To be sure, this current of tradition was influenced by the Enlightenment and the constitutional movement after 1818, but it retained its characteristic in so far as the rigid reduction of the state's tasks to "security and order" was not fully accepted in theory, let alone practiced. *Policey* was slowly subjected to the constraints of the *Rechtsstaat* (state under the rule of law), but until the middle of the century it remained comprehensively in charge of "welfare," it preserved the link with politics and the general sciences of the state, and it showed a particular openness to social questions, at least until the so-called Gerber-Laband Positivism carried the day (Scheuner 1977). In the work of Lorenz von Stein and his conception of the "social monarchy," this way of thinking carried on even to the beginning of the twentieth century, specifically in Austria (Forsthoff 1972; Schnur 1978).

In nineteenth-century national economics, as well, the lines of connection to eighteen-century thinking were never fully severed (Winkel 1977). To be sure, the ideas of Adam Smith were received in the first two decades of the nineteenth

century (Chr. J. Kraus, G. Sartorius, A. F. Lueder, G. Hufeland, J. F. E. Lotz, K. H. Rau), and Liberalism was considered the "dominant doctrine." But everywhere one could see state-economic modifications of Smith's position, modifications that sought to do justice to tradition, to the conditions created by a patchwork of small states, and to the unchanged, strong role of the state in economic life. Even in the liberal, Prussian-led *Zollverein* (Customs Union), the champions of free trade (Deutscher Freihandelsverein 1847, Kongress Deutscher Volkswirte 1857) were never completely triumphant (Hentschel 1975). Practitioners, even those who can be considered Smithians, the likes of P. Ch. Beuth in Prussia, engaged in an intensive promotion of industry (Henderson 1958; Ritter 1961; Mieck 1965; Fischer 1962). The theory and practice of protective tariffs remained alive and well. The originally Romantic criticism of enlightened Liberalism culminated in part in theological blueprints (A. Müller, F. X. v. Baader), but in part it was also translated, supported by the idea of the nation state, into a national economic program that sought to combine free trade, the promotion of industry, and economic unity (F. List). Even in the years from 1860 to 1873, at the height of Liberalism, we find notions of the "common weal," and the representative of the Historical School of Economics (W. G. F. Roscher, K. G. A. Knies, G. von Schmoller) underscored the importance of state intervention in the sense of mercantilism.

Finally, the Socialist literature that emerged on a broad front after 1848 offers a substantial corrective to the notion that Liberalism "ruled" nineteenth-century economics. Especially the state socialists and the champions of the idea of the "social monarchy" – such varied thinkers as Johann Karl Rodbertus-Jagetzow, Victor Aimé Huber, Hermann Wagener, Ferdinand Lassalle, Lorenz von Stein, Albert Schäffle, and others – formed an important counterweight. They managed to get social legislation off the ground, indirectly via the state-socialist wing of the Social Democratic movement, and directly via the *Verein für Socialpolitik* and the bureaucracy.

This continuity is meant when observers speak of Germany's special "state-economic tradition."[48] It appears in the historical-philosophical guise of the Historical School, of Right-wing and Left-wing Hegelians, and as the Christian philosophy of Stahl and von Gerlach. Always, the state and not society retains the final responsibility for economic life and social conditions. The state becomes (secularized) "God on earth," the "greatest moral institution for the education of mankind" (G. v. Schmoller), the height of cultural evolution. It is not only the guarantor of security or the distributor of material benefits, but also a Christian-moral state. In the face of these traditions, Bismarck's embrace of "state socialism," which seems so sudden and unexpected at first glance, contains clear elements of a return to principles that had by no means been forgotten.

[48] Treue (1970, p. 529).

3.4.5 The Decision in Favor of Compulsion

The orientation toward the state that is typical of the German tradition, moderated and rendered bearable through the ethical bonds of its roots in Christianity or transcendental philosophy, suggest the call for the "state" in situations of crisis. Under the conditions of the constitutional monarch, "state" referred primarily to the monarchy – "if it could only decide to become a social monarchy" (Lassalle).[49] The state or monarchy should answer their social calling, they should above all impose limits on unfettered private autonomy. The industrialist Harkort wrote in 1844: "The state must intervene to prevent further ruination, so that the stream of pauperism, growing incessantly, does not disastrously deluge the blessed pastures of the fatherland. . . We demand of the state that it not only command, but also step in to help and promote" (Schraepler 1964, p. 87f.). Four decades later it sounded like an echo when Bismarck declared: "The state must take the matter into its hands."[50] This principle was accepted by line that stretched from the Conservatives to the Lassallians, within the bureaucracy (stripped of its liberal top echelons), and in broad segments of the middle class, while orthodox Liberals, the revolutionary wing of the Social Democrats, large entrepreneurs, and segments of the Center Party were opposed for varied reasons of their own.

Still open was the question of whether this appeal to the state would invariably lead to compulsory insurance. The debate that was carried on reveals the dilemma of the Liberals: to affirm the purpose of social protection while rejecting the compulsion necessary for achieving it. Characteristically enough, no consensus on this point was possible also within the *Verein für Socialpolitik* (Lindenlaub 1967, vol. 1, pp. 85ff.). After the issue of compulsion had already been contested over the factory inspection law (§139f. GewO),[51] National Liberals spoke once again of "state omnipotence" and "state bureaucratism" (von Treitschke 1874, pp. 67–110, 248–301), and they pointed to the contradiction between a liberal commercial order and compulsory protection (Brentano 1881); indeed, they saw Bismarck and the ministerial bureaucracy as "already mired in Socialism up to their shoulders."[52] As the Liberal Hirsch put it: "The compulsory fund is the direct path to Communism" (Hirsch 1875, pp. 11, 38).

[49] Letter of 24 February 1864 to Victor Aimé Huber, in Mayer (1911, p. 192).

[50] Rothfels (1925, p. 398); Bismarck in the Reichstag on 15 March 1884: "Does the state have the obligation to care for its helpless citizens, or does it not? I assert that it does have this obligation, and not just the Christian state, as I ventured to suggest once with the words 'practical Christianity,' but every state in and of itself."

[51] In this case, Bismarck, contrary to his support for compulsion when it came to social insurance, opposed compulsion. Theodor Lohmann, meanwhile, who otherwise tended to reject compulsion, was in favor based on the experiences to date, and his position carried the day in the government draft of 1878 and the final bill.

[52] Ludwig Bamberger in the Reichstag on 12 May 1884, Verhandlungen Reichstag, vol. 75, p. 546.

Bismarck had early on given this slogan a positive turn: "Many of the measures we have taken are socialist, and as it is, the state in our Reich will have to get used to a little more Socialism."[53] He reminded his audience that "the socialist element is nothing new, and the state cannot exist without a certain Socialism,"[54] and of the everyday reality and positive effects of compulsion in the past, as with the liberation of the peasants, in poor relief, and in compulsory school attendance. He sought historical points of connection in Frederich the Great's policy of protective tariffs and to Freiherr vom Stein. State compulsion seemed to be the historically more lasting and more successful political instrument.[55] At the *Verein für Socialpolitik* he received backing from Albert Schäffle with the likewise historical reference to the abolition of feudal dues on the land. Compulsion (to preserve liberty), he argued, was "not a new and unheard-of intervention of public law;" for "voluntariness alone is a rope by which especially the masses in need of help are not able to pull themselves out of the morass of economic misery" (Schäffle 1884, pp. 10, 112). The new compulsion could thus be situated within the traditional dialectic of subordination and protection, of freedom vs. security. Against a weakly rooted Liberalism, the fundamental willingness of conservative thinking to overlay the freedom of the contract with bonds of ethics and public law remained the predominant tendency.

When it came to sickness insurance, the existing organizational substructure was complemented with the principle of compulsion, and agreement extended well into the liberal camp, since the previous voluntariness had quite clearly proved inadequate.[56] On accident insurance it was the very issue of compulsion that led to a break between the rather liberal Lohmann and Bismarck, who was pursuing a different, vague idea, namely to develop the commercial occupational cooperatives into a "parliament" organized by estates to take the place of the Reichstag that was a thorn in his side. However serious one might judge this idea to have been, it is evident that the issue of compulsion, specifically, remained controversial within the bureaucracy. The "state socialists" and Bismarck opted for compulsion, while the opposing party would go only as far as "indirect compulsion." The front lines were similarly drawn within the Reichstag. That is also why the principle of compulsion carried the day on pension insurance with a slim majority, which was created only by splitting up the Center Party.

To explain the eventual triumph of the principle of compulsion, it is not enough to point to the bad experiences with voluntariness: for if voluntariness had truly been an incontrovertible tenet of faith, there would no doubt have been a greater effort to come up with positive incentives to get workers to enroll in the insurance.

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[53] Bismarck in the Reichstag on 12 June 1882; see also his Basic Speech on Socialism on 15 March 1884, Verhandlungen Reichstag, vol. 75, pp. 72ff.

[54] Bismarck in the Reichstag on 15 March 1884, Verhandlungen Reichstag, vol. 75, pp. 72ff.

[55] Bismarck in the Reichstag on 14 June 1882, Stenographischer Bericht 5. Legislaturperiode II. Session: 437.

[56] This is how Theodor Lohmann justified the draft of the sickness insurance bill. See Rothfels (1927, p. 54).

But voluntariness was *not* such a tenet. The liberal era had lasted barely more than a decade in Germany. Liberalism was not the real political force, especially since it was internally divided. The Prussian civil service, the army, the land-owning nobility, and the church were nearly all conservative through-and-through. That meant, however, that a willingness to engage in social reform was more widespread among them than among the economic liberals (Schmoller 1874, p. 342). What flowed together here was the welfare-state tradition of the eighteenth century, the Lutheran ethic of service, and a mistrust that existed among the noble leadership strata toward the new powers of industrial capitalism. The liberal Ludwig Bamberger could thus declare in the Reichstag, with an undertone of resignation: "If this idea were feasible anywhere in the world, it would be Germany. What is called the social monarchy, the connection between a strong sovereign power – resting on a strong army – and socialist view and endeavors, if it were feasible anywhere in the world, that much I admit, it would be in Germany."[57]

3.4.6 Bureaucracy and Parties

One of the classic analyses of the process that gave birth to social insurance concluded that the ministerial bureaucracy, influenced in many ways by science, could "be seen, on the whole, as the real bearer of the social legislation" (Vogel 1951). It is in fact true that it functioned not only as the coordinating link for the various impulses coming from Bismarck, industry and its new organizations, and the parties; rather, it was substantially involved itself, for example, through the likes of Hermann Wagener, Robert Bosse, and Theodor Lohmann. As it was, the role of the ministerial bureaucracy was particularly important within the constitutional monarchy, because it knew it had the backing of the "monarchical principle" and was independent of parliament. Since the eighteenth century, Prussia, and thus also the Reich that was so closely intertwined with it, was in a special sense an "administrative state;" it was governable and capable of integration only thanks to its excellent, vaunted administration. The rebuilding of the country after the catastrophe of 1806 took place through administrative reforms "from above." Between 1815 and 1848, the administration was seen as a kind of replacement for a constitution. And now, after the founding of the Reich, specific conditions were added that strengthened the self-confidence of the growing Reich administration (Morsey 1957). Bismarck's repeated attempts to put pressure on the Reichstag and the Bundesrat, for example with respect to the representation law (*Stellvertretergesetz*), protective tariffs, and the anti-Socialist laws (Binder 1971), indirectly boosted the power of the ministerial bureaucracy. By seeing itself as the instrument of the monarchy, it partook in the latter's claim of being above the parties. What was "irreconciled" in parliament, it could attempt to bring together again in a "social policy of reconciliation" (Th. Lohmann).

[57] Reichstag, Protokolle, 70th session on 18 May 1889, 1839.

Even if the parties (like the Center Party), the Prussian conservatives, the *Verein für Socialpolitik*, and other groups had provided significant stimuli, on the whole it remains true to say: The bearer of social reforms in their entirety was – as in Prussia at the beginning of the nineteenth century – the upper civil service (Treue 1970, p. 515), but a civil service that was directed rather forcefully in a new direction by Bismarck. At first the Prussian Ministry of Trade was dominant, later the Reich Office of the Interior.

The importance that the ministerial officials had in this area can be seen indirectly also in the influence exerted by industry and private insurance companies, for its was precisely the officials that provided a successful point of access, and not the Reichstag. And so the industrialist Louis Baare sketched the basic outlines of the accident insurance law in an 1880 memorandum, Tonio Bödiker, the first president of the Reich Insurance Office, continued his career with Siemens & Halske, and the shape of pension insurance in the Prussian *Volkswirtschaftsrat* (National Economic Council) was substantially influenced by Johann Friedrich Jencke, the Director General at Krupp and expert on social policy in the Central Association of German Industrialists (Althoff 1940, p. 181). To be sure, many lines of connection also ran between the parties in the Reichstag and the bureaucracy. That is true above all for the Conservatives, the Christian Socialist under Stoecker, the conservative wing of the *Verein für Socialpolitik* (A. Wagner, G. von Schmoller, A. Schäffle, G. von Schönberg) and the variant of "state Socialism" advocated there.[58] It also holds – though with qualifications – for the National Liberals and the Center Party. Early and independent impulses for social policy came especially from the Center Party, and in modified form they were able to become part of Bismarck's body of laws.[59] The accident insurance law, for example, came about as a clerical-conservative compromise (Ritter 1997, p. 700). The Social Democrats, however, remained decidedly opposed, to the extent that at the time the current around Bebel and Liebknecht was dominant, and not the reformist group (Auer, Grillenberger) that become stronger only later. To them, State Socialism was the attempt by the bourgeoisie to do what Lassalle had counseled, namely, "to open the valves in time to preempt an explosion." The obvious intent was to separate the working class from its political leadership. The SPD's resolution on State Socialism in 1892 was still very firm: "Social Democracy is by its nature revolutionary, State Socialism is conservative. Social Democracy and State Socialism are irreconcilable opposites" (Domann 1974; Martiny 1976). The left Liberals,

[58] Rothfels (1935, p. 59): "Society, shaped by the state, and the framework of the state filled in by a well-structured social body, these are the basic ideas of so-called State Socialism." On Hermann Wagener see Saile (1958).

[59] See, for example, the proposal by Count v. Galen on 19 March 1877, Reichstagsdrucksache no. 74, p. 274, on worker protection (Sunday rest, protection of trades, factory worker protection, restrictions on youth and women's work, and so on), freedom of movement, and liability. See also Vogel (1951, pp. 58ff.). Moenning (1927), Eickhoff (1932), Reiss-Vaseck (1934), Quandt (1938), Bauer (1974).

led by Richter and Bamberger, acted out of different motivations but ended up taking the same oppositional stance (Kelsch 1933; Mueller 1952).

Far more important in this regard than the direct contacts between the bureaucracy and the parties was probably the fact that the ministerial bureaucracy tailored its draft bills ahead of time to the positions of the parties to give them a chance of passage. The parties were the constitutional eye of the needle on social legislation, and they made intensive use of that function, especially on accident insurance. The Center Party had a key role in the debate over self-administration and state subsidy. This relativizes the claim about the dominance of the bureaucracy: it did not remain unaffected itself, since Bismarck removed its most important liberal leaders, and it was open in various directions to influence from the organizations of industrial entrepreneurs, the Verein für Socialpolitik, and the parties. But the heart of the observation that the bureaucracy played a leading role remains true, especially against the background of the traditionally important role of the administration in Germany and the theoretical and practical traditions reaching back to Federick the Great's Prussia and still in place in the nineteenth century.

3.4.7 Self-administration

The real counterweight to the use of compulsion by way of public law in social insurance was to be the idea of self-administration. This was an effort to integrate a principle that had unparalleled success in the course of the nineteenth century. "Self-administration" signaled independence from the absolutist "state administration," democratic participation, and the autonomous organization of society (Stolleis 1990). The Historical School connected it to the memory of the "Germanic" principle of the free association of groups (*Genossenschaft*), and it elevated the opposition between centralized political power (*Herrschaft*) and *Genossenschaft* into a structural characteristic of history. The principle became accordingly important in the communal government after the Prussian City Code of 1808, in von Humboldt's university reform after 1810, in the reorganization of the trades after the abolition of guild constitutions, and in the Lutheran state churches, which already during the nineteenth century were emancipating themselves from the control of the church by the territorial ruler and gradually arriving at self-administration (Heffter 1969).

It therefore made sense to employ this central institution, which mediated between state and society, also for social insurance to anchor this new form of protection with those at whom it was directed, and to make them aware that they were administering their own "patriconium" with it. The Center Party and the Christian Socials were also open to this. At the same time, one could use it to ease the distrust of Liberalism against "State Socialism."

Bismarck's attitude toward self-administration was not very decisive. On the one hand, he was moved by the idea of integrating the working class, but already accident insurance set up self-administration only for the industrialists in the form of the "Occupational Cooperatives" (*Berufsgenossenschaften*) – at the

suggestion of Schäffle and against Lohmann.[60] When it came to sickness insurance, the adoption of the strongly decentralized institutions of self-administration (1885: 17,511 funds) was motivated more by the idea of feasibility and the hope of winning the support of the Center Party, than by a fundamental commitment to self-administration. Additional impulses may have come from a sensitivity to the liberal concern over "state omnipotence" and "bureaucratism," but also from a specifically Prussian tradition of Freiherr vom Stein's idea of self-administration, and from a conception of British "selfgovernment" as mediated by Rudolf von Gneist (1869; Hahn 1995). At any rate, through its position outside of the sovereign administration, the social administration retained the historical connection to organized social self-help.[61]

Of course, self-administration was part of an entirely different historical context at the end of the nineteenth century. The separation of state and society, which had once been part of its very essence, was beginning to dissolve again with the move toward the interventionist state (Menger 1983). With Industrial Revolution and population growth, communal self-administration became once again dependent on state support, and in this way it got caught up in a process that hollowed out its competencies and finances, a process that would intensify into the "crisis of self-administration" in the 1930s (Köttgen 1931). Occupational self-administration also changed into a system of compulsory public-law associations with reduced autonomy and narrow legal parameters (Chambers of Trades, Industry, and Commerce, Chambers for the Healing Professions, Lawyers, and Notaries). The self-administration practiced there was more like a mixture of state administration (including the expertise of those who worked there) and the preservation of particular group interests. In a comparable way, the "self-administration" of social insurance has developed over time into a large bureaucracy removed from the insured, in which the decision-making spheres left to self-administration have become occupied by the associations of the parties to collective bargaining that emerged around the same time (Bogs 1973).

Already the contemporary verdict on self-administration within social insurance was not favorable, no doubt also because observers were comparing it, consciously or unconsciously, with other models of self-administration. The enlightened-liberal and simultaneously national pathos of the reformers of 1806 is something we look for in vain at the end of the nineteenth century. Workers were neither inclined nor able to assume in this idealized way the self-administration of their own material provision granted to them by the state, nor was Bismarck willing to convey the

[60] Schäffle (1905, vol. 2, pp. 143ff.); Rothfels (1927, p. 57). On the limited participation by Schäffle overall see also Oncken (1906, p. 254f.).

[61] See Bieback (1976) on the organization of social insurance in the form of public law entities (sickness funds, occupational associations) and of public-law institutions with corporative elements (Pension Insurance Funds).

impression, by emphasizing self-administration too much, that the state no longer had anything to do with social insurance. The important thing was precisely the positive connection to the state. For that reason, self-administration in the sense of a genuine participation by the working class stood from the outset on weak ground, even if the self-administration in the sickness insurance gave the SPD the chance to survive in the face of the repressive anti-Socialist laws. To Bismarck's disappointment, the hoped-for integration effect did not happen, and it probably could not happen, since the idea of bridging the class differences through self-administration was not viable. In the emerging mass society, self-administration could no longer be created by a legislative act, unless the older traditions still existed and could be revived, as was the case with sickness insurance. The latter saw the emergence of the so-called "rule of Social Democracy in sickness insurance" (Möller 1908; Tennstedt 1976, p. 390, 1991).

3.4.8 State Subsidy

The basic idea of social insurance was thus to deal with the social question through statist solutions "from the top down," and in so doing bring about the integration of the working class into the new state. Along this line, Bismarck's advocacy of state subsidies for the accident and sickness insurance was only consistent. He wanted what he had seen in France: "state pensioners" who would, if push came to shove, vote for the continuation of their pension, that is, conservative. The workers, as Hermann Wagener had put it in an earlier memorandum to Bismarck, were to be "won over to the idea of the Reich and bound to it through the benefits of the Reich."

With equal consistency, Liberals and the Center Party fought against state subsidies as the core of the Bismarckian "State Socialism" and managed to get it dropped from accident insurance. The state subsidy for pension insurance became a symbol of the emerging interventionist state, in the eyes of the Center Party a "very dangerous piece of Communism" (F. Hitze), in the eyes of industry a "fatal gift (*Danaergeschenk*)," a "legal title for an excess of policy."[62] Lujo Brentano believed the interventionist state was bringing the "downfall of political liberty and the nation's civilized behavior," and eventually the "ruination of culture" (Brentano 1881, p. 108f.). What explains the intensity of the debate over the state subsidy – especially in the Reichstag debates of 1–4 April 1881, and 13–15 March 1884 – is not only party-political differences, but also the realization that it would mean a significant loss of ground for Liberalism. The factual arguments – as laid out by Schäffle, for example – thus no longer took, not even the economic argument that the state subsidy lowered the social contributions of industry, which should have been in its interest.

[62] As said by the Association of German Millers in 1882, in Vogel (1951, p. 42).

In retrospect, one can say that Bismarck overestimated the integrative effect of a state subsidy as much as his opponents did its effect as a "pacemaker into state Socialism." The liberal middle class affirmed state help for the working class in principle, but it wanted to hold on to its own material and political position without any losses and at the same time prevent the power of the state from growing. The revolutionary wing of the workers' leadership was hostile to or at least suspicious of the "little material concessions" from the bourgeoisie (August Bebel, in Domann 1974, p. 120). Given its social structure, Prussian conservatism, which was pushing for a state solution to the social question, would hardly have been open to a Bonapartist pact with the working class against the bourgeoisie (Hofmann 1986, pp. 181–205). Such plans were unrealistic; Bismarck, too, seems to have employed them more as a conceptual model and an instrument of blackmail.

3.5 Sickness, Accident, Disability

"Bismarck's social insurance," a label it rightly deserves in spite of the complexity of the process that produced it, came into being through three major laws in 1883, 1884, and 1889.[63] This process was a difficult one. Accident insurance, originally intended as the first law, ran into considerable parliamentary opposition.[64] As a result, sickness insurance, which comprehensively restructured the already existing system of funds, moved to the head of the line, and it retained that place also in the *Reichsversicherungsordnung* (Social Insurance Act) of 1911. Finally, disability and old-age insurance, which, like accident insurance, was venturing into uncharted territory, was particularly controversial; the real process of debate began on 17 November 1887, with a memorandum from the Reich Office of the Interior and ended with the final vote in the Reichstag on 18 May 1889 (Rückert 1990, margin numbers 8–24).

3.5.1 Sickness Insurance

The sickness insurance for workers,[65] enacted by law on 15 June 1883, was the culmination of a long prehistory and opened up a new – at the time still

[63] "Gesetz betr. die Krankenversicherung der Arbeiter v. 15. Juni 1883" (amended 10 April 1892, supplemented 30 June 1900); "Unfallversicherungsgesetz v. 4. Juli 1884" (expanded 5 May 1886, and 13 July 1887), and "Gesetz betr. Unfall- und Krankenversicherung der in land- und forstwirtschaftlichen Betrieben beschäftigten Personen v. 5. Mai 1886;" "Alters- und Invaliditäts-versicherungsgesetz v. 22. Juni 1889" (amended 13 July 1899).

[64] Tennstedt and Winter (1993), Tennstedt (1995). The entire process of discussion can now be retraced in the two volumes of Born et al. (1993–1997, Part 1, vol. 2 [1992], and Part 2, vol. 2.1 [1995]).

[65] "Gesetz betr. die Krankenversicherung der Arbeiter v. 15. Juni 1883", RGBl., pp. 73–105, went into effect on 1 December 1884.

unforeseeable – development. In no other sector of social insurance did the tradition of cooperative self-help reach back as far as in the case of sickness insurance. The traditional "sickness, aid, and funeral funds" of the guilds, fraternities, unions, and miners' associations still existed, even if in modified form: the association of individuals that carried these funds had gradually dissolved into the industrial proletariat, while the external forms of the funds, with their cooperative structure and self-administration, continued (Höffner 1956). Though they had survived even the abolition of the guilds between 1806 and 1848, they were unable to cope with the problems of industrial society. They incorporated only a fraction of the workers, were unequally distributed regionally, and quickly exhausted their capacity. Membership numbers stagnated, the poorest were excluded from them, and voluntariness was not working. In Prussia in 1845, communities were given the initiative to compel journeymen and shortly thereafter also factory workers (1849) to join the funds, and to compel their employers to pay half of the contributions. However, the communities proved too weak to push through the funds over the opposition of factory owners. Even when lawmakers moved to the higher levels of district governments (1854), the fund system did not come together in a way that provided real geographic coverage. By 1874, only about 5% of the population was insured in a fund. When the private funds that had sprung up by 1876 were given a semi-public status through the Law Regarding Registered Aid Funds, only about two of eight million workers were insured, and the fund system was bewilderingly complex and not very effective, especially since the funds had not yet formed a union of solidarity with a corresponding balancing of risks (Zöllner 1981, p. 81).

It was clear that something had to be done: problems were growing, and the working class was becoming radicalized and politically organized. Sickness became a mass phenomenon of industrial society. The old causes of disease were joined by the factory with its stresses, poisons, and accidents. A poor diet and the infamous living conditions in working-class neighborhoods were breeding diseases. Sickness, in turn, did not mean primarily physical suffering, which one endured or cured as best as possible, but the loss of income that threatened the family.

Yet the liberal state was still being cautious. The Aid Fund Act of 1876 did not help much. The number of funds barely increased, and the system remained confusing, inefficient, and plagued by glaring differences in benefits and services. Everything was therefore pushing toward a grand solution, which contemporaries began to look for in the direction of a universal compulsory insurance for industrial workers. Models existed especially in the mining industry. Beginning in 1878, this grand solution seemed to be moving within reach, though the plan was for an accident insurance, while sickness insurance was accorded only a supplementary function.

The Imperial Message of 17 November 1881, thus promised a bill "that takes a standardized organization of the commercial system of sickness funds as its task." Since the creation of accident insurance was being delayed, sickness insurance was split off in 1882. The hope was that it could be advanced most readily, since the commercial system of sickness funds could be presupposed. The decision was now made in favor of broad compulsory insurance, which means that the existing

structures were completed both organizationally and in terms of the principle of compulsion. That principle laid down obligatory insurance for three large groups of workers and white-collar employees (up to an annual income of 2,000 RM) in mining, industry, the railroads, inland steam navigation, trade, and commerce, and allowed the expansion to further groups, especially in the transportation sector, home-based industry, as well as agriculture and forestry. With that, nearly all wage-dependent workers had compulsory insurance in one of the already existing or newly set up sickness funds (communal, local, work-based, guild-based, miners', and registered funds), and they received, for a maximum of 13 weeks, the costs for doctors and medications, half of a day-laborer's wage as sick pay, maternity benefits, and funeral benefits. This applied also in case of sickness from an accident in the workplace, which facilitated the adoption of accident insurance. In case of unemployment, the beginnings of a separate unemployment insurance was created as an annex to the sickness insurance (Koch 1971; Tennstedt 1977; Aribas 1981; Töns 1983; Frank 1994). The financing of sickness insurance was divided – against Bismarck's intention – such that workers and employees paid two thirds and employers one third. What explains the relatively weak parliamentary opposition to the law on the part of the Liberals and the Social Democrats is that a well-known institution was merely rounded out on the Reich level and made compulsory. This was not a genuine break with tradition.

The new compulsory insurance led rapidly to a doubling in the number of enrollees. In the self-administration, the workers, in accordance with their contribution, received a preponderance of two thirds over employers, a situation that would prove consequential over the long term. The benefits of sickness insurance after 1883 were modest by today's standards. There was sick pay of half the wage starting on the third day and up to a maximum of 13 weeks, free medical treatment from "district" doctors under contract with the funds, and material benefits. Mothers in childbed received 4 weeks of support. Measured against the previous conditions, however, this was satisfactory, and it soon rooted sickness insurance deeply within the public's consciousness. The more members it had, the financially stronger it got. By 1913, including family members, about 62% of the population was already insured. Benefits rose, but so did contributions. By the turn of the century, the number of doctors had doubled, while the population had grown by 11.5%. There was plenty of work for all medical professions, since sickness insurance had opened up an enormous market for the relevant services.

When it came to the distribution of this market, the collective power of the association soon pushed aside the individual. As in the working world, the years after 1894 saw the emergence, in rapid succession, of associations, first those of the sickness funds, and then, on the other side, the German Medical Association (*Verband der Ärzte Deutschlands*, the so-called *Hartmannbund*). Shortly before the First World War, there was a clash of interests. Until then, the funds hired doctors to provide services to the insured. It was their decision who received such a contract. Doctors who did not participate in this system felt threatened, especially since competition had already grown more keen within the medical profession. The goal of the Hartmannbund was to abolish the two-class system among doctors and

to give all of them the opportunity to treat insured patients. This was achieved only in 1913 through the threat of a general strike by doctors. The subsequent "Berlin Agreement" brought not only a regulated procedure for licensing sickness fund doctors, but also a ratio that was favorable to the medical profession: one doctor per 1,000 insured patients.[66] With that, the system in place to this day had been created, with all its advantages and disadvantages: it moved the costs incurred by the individual out of his view and left it to the associations to settle them. Doctors' fees, hospital per diems, costs for medications and services need not concern the patient. Behind this stands the humane notion of providing to the individual what he truly needs without fear about the costs. The flipside of this setup were and are the abstractness and anonymity of the process, which provides little incentive to the parties involved to keep down costs.

3.5.2 Accident Insurance

A year later, on 6 July 1884, the protracted process that gave rise to the accident insurance law – with a first Emperor's Speech urging its accelerated adoption[67] – reached its conclusion. The means of common law, by which the worker had to prove the fault of the employer in cases of accidents in the workplace, were no longer able to solve the problem of the enormous number of accidents that were occurring. The regulations in the Prussian *Landrecht* and in the Law on Domestics, which contained stronger elements of care, proved inadequate. This was also true of the areas using French law, even though the latter contained a liability by factory owners also for those acting on his behalf. And since 1838, the Prussian Railroad Law of 3 November 1838,[68] included tougher liability, which, by reversing the burden of proof, was heading in the direction of an "absolute liability." After the establishment of the North German Confederation, there were efforts to both improve liability under civil law and to make progress by expanding the Commercial Code. This gave rise to the "Law Concerning Obligatory Compensation for Deaths and Bodily Harm Caused by the Operation of Railroads, Quarries, Mines, and Factories, 7 June 1871," the Reich Liability Law. Under this law, as well, the "entrepreneur" could escape liability by invoking a higher power or maintaining that the employee himself was at fault. He was liable for those acting on his behalf only if they were at fault. Nobody could be happy with this regulation, neither the employees, who were forced to engage in costly procedures to prove fault, nor

[66] The debates were heavily politicized: "Social Democratic sickness funds" confronted "bourgeois" doctors, while the "Social Democratic Association of Doctors" (founded in 1913) stood between the two camps by advocating the right of doctors to organize. See Hansen et al. (1981).

[67] Emperor's Speech on 15 February 1881. Text in Born et al. (1993–1997, 1, section 1, Volume 2 [1993], no. 203). For a detailed account of how the law came to be see Quandt (1938).

[68] PrGS 1838, p. 505.

employers, who, for reasons of cost, preferred to see the problem of rising rates of accidents solved by way of insurance.

Still, the breakthrough to the (public law) idea of insurance proved difficult, especially since even the expert Theodor Lohmann was arguing only in favor of tightening liability. By the time the delegate Karl Ferdinand Stumm repeated his motion of 1869 on 11 September 1878, demanding obligatory old-age and disability funds for all factory workers, political conditions had changed. The breakthrough came with a memorandum by the Bochum industrialist Louis Baare (Baare 1880, pp. 31ff.; Tennstedt et al. 1993, pp. XXV–XXVIII). Bismarck decided to abandon civil law liability and embraced compulsory insurance, for which – and this was important to him – workers did not have to pay any contributions. This did away with the previous necessity of directing the worker to pursue civil legal action against his employer, which was practically tantamount to a denial of justice. The principle of an individual settlement of damages in accordance with the principle of liability for fault was replaced by the "social" principle of absolute liability with a simultaneous pooling of the risk. The benefits of accident insurance complemented those of sickness insurance, but it did not cover all accidents, only those "that happened in the workplace," and only those that impaired a person's ability to engage in gainful employment.

The political problem of accident insurance lay in the diverging opinions about whether it should be a genuine, state-independent insurance financed by premiums, or an institution carried by the Reich through state subsidies. The first draft, which envisioned a Reich institution as well as employer contributions and a Reich subsidy, revealed the faultlines: the Reichstag wanted a federal structure of the organization, contributions from workers, and no state subsidy. When it failed, the Imperial Message of 17 November 1881, urged the Reichstag to take the task "to heart again" and promised a revision of the draft. But the second version – not combined with sickness insurance – also failed, with the result that only the separation of sickness insurance (1882) and the revamping of accident insurance achieved the breakthrough in the third attempt (Quandt 1938; Wickenhagen 1980, pp. 38ff., 44ff.; Tennstedt at al. 1995). The carriers of accident insurance would now be the public-law "Employers'" or "Trade Associations" in which the entrepreneurs of the insured companies had joined together. The state subsidy so urgently desired by Bismarck was gone. The insurance was financed through a pay-as-you-go (unfunded) scheme through contributions from employers. The funds, as the explanation of the third draft put it, should be raised "not in accordance with the principles of private law, but those of public law."[69] The organizational part of the Accident Insurance Law of 6 July 1884, took effect on 9 July 1884, the entire law did so on 1 October 1885. With the previous resistance having been overcome, the law could be rapidly expanded. A first "expansion law" (postal service, telegraph, railroad, naval, and military administrations) was already passed between

[69] Reichstagsdrucksache, IV. Session 1884, no. 4.

December 1884 and June 1885. This was followed in 1886, after some opposition, by enterprises in the agricultural sector and in forestry, with lake navigation and the construction industry following suit in 1887.

The insurance now covered workers and white-collar employees (up to an annual income of 2,000 RM). As a benefit they received medical treatment starting in the 14 week. What became particularly important over the long term, however, was the task of accident prevention that was assigned to the Trade Associations. In this area, they created bodies of regulation that were gradually implemented through the pressure tools of higher contributions, higher danger classes, and monetary fines, and which did in fact bring down the accident rates (Wickenhagen 1980, pp. 63ff.). The merger of these associations into a single one in 1887 contributed to the coordination of these efforts throughout the Reich. With this, the Trade Associations took on a part of the regulatory risk prevention that was originally supposed to be the sole purview of the factory inspectors of the Trade Supervisory Office.

On the occasion of the creation of accident insurance, a Reich Office of Social Insurance (*Reichsinstanz der Sozialversicherung*) was also set up. It was the highest decision-making and supervisory body of the Reich Insurance Office (*Reichsversicherungsamt*) and existed from 1884 to 1945.[70] Under its first president, Tonio Bödiker (1884–1897), it was initially under the authority of the Reich Chancellor, after the First World War under that of the Reich Ministry of Labour. Its tasks were gradually expanded to all of social insurance: first Accident Insurance (1884) and Disability Insurance (1889), then also Sickness Insurance (1913), White-Collar Employee and Miner's Insurance (1922/23), as well as Unemployment Insurance (1927). The year 1919 saw the addition of the Reich Provisioning Court (*Reichsversorgungsgericht*), which was responsible for looking after war victims and was linked to the Reich Insurance Office in that the same person was president of both.

Characteristic of the activity of the Reich Insurance Office was the competency for the entire area without a separation of powers; that is to say, the exercise side-by-side of supervisory, administrative, and legal decision-making tasks. When it came to the latter, representatives of the employers and employees were consulted – as is still the practice today. Even certain law-making powers were in place. The legal process was three-tiered: from the Insurance Offices to the State Insurance Offices and then to the top. Although the functions were institutionally connected, the Reich Insurance Office developed de facto into a Reich Court for Social Insurance. It was therefore only consistent with this development that the members of the Reich Insurance Office (and of the Reich Provision Court (*Reichsversorgungsgericht*)) formed the basic personnel of the new social jurisdiction after 1945 (Stolleis 1979).

[70] Wickenhagen (1980, pp. 57–79), Tennstedt (1984, pp. 47–82), Bogs (1977, pp. 195ff., 1979, pp. 3–23), Stolleis (1990, p. cols. 801f.).

3.5.3 Disability Insurance

The discussions over the third core area of social insurance began with the publication of "Rudiments of Old-Age and Disability Insurance for Workers, along with a Memorandum" on 17 November 1887. Scholars and associations, parties and the public took up the draft bill, which came from the Bundesrat to the Reichtsag, where it was repeatedly deliberated and revised. At the end of this unusually intensive process stood the "Law Concerning Disability and Old-Age Insurance of 22 June 1889" (*Gesetz. betr. die Invaliditäts- und Altersversicherung vom 22. Juni 1889*), a law, incidentally, that was opposed by the Social Democrats, the left-leaning Liberals, and the majority of the Center Party. It introduced compulsory insurance for wage-earners who made less than 2,000 RM per year. As with the Sickness Insurance, white-collar employees were now included. In cases of disability, which was determined solely by the public legal authorities, a disability pension – and starting at age 70, an old-age pension – could be applied for; the disabled person must have paid regular contributions for 5 years, the 70-year-old for 30 years. The pension he received was a "security supplement to his livelihood," not a guarantee of his living standard (Rückert 1990; Fisch and Haerendel 2000). Because the insurance for disability and old-age could be expected to relieve the system of government poor relief, the state from the beginning supported pension insurance with subsidies.

Bismarck had originally sought a Reich institution and at least a visible state contribution to the financing. That proved impossible to implement, at least not in the form of the "tobacco monopoly" as Bismarck had planned. For one, industry resisted the transfer of the new branch of insurance to the Trade Associations. For another, the federal states, working through the Bundesrat, changed the central "Reich Office" that was planned into state insurance offices. Finally, the Reichstag limited the state subsidy from one third of the total costs to a fixed sum of 50 Reichsmark per pension. The principle had thus been preserved, but Bismarck's real intent of having the Reich bear the full burden had been distorted: the perspective of the insured and the public was dominated by contributions paid by both workers and employers. Disability and Old Age Insurance thus seemed like a construct in which personal contribution and state compulsion and state subsidy were balanced. This dual character has persisted to this day. It also finds a constitutional echo in the question to what extent the entitlement to a pension is based on personal contributions and thus falls under the constitutional-legal notion of property. Accordingly, an increase in the state's share through subsidies to pension insurance from tax revenues would reduce the personal share and in a sense get closer again to Bismarck's intention, if for very different reasons.

An appreciation of this tripartite insurance edifice as it presented itself in 1889 has come for the most part from retrospectives on its anniversaries. From the perch of what had been accomplished in the meantime, these retrospectives were "exhibitions of achievements," though occasionally also accompanied by the anxious question of how this path could be continued under the changed social and

economic background conditions. Contemporaries took a different view: Bismarck himself was disappointed after the long struggles in parliament; he had not achieved his political goal. His middle class supporters followed his cue and paid relatively little attention to social insurance. It seemed, at least in the first few decades, more like a byproduct in the great man's accomplishments. After Bismarck's departure from the political stage, Social Democrats gradually came to recognize the high value of this entity, institutionalized, partially uncoupled from its founding motives, and primed for growth. To be sure, the initial dimensions were modest: sickness insurance began with an insured share of the population of less than 10%, and it paid an average of 11.20 Reichsmark annually per covered person (Wehler 1995, p. 914). Accident Insurance began to get traction only after 1886, and over the long term its accident prevention measures took decades to take effect. The benefits of Old-Age and Disability Insurance with their average payments of 155 RM per year were not intended to replace wages. In 1900/1910, only 27% of all men reached the retirement age of 70.[71] However, this body of laws meant that a threshold had been crossed – something of which contemporaries became aware more or less quickly, depending on their "class situation." The condition of the working class improved, also through the relatively continuous rise in real wages. The state had changed its role: it had become an interventionist state, that is to say, it now derived its legitimacy also from the functioning of these institutions, indeed, it became clear that social security and "mass loyalty" would henceforth have to be related one to the other. The state had created a system of compulsory insurance whose conditions it controlled. This system worked in the context of a society that had long since ceased to be predominantly agrarian, but was instead a powerfully industrialized one. In the economy, gigantic enterprises had formed and become interconnected through association structures and cartels. The Social Democrats and the unions had risen via the twofold path of parties and associations; pure repression as during the time of the anti-Socialist laws was now out of the question. The approval by the Majority Socialists of the war bonds of 1914 also reflected this slow change of the political climate since Bismarck's resignation.

3.6 Supplementary Laws and Further Development Down to the First World War

Although the two-and-a-half decades between Bismarck's resignation and the outbreak of the First World War were filled with growing political uncertainties and profound changes in intellectual history, in economic and socio-political terms they constituted a growth phase in which the structural change toward an industrial

[71] Ibid. Here one must consider, though, that the average age at retirement in 1905 was 56.3, and that life expectancy was higher for those who entered the working world and paid contributions (men: 46.7, women: 49). See Ritter (1991, p. 92), Kaschke (2000).

and service society and the expansion of the group of white-collar employees took place. Social protection mirrored this, initially with a series of laws that expanded upon and amended the social insurance.[72] The circle of the insured was expanded, especially in Sickness Insurance, which was revised in 1892 to strengthen the principles of non-cash benefits, and to create the possibility of including family members at the level of the community, the workplace, and the guilds (RGBl., p. 379). The intend side-effect was the displacement of the voluntary aid funds of the workers which were oriented toward cash benefits. The result was that the number of persons covered by sickness insurance had doubled by 1900. In Tennstedt's assessment, the amended law of 1892, with its strengthening of the principle of non-cash benefits, contributed substantially to the de facto recourse to doctors and hospitals by the workers, that is, to the "medicalization" of broad segments of society (Tennstedt 1991).

After 1884, Accident Insurance broadened horizontally through the inclusion of other types of businesses, and vertically through the incorporation of higher-earning white-collar workers (up to 3,000 RM per year). This in turn had a positive effect on the possibilities of accident prevention, which was systematically pursued after 1886, and on the benefits of the insurance.

A growth in enrolled members also allowed Disability Insurance to loosen the strict preconditions for the existence of disability; initially there was no pension payment if and as long as there was still the strength and ability to engage in any kind of work. What was supposed to matter now was the "reasonableness" of the work, and this represented a very decisive step in the direction of a decision that respected the individual case. At the same time, however, this also became a source of disputes. The interest of the insurance to avoid the case of inability to work as much as possible, simultaneously stimulated the efforts to grant treatment and stays at spas of their own. The commitment of insurance companies in financing clinics and homes for the insured was the correct calculation: the result was economically more favorable than pension payments. Since the average life expectancy around 1900 was still below 50, the burden from pension because of old-age disability was small, to begin with. This led to the rapid accumulation of capital stock, which made it possible to pay for the above-mentioned treatments and spa stays. Moreover, since 1899 it was possible to use some of the contributions to financially balance the State Insurance Agencies, which in turn supported the construction of workers' apartments. The financial compensation, in turn, was the precondition for being able to keep the contribution and benefit levels uniform across the Reich.

[72] For example: the laws of 28 August 1885, RGBl., p. 159, and of 5 May 1886, RGBl., p. 132, on the expansion of sickness and accident insurance; the laws of 15 March 1886, RGBl., p. 53, of 11 July 1887, and 13 July 1887, RGBl., pp. 287, 329, on the expansion of accident insurance; laws amending sickness insurance of 10 April 1892, RGBl., p. 379, and 25 May 1903, RGBl., p. 233; laws amending accident insurance of 5 July 1900, RGBl., p. 573; laws amending disability and old-age insurance of 13 July 1899, RGBl., p. 463; for reasons of space, an account of the additional provisioning for the public sector is not included here. See the historical comments in Hautmann (1984, pp. 6–17).

Of course, the level of services was so low that no workers could live off the pension, and there was no security for the widow (Dreher 1978).

Yet the picture of placid development should not cause us to overlook the fact that the end of the Bismarck era coincided with a domestic political crisis. The laws dealing with workers' insurance had been completed in 1889, but it had taken a lot of effort to do so. The political forces were shifting, and the party cartel on which Bismarck had been relying collapsed. In May of 1889, a large miners' strike in Westphalia was quashed. But the majority in the Reichstag no longer believed that the workers' movement could be tamed by repression. The unlimited renewal of the anti-Socialist laws asked for by the government failed. The Reichstag elections of 20 February 1890, documented the new situation. The Free Conservatives and the National Liberals had suffered a catastrophic defeat, while the Social Democrats, the Left Liberals, and the Center Party achieved a landslide victory. Bismarck quickly embraced a new reformist line of social policy. Surprisingly enough he agreed with the young Emperor Wilhelm II that protective labor legislation was necessary. These were half-hearted rearguard battles. The policy of repression toward the workers' movement had failed. The anti-Socialist laws were abrogated on 30 September 1890. Social insurance had been achieved, though it could unfold its positive effects only over the long term. By contrast, protective labor legislation, for which there was a pent-up need, could be enacted fairly quickly.

3.6.1 Protective Labor Law

What Wilhelm II had in mind in 1890 was another step in a direction that had been conspicuously neglected since the founding of the Reich (Reichold 1990). The word *Arbeiterschutz* (worker protection), which came into common use in the 1870s, referred to limits on working hours, the protection of women (especially women who were pregnant or in childbed), youths, and children against hard labor, as well as protection from dangers in the workplace. This was an issue that incorporated social policy and health policy motives as much as the intent of the traditional defense against dangers by good public policy, which, under the conditions of industrialization, had to deal with entirely new phenomena. Its means were largely the sovereign prohibition, the relevant control, and sanctions for violations.

In this sense, regulations to prevent dangers had already existed in the manufactures of the eighteenth century. Enlightened Absolutism had no qualms about issuing directives and prohibitions if they deemed it appropriate to protect workers, who were simultaneously also subjects and potential recruits. However, the beginning of occupational safety is usually dated to when the Prussian state, rattled by reports from the military inspectors, began to fear for the health of the youth; at the same time, it recognized that compulsory schooling had a lot of gaps in its implementation. The well-known Prussian directive of 9 March 1839, about the employment of young workers in factories generally prohibited the employment of children under 9 years of age, and of youths over the age of 16 for more than 10 h a day (Wickenhagen 1980, pp. 11ff.). This was within the tradition of health

regulations, the ordered school system, and the protection of churches, which urged the sanctification of Sunday and religious, catechumen, and confirmation classes. A law of 1853 continued along this line by raising the general age of protection to 12 (PrGS, pp. 225–227).

In the following years – when economic liberalism was at its height – signals in this direction were fairly rare. The regulations on continued payment of wages and protection against dismissal for clerks in the *Allgemeines Deutsches Handelsgesetzbuch* (General German Commercial Code) of 1861 remained marginal and exerted no influence as a model. The liberal commercial code that was drawn up in 1869 for the North German Confederation, with which Bismarck ended the Prussian constitutional conflict politically and brought the Liberals into the coalition he needed to establish the Reich (and which lasted until 1878), contained only the incontrovertible points: protective regulations for adults, especially for women, did not exist at all (except for the prohibition against payment of wages in kind); children under the age of 12 were in principle not allowed to work in factories, 12–14 year-olds could work 6 h, 14–16 year-olds up to 10 h. Night and Sunday work was permissible only from age 16 on. The restriction of these regulations to factory work and their inadequate policing by factory inspectors,[73] the local policy, or volunteer citizens meant that the traditional use of children in cottage industry and agriculture remained untouched. The year 1871 saw the addition of the Reich Liability Law with regulations on accident prevention that were limited and soon recognized as ineffective (Wickenhagen 1980, pp. 21ff., 29ff.). Thus, until 1871, a systematically conceived and effective occupational safety law existed only in its rudiments. The problem was recognized and also frequently articulated, but this did not give rise to a political will that was capable of garnering a majority.

The history of legislation dealing with occupational safety between the founding of the Reich and the end of Bismarck's era is therefore a history of failure. While social insurance from about 1874 developed a model that was very progressive compared to the rest of Europe, German fell behind other countries on labor protection, especially England and Switzerland. Even though all significant social forces – from the Social Democrats to the Conservatives, from the Center Party to the *Kathedersozialisten* (academic Socialists) – agreed that something had to be done, Bismarck consistently blocked all attempts at legislative improvements. The personal biases of the estate owner Bismarck and his aversion to too much bureaucracy factored into this as much as the fact that it was precisely the workers' movement that was advocating for labor protection. It was one of his basic beliefs that one should not lead workers too much by nose as they pursued their material interests. Finally, he regarded protective measures as an impediment with a view toward foreign competition. He used the differences of opinion among supporters to split them apart: some were more strongly in favor of the normal working day (10 h) and the prohibition against payment in kind, others of prohibitions against work by

[73] "Gesetz über Fabrikinspektoren v. 16. Mai 1853," 225. State factory inspectors were made obligatory throughout the Reich only by the Reich law of 17 July 1878, p. 199.

youths, pregnant women, and mothers in childbed, and against night and Sunday work. There was also disagreement over the means to be employed: stricter enforcement of the laws by factory inspectors, strengthening of occupational safety by intensifying individual regulations and/or by expanding the circle of protected individuals and the circle of workplaces that are covered by the law.

The result was that initiative followed initiative.[74] They began with a draft by the *Allgemeiner Deutscher Arbeiter-Verein* (General German Workers' Association) in 1876, continued with a draft bill on the Commercial Code by Theodor Lohmann in 1876 (Ayass 1996, introduction to no. 89), a Social Democratic blueprint of 1877, and a plan by the Center Party in 1885. Within the ministerial bureaucracy it was once again especially Hermann Wagener and Theodor Lohmann (Lohmann 1878; Tennstedt 1994) who advocated workplace protection in factories, specifically by reviving the institution of factory inspectors, which was standard throughout the Reich after 1878, but also through large-scale inquests into women and child labor in the factories (1875/76).[75] Bismarck, who was angry not only about a ministerial administration that was pressing him with draft laws, but also about a brave factory inspector at his paper mill in Varzin, blocked all efforts towards occupational safety in 1877. As a result, the only thing that was achieved was a minor amendment to the Commercial Code on 17 July 1878. Following the English mode, it introduced Commercial Supervisory Offices throughout the Reich, which had the authority of a local policing authority (§139 b GewO). With that, business inspections could also be carried out at night. Moreover, a general duty of the employer to ensure "workplace safety" (*Betriebssicherheit*) (§120 a GewO) was laid down in the law. Finally, maternity leave limited to 3-weeks was introduced for female factory workers, namely without protection against dismissal and continuing payment of wages. All told that was a meager result, one that meant Germany lagged behind by international standards. All areas outside of factory work were unprotected. The essential demands for restrictions on work hours, night work, child labor, and maternity rights remained unfulfilled, especially since activists were not able to attach improvements in workplace protection to the social insurance legislation. Only factory inspection, the future *Gewerbeaufsicht* (Industrial Supervision), had gotten under way and was supplemented after 1884 by the preventive work of the Trade Associations of the accident insurance (Umlauf 1980).

The tide seemed to be turning again in 1890. Bismarck had once again stymied plans to improve workplace protection laws and thus contributed to his political downfall (Rothfels 1921, pp. 267ff.; Grebe 1937; Gall 1980). Hopes for a new beginning in social policy were revived under the young Emperor Wilhelm II, who was looking for an area of domestic politics in which he could make a name for himself. But after the Emperor's two decrees of 4 February 1890, which Bismarck had still drafted but did not want to publish, his interest in this subject matter

[74] A very good overview is offered by Ayass (1996, introduction, pp. XIX–XXXIX).

[75] Ergebnisse der über die Frauen- und Kinder-Arbeit in den Fabriken auf Beschluss des Bundesrats angestellten Erhebungen, zusammengestellt im Reichskanzler-Amt (Berlin, 1877).

flagged again. The one decree led to the – essentially unsuccessful – International Berlin Conference on Workplace Protection in 1890 (Stolleis 1931, p. 11f.), the other to the "socio-political reform legislation of the von Berlepsch era" (von Berlepsch 1987; Mommsen 1995, pp. 105ff.). Its measures aimed at improving the structures within businesses without questioning the rights of entrepreneurs, for example, the obligation to issue factory codes. The first possibility of voluntary employee representation in the workplace appeared in 1891 (Rückert and Friedrich 1979, pp. 22ff., 117ff.). However, these beginnings of codetermination within companies were also accompanied by impediments to the right to strike, for example, by the prohibition against "breach of contract," that is, leaving the workplace.

In the foreground, however, stood the improvement in workplace protection. It was inserted into an amendment of Part VII of the Commercial Code. This law, the so-called Work Protection Law of 1 June 1891, incorporated a number of older demands: the general prohibition against Sunday work in industry and its restriction to 5 h in trade and commerce, the introduction of the maximum workday of 11 h for women, and the prohibition against night work for women and youths under the age of 16.[76] Added to this were different break regulations for youths under the age of 16; during these breaks, they were prohibited from being in the working areas. But special protective regulations also applied beyond the age of 16 up to the age of majority. For example, businesses had to keep a "work book for underage industrial workers," which was intended chiefly to strengthen the familial authority vis-à-vis the underage person (§§107ff. GewO). Male and female workers under the age of 18 were encouraged to attend the "continuing education school" (*Fortbildungsschule*) (§106 GewO). These regulations were then supplemented by the Reich Law concerning Child Labour in Industrial Enterprises of 30 March 1903 (RGBl., p. 113). The law distinguished between the employment of children that were part of the family for one's own commercial business, the employment of own children at home but for a third party, and the employment of other children. The maximum work time was tiered accordingly: as a rule, other children could be employed for only up to 3 h a day, during vacations up to 4 h, but not before morning school hours and only 1 h after the end of afternoon classes. A distinction was also made as to whether the children were employed in workshops, in commercial businesses, in "public theatrical performances and other public shows," in inns and taverns, or whether they delivered goods or ran errands. Sunday work, where it was not completely prohibited, could not prevent attendance of the main church service. Regulations concerning the protection of apprentices had already been inserted into the Commercial Code in 1900 (Jacobi 1924, pp. 75–89).

The Law on Work at Home of 20 December 1911, now also created – supplementary to the stipulations of §§618 BGB, 62 HGB, 120 a ff. GewO – regulations about occupational health and safety for so-called "home-workers" (*Heimarbeiter*) (RGBl., p. 976). The elaboration of the law that was actually in effect in all these

[76] "Gesetz über die Neufassung des Titel VII der Gewerbeordnung v. 1. Juni 1891," RGBl., p. 262. See Kaufhold (1991).

areas came to a large extent under the regulatory authority of the Bundesrat, which in this way acquired the position of an important mediating organ for federal social policy. Moreover, the "law actually in effect" depended on the work of the factory inspectors who were being used with growing frequency (Ritter and Tenfelde 1992).

3.6.2 Labor Law

The work protection law was genuine public law in the spirit of the "good public policy" that warded off dangers. Its primary instrument was the prohibition, an interventionist special regulation to suspend general contractual freedom. By contrast, the labor law of the late nineteenth century was derived substantially from common law, though one must not overlook the fact that important traditional currents existed in the special laws in mining (Strätz 1974), the trades (Ebel 1964; Ogris 1967), and the law dealing with domestics (Schröder 1992). Following concepts in Roman law, dependent work was referred to as "*Dienstmiete*" (locatio conductio operis) (hired service). The textbooks on pandectics devoted little space to the topic, less because Roman law did not offer any starting points, and more because of the underlying social consensus that the establishment of a working relationship was the subject of a voluntary agreement (Coing 1989, vol. 2, pp. 185ff., 194ff.; Becker 1995). The principle of liberty had turned in the French Revolution against anti-free market, "exclusive" organizations of citizens in the same profession (Simitis 1989). It was hostile above all to the traditional organizations of the guilds. Under the banner of economic liberty, the nineteenth century had begun to "de-juridify" the working world. Estate-based barriers, not the estates themselves, were removed: "Every nobleman is authorized to engage in any common trade, without any disadvantage to his estate; and every burgher or farmer is entitled to move from the estate of farmers into that of the burghers, and from the estate of burghers into that of the farmers," declared the Prussian Edict of 9 October 1807. Beginning in 1810, the Law on Domestics was based only on work contracts. In principle, all citizens now had legal capacity and the ability to engage in business and commerce, had equal rights of property and inheritance, and were subject to the civil law code.

While the economic forces unleashed by this contributed to launching Germany into the industrial age, they also produced misery on a massive scale – the "social question." Legal freedom allowed employers in the first phase of industrialization to dictate the price of labor and its conditions. The creation of a counterforce by workers through organization was outlawed, as in the Prussian Commercial Code of 1845 (Huber 1969, vol. 4, pp. 1134ff.; Lorenz 1991). This did not prevent the emergence of unions, especially since the Janus-headed principle of liberty could also be invoked to justify "freedom of association" (Kögler 1974; Hardtwig 1997). The Commercial Code of the North German Confederation of 1869 allowed "agreements and associations for the purpose of achieving favorable wage and working conditions, especially by means of the cessation of work and the dismissal of workers" (§152), but it denied legal protection to coalition agreements and prohibited forcible measures against those who do not wish to join an organization.

At least there was now a possibility of setting up collective self-help organizations by industrial workers, which means that the year 1869 forms in retrospect the real beginning of collective labor law and the unions.[77] The great waves of strikes in 1869, 1872/73, and 1889/90 were no longer able to rattle the freedom of association in principle, though the state certainly did attempt to contain the repercussions of the new instruments, especially by blunting the strikes that were a necessary corollary of the freedom of association through restrictions under civil law, criminal law, and commercial law. Attempts to restrict the freedom of association and the freedom to strike by means of penal law included an initiative to make "breach of contract" a criminal offense. In the end, the public debate over this merely led to the solidarization of the worker's movement. The liberal main current from the founding phase of the North German Confederation grew weaker again around 1874. The state opted for repression, but it did not dare abolish the right of association. Notwithstanding, the union movement continued to grow steadily. Between 1890 and 1900, the total number of organized workers rose from just under 280,000 to 680,000; by 1914, the number had risen again to 2.5 million. Since employers' associations were also set up at this time (Kessler 1907; Blaich 1979; Ullmann 1981), by the end of the nineteenth century the two camps faced off on the organizational level. Until 1914, however, the state could not be prevailed upon to guarantee the parties to collective bargaining a legally secured sphere in which to develop, to recognize collective wage agreements, and thereby institutionalize the social conflict (Ayass et al. 1997; Huber 1969, vol. 4, pp. 1223ff.; Schlickum 1978), even if the Reich Court decided in 1910 to regard collective bargaining agreements as binding (RGZ 23: 100). But at least the restrictions in association law that dated back to the Prussian period of repression in 1850 were partially repealed by the Reich Association Law of 19 April 1908 (RGBl., p. 151). Now, agricultural workers could also organize and membership of women and youths was allowed.

It is against this background that one must see the sharp criticism already by contemporaries that the Civil Code did not deal with the law concerning modern mass labor relations (Wieacker 1967, pp. 481, 549f.; Benöhr 1997). It was not until 1900 that the labor contract was interpreted as a special kind of contract (Lotmar 1902–1908; Rückert 1992a, b; Gasser 1997). This gradual uncoupling of material labor law from civil law corresponded, in terms of legal procedure, to the creation of special courts characterized by particular expertise. On the Reich level these were the Commercial Courts (*Gewerbegerichte*) introduced on 29 July 1890: they were set up by the turn of the century, and their equal representation from both sides also hinted at the trend toward a special labor and social jurisdiction in the twentieth century (Brand 1990; Weiss 1994; Kraushaar 1995).

[77] Schönhoven (1987), Ramm (1978), Schröder (1988), especially 250ff. on the possibilities of the judicial system to deal with the new forms (strikes, lockout, boycott, "breach of contract," collective bargaining agreements) on the basis of civil and penal law. For a summary account see Bieber (1998).

In this way, modern labor law became a special law motivated by social policy and working with the instruments of state intervention.[78] Everything that was called "progress" as it developed had been wrested from the countervailing forces of economic liberalism. That such interventions invariably entail restrictions on the freedom of all concerned comes as no surprise. Rather, it is part of the core problem of how the economic interests of the few strong members of society should be balanced against the need for self-actualization and need for protection on the part of many. This can succeed now and then and it requires constant rebalancing.[79]

The opposition of interests thus indicated is paradigmatically revealed by the emergence of the great camps of coalitions of organized workers and employers' associations, in which the self-regulation of the basic social conflict was practiced as an "epochal alternative to state regulation" (Bender 1991, 1984). The result was the formation of intermediary powers, which the state of the early modern period had just recently eliminated in a long process of monopolizing state power (Willoweit 1978).

The first collective wage agreement in 1873, initially still suppressed by the state, began the long history of its success in Germany and the neighboring countries in Western Europe (Ullmann 1977; Coing 1989, vol. 2, §31, pp. 201–206; Englberger 1995). That success was very rapid after 1899: shortly before the First World War, there were 12,369 collective wage agreements for 193,000 enterprises with about 1.8 million employees (Hueck and Nipperdey 1963, p. 12). These agreements were regarded as a special kind of legal contract between the workers' and employers' association, or between a union and a single company. At the same time, however, it was recognized that in addition to the legal-contractual relations between the two parties (obligation to maintain social peace), there were also normative repercussions for the individual employment relationship (wage, work time). The distinction between the obligatory and the normative part of the collective wage agreement was beginning to take shape. Many details were contested, especially the immediate effect of the normative part (Imle 1905; Rundstein 1906; Sinzheimer 1907–1908). It was not only constructive difficulties that prevented the assumption that the agreement was directly obligatory for the individual employment relationship. Rather, a doctrine that was impregnated with individualism resisted constraints on the employer's freedom from a norm negotiated by his association. While the solving of conflict by societal forces was accepted, the "non-state" law-making that developed from it was not.[80]

[78] The literature since 1945 was exhaustively compiled by Rückert (1996).

[79] With a slightly divergent view, Rückert (1998).

[80] Huber (1969, p. 1256) sees in the gradual development of the law-creating function of the Trade Associations their emergence as an "element of statehood." For him, the setting of norms through collective wage agreements is therefore delegated by the state. That is in line with the views at the time, which was also the basic assumption underlying the final Decree on Collective Wage Agreements, Workers' and White-collar employees' Committees, and the Mediation of Labour Disputes, 23 December 1918: RGBl., p. 1456.

3.6.3 Social Insurance Law Down to 1914

Expansion

From the beginning of the so-called von Posadowsky Era (1899–1907), the prevailing tendency is social insurance law was toward expansion and external rounding off (Real 1958; Huber 1969, pp. 1237ff.), parallel to the economic process of ongoing industrialization and urbanization. Growing prosperity and shorter working hours, population growth and an increase in the ratio of workers (especially white-collar workers) against a declining ratio of self-employed, as well as an increasing presence of women in the labor market were the essential characteristics of the development (Schmidt 1998, p. 36f.; Suhr 1930; Frevert 1979). Social insurance was by now established and was accepted by the broadest circles. The focus here, unlike in the law on collective wage agreements or in codetermination in the workplace, was on building out and rounding off what existed. In addition to the expansion of the groups covered by accident insurance (1900) and the temporal extension of the general protection of the sickness insurance from 13 to 26 weeks (1903), this was evident above all in the introduction of insurance of surviving family members (Dreher 1978). In the area of social insurance, legislators got that far only in accident insurance. In pension insurance, the premiums that were paid in were refunded if the insured person died before reaching retirement. That was clearly inadequate, especially for the worker's widow with children who had previously not been gainfully employed. As a result, politicians agreed in 1902, in a peculiar coupling with a higher customs tariff, to set up a modest insurance for surviving family members within a decade, though only for a widow who was not self-insured and disabled. As long as a worker's widow was able to continue working no pension was forthcoming, while the widows of white-collar workers were not exposed to this dilemma, as the middle class parties believed that it would be too much to ask of them. The widows' pensions that were paid beginning in 1912, "stood at 87 million RM a year. That corresponded to 47% of the average level of disability pension, and 9% of the average annual earned income" (Zöllner 1981).

Insurance for Salaried Employees

A second innovation with far-reaching socio-political repercussions was the creation of an Insurance Law for Salaried Employees on 20 December 1911 (Bichler 1997). This law did justice to the fact that white-collar workers had established themselves within a short period of time as a separate social group between workers and civil servants (Croner 1962; Engelsing 1967; Kadritzke 1975; Kocka and Prinz 1983). The previously uninsured salaried employees who earned between 2,000 and 5,000 RM pushed for a parallel insurance that was separate from workers' insurance. This goal was achieved with relative ease: the new insurance demanded

higher contributions, but it also provided more benefits whose level was clearly above that of the pension insurance for workers (Zöllner 1981, p. 111). This higher benefits imparted to this insurance the a "pace-maker function" in social policy (Zöllner 1981, p. 111). The motive behind these enhanced benefits was "to immunize salaried workers against the agitation by Social Democrats and the socialist Free Unions and win them over to the state or one's own party" (Ritter 1998b, p. 94f.). That also accorded with the intentions of salaried employees, who tended to define themselves as "bourgeois" and formed a salary-dependent middle class. The bourgeois parties wooed this group of so-called "private civil servants." That was also why the previously "petty salaried employees" (below 2,000 RM) were also included in the new insurance, without exempting them from the workers' insurance. A strong motive for a separate insurance for salaried employees was also that this obviated the need to raise the state subsidy for old-age and disability insurance for workers.

Reich Insurance Code

Of great significance, finally, was the unification of the three main pillars of social insurance into a single law code, the Reich Insurance Code (*Reichsversicherungsordnung*) on 19 July 1911 (Rother 1994; Fuchs 1998). This had been preceded by various debates about a restructuring, for example, the unification of the various insurances under one roof, or at least the combining of sickness or accident insurance with old-age insurance. Beginning in 1903, then, the dominant idea was that of an "organic linkage."

This was the path of adding together the codifications of autonomous-remaining parts and bracketing them with a General Part. The Introductory Act issued on the same day repealed the existing laws on social insurance in the same way that the Law of 20 December 1911 also abrogated the old 1876 law about registered Aid Funds (*Hilfskassen*). Although this did not create a comprehensive code of social law, the part of social law that was characterized by strong inner homogeneity and was most important in practice was arranged in a coherent way and opened up to scholarly treatment. Technically, the purpose of the Reich Insurance Code was to update the law in an area that had evolved in stages and to restructure the procedural pathways. Politically, it was intended to contain the influence of the SPD and the Free Unions in the sickness insurance and to eliminate from the latter funds that were too small (Ritter 1983, p. 57f.). Yet it was "modern" in the sense that, completely emancipated from the common law, it regulated an area that had been unknown only a generation earlier.

The division into a General Part and six special "books" corresponded to the structure of the Civil Code enacted in 1896. The *Reichsabgabenordnung* (German Tax Code) that was drawn up in 1919 also followed this pattern. With this, social insurance, civil law, and tax law had been organized in a way that

nineteenth-century legal science had envisioned following the codification controversy of 1814. The fact that the summarizing codes of social insurance and tax law came about fairly quickly[81] also has to do with the standard of jurisprudential work attained by pandectics. All jurists involved had been trained in the common law, from where they derived their inspiration in terms of the degree of abstraction in the General Part, the parsimonious use of unspecified legal concepts, and the conciseness of expression, or the method of citation.

Substantively, the Reich Insurance Code did not offer anything that was in principle new. It specified and reformed the existing state of legislation and the practice it had given rise to over 20 years. During that time, social insurance had above all expanded, both by pulling in new circles of the insured and instituting an insurance for surviving family members that was attached to the disability insurance, and by increasing benefits (Peters 1978, pp. 78–80). By now, domestics and workers in agriculture and forestry were included in sickness insurance, the latter in the so-called *Landkrankenkasse* (Rural Sickness Fund). Disability insurance for the first time had a pension for widows – if a widow was herself disabled.

However, bringing the laws together into a code made it more obvious than before that the social insurance laws had imparted to the state a new quality overall. What might have seemed historically as the return to welfare-state concepts from the eighteenth century, what had been intended politically as a means of fighting Social Democracy and had failed on the whole in its goal, had now become a financially strong institution with a considerable dynamic of its own. The most important risks in life had been collectivized and insured against by the state, "compulsion" was legitimized by its purpose and was no longer regarded as a scandalous deviation from the doctrines of economic liberalism. The Social Democratic movement, which had long since embarked on the road to changing from a party of revolution into a party of reform, appreciated the practical advantages of the new system and secured for itself in the self-administration a certain share of public functions which had been closed off to it within the state prior to 1918.

It was only in the 1920s and 1930s that observers, looking back, realized that it was not so much protective tariffs or minor stipulations of social protection (such as the prohibition against usury) that marked the real entry into the interventionism of industrial society, but social insurance. It occupied an "intermediate space" between state and society: it was close to the state but "self-administering," it was largely financed by "contributions" and was therefore a benefit generated by the productivity of society and dedicated to a specific purpose. That is why social insurance can also be seen as an institution with a cushioning function, one that mediated between the statist impulse and cooperative self-help. In this way, typical risks of life (sickness, accident, disability, and old age) could be moved from the realm of the individual into a special public system without directly affecting the state. Special systems also develop special responsibilities, and thus they relieve the

[81] The first draft of the Code in 1909 became the second draft of 1910, which was then adopted on 31 May 1911. The parts then went into effect gradually between 1912 and 1914.

state both financially and politically. At the same time, they relieve families from providing services and material and cash benefits. Of course, over the long term this also results in families being no longer able or willing to generate these things. Thus, with the waning of responsibility comes also a waning of the capacity for self-help. Accordingly, the number of children, once seen as a kind of insurance policy for the survival of the family, declines, while life expectancy simultaneously increases.

In this area, too, we see the above-mentioned development of an "intermediary" sphere that was to be guided by the interaction of employers and workers, though in this case with a good deal more weight and guiding powers on the part of the state. Still, a cooperation between employers and employees was also practiced here. Not only was there agreement in the collective wage negotiations, the two sides also cooperated in the committees of social insurance, the work of the Trade Associations, factory inspection, and judicial decisions. Over the long term, this cooperation, while it did not cause the opposing camps in the class warfare to disappear, blunted their edge and contributed to the emergence of the later "social partnership."

In terms of domestic politics, social insurance – as was already evident before 1914 – was shifting the centers of gravity. It reinforced the existing trend toward Reich administration (Reich Office of the Interior, Reich Insurance Office), and it favored the trend – already visible in its early stages – whereby the ministerial bureaucracy, associations, and social insurance arrived at agreements that circumvented parliament. Within Germany's federal structure, social insurance now formed a financially and politically important special bureaucracy that cut across the federal states. That corresponded to the logic of migration movements in industrial society. Finally, we can note that social insurance had been created because the political forces agreed that the "state" was responsible; however, because it was visibly successful, it reinforced this trait – so characteristic of Germany – of a social-state statism. Once the starting situation with the fragmented system of funds, inadequate liability, and the all-but absent protection against old age had been overcome and the standardizing superstructure of the Reich Insurance Code had been erected, a return to the status quo ante had become in every way unthinkable.

Imperial Germany did not move significantly beyond the state of social insurance that had thus been achieved. Leaving aside the outbreak of the First World War, the balance of political power also did not suggest any substantial changes. Wilhelm II's embrace of big industry, Germany's entry into the politics of international imperialism (colonies and trade treaties, expansion of the navy), and the renewed struggle against the re-invigorated social democratic movement in Prussia and Saxony stifled the beginnings of a renewal of social policy. Paradoxically enough, this was especially true for the period after 1912, when the Social Democrats had become the strongest party but did not constitute the government. In this constellation, progressive social policy carried the stain of giving in to the opposition. In addition, the Social Democratic movement itself had moved into a phase of wait-and-see and consolidation (Domann 1974).

3.6.4 The Municipal Level

Below the level of politics on the big stage, living conditions and administrative tasks changed during the Wilhelmenian era especially within the municipalities (Steinmetz 1993). A first large wave of incorporations created new administrative structures in the conurbations. The water supply and sewage disposal were centrally organized on a large scale or modernized, street lighting emerged, public baths, slaughter houses, transportation enterprises, modern hospital facilities, parks, and cultural institutions were created. In substance – but not yet in its later name – municipal *Daseinsvorsorge* (governmental provision of essential public services) came into being. "With the takeover of numerous private enterprises by the cities and municipalities," Ferdinand Schmid wrote in 1909, "we have, in the opinion of many, already in fact entered into the age of a partial state and municipal Socialism" (Schmid 1909, p. 205). In fact, the establishment of journals and annuals dealing with issues of municipal administration reveals the degree to which Germans, stimulated by the English municipal Socialism of the *Fabians* (Grunwald 1897; Hugo 1897), were becoming attuned to these phenomena. From around the turn of the century there also emerged a so-called *Kommunalwissenschaft* (science of municipal administration). One of its most important tasks was to take note of the growing social problems of the large urban landscapes. There was more and more discussion about the social tasks of the cities (Adickes and Beutler 1903; Hugo 1901, 2nd ed., 1906; Sohnrey 1907; Thissen and Trimborn 1910; Damaschke 1922), especially in the areas of the health care system and public health, education, and youth care. The growing understanding for the special needs of young people against the backdrop of the culture-critical "Youth Movement," and the growing pressure of problems on the ground led to the replacement of the Prussian Compulsory Education Law of 1878 with the new Law for the Corrective Training of Minors (*Gesetz für die Fürsorgeerziehung Minderjähriger*) of 2 July 1900 (Petersen 1907). Step by step, the still politically discriminatory poor relief and the non-discriminatory public services to care for young people took divergent paths.[82] The context of wider attention – supported by statistical surveys – to the condition of children and young people since 1900 also included the Reich Law Concerning Child Labour in Commercial Enterprises (Child Protection Law) of 30 March 1903, which outlawed factory work and night work outright and allowed it only on a limited basis in trade and commerce (Agand 1902). When it came to poor relief itself, the political harmfulness of an across-the-board denial of suffrage and other public rights was recognized, and one tried to cast off ballast without giving up the principle. As a result, certain benefits and services were defined out of poor relief on the ground that their absence did not harm the essential principle.[83]

[82] "Reichsgesetz betr. die Einwirkung von Armenunterstützung auf öffentliche Rechte v. 15. März 1909", RGBl., p. 319.

[83] The Law Concerning the Effect of Poor Relief on Public Rights ("Gesetz betr. die Einwirkung von Armenunterstützung auf öffentliche Rechte v. 15. März 1909"), RGBl., p. 319, removed

4 The First World War

Germany's entry into the First World War changed the constitutional situation – in addition to all circumstances of everyday life. The Bundesrat was empowered "to order, during the time of the war, such measures as may prove necessary to remedy economic harms" (RGBl., p. 327, §3). The Reichstag stepped back as the legislator during normal times and conceded extra-parliamentary legislation to the Bundesrat, which inundated all of economic and social life with a total of 825 Bundesrat Decrees. With numerous other "legislators," including the Supreme Army Command, contributing, the result was a Special War Law that spread out over all areas of the law. Not only did it bridge the conventional separation of private law and public law, but is also massively restricted legal protections.

4.1 Adjustments

Since this war was for the first time less a war of militaries than of productive capacities, labor and social law were deployed equally to concentrate society's forces and to stabilize the domestic political situation.[84] These were "adjustments to the special conditions of the war" (Preller 1949, reprint 1978, p. 59), but also much more, namely the continuation of a movement that had already begun before the war, namely to bind the world of economics to political goals "from the outside" and "from the inside" (Feldman 1974). In practical terms this meant: loosening workplace protection where it was a hindrance to military production; making it more difficult to freely change jobs and – especially significant – introducing a state-issued certificate of employment; exempting skilled workers from military service; shifting workers into military production; protecting workers from garnishment of wages and dismissal; and lowering the retirement age in the workers' pension insurance to 65, where it already was for white-collar workers. When it came to social insurance, furthermore, it was necessary to guarantee that soldiers did not suffer any disadvantage from contributions they missed and that the social insurances themselves did not collapse from the massive loss of contributions. Wartime production drew in women as workers on a large scale, which made the number of the insured rise again.

sickness support, institutional care for the disabled, benefits of youth care, education, and vocational training, benefits to ease a temporary emergency, and funeral benefits as non-discriminatory.

[84] Kahn (1918), Heymann (1921); on the economic and labor-policy questions see Feldman (1966); for a comparative analysis see Williams (1972).

4.2 *The* Vaterländischer Hilfsdienst *(Patriotic Auxiliary Service) and Collective Labor Law*

As the war intensified in 1915/16, the military demanded greater access to the civilian population, especially through the introduction of the obligation to work, initially for men and women, then only for men. This gave rise to the Law on the Patriotic Auxiliary Service of 5 December 1916, which was a compromise between the private sector, unions, the government, and the military (RGBl., p. 1333). Far-reaching and forward-looking socio-political concessions were made to compensate for the fact that public law was being superimposed upon contractual freedom with this obligation to work. Participants in the Auxiliary Service were covered by social insurance,[85] service in the military and the Auxiliary Service were counted for eligibility,[86] the benefits for orphans were increased, and, as previously mentioned, the age of retirement was lowered from 70 to 65.[87] In part these measures were simple adjustment processes, in part reactions to acute problems, and in part politically achieved improvements that carried on older lines of development.[88] More important still was the fact that long-defended positions in collective labor law were abandoned: the parties to collective bargaining were included when it came to obligatory service and decisions about a change of jobs. All workers were explicitly granted the right to form clubs and the right of assembly, which amounted to an indirect recognition also of the right of association and the right to strike. Committee of Workers and Salaried Employees became obligatory in all commercial enterprises with a workforce of 50 or more, which was tantamount to a breakthrough for co-determination in the workplace. In this way, the unions, whose main currents (Free Unions, Christian Unions, Hirsch-Dunker's Trade Unions) were now working in unison, were integrated into the model of the emerging cooperative social state.[89]

4.3 *War Relief and Unemployment Benefits*

Eventually, the war-waging state not only had to win over workers for military production and pacify the "home front" with the help of the parties to collective

[85] "VO über Versicherung der im vaterländischen Hilfsdienst Beschäftigten v. 24. Februar 1917," RGBl., p. 171.

[86] "Gesetz betr. Erhaltung von Anwartschaften aus der Krankenversicherung v. 4. August 1914," RGBl., p. 334; "Bekanntmachung über die Anrechnung von Militärdienstzeiten und die Erhaltung von Anwartschaften in der Invaliden- und Hinterbliebenenversicherung v. 23. Dezember 1915," RGBl., p. 845.

[87] "Gesetz betr. Renten in der Invalidenversicherung v. 12. Juni 1916", RGBl., p. 525.

[88] As for example the "Gesetz über Bezüge von Sozialrentnern v. 18. Juli 1922", RGBl. I, p. 649.

[89] Huber (1978a, vol. 5, pp. 110–115).

bargaining and social insurance, it also had to address unemployment and mass poverty caused by the war. Before the war, initiatives in the direction of support in case of unemployment had been unsuccessful, both because of the opposition from the private sector and because unemployment was not seen as an urgent crisis affecting society as a whole. Depending on the constellation, it was either "fate" or an instrument of repression against the political pressure from the working class. That situation change when unemployment rose rapidly in the fall of 1914 (Sachße and Tennstedt 1988, p. 46f.). A jobless and unsupported proletariat at home would have magnified the threat from outside. As a result, initial steps were taken – within the framework of welfare – to find jobs for workers in the communities, and unemployment benefits were paid out at the municipal level, financed for the first time by the Reich (Faust 1986; Führer 1990).

At first the families of men drafted into the military had to be looked after. This was done through benefits that depended on demonstrated need, but which were different from welfare and charity in that the recipients were legally entitled to them. The state tried hard in other ways, as well, to distinguish these benefits of "war relief" funded by the Reich, which were also joined by special help for women in childbed as part of sickness insurance (Kleeis 1928, pp. 221ff.), from poor relief.[90] Voluntary benefits from the communities supplemented "war relief" with *Kriegswohlfahrtspflege* (Wartime Welfare). Families received rent subsidies, and landlords were expected to lower the rent. The disputes this created went before the "Rent Tribunals" (*Mieteinigungsamt*). As a result, there arose, beyond poor relief, a much more modern second system, which in turn influenced poor relief: "a uniform Reich law, a uniform administrative organization and efficient associations, cost-sharing by the Reich, states, and communities, replacement of the complicated principles of residential relief (*Unterstützungswohnsitz*) by the normal place of residence, no discrimination" (Sachße and Tennstedt 1988, p. 51).

Finally, the unemployed and needy family members were joined by disabled veterans and surviving dependants of servicemen. They were the recipients of care benefits as well as supplemental relief measures, which were regulated after the war through decrees and laws.[91] Since that time, the Reich and the states were financially involved also in the area of the formerly purely communal welfare.

All in all, in this area, as well, we can see an almost inescapable assumption of overall responsibility by the state. Poverty and unemployment under the conditions of the war pushed the state into the role of the great guarantor. Although the war also precipitated an enormous increase in voluntary welfare and charity, which in turn prompted a response by the state in the area of collection of charitable giving and to the creation of a National Women's Service (*Nationaler Frauendienst*) (Sachße and

[90] "Gesetz betr. die Unterstützung von Familien in den Dienst eingetretener Mannschaften v. 28. Februar 1888 i.d.F.v. 4. August 1914", RGBl., p. 332; Sachße and Tennstedt (1988, p. 50f.).

[91] "VO über die soziale Kriegsbeschädigten- und Kriegshinterbliebenenfürsorge v. 8. Februar 1919", RGBl., p. 187; "Gesetz über die Kosten der Kriegsbeschädigten- und Kriegshinterbliebenenfürsorge v. 8. Mai 1920", RGBl., p. 1066.

Tennstedt 1988, pp. 56–63), the dominant characteristic was the trend toward state regulation. Only the state was in a position to guide the social dynamic triggered by the war. The material differences between civil servants, while-collar employees, workers, and the self-employed in the trades and retail diminished noticeably. The supply problems leading to ration cards for food, the establishment of the "people's kitchens" and the production of staples by the communities themselves, widespread deficiency diseases, and the social problems in the wake of neglect and crime essentially affected all strata of society. If the state wanted to administer the shortage evenhandedly and have the greatest possible pacifying effect, traditional class barriers had to fall when it came to distribution, while efforts were made at the same time to avoid the discriminatory effects of "poor relief."

When it comes to the repercussions of the war for all spheres of life, I will look at them only as they related to social policy. In this area the *dirigiste* state took what it needed – workers, war-essential raw materials, food. It devoured individual freedom and replaced it with the sovereign order. But since the complex constitutional monarchy, which was to a significant degree directed also by associations and parties, could not simply be commandeered, the social forces made up for their losses through concessions, for example, the recognition of the parties to collective bargaining and of labor action. Modern wars of material and national economies, which are waged by exhausting all reserves of raw material and human labor, could be fought only with the utmost consideration for the workers and the organizations representing them. As a result, even more so than before the war, semi-public forces inserted themselves between state and society, which shaped the legislature in terms of substance, but which could not do without it when it came to the translation of substance into normative programs. Parallel processes were evident in efforts to resolve emergency situations below and outside of social insurance: since the war pushed broad strata also of the middle class to the poverty line, the state had to intervene on the level of the Reich and the federal states, coordinate, and draw up a scale of values. War casualties and surviving dependants ranged at the top, in the middle were the self-employed, civil servants, and salaried employees who had fallen on hard times, followed by the working class, and at the bottom the previous population of the poor. Similar to the way in which the insurance for salaried workers had exerted a socio-political pull on insurance for workers, one could now observe a gradual convergence of war relief and poor relief. This also led to a new quality of cooperation between organizational forms of the state, local communities, the churches, and society at large. The "new, non-discriminatory style of relief" (Sachße and Tennstedt 1988, p. 65), not least via the medium of the integration of women's labor and through growing professionalization, spread across all efforts to combat poverty. Finally, there was the war "as the great pacemaker of social policy" (Preller 1978, p. 85; Schmidt 1998, pp. 41–46). There is little doubt that the socio-political advances of the Weimar Republic in collective labor law, in the equalization of protections for salaried employees and workers, in unemployment insurance, in maternity benefits, in tenant law, in youth welfare law, and in the welfare system would not have been achieved so quickly without the upheavals of the war. The state vastly expanded its activities, but the

more it did so, the less it could be a dictatorial state. The social state of industrial society that was now emerging lived from cooperation and the formation of consensus on social policy.

4.4 *Provisioning* (Versorgung)

"Individual rights and advantages by members of the state must be secondary to the rights and duties for promoting the common weal, if there is a genuine contradiction (collision) between them. – Conversely, the state is obliged to compensate the person who is compelled to sacrifice his rights and advantages for the good of the common entity." These two famous maxims from the introduction to the *Allgemeines Landrecht für die Preußischen Staaten* (General Laws for the Prussian States) of 1794 contain the principle of burden-sharing. The precedence of the common weal, one of the most venerable and fragile formulas in European legal history (Stolleis 1987), implies the subordination of individual rights, in return for which the community itself, "for the sake of justice," promises to offer compensation.

In this abstract sense, the principle covers a whole host of constellations of intervention and compensation.[92] Not all have the character of social law: for when it comes to equalization of "special victims" or "intolerably" grave interventions via legal instruments such as expropriation and sacrifice, the social status of those affected should not matter. But when one speaks of the function and conception of social law, that very status is a crucial criterion as the material foundation of socio-legal norms. Thus, the present discussion will address as social provisioning law in the narrower sense only those norm that were intended to equalize social shortcomings or prevent them (provisioning as equalization for special sacrifices, maintenance-"pension" as the equivalent of services rendered, mitigation of inequalities in the distribution of opportunities in concrete cases and generally through long-term changes in social structures).

4.4.1 Civil Service, General Conscription, War Victims

These norms initially regulated cases in which the community as a whole granted compensation for special burdens that constituted untypical irruptions into the life

[92] Whether the so-called "public-law compensations" are part of social law or, because of their retroactive compensatory function, they constitute merely a compensatory annex to the law of the state's activities, is a question that is of more theoretical than practical interest (see the discussion in Veröffentlichungen der Vereinigung der deutschen Staatsrechtslehrer 28 [1970], pp. 270ff.). The fact that these two areas are related is evident in the care given to disabled war veterans: conventionally considered part of social law, it grants "compensation" for thee harm done by the state. On this see also the umbrella term "compensation system" suggested by Zacher (1970, p. 6, 1972, pp. 461ff.).

of an individual: that is, help during catastrophes, acts of nature, famine, epidemics, and above all war. In addition, they regulated cases of need in groups or individuals that were typical, continuously recurring, or at least common in certain social formations. Here, the state compensated groups that bore a "special" burden relative to others. A similar motivation in terms of social policy lies behind state aid to compensate for the unequal life chances and opportunities for self-development for the mentally and physically disabled, and among those of equal abilities within an educational system that contains inequalities and either fails to dismantle them or produces them in the first place.

4.4.2 The Legal Development

However, the basic notion of compensation for special sacrifices mentioned above also gave rise to an area of the law that seems to have very little to do with social law: provision for civil servants and judges. The early modern state gradually created means of "providing" for its functional elite in the form of a "salary" (*Besoldung*). The professional civil servants who had thus become dependent, and who now also represented the state (Wunder 1982), secured itself by striving for life-time jobs and maintenance through a "salary," which distanced itself already terminologically from the "pay" for services. This area moved systematically into public law (Wunder 1978; Hattenhauer 1993, pp. 195ff.), along with its maintenance according to position and service and including care for widows and orphans.[93]

In the course of the nineteenth century, this current established itself in all German states (for Baden see Wunder 1989). It was completed with the Prussian Law on the Pensioning of Direct Civil Servants of 27 March 1872, and translated onto the Reich level with the Law on Reich Civil Servants of 31 March 1873 (Zacher and Ziegler 1984, pp. 7–13). Whatever peculiarities still existed on a state level were then removed during National Socialism through the Civil Servant Law of 1937. As far as "maintenance" was concerned, that law also remained essentially within the existing tradition.

4.4.3 Maintenance of Soldiers and the Law on the Consequences of War

"Maintenance" of soldiers developed along partly parallel, partly divergent lines. This had to do with the fact that soldiering in the early modern period, once it had replaced the armies based on the medieval feudal system, tended to be characterized more like risk-conscious entrepreneurship up to the Thirty Years' War. Whoever went to war provided his own equipment, had to "risk his neck," and was

[93] Wunder (1985); more basic, Gönner (1804, §425, p. 1808). On this see Hattenhauer (1993, pp. 204ff.); on Gönner see Schaffner (1964); Stolleis (1995, p. 242).

accordingly interested in booty. Absolutism subsequently set up standing armies, gave them uniforms, and put them in barracks, which automatically brought with it an obligation on the part of the state to maintain them. Here, too, discipline and maintenance proved to be two sides of the same coin. Since then, the state took on the maintenance and "re-socialization" of soldiers returning from the war, support for widows and orphans, reconstruction, and compensation for those affected as secondary phenomena of the war. The monopolization of war and peace in the modern sovereign state (Hofmann 1967) also entailed the state's responsibility for the consequences. Henceforth, it was no longer the family or kinship units, the community, or the *Landschaft* but the territorial lord who was responsible for war and its effects. He provided for veterans through compensation (the Prussian *Gnadentaler*), settlement as farmers, or employment as trainers of recruits, teachers, and other low-level civil servants (*Zivildienstschein*), he granted tax breaks and privileges, and set up manufactures. Prime examples are the policy of Maximilian I of Bavaria after the Thirty Years' War (Doeberl 1904), the measures taken by Brandenburg-Prussia from the Great Prince Elector to Frederick the Great, and the maintenance of the Napoleonic veterans.

Within the law that evolved in this way, oriented toward war and its consequences, two lines of development are evident, first, in the emergence of a civil-service like mechanism of maintenance for the professional army, and, second, in the increasing impact on the civilian population:

The first line, which extends to the prevailing law, included the regulations pertaining to the pay and pension entitlements of professional soldiers, including the maintenance in case of disability and the care of widows and orphans. The basis of these benefits is the service relationship in the broader sense. The purpose of the benefits is to keep the army intact and to safeguard psychologically the readiness of soldiers to go to war. Functionally, then, these regulations can be sufficiently separated from social law.

In the seventeenth and eighteenth centuries, these regulations included numerous pension provisions for disabled officers, the Prussian "Military Pension Regulation" of 1825, but especially the Reich Law Concerning the Pensioning and Maintenance of Military Personnel of the Reich Army and the Imperial Navy, and the Grants for the Dependants of Such Persons of 27 June 1871 (RGBl., p. 275). After 10 years of service, professional officers were now provided for like civil servants, non-commissioned officers and common soldiers after 18 years. In addition, both groups were entitled to maintenance in case of injuries sustained on the job; the waiting period of 8 years originally stipulated was eliminated in 1906 (RGBl., pp. 565, 593). Additional improvements came with the Military Survivor Law of 17 May 1907 (RGBl., p. 217), the Capital Compensation Laws for Enlisted Men and Officers of 3 July 1916 and 26 July 1918 (RGBl., p. 680; 1918, p. 994), and the Compensation Law for Re-enlisted Men and Officers of 13 September 1919 (RGBl., p. 1654, 1659). After the Weimar Constitution stated: "The inviolability of the acquired rights and the option of legal recourse for proprietary claims are guaranteed especially to the professional soldier" (Article 129, Section 4) (Anschütz 1933, p. 596), the practical consequences of this for the

soldiers of the Reichswehr were drawn through the Military Law of 23 March 1921 (RGBl., p. 329) and the Wehrmacht Maintenance Law of 4 August 1921 (RGBl., p. 993; 1925, p. 349). Interestingly enough, disputes over maintenance involving soldiers were "supposed" to be settled through the normal legal channels, but what exactly established itself was the legal channel that ended with the *Reichsversorgungsgericht* (Reich Provisioning Court) and was part of social law. National Socialism did not depart from this line in principle, at least as far as the maintenance of the Wehrmacht through the Wehrmacht Welfare and Maintenance Law of 26 August 1938, was concerned (RGBl. I, p. 1077). Of course, the parallel "maintenance" of the "old fighters" (*Alte Kämpfer*) (RGBl. I, p. 133) and of the members of the Reich Labour Service (RGBl. I, p. 1158; RGBl. I, p. 1631) who were deployed like soldiers was in line with the nature of the political system.

It was in the second line of development, managing the immediate consequences of the war, that social law in the narrower sense took shape. In part this was the traditional poor relief that filled in the gaps in the maintenance law. Well into the nineteenth century, poor relief was the final stop for disabled soldiers, especially if they had to endure a waiting period in cases of service-related disabilities. However, these were the developmental stages of the provision for professional soldiers.

The situation was different for citizen subject to conscription. Early forms of an "obligatory military service" with the community subsequently assuming responsibility for the consequences had already existed in medieval cities, in which the community of citizens defended and cared for itself as a group. But modern conscription emerged only in the wake of the mass levies of the French Revolution. Ever since, it was "nations" that took up arms. The "cabinet wars" became national wars, in which for the first time the opposing nation was identified as an enemy to be defeated. This could not but lead to a comprehensive ideologization, but also to a blurring of the distinction between civilians and fighting troops, since both were parts of the nation. Accordingly, the state had to offer regulations of provision and compensation for those citizens who, as "conscripts," had to bear a special sacrifice for the nation as a whole. Likewise, dependents who lost their "breadwinner" made a special sacrifice. The price for the ideologization of entire nations was the protection of all citizens against the consequences through social legislation. "Patriotic" war also imposed an obligation on the fatherland. The promised "gratitude of the fatherland" in the form of later care and provision at least for dependents was to make the sacrifice of the individual easier and overcome reluctance in the mobilization of the entire nation. This motivation applied to all soldiers; however, with respect to the legal justification of provision, one must distinguish the above-described current of civil service law for professional soldiers, and the current of social law for conscripts. In that sense, the notion of provision also split: providing for civil servants, judges, and professional soldiers is a functional equivalent for services rendered, while providing for those who are forced to bear the burden of war is compensation – at least similar to social law – for a special sacrifice.

It is obvious that it was especially the socio-legal elements of the law dealing with the consequences of war that gained greatly in importance in the privations of the First World War and the postwar period. There were 1.5 million disabled

veterans and 1.7 million surviving dependents. Two hundred-and-twenty-one government-run army hospitals had to be dismantled: the patients had to be discharged as "healed," many of whom most definitely were not, and the personnel had to be let go or moved to different jobs. The old legal foundations of the provision law before 1914 were obsolete for the simple reason that they had emphasized the distinctions in rank between enlisted men and officers in a way that was now felt to be outdated.[94] That is why the whole complex was newly regulated in the Reich Provision Law of 12 May 1920, which came in the wake of the Decree on Social Provision for Disabled Veterans and Surviving Dependents of 8 February 1919. These legal foundations for the benefit of the affected civilian population were supplemented by the Act on Harm to Persons from the War of 15 July 1922 (RGBl. I, p. 620). Creations on the institutional side were Social Welfare Offices (*Versorgungsämter*), which decided on the ground about pension applications, Main Social Welfare Offices (*Hauptversorgungsämter*), which served as an oversight authority, and procedural law.[95]

On this basis, the authorities approved not only about 2.5 million pensions, but also curative treatments, orthopedic care, and stays at health spas utilizing the facilities of the sickness funds. Much more so than before, the socio-political engagement was now focused on regaining or boosting gainful employment, job placement, and integrative measures for surviving dependents (*Kinderhilfswerke* [Children's Charities], stays in the countryside, institutional care). Social distinctions based on rank were not to exist any more, but there was a gradation derived from income and previous social status.

Like all other social benefits, those for soldiers, disabled veterans, and surviving dependents got caught in the maelstrom of inflation. The Social Welfare Offices, which had suffered a drastic personnel reduction of about two-thirds, now granted inflation adjustments, which were later, after the inflation, converted into a need-based "supplementary pension." So as not to get close again to welfare based entirely on need, the basic pensions were raised in 1925 and the supplementary pensions were reduced. Then, beginning in 1919, the provisioning law, half-way stabilized and only slowly waning in terms of its practical importance, was hit by the general benefits cuts as part of the consolidation policy of the presidential cabinets.[96]

[94] "Gesetz über die Versorgung der Personen der Unterklassen des Reichsheeres, der Kaiserlichen Marine und der Kaiserlichen Schutztruppe v. 31. Mai 1906", RGBl., p. 593; "Gesetz über die Pensionen der Offiziere v. 31. Mai 1906", RGBl., p. 565.

[95] "Gesetz über die Versorgungsbehörden v. 15. Mai 1920", RGBl., p. 1063; "Gesetz über Verfahren in Versorgungssachen v. 10. January 1922", RGBl. I, p. 59.

[96] "Zweite VO des Reichspräsidenten zur Sicherung von Wirtschaft und Finanzen v. 5. Juni 1931", RGBl. I, p. 279.

5 The Weimar Republic

The economic and social situation was desperate after the war. The situation could no longer be managed with the traditional poor relief. Before the war, the basis of welfare provisioning had been "that one is dealing with non-economic entities" who were unable "to find their place in life on their own" and "to fulfill their task in economic life and society" (Klumker 1918, p. 25). Six million soldiers and more than three million surviving dependents and disabled veterans now had to be integrated. They were joined by impoverished service members and other unemployment casualties of the conversion from wartime to peacetime production. National income had been cut in half. The state and local government were in debt and a rising inflation, which would destroy savings, seemed only a matter of time. In this way, the relatively contained strata of the "poor" (Klumker 1918, pp. 10ff.) from before the war had become a menacingly broad stratum, which was filled not only by victims of the war, but also by a middle class stripped of their assets.

In spite of the exceedingly difficult economic situation, conditions were not unfavorable for the Republic, as long as one looked at the given institutional structure. The Republic inherited from the Empire not only the legal system and the institutions, but also a professional civil service vaunted as exemplary. The same is true of the local communities and communal organizations. Traditionally, they were the locus of a majority of the tasks at hand (poor relief and youth care, the creation of jobs and housing, communal health policy, social infrastructure). Since they were closest to the social problems, it was there that the powers for overcoming them were most likely to emerge. Voluntary charity continued to be present and organized into the large associations (Sachße and Tennstedt 1988, pp. 152–172): (1) *Centralausschuss für die Innere Mission der deutschen evangelischen Kirche*, (2) *Deutscher Caritas-Verband*, (3) *Zentralwohlfahrtsstelle der Juden*, (4) the *Deutsche Rote Kreuz* (German Red Cross), (5) *Deutscher Paritätischer Wohlfahrtsverband*, (6) *Hauptausschuss für Arbeiterwohlfahrt*, and (7) *Zentralwohlfahrtsausschuss der christlichen Arbeiterschaft*, all – with the exception of the Arbeiterwohlfahrt – united in the *Deutsche Liga der freien Wohlfahrtspflege* (German League for Charitable Welfare).

And more: the social insurances for workers and salaried employees were financially weakened, but they were institutionally intact. Wartime Welfare (*Kriegswohlfahrtspflege*) could be continued. The "Weimar Coalition" (Social Democrats, Center Party, German Democratic Party), which was particularly progressive on social legislation, dominated the National Assembly. Women's right to vote (Art. 22 WRV) imparted to this current a far broader democratic legitimacy. The denial of voting rights to welfare recipients had also be repealed on 29 November 1928, by a decree from the Council of People's Representatives. The number of workers organized in unions grew from 3.9 million (1918) to 13.3 million (1922) (Preller 1978, pp. 180ff.). The new constitution of 11 August 1919, gave the Reich the legislative authority for "welfare for the poor and migrants," "population policy, welfare for mothers, infants, children, and youths,"

"labor law, insurance and protection of workers and employees as well as certification of employment," and "welfare for servicemen and their dependents" (Art. 7 WRV). To the extent that there was a need for the enactment of uniform regulations, the Reich also had the legislative authority for the "welfare system" (Art. 9 WRV). Together with the basic principles of social policy (partly programmatic in nature, partly possessing the character of basic law) in the second main section of the Constitution (Articles 109, 119, 122, 151, 155, 161, 162, 163), these norms formed the constitutional basis for a wide-ranging social legislation with which the Republic, endangered from the very beginning, could set out to deal by means of social policy with the misery of the war, inflation, and depression (Henning 1978, pp. 64ff.; Büsch and Feldman 1978: Feldman 1984, 1993).

Although these starting conditions seemed good, problems quickly proliferated. German society and its political system were unsettled by the defeat in the war and the humiliation in foreign policy, the hitherto ruling classes were partly overthrown, partly disoriented. The symptoms of intellectual unrest and a quest for meaning, which had been multiplying already since the end of the nineteenth century and were an indicator for a crisis-driven transformation of social conditions and attitude towards life that went with it, were now at times condensing into the experience of catastrophes. The most difficult phases (1920–1923, 1929–1932) and their political events have been closely studied and described (Bracher 1971; Kindleberger 1973; Möller 1997; Winkler 1993). That is also true of the social policy that was realized during these phases (*Deutsche Sozialpolitik*; Preller 1978; Abelshauser 1987).

War and inflation shifted the basic direction of social policy. While in the Empire it had aimed primarily at industrial workers and had simultaneously sought to pacify them politically by providing material security, the consistent expansion of social insurance was already pointing in the direction of a slowly emerging national insurance. However, that trend asserted itself fully only when entirely new segments of the population became involuntarily dependent upon the state in the postwar period. The number of the needy quadrupled between 1913 and 1924, and the need for state support per capital grew eightfold (Sachße and Tennstedt 1988, p. 81). Since the number of industrial workers stagnated, while that of salaried employees and the socially needy strata increased, what became evident here was the transition from a more simply structured class society to a more complex, modern mass society. In that society, those who had jobs gained a relatively secure place, thanks to guarantees and protections from associations, while the unemployed and many other groups gradually turned into the "poor," without being able to fight against it in any organized form. These groups, which were now also voters, could not be pacified by pointing to traditional welfare. The trend and potential was for ever broader strata to become recipients of social services and benefits, which would lead invariably to an intertwining of the various special systems and to an ever more refined balancing of "equality." That is also the reason why the equality clause in Article 109 of the Constitution experienced an extraordinary growth in importance (Anschütz 1933, Art. 109).

Other areas of politics, too, were seized in this way by the ubiquitous notion of "the social." Every political measure that affected a nation sorely oppressed by dire

circumstances had to take the social element into considerations. Thus, social law in the broader sense included the Reich Settlement Act (*Reichssiedlungsgesetz*) and Reich Homestead Act (*Reichsheimstättengesetz*), legal regulations to protect renters and tenants, regulations to eliminate the housing shortage, steps to hold down rent increases, and the entire social housing construction of the 1920s and 1930s. Socially motivated in this broadest sense was also the fight against inflation.

*5.1 Welfare (*Fürsorge*)*

The welfare measures occasioned by the war had placed alongside the old poor relief an "elevated welfare," the Wartime Welfare (*Kriegswohlfahrtspflege*). This created two classes of welfare recipients: the traditional poor, who had to be supported "by virtue of their existence," were joined by the "special victims" of the war, whom one did not wish to burden with the odium of poor relief. This concerned primarily family support for the wives and children of conscripted soldiers, care for disabled veterans and their families, and provisions for surviving dependents (widows and orphans), as well as special care for those groups so badly damaged economically by war and inflation that they had to become welfare recipients. This new "welfare" dominated by the notion of special sacrifice gave rise to ideas that were no longer compatible with the old poor relief: the end to political discrimination, legal entitlement to benefits, the individualization of aid, professionalization, and a socio-political guiding intent that was very different from the traditional "poor policy." As a result, the older system of poor relief receded into the background to the same degree that the new systems of protection took shape. Nevertheless, it continued to be indispensable as a subsidiary system. Welfare was the supplementary system when other protections failed or did not provide adequate benefits. However, this clean separation was not really accomplished, especially since the goal was to combine organizationally all welfare benefits "into one hand" of the district and state welfare associations. For example, the differentiation between poor relief and "elevated welfare" could be achieved only through different benefit levels and by not including the social security pension or other benefits. Notwithstanding all efforts at drawing distinctions, "welfare" (*Fürsorge*) became the dominant term. All recipients of social benefits who wanted to escape the negatively-freighted status of the "poor" saw themselves cast back into this status in the post-war period and the crisis years of the Republic – whether they were disabled veterans or surviving dependents, members of the middle class wiped out by the devaluation of the money, recipients of very small pensions from social insurance, or unemployed who fell outside of the protection of insurance. The bitterness this generated became one of the essential causes behind the instability of the Republic (Winkler 1972; Möller et al. 1993).

Public welfare had traditionally been the domain of local communities and the federal states (Castell-Rüdenhausen 1991). The Reich level had to be used at most to regulate such central questions as that of the *Unterstützungswohnsitz* (residential

relief system). During the war, as we have seen, the Reich took on those special areas of "elevated welfare" that ran parallel to poor relief, were financed or subsidized by the Reich, and at the same time were supposed to remain clearly separated from poor relief. That line was continued after the war. The Residential Relief Act (*Unterstützungswohnsitzgesetz*) of 1870 remained in force (in the version of 7 July 1908) and the Reich was initially active in areas that lay aside poor relief. These were: communal unemployment relief, co-financed by the Reich and the states, which could be means-tested and demand work in return, but which was not poor relief[97]; welfare for surviving dependents and disabled veterans[98]; welfare for recipients of very small pensions and social security retirees[99]; child and youth welfare (Sachße and Tennstedt 1988, pp. 99ff.); health care, including care for women in childbed[100]; and housing welfare (Sachße and Tennstedt 1988, pp. 138ff.). These continuously growing areas began to divide and break down into more specific and detailed areas of welfare. They were in part emergency measures to deal with the consequences of the war, dominated by the basic notion of the "special sacrifice," and in part the expression of an engagement by the welfare state that had moved far away from the older notions of "good order." The endeavor to maintain social harmony by means of social policy was crisis management intended to prevent an internal political collapse. The state, which had laid claim since the World War to overall responsibility for the reliable performance of societal processes, or at least was not able to rebuff the corresponding ascription of this kind of responsibility, now carried on the sovereign guidance it had rehearsed during the war: in part through financial subsidies, which tended to turn local communities into "paying offices of the Reich" (Sachße and Tennstedt 1988, p. 87), in part through laws that created the framework, through laws that exerted direct guidance on areas assigned by the competency system of the Reich Constitution, and by (emergency) decrees, "basic principles," or "recommendations." No strict system was pursued in the process. The Reich regulated what could be regulated within the framework of what was politically and financially possible, and developed the organizational forms that went along in a very pragmatic fashion (Berg 1985, §8, pp. 231ff.). Or to put it more clearly: there "emerged a de facto highly fragmented, difficult-to-grasp tangle of special types of welfare, each with different legal

[97] "VO über die Erwerbslosenfürsorge v. 13. November 1918", RGBl., p. 1305; Sachße and Tennstedt (1988, pp. 94ff.).

[98] "VO über die soziale Kriegsbeschädigten- und Kriegshinterbliebenenfürsorge v. 8. Febraur 1919", RGBl., p. 187; Sachße and Tennstedt (1988, pp. 98ff.)

[99] "Reichsgesetz über Nostandsmassnahmen zur Unterstützung von Rentenempfängern der Invaliden- und Angestelltenversicherung v. 7. Dezember 1921", RGBl., p. 1533; "Gesetz über Kleinrentnerfürsorge v. 4. Februar 1923," RGBl. I, p. 104; Sachße and Tennstedt (1988, pp. 92ff.).

[100] This area was separated from sickness insurance, since this was not insurance law, but organizationally nothing changed. See the "Gesetz über Wochenfürsorge v. 9. Juni 1922", RGBl. I, p. 502; Sachße and Tennstedt (1988, pp. 114ff.).

foundations and financing modalities, different administrative organization, and unequal benefit levels" (Sachße and Tennstedt 1988, p. 142f.).

Thus, as long as the Reich, out of tradition and a supraordinated perspective, devoted itself to the areas of "elevated welfare," aid to the poor through public welfare remained a matter for the states. The state laws that were now passed[101] were "organizational laws intended to standardize and stabilize the developments of communal welfare that had begun during the Wilhelmenian period. The goal was to ensure that all institutions, both public and private, followed uniform, planned, and deliberate procedures, to prevent a fragmentation of efforts and expenditures, and gain professionally trained personnel to carry out the newly defined tasks" (Sachße and Tennstedt 1988, p. 87).

Parallel to this development, however, as the welfare system was transferred from the Reich Ministry of the Interior to the Reich Labour Ministry in October 1918 on the basis of the new constitution, ideas about a "Reich Poor Law" that had been floating around in the *Deutscher Verein für öffentliche und private Fürsorge* (German Association for Public and Private Welfare) since 1912 became more concrete. Out of the initially modest plans to replace the *Unterstützungswohnsitz* with the *Aufenthaltsprinzip* (the principle that aid is given wherever a person happens to be living), to grant a legal entitlement to aid, and to have the Reich bear more of the costs than it did before, grew plans for a more comprehensive codification of social law. It was to encompass not only all areas of welfare, but also insurance law. Of course, given how recently the Reich Insurance Code of 1911 had been codified, this was not very realistic. That is why the plans were limited to a statutory regulation for all "poor" groups, including youth welfare, that is to say, an integrative "Reich Welfare Law" with legal entitlement and an emphasis on the principle of individualization. Finally, even more restrictive was a continuation of the existing poor law that excluded youth welfare but included the "elevated welfare." As infeasible as a total codification of social law may have seemed, this idea did express the tendency to interconnect all social benefits, which had emerged under the pressure of war and the post-war miseries. Henceforth, the modern welfare state realized itself in a network of social benefits with a tendency to encompass all groups.

And so, all that seemed possible in 1923 was a small solution. It was the year of the inflation, the occupation of the Ruhr region, martial law for the Reich territory, unrest in Saxony and Thuringia, Bavaria's conflict with the Reich, and the Hitler putsch. At the end of the year, the parties agreed to an Enabling Act of 8 December 1923, which would run for 10 weeks (RGBl. I, p. 1179; Huber 1984, vol. 7, pp. 451ff., 458ff.) It provided the basis for a third Emergency Tax Decree on 14 February 1924 (RGBl. I, p. 74). Paragraph 42 of that Decree transferred various areas of social care from the Reich to the states and eliminated the Reich subsidies

[101] Especially: Saxony ("Gesetz über die Wohlfahrtspflege v. 30. Mai 1918"), and Thuringia ("Wohlfahrtsgesetz v. 20. Juni 1922"), but also in nearly all other city states and smaller states. See Sachße and Tennstedt (1988, p. 88).

that had been given until then. The added burden on the state was covered via financial equalization.

In spite of this transfer, the Reich reserved for itself the right to pass more specific decrees under Reich law. And those decrees appeared in the Reich Law on the Responsibility to Provide Social Welfare Assistance (*Reichsverordnung über die Fürsorgepflicht*) of 13 February 1924 (RGBl., p. 100), the first Reich-wide regulation of the core area of welfare provision. As an aside, this path was also used to adjust the contribution and benefits of social insurance, extend working hours, enact the so-called "Emmingerian reform of the judicial system" (1924; Claussen 1985), and pass a series of financial measures.

The Reich law primarily regulated the carriers of public welfare assistance. It replaced the old Associations of Local and State Poor and appointed the State and District Welfare Associations as the new carriers (§1), through the specific form they would take was left to the states. Important for the relationship to the system of voluntary charity was not only the possibility of delegating state tasks, but above all the statement: "The Welfare Associations are not to create their own institutions where suitable institutions of voluntary charity exists in adequate numbers" (§5, Sect. 3). For one, this was intended to prevent inefficient overlapping and competing offerings, for another, it reflected a recognition that broad sections of welfare were occupied by social forces, and that these forces should now be given preference as the status quo. This stipulation (§17, Sect. 3, SGB I) has been seen to this day as the basic rule for the division of labor and as an expression of mutual respect and support in the area of social work. Historically it is also a reflection of the strong position of the Center Party and the Caritasverband within the spectrum of socio-political forces in the Weimar Republic.

Public welfare assistance now comprised the following: social assistance for disabled veterans and surviving dependents, assistance for the disabled and for salaried employees who had no insurance protection,[102] assistance for recipients of small pensions,[103] assistance for the severely disabled and those seriously impaired in their ability to work through job procurement, assistance for needy minors, maternity benefits, and – listed only at the very end – assistance for the poor. To set the last-named apart from "higher level welfare," officials resorted to the instruments of material differentiations, whether by granting higher direct benefits, not counting certain income when means-testing, or accepting untouchable "*Schonvermögen*" (exempted personal assets) for those living on social security pensions or very small pensions. After fierce political debates, a new §33a of the Reich Principles stipulated in 1925 that the target levels for "higher level welfare" should be at least one quarter above those for subsistence assistance granted by general welfare for the poor. The difficulties that emerged here reveal how the notions of compensation for special sacrifices and of social equalization became

[102] Law of 7 December 1921, RGBl., p. 1533, newly promulgated on 22 July 1922, RGBl. I, p. 675.
[103] Law of 4 February 1923, RGBl. I, p. 104.

intermixed. Public welfare assistance became the catch-all for those who dropped out of their special systems of social protection and now found themselves in the company of those who became welfare recipients solely because of their poverty. With this, essential special areas of welfare had been once again subsumed under one roof and at a higher level than before. Welfare tasks that occurred at the local level "should by all means be taken on by the same office" (§3).

To be sure, the Reich Decree left it to the states to specify the criteria for the receipt of welfare benefits, define the goals, and decide how the benefits would be delivered. But here, too, the Reich reserved for itself the right to issue "fundamental principles," which then came into force in 1924/25 (RGBl. I, p. 765). The fundamental principles were based on preliminary work done by the German Association for Public and Private Welfare, especially a memorandum of 1919, which was continued in another memorandum issued by the Reich Labour Ministry on 14 February 1923. They contained a clearly thought-through General Part of welfare law and represented, in terms of substance, the most important codification in this area. They were in force until the passage of the Federal Welfare Act (*Bundesozialhilfegesetz*) in 1961; in fact, they are valid to this day as a material part of this law. Their intellectual concept, strongly shaped by the socio-political tradition of political Catholicism, existed in the previously mentioned memorandum. It stated the following: "Welfare should create values instead of merely preserving them. Its noblest goal must be to strengthen the will and power of the need person such that he can hold his own through his own skill, effort, and productivity. It must not paralyze the self-responsible work, especially not the fulfillment of one's obligations towards one's own family. It must take effect in time and adequately, and, where the need exists, also intervene preemptively. Formally it must respect human dignity. It must not help in a uniform manner, but must probe into the peculiarity of the emergencies and on that basis select the means to remedy them. It should no longer put the giving of cash in the center, but help from one human being to another."[104]

The essential principles of social assistance today are spelled out in these brief words: what is presupposed is an image of the person that is focused on earning a living through work. That means, conversely, that "asocials" and "work shirkers" ranged at the lowest end of the scale. In case of "uneconomical conduct," social assistance should "test in the strictest way and restrict the kind and measure of social assistance to what is indispensable for getting by." Persons "who stubbornly act against the legitimate directives from the relevant authorities" were disciplined in this way and stood under the threat of being committed to a "work house" (§20, RGBl. I, p. 770). Thus, the work ethic and repression thus lay closely side by side – as they already had throughout the entire modern period and continue to do so to this day.

[104] Deutsche Sozialpolitik 1918–1928. Erinnerungsschrift des Reichsarbeitsministeriums (Berlin, 1929, p. 241).

What this meant was: "normally," everyone should use his own strength and means, should ask his family members for help and seek out aid "form other sides." Only when all of that failed was a person "needy." If that was indeed the case, as verified by a means test involving question about income and living circumstances, the state itself responded "in a timely manner" without an application from the person in need of help and covered the "necessities of life."[105] The state should look to providing work and provide assistance to the needy person in such a "lasting" way that he will be able to get back on his feet again ("help to self-help"). Job procurement thus ranked ahead of cash benefits, lasting help seemed more economical than a never-ending chain of small payments. Following the principle of individualization, the decision about which measure was appropriate was left to the discretion of the authorities: "The assistance that should be granted in each individual case within the framework of the necessities of life must be guided by the peculiarities of the case, namely, the type and duration of the need, the person who is in need, and local conditions."[106] Help was thus to be assistance for the individual, should due justice to the individuality of the person receiving it, and determine his life situation very precisely in order to offer targeted aid. In addition, however, there were also "institutions" of social assistance, to the extent that standardized help seemed more useful or cheaper.

The latter is already an indication that the principle of individualization could not be sustained. Everything was pushing toward standardization, not least the maxim of equality. There were strong regional differences in the aid granted by rural district (*Landkreise*) and cities, the lines of demarcation between general and "elevated" social assistance had to be specified, and the mass nature of the administrative processes called for unified national regulation. As a result, "guidelines" (*Richtsätze*) established themselves, even as the Reich shifted costs almost entirely to the states and local communities, while at the same time having stripped those communities of essential source of income through the Erzbergian Financial Reform of 1920. The *Richtsätze* (today referred to as *Regelsätze*) had a homogenizing effect on the practice of social assistance and also lifted its level. But that precisely caused an accumulation of socio-political dynamite. The communal level bore a growing burden of social assistance, while the previously possible differentiation of benefits according to local conditions and possibilities became increasingly impossible (Sachße and Tennstedt 1988, pp. 175ff.). At the

[105] "The necessities of life include

a. subsistence, especially housing, food, clothing, and nursing care;
b. sickness assistance and help to restore the ability to work;
c. assistance for pregnant women and maternity benefits, moreover
d. educating minors and enabling them to be gainfully employed,
e. enabling the blind, deaf-mute, and disabled to be gainfully employed.

If necessary, funeral costs shall be paid." (§6 Reichsgrundsätze). For a contemporary voice on this see Arendsee (1932). On this author see Cerny (1992, p. 17).

[106] Compare today §3, section 1 of the BSHG (Federal Welfare Act).

end of the Weimar Republic, local communities across the board were deeply in debt, not least because they had to shoulder the costs of welfare benefits, which became oppressive precisely during a time of crisis. When benefits were cut in 1930, the homogenization previously achieved through the *Richtsätze* revealed its downside to those affected.

To be sure, the Basic Principles did not establish an actionable legal claim to general welfare, which began to establish itself in legal decision after 1949 and became law in 1961 (§4 Federal Welfare Act). Yet such legal claims certainly did exist with the "elevated social assistance," and beginning in 1926 it was also possible to challenge the denial of benefits and the determination of their kind and level. But the protection by the administrative court failed: one was dealing with a discretionary decision, and there was a consensus that it followed from the "historical development of public welfare measures, from poor relief, from the Residential Assistance Act, and the Reich Law on the Responsibility to Provide Social Welfare Assistance of 13 February 1924, that the person in need of assistance never has a legally actionable claim against those obligated."[107] Where a material claim does not exist, the failure of public assistance does not constitute a violation of the individual's legal positions.

In this way, the system of public assistance during the Weimar period reflected the achievements and setbacks of the Republic. Thanks to the preliminary work done before the war, it was possible fairly quickly to reform the organizational foundations, give public assistance a uniform framework throughout the Reich, and provide it also with viable guiding ideas in the "Principles." The "special assistances" that had been developing along their own tracks were to some extent brought back into general public assistance. The professionalization of those working in public assistance made rapid progress especially in the 1920s, namely on both sides of the dual system, the communal assistance bureaucracy and charitable welfare (Sachße and Tennstedt 1988, pp. 202ff.). Consequently, the individuals working in these areas were incorporated into social insurance. But the expanding system of public assistance as the final protection against material privation invariably came under enormous pressure when the fallout from the war had to be deal with, when inflation destroyed savings, and when the global economic crisis once again threw millions out of work. The expenditures for public assistance weighed heavily on local budgets and thus closed the fateful circle of political hopelessness.

Although the system of charitable welfare, which encompassed more than 10,000 institutions of closed assistance and nearly 19,000 institutions of open assistance on the eve of the war, had expanded and professionalized itself to an astounding degree, it still had to wage the same battle against inflation as all other structures and it did not receive from the state the kind of support in keeping with its

[107] "Urteil des Preus. Kompetenzkonflikt-Gerichtshofs v. 20. Juni 1931", in: Nachrichtendienst des Deutschen Vereins für öffentliche und private Fürsorge 1954, p. 133. On the qualification of this claim as a *Reflexrecht* see already Jellinek (1905, p. 73).

function. The subsidies for the work it did declined continuously also in the economically favorable years of the Republic (1924–1929). In the end, charitable welfare was not able to cushion the shortcomings that had developed in public assistance.

5.2 *Youth Welfare*

Parallel to the development of public assistance, and in part preceding it, "youth social law" came into its own. Such a special area tailored specifically to an age group had never before existed. To be sure, the state in the nineteenth century had reacted in an age-specific way with the gradual curtailment of child labor after 1939, with the enactment of obligatory school attendance, with aid to orphans under poor relief law, and with regulations pertaining to guardianship, but this was not driven by a self-contained social policy for the benefit of "young people." Such a policy was absent especially in the reactions of criminal law and of corrective training (*Fürsorgeerziehung*), which varied from state to state and could be imposed by the criminal judge.

Beginning in 1900, however, a number of factors changed. The Civil Code standardized family law, especially the stipulations regarding maintenance, guardianship, and adoption. It established a threshold for state intervention with "child welfare (*Kindeswohl*)" (§§1666, 1838 BGB). In addition, for the purpose of preventing "utter moral dissolution," the "compulsory education of minors" that was possible since 1871 was made feasible at the state level.[108]

In Prussia, this led to the separation of local poor relief and suporalocal public assistance education (*Fürsorgeerziehung*) administered by the provincial associations.[109] The states now also began to set up a system of youth welfare separate from poor relief. It included, in addition to oversight of foster care, the institution of official guardianship (*Amtsvormundschaft*), through which – different from the individual guardianship of the Civil Code – an official agency was employed for a community's orphans (Art. 136 EGBGB) (Keidel 1929, pp. 357ff.).

While the relevant local authority still combined task related to policing, poor relief, and youth welfare between 1900 and 1910, a process of differentiation began: for example, in 1900 in Mainz with a special deputation for youth welfare (Schmidt 1907), with "Committees for Youth Welfare" in Prussia's Rhenish Province and in Westphalia, or in 1910 with the creation of the first Youth Office in Hamburg (Hasenclever 1978, p. 31). Henceforth, services to youth people were no longer supposed to have the politically discriminatory effects of poor relief.[110]

[108] Article 135 "Einführungsgesetz zum BGB" (EGBGB).

[109] "Gesetz für die Fürsorgeerziehung Minderjähriger v. 2. Juli 1900", PrGS, pp. 264–269.

[110] "Reichsgesetz betreffend die Einwirkung von Armenunterstützung auf öffentliche Rechte v. 15. März 1909," RGBl., p. 319.

The same period saw the beginning of the youth court movement, which was based on the realization that juvenile delinquency had specific causes and called for a specific response. Preliminary work for a "Youth Court Law" commenced in 1908, born by the hope of incorporating as many pedagogical elements as possible into penal law.

Behind these varied approaches stood the bourgeois Youth Movement and the Workers' Youth Movement, though the latter was looked upon with suspicion by the Wilhelmenian state and was excluded from government support.[111] In order to maintain political control in this area, Prussia initiated a patriotically oriented leisure time education for boys in 1911, after 1913 also for girls.

The First World War on the one hand interrupted the reformist approaches, while on the other hand intensifying the aspect of public assistance and oversight. Young people were subject to the reach of the military administrative apparatus (obligation to work, prohibition against entering taverns, compulsory savings, etc.); at the same time, they were recognized as national "capital" in need of active, non-discriminatory care. Embracing the promotion of young people could thus have military, nationalistic, idealistic-reformist, or socialist motives. All of these currents presupposed "youth" as a separate phase of life, and the demand for a separate "youth law" was accordingly raised for the first time in 1916 (Simon 1916).

With the revolution of 1918 and the work of the National Assembly in 1919, a standardized national regulation of public youth welfare through Youth Offices seemed possible, indeed, supporters were hoping for a major Reich Youth Law. (Felisch 1917; Gräser 1995). The new constitution stipulated the parents' right and obligation "to raise their children to bodily, spiritual, and social fitness" and the authority of the state to supervise it (Art. 120 WRV). It further promised equality for "children out of wedlock" and the protection of youth "against exploitation and against moral, spiritual, or bodily dissipation" (Articles 121, 122 WRV). Large families now had a "claim to compensatory social welfare" (Art. 119, Section 2 WRV).

The hope was that a Reich law on youth welfare could be quickly created on this basis. But the Kapp Putsch and the financial concerns of the states slowed the National Assembly. The legislative process resumed only after an interpellation by 33 women from all parliamentary groups in the Reichstag, led by Marie Elisabeth Lüders (DDP), Gertrud Bäumer (DDP), Agnes Neuhaus (Zentrum), and Marie Juchacz (SPD), pushed for its acceleration (Hasenclever 1978, pp. 52–58). Although many reformist hopes from the pre-war period were not considered, the Reich Law for Youth Welfare of 9 July 1922, did guarantee for the first time a "right to an education to bodily, spiritual, and social fitness" (§1), recognized the primacy of the parents and the principle of subsidiarity between the family and the state, emphasized the "unity of youth welfare" against certain centrifugal tendencies, and,

[111] See §17 of the "Vereinsgesetz v. 19. April 1908", which prohibited young people under the age of 18 not only from being members in political organizations, but also from attending public political gatherings.

finally, regulated the position of public youth welfare toward private, charitable youth welfare (RGBl. I, pp. 633, 647).

In the loss column was the fact that there was no supreme Reich agency and that youth jurisdiction remained separated from youth welfare. The tension – visible to this day – between state youth welfare (official guardian ship, local orphans' council, protection of foster children, corrective training (*Fürsorgeerziehung*) and the largely charitable *Jugendpflege* (care for the youth)) persisted. The demarcation between youth law and social assistance law, toward the Kindergarten and school system, toward disability law and health care required several more decades of efforts in practice and legal decisions. Finally, youth welfare saw its sphere of action curtailed again almost immediately.[112]

In spite of all the compromises and curtailments (Neundörfer 1923), however, the Youth Welfare Law was an outstanding legislative achievement by the young Republic, a balancing act between the "socialization of youth welfare" and the bourgeois-confessional "protection of the family." It installed throughout the Reich the communal "Youth Office" as a new agency staffed with professionals. It carried out the shift from thinking in categories of warding off dangers toward a pedagogically motivated "protection of the youth," no doubt also in consideration of the increasingly important function of the private, charitable *Jugendpflege*, which attained considerable influence through the participation of the laity. It became the framework law for the youth work by the states,[113] individualized youth assistance, and asserted the latter's "unity" with respect to assistance and care.[114]

The subsequent years also saw strong discrepancies between an advanced professional discussion and the political possibilities of a Republic wracked by crises. Apart from the politicians in the Reichstag, it was especially Gertrud Bäumer, Christian Klumker, Wilhelm Polligkeit, Hans Muthesius, and Hermann Nohl who advanced the practice and who did the conceptual work. What was created in spite of the short and problem-ridden time was still impressive: the legislator now regulated across the Reich the "religious majority" of children and youths that was stipulated in the constitution.[115] Criminal law witnessed the same kind of differentiation as social law through the emergence of a "youth social law." In preparation since 1920, the Youth Court Act was passed in 1922.[116] It contained new thresholds for the age of criminal responsibility and allowed for a response to young people based on their "capacity of discernment." In fact, it generally followed the trend to consider the developmental processes in young people in

[112] "Verordnung über das Inkrafttreten des RJWG v. 14.2.1924", RGBl. I, p. 110; "Einführungsgesetz zum Reichsgesetze für Jugendwohlfahrt i. d. F. v. 14. Februar 1924", RGBl. I, p. 110.

[113] Hasenclever (1978, pp. 98ff.), Friedeberg and Polligkeit (1930, pp. 47ff.). The implementing laws for the Reich Youth Law after 1923 can be found in von Staudinger (1929), EGBGB, p. 356f.

[114] Weaknesses of the Law summarized in Hasenclever (1978, p. 85f.).

[115] "Gesetz über religiöse Kindererziehung v. 15. Juli 1921", RGBl., p. 939. See Kammerloher-Lis (1994).

[116] "Jugendgerichtsgesetz v. 16. Februar 1923", RGBl. I, pp. 135, 252.

the kind of punishments handed down, in the register of convictions, and in the cooperation with charitable youth aid and the Youth Offices (so-called Youth Court Assistance). To be sure, the corrective training that had just recently been eliminated from youth assistance law, and which was still considered indispensable, had moved into youth penal law as an instrument of educational discipline in the hands of the judge. Eventually, the legislators responded preventively with the Movie Theater Law of 12 May 1920, to the real or presumed dangers of the new medium, a trend that continued with the 18 December 1926 law – highly controversial in terms of cultural policy – to combat harmful publications.[117] Other "protective" initiatives, including also those to improve workplace safety, failed.

A summary of the legislative and practical developments in youth welfare during the Weimar Republic is not easy. There were considerable delays and other shortcomings in implementation, but at the same time a move toward professionalization and the incorporation of women as youth welfare workers, combined with the mobilization of voluntary forces. The same kind of professionalization occurred in the work of organizations, in which socialist, charitable, reform-pedagogical, and nationalistic patterns emerged. Needless to say, there were heated debates, for example about the inadequate and scandal-ridden corrective training, which was to be transformed – if possible – from a tool resembling penal incarceration into an effective pedagogical institutions, while the Left argued that it should be abolished altogether. The fact that corrective training was reduced during the final phase of presidential dictatorship, over the objection from professionals, and the young people in this program added to the already catastrophic number of unemployed youths, was a bitter ending to the controversy.[118] In the end there were efforts to ward off a catastrophe, for example through the creation of the voluntary labor service after 1929 and an "Emergency Organization for German Youth" (1932), efforts that were unsuccessful given the dire financial straits of public budgets and the radicalization of the youth that had already occurred.

5.3 Housing Policy

Although some measures of government housing policy had already been taken during the world war, this area gained new importance only under the conditions of the Weimar Republic. The steps taken during the war to support the social peace on the "home front" (tenant protection, rent control, publicly-run housing, promotion of housing construction) could be expanded and built upon under the provisions of Article 155 of the Weimar Constitution. With that article, state care for housing made its way into the catalog of public tasks by way of constitutional law.

[117] Petersen (1995, pp. 50ff. [Movie Theater Law]: 56ff. [Harmful Publications Law]).

[118] "VO des Reichspräsidenten über Jugendwohlfahrt v. 4. November 1932", RGBl. I, p. 522; "VO des Reichspräsidenten über Fürsorgeerziehung v. 28. November 1932", RGBl. I, p. 531.

It stipulated that that state should secure "healthy housing to all Germans, and to all German families, especially those with many children, housing and an economic homestead in accordance with their needs." War veterans were to be given "special consideration in the homestead law that is to be written." Of course, this stipulation, too, was only a guideline for the legislators and therefore – as Gerhard Anschütz put it in his leading commentary – "lex ferenda, not lex lata" (Anschütz 1933, p. 723). Still, important reform projects in this area fell into the period 1918–1933. Initial measures were already taken even before the constitution took effect. The situation in the housing market was exacerbated especially by the return of many veterans and the concentration of workers in a few centers of the armaments industry. Added to this was the fact that housing construction had virtually ground to a halt during the war. With the national economy focused on war industry, construction materials and workers were hard to come by. At times there were even thoughts of prohibiting all construction activity that did not serve military interests through the general commands (Bunte 1995, p. 23). The capital market for housing construction had collapsed; compared to war bonds, housing construction was barely profitable for investors; the construction of company housing and construction programs for employees by the Reich, the states, and the local communities had ceased, except for the erection of barracks for armaments workers. While the net gain in housing units had been at 200,000 in 1913, by 1918 it had dropped to only 8,000 (Bräunche 1997, pp. 23ff.; Bunte 1995, p. 24). Estimates put the housing shortfall in 1918 at 700,000–800,000 units, and it nearly doubled again by 1923 (Peters 1984, p. 60; Stratmann 1976, p. 40; Witt 1979, p. 392). The reasons lay in the immediate fallout from the war. An army of a million had to be demobilized, refugees from Alsace-Lorraine had to be absorbed,[119] soldiers from the dissolved garrisons flooded the housing market, and the establishment of households and families surged in the first years after the war.[120] The housing crisis, which was latent in many parts of the Reich also before 1914, could no longer be shunted aside. The Frankfurt City Construction Councilor (*Stadtbaurat*), Ernst May, expressed the general sentiment: "The war and its consequences – the Revolution – have sharpened the authorities' sense of responsibility for pacifying the people with healthy housing" (Stratmann 1976, p. 53).

The response of the legislature on the Reich level to the growing crisis lay largely in expanding protection for tenants. The "Law on Tenant Protection and Rent Tribunals" of 1 June 1923 (RGBl. I, p. 353) created special regulations for the old housing stock (the cutoff date for that list was 1 July 1918), exempting the units owned by the public, non-profit Housing Construction Association. The right to

[119] A total of 32,000, who were looked after by the "Reich Office of Care for Expellees from Alsace-Lorraine" in Freiburg im Breisgau. Bräunche (1997, p. 25). Karlsruhe had 6,000 resettlers from Alsace (Bräunche, ibid.), Frankfurt am Main about 4,5000 (Stratmann 1976, p. 52).

[120] In the *Standesamtsbezirk* Karlsruhe, the number marriages was well below 1,000 during the war years, rose to 1,877 by 1919, and to 2,155 by 1920. For the repercussions on the housing market see Dommer (1926).

terminate a lease was essentially revoked; there was merely the possibility of an action requesting a modification of legal status, the success of which depended on the existence of certain reasons for the termination of lease (personal use, arrears in rent, improper use of the rented space, or nuisance to the landlord). The legal enforcement of an order to vacate could occur only with the consent of the Rent Tribunals. Moreover, if a rental agreement was terminated, the tenant had to be provided with housing of equal quality.

A year earlier, the Reich Rent Law of 20 March 1922, had introduced nation-wide rent control, the enforcement of which was placed into the hands of the communal Rent Tribunals. Prussia already had a corresponding regulation since the Maximum Rent Decree of 9 December 1919 (PrGS, p. 59). But tenants, too, had to accept restrictions, specifically on the basic right of freedom of movement (Article 111 WRV). In addition to the fight against food shortages, the fight against the housing shortage played a major role in this area. Thus, the Proclamation about Measures against the Housing Shortage of 23 September 1918 (RGBl., p. 1353), in its last version as the "Housing Shortage Act" of 26 July 1923 (RGBl. I, p. 751), was in force throughout the Weimar Republic. The result of these regulations during the period of inflation was that the rents that were fixed lagged the erosion in the value of the money. At times, the rent amounted to merely 1% of net wages.[121]

Another response to the general misery was passage of the Reich Homestead Act on 10 May 1920 (RGBl., pp. 962, 1218). It picked up the homesteading idea that had been spreading to Germany from America since the 1880s, and which, in addition to pursuing certain goals of population policy, was aimed primarily at improving the economic situation of socially weaker groups.[122] Under the leadership of the Prussian land reformer Adolf Damaschke, the "Main Committee for Soldiers' Homesteads" was founded in 1915, whose goal was to strengthen the morale of the fighting troops; the soldier, as Damaschke put it, should "fight like a man who is defending his own homestead" (Schildt 1998, p. 154). As in so many cases, it was only the control economy of the war that made possible long-delayed interventions by the social state. The Reich Homestead Act of 1920 distinguished so-called Residential Homesteads (the family's house and vegetable garden for suburban and rural conditions), and economic homesteads (for farm or truck gardens), which were handed out by the Reich, states, local communities, and community associations (§1). The status as a homestead had to be entered into the land register (§5). When a homestead was sold, the issuer had the first right of refusal (§11), and in the case where "the homesteader does not himself permanently occupy or work the homestead, or if he engages in gross mismanagement," the issuer had the right to reclaim it (§12). A mortgage on the homestead required the approval of the issuer (§16), a foreclosure because of the homesteader's personal indebtedness was not

[121] Bunte (1995, p. 30). Case studies in Stratmann (1976: Frankfurt am Main) and Bräunche (1997: Karlsruhe).

[122] On the homesteading idea see Der Grosse Brockhaus, vol. 8, 13th ed. (Leipzig, 1931), "Heimstättenwesen," 328; Damaschke (1922, pp. 262–298).

permissible (§20). In line with Article 155 of the Weimar Constitution, veterans and war widows should be given preference in the distribution of homesteads.

Of course, all of these measures could do no more than "administer" the existing shortages and misery. A fundamental change would have required a reinvigoration of construction activity. Especially the shortage of private capital as well as building land, and not least the significantly higher building costs (in 1920 they were about 15 times higher than before the war) (Bunte 1995, p. 32), prompted the public authorities in 1918 to embark on the path of promoting housing construction. Five hundred million Marks were set aside to create housing, especially for large families and socially weaker segments of the population (Bunte 1995, p. 34). These subsidies served to compensate for the higher building costs, but they offered so little incentive for economical construction that the straight subsidy program was replaced with construction loans starting with the1920 budget. The "Law Concerning the Temporary Promotion of Housing Construction" of 12 February 1921, obligated the states to spend at least 30 Marks per resident in fiscal 1921/22 for the public promotion of housing construction, with most of the money – totaling about 1.8 billion Marks – advanced by the Reich. The financing of this measure was largely provided by the "Law Concerning the Levying of Tax for the Promotion of Housing Construction" of 26 June 1921, which required the owners of housing completed before 1 July 1918, including renters, to pay 5% of the pre-war user value (calculated as of 1 July 1914) (RGBl., p. 773). That program came to an end during the inflation summer of 1923, when the receipts, in spite of higher rates (up to 90,000% higher), no longer covered even the expense of collecting them. All told, the balance sheet of those years up to 1923 was not very positive. The net addition of around 560,000 housing units covered merely a third of the shortfall, which had risen once again during the period of inflation (Bunte 1995, p. 37). The promise of at least temporary relief came from the creation of makeshift and small dwellings, whereby the public authorities increasingly took the lead as the builder. Settlements for disabled veterans and expellees were erected with "emergency" dwellings of varying quality, sometimes also in former barracks (Bräunche 1997, p. 27). In this way 60,000 units were created in the German Reich in 1919, but we certainly cannot speak of a standardized process. Construction activity was more intensive in cities where the workers' movement had achieved influence through the workers' and soldiers' councils.[123] But the city as the builder remained the exception; for the most part, the state's direct influence was exerted by way of housing taxes, loans, and rent regulations.

It was only the introduction of the Rentenmark and the stabilization of the currency from 1923/24 that made possible a new policy of promoting housing on the basis of precise budgeting. At the same time, the voices demanding a radical change of course toward the unfettered housing market of the pre-war period grew

[123] Five hundred units were built in Berlin in 1919, but twice as many in much smaller Frankfurt am Main; the city was the direct builder for two thirds of them, one third were erected by Construction Associations and Savings Associations. Stratmann (1976, p. 53).

louder.[124] The Reich government, too, regarded the low rents (depending on the states, between 25 and 40% of the peacetime rents in 1913) as a problem. There were discussions in the Reich Labour Ministry about bringing rents slowly up to the pre-war level, but to collect the differences in taxes and channel it into housing construction (Ruck 1997, p. 41). That was the thrust of the Emergence Tax Decree of 14 February 1924 (RGBl. I, p. 74). Beginning on Paril 1, 1924, this decree levied a "monetary depreciation compensation tax on built-up land" from states and local communities, one tenth-of which had to be spent on promoting housing construction. Since this levy was referred to in Prussia in short as the *Hauszinssteuer* (House rent tax), people spoke in view of the public construction activity that soon began of the "*Hauszinsteuer* era."[125]

With the introduction of this tax, the urgently needed housing construction was financially secured for the foreseeable future; local communities now had the possibility of pursuing housing policy on a larger scale and implementing the settlement measures. Comprehensive planning concepts in the form of "general construction plans" emerged in all large cities. Within the framework of this "new building" there arose new settlements still regarded as exemplary today, such as the "Römerstadt" in Frankfurt am Main (Ernst May), the "Hufeisensiedlung" in Berlin (Bruno Taut), or the "Jarrestadt" in Hamburg (Fritz Schumacher).[126] In the area of public construction and "urban sanitation," as well, long-delayed projects could be carried out, such as schools, libraries, and public swimming pools.[127] This era came to an abrupt end at the beginning of the 1930s: the receipts from the *Hauszinssteuer* dropped by half from 1930 to 1933, and even these reduced funds were used for the general consolidation of the budgets.

5.4 Social Insurance and Labor Law Confront New Challenges

5.4.1 Dealing with the Fallout from the War and the Further Development of the Classic Branches of Social Insurance

The historical retrospectives that were written in 1981 and 1989 for the one hundredth anniversary of social insurance strongly emphasized and praised its continuity.

[124] For example, the request by Paul and comrades (DNVP) on 9 October 1924, Reichstagsdrucksache no. 566, for a "precisely delineated program for dismantling tenant protection and rent control."

[125] The fundamental work on the *Hauszinssteuer* era is Ruck (1987, pp. 91–123, 1988, pp. 150–200).

[126] For a comprehensive contemporary overview see Adler (1931, reprint 1998).

[127] Margold (1931, reprint 1998); on the example of Munich see Rudloff (1999).

That perspective was perfectly understandable, and in terms of institutional history and personnel there was little to argue against it: "During the Weimar Period, the five branches of the classic social insurance, sickness, accident, and disability insurance, insurance for salaried employees, and miners' insurance preserved their traditional form grounded in the principle of self-administration" (Huber 1981, rev. 1993, p. 1097). But it is equally undeniable that social insurance entered into a new political constellation after the revolution and with the new constitution. The constitution proclaimed an active social policy. The Republic began with a majority, the so-called "Weimar Coalition," that was especially open-minded toward social policy. In the founding act of the Republic, the "social" was the element that bound together the workers' movement, the center, and the liberals. Social insurance, as the most important system of protection, had now once and for all ceased being an instrument of domestic politics that was only partially parliamentarized; instead, it was a policy that had been removed from the Ministry of the Interior and handed over to the new Reich Labour Ministry (Rindt and Saffert 1968, p. 13f.), and was fully dependent on the vote of the electorate, which now also included women. That meant more "politics" in the sense of a more active management of the social problems. For the first time it was now also possible to push through by parliamentary means the demands of the women's movement.[128] But there was also "more politics" in the sense of a quicker and less filtered reaction to government crises and economic miseries of the Republic. Especially the inflation of 1923, which devoured not only the citizens' savings but also the reserves of the social insurances, constituted a deep economic rupture from which the various branches of the insurance recovered at different rates. To keep up with the galloping inflation, the capital cover system had to be abandoned at times. Moreover, adjusting the contribution rates and the benefits to the inflation consumed a large portion of the legislative energy (Mügel 1927).

In other words: social policy, which was inescapably also societal policy on a large scale, was the Achilles heel of the young Republic. Its capacity to defuse social conflicts would decide the fate of the state. That was not only the constellation of the years after a lost war and a new beginning marked by uncertainties; it also reflected the long-term trend in the development of the western and central European states since the nineteenth century. The Industrial Revolution had gotten under way in these states through the unleashing of capitalism and with the enormous human sacrifices that constituted the "social question." But the political pressure emanating from the "social question" and the rising productivity of industrialization also allowed for the creation of large collective system of security, the expansion of worker protections, and the legal regulation of the clash of interests in collective labor law. In all areas, the state abandoned its paltry role as

[128] Gerhard (1990, p. 342f.) list the Law on Religious Child Rearing (1921), the Reich Youth Welfare Act (1922), the Law on the Admission of Women to Legal Offices and Professions (1922), the Home Work Act (1924), and the Law for the Protection of Women Before and After Giving Birth (1927), and the Reich Law to Combat Sexually Transmitted Diseases (1927).

merely a "night watchman" focused on warding off threats and assumed the position of a comprehensive guarantor. It became a "welfare state," initially still in the sense of fighting off threats that could arise for the body politic from mass poverty and class warfare, but then increasingly as a agency for the distribution of the national income that was intertwined in multifarious ways with the societal forces. Those forces were now organized into associations, and in cooperation and competition with the other parties and the ministerial bureaucracies, they were especially intent on getting their hands on the rudder of legislative activity. Everything now depended on the viability of this changed state: the ability for political action, on the one hand, and the productivity of the economy, on the other.

The functionality specifically of the large systems of social insurance was, in turn, linked to the existence of "work." Only jobs brought contributions to the insurance funds, which could in turn benefit others. Conversely, unemployment meant a financial burden and political extremism. There was good reason why the Weimar Constitution promised special and comprehensive social protection for labor (Articles 157–163), and declared that every German "shall be given the opportunity to earn his living by economic labor" (Article 163). The central place of the factor "labor" is also evident in the fact that the organizations of employees and employers, ever since their recognition in the constitution (Articles 159, 165), also dominated the participation of the insured in the social insurance scheme. "Work" and "joblessness" were the two dominant themes of the Republic. That led to an intensive reshaping of individual and collective labor law and to the introduction of a separate labor court jurisdiction. It touched indirectly on social insurance, whose basic pillar was a work relationship subject to compulsory contributions; thus, every measures aimed at the labor market also altered the background conditions for the accessory social insurance. Finally, the classic social insurance was broadened by a bold innovation – a Law on Job Placement and Unemployment Insurance of 1927 that combined job placement and real insurance against joblessness. The fate of the Weimar Republic was "work." It owed its creation to a workers' movement that was largely moderate, and it was eventually undone by rampant unemployment.

For the first time there now existed a Reich Labour Ministry.[129] It was also in charge of the "comprehensive insurance system" guaranteed by the constitution, with crucial contributions by those insured, "to maintain health and the ability to work, to protect motherhood and prevent the economic consequences of old age, weakness, and the vicissitudes of life" (Article 161). These words in the constitution referred to the existing branches of social insurance, while the "critical contribution of the insured" had been limited in 1911. It was "critical" only for sickness and miners' insurance, weaker for insurance for disability, salaried employees, and unemployment, and completely absent for accident insurance.

[129] "Erlass v. 4. Oktober 1918", RGBl., p. 1231. The removal of the Reich Insurance Office from the Reich Ministry of the Interior had been pursued in vain by the Republic's first president. See Tennstedt (1984, pp. 47ff.).

However, 1928 saw the first joint social elections of the insurances for workers and salaried employees and for miners' insurance.[130] The core of the legal foundation of social insurance continued to be the Reich Insurance Code of 1911, which was revised and newly issued.[131] It was joined by the Salaried Employees' Insurance Act (1911/24) and the Reich Miners' Act (1923).[132]

There were some characteristics that all of the various branches of social insurance in the Weimar Republic shared (Kleeis 1928/1981; Bogs 1981): a generally higher level of democratic legitimacy and a more intensive dependence on politics and party politics that came with that; the functionalization of social insurance in dealing with the consequences of the war, inflation, and the global economic crisis; the expansion of the circle of the insured and of insurance benefits (with a countervailing tendency of frantic cuts through emergency decrees); and, finally, the growing intertwinement of the systems of protection into an overall entity called the "welfare state" (*Wohlfahrtsstaat*).[133]

The latter had clear downsides in the every growing complexity of the set of norms of social insurance. A fundamental reorientation did not take place, even though there were suggestions in that direction. Not even the obvious merger of disability insurance and insurance for salaried employees succeeded. But under the pressure of the circumstances, social insurance law had to be changed and amended so many times that even specialists threw up their hands (Preller 1978, p. 283). That was not only a shortcoming of praxis, but also a structural problem with which social policy has had to wrestle to this day: a legal system with a high degree of complexity into which external political impulses must be continually incorporated is no longer able to gauge the side-effects on the subsystems, effects that can occasionally cascade. Accordingly, the preferred method is to work with the "tentative" introduction of innovations, experimental legislation, or time-limited regulations. Decisions are made on the basis of "equity" by by-passing statutory law that has ceased to be meaningful. Above all, the scientific permeation of a field suffers if the latter proves so unstable that any attempt at systematization is soon thwarted by countervailing political impulses.

Sickness Insurance

The legislative changes in the area of sickness insurance reflect societal developments that, in turn, constitute reactions to the existence of a functional

[130] "Gesetz über die Wahlen nach der Reichsversicherungsordnung, dem Angestelltenversicherungsgesetz und dem Reichsknappschaftsgesetz v. 8. April 1927," RGBL. I, p. 95; Tennstedt (1977).

[131] "Reichsversicherungsordnung in der Fassung v. 15. Dezember 1924," RGBl., p. 779; "Reichsversicherungsordnung (Drittes, Fünftes und Sechstes Buch) i. d. F. v. 9 Januar 1926", RGBl. I, p. 9.

[132] "Angestelltenversicherungsgesetz i. d. F. v. 28. Mai 1924", RGBl. I, p. 563; "Reichsknappschaftsgesetz v. 23. Juni 1923", RGBl. I, p. 431, "Neufassung v. 1. Juli 1926", RGBl. I, p. 369.

[133] On the history of the word itself see Stolleis (1998b).

sickness insurance. I am referring here to the medicalization of society – which now also reached the rural areas – through health reforms, the women's movement and its fight to decriminalize abortion (Gerhard 1990, pp. 366ff.), care for families, and the growing ratio of doctors to the population. The following groups were insured between 1919 and 1923: employees in public corporations, those engaged in home-based commercial work, workers in child-rearing, education, social assistance, nursing, and welfare – in other words, groups that were until then believed to be protected by special social relationships, but which had long since lost this special protection or wished to exchange it for an anonymous-institutional protection for their sake of their own autonomy. Equally important was the inclusion of a "breadwinner's" dependents: they were granted the "family assistance" that was derived from the main contribution payer and legally guaranteed in 1927. The unemployed were also covered by insurance in 1927, a necessary and important innovation intended to prevent gaps in insurance protection from a temporary hiatus in work. In addition, a new sickness insurance for sailors was created, carried by a Professional Maritime Association (*Seeberufsgenossenschaft*) (RGBl. I, p. 337). The result of all these expansions was that about 60% of the population was insured in the statutory sickness funds at the end of the Weimar Republic. If we add all the other funds, sickness insurance at that time was already de facto a "national insurance." With that, a base had been created that was able to carry the complex system of doctors, pharmacists, hospitals, rehabilitation facilities, and the medical, pharmaceutical, and hygiene industries.

Fights over how this important segment of the national income would be divided up were inevitable. Especially doctors who advocated the free choice of a physician and higher fees found themselves at the receiving end of the patronizing power of the sickness funds, particularly since the latter were showing a tendency to set up their own "outpatient clinics" (Hansen 1981). On the one hand, physicians were losing private patients to the compulsory insurance funds, on the other hand, the income base for all physicians broadened. Following a major physicians' strike in 1920, the Reich Labour Ministry brokered an agreement about an approval procedure to provide care as a fund-approved physician.[134] Physicians and sickness funds now negotiated in a "Reich Committee" that guided the shape of the agreements through "guidelines."[135] The conflict had thus been shifted into a corporative institutions operating in a semi-authoritarian fashion, not untypical of the zeitgeist, which could not decide on either the free market approach or a state-run, planned health care service, but preferred "self-responsible guidance." This did not really resolve the conflict: physicians, organized into the Hartmannbund, continue to oppose state guidance of medical care and especially against the possibility of

[134] On the development of the so-called Berlin Agreement of 1913, which was to run for 10 years, see Hansen et al. (1981, pp. 152ff.).

[135] "Verordnung über Ärzte und Krankenkassen und die Krankenhilfe VO v. 30. Oktober 1923", RGBl. I, p. 1051; RGBl. (1932), I, p. 19.

disciplining physicians who were practicing in an "uneconomical" way and even exclude them from working as fund-approved doctors for 2 years.

The Emergency Decree of 8 December 1931, then regulated the question in such a way that the sickness funds paid a flat fee to the Association of Fund-Physicians for every treatment reported to them (RGBl. I, p. 699). The latter, a public law body with compulsory character, in turn distributed the funds to the doctors. One physician was to be responsible for 600 insured patients.

Accident Insurance

Here, too, one can see the pervasive tendency toward an expansion of the individuals covered, the risks that were insured against, and the benefits. For example, it turned out to make sense to insure not only the workers on the factory floor, but also those in the sales and administrative departments closely connected to actual production. Outside of businesses emerged groups that were either new (lab technicians) or previously unprotected (actors), and especially those that were active in the public interest and especially "vulnerable to dangers" (firemen, rescuers, those providing nursing care and welfare assistance).[136]

But accident insurance also expanded the "sphere" of possible accidents by including the way to and from the workplace,[137] and by broadening the notion of a "work" accident by including the operation of tools, for example for the purpose of repair and maintenance. Finally, it went beyond the restriction to "accidents" suggested by its label and protected against occupational diseases that were indicated on an initial list. Thereafter, there was an ongoing, particular discussion – dominated by medical expertise – about an expansion of that list.[138]

However, since the consequences of accidents or occupational diseases extended far beyond medical recovery, the professional associations now also saw to restoring or boosting the ability of victims to return to gainful employment.[139] That included help in finding new work. This led to almost unavoidable frictions with sickness funds and physicians, because the accident insurance began to care for "its" patients in its own facilities. An agreement between the professional associations and physicians in 1926 sought to find common ground.

Finally, the preventive work of accident prevention was from the beginning among the tasks of the professional associations, especially since these efforts also had the effect of lowering costs. That sector was now further strengthened, both

[136] "Drittes Gesetz über Änderungen in der Unfallversicherung v. 20. Dezember 1928", RGBl. I, p. 405f.

[137] "2. Gesetz über Änderungen in der Unfallversicherung v. 14. Juli 1925", RGBl. I, p. 97.

[138] "1. Berufskrankheiten VO v. 12. Mai 1925", RGBl. I, p. 69; expanded by a decree of 11 February 1919, which recognized another 11 occupational diseases.

[139] "2. Gesetz über Änderungen in der Unfallversicherung v. 14. Juli 1925", RGBl. I, p. 97.

through training and codes for businesses, and through the creation of a central office for accident prevention.

Disability Insurance

Disability and old-age insurance would prove the most vulnerable component of social insurance during the crisis years of the Weimar Republic. Although their principles remained unchanged, the First World War already increased the burden by more than tenfold between 1913 and 1924 (Tennstedt 1981, p. 436). At the same time, the inflation caused a catastrophic devaluation of pensions. In spite of frenetic legislative changes,[140] there was simply no longer any equivalence between contributions paid in gold Marks and the benefits paid out in the inflation year of 1923. Rather, the certificate handed out to those entitled to a pension was the prerequisite for the provisions of the somewhat increased *Sozialrente* (social security pension) to kick in.

Since inflation had annihilated the capital of the disability insurance funds, the capital cover system had to be abandoned. A gradual consolidation was achieved by 1929 with the help of the "average premium method based on pay-as-you-go principles" of, which was used to move away from the rigid principle of Mark–Mark. Still, by that time pensions had not yet reached the level of truly securing a person's livelihood in old age.

Important was the elimination of the double insurance of "low-level salaried employees" in both the workers' and salaried employees' insurance schemes, a result of the way these had come about.[141] While this was an organizational disentangling, by virtue of the simultaneous de facto adjustment it followed the general trend of leveling out the old distinctions conceived in "statist" terms. Anyone who moved between the insurance schemes for workers and salaried employees had his contributions counted. The separate systems also moved more closely together thanks to the fact that beginning in 1922, the Reich Insurance Office and its legal decisions was equally responsible for workers' insurance and salaried employees' insurance (Bogs 1979, pp. 3ff., 9).

Insurance for Salaried Employees

After 10 years, the separate insurance for salaried employees that had been in existence since 1911 first underwent a thorough amendment (RGBl. I, p. 849) and

[140] See "Notgesetz v. 24. Februar 1924", RGBl. I, p. 147 ("AusführungsVO betr. Preistreiberei, Ausfuhrverbote, Handelsbeschränkungen, Verkehr von Vieh und Fleisch, Notstandsversorgung, Preisprüfung, Auskunftspflichten, Wucherverbote", RGBl. [1924] I, p. 699).

[141] "Gesetz v. 10. November 1922", RGBl. I, p. 849.

revision through the Salaried Employees Act.[142] It defined more precisely that term "salaried employee" (*Angestellter*) stipulated in 1911,[143] expanded self-governance, and – as in the other branches of social insurance – it included new occupational groups from the area where independent and dependent work overlapped (musicians, midwives, nurses). After inflation had been tamed, the restructuring of this insurance scheme sought a model of graduated contribution rates that combined a certain uniformity with the principle of contribution equivalence. That model was found by combining a basic rate for all and five different income classes for contributions.

Miners' Insurance

During the Weimar Republic, the insurance law governing the mining sector retained its age-old special status, though it did not rule out a close legal interlocking with the Reich Insurance Code. It found its final codification on the Reich level in the Reich Miners' Law of 23 June 1923, which was revised once more in 1926 (RGBl. I, pp. 431, 760; RGBl. [1926] I, p. 369). The Miners' Insurance, carried by the Reich Miners' Association, uniformly protected workers and salaried employees as "employees" (*Arbeitnehmer*) in the area of sickness, pension, disability, and salaried employees' insurance – incidentally, at more favorable conditions than other schemes (Geyer 1987).

5.4.2 From Social Assistance for the Jobless to Insurance Against Unemployment

The Risk of Joblessness

That unemployment was one of life's risks in industrial society was certainly apparent in the last third of the nineteenth century, but more like an "affliction" and as such also a domestic political problem, and not as a cyclically returning, "typical" problem, and therefore one that was amenable to an actuarial approach (von Schanz 1895, 1897; Molkenbuhr 1902). The dogma of contractual freedom under private law was simply too dominant (Wieacker 1974; Mayer-Maly 1998), the countervailing interests of employers was too strong, and the political establishment after Bismarck was not very willing to embark once again on a path of intervention that was difficult to grasp with actuarial tools (Faust 1986). What was known seemed sufficient, namely, certain progressive protections by individual

[142] "Gesetz v. 28. Mai 1924", RGBl. I, p. 563. It was only in 1923 that the Reich Insurance for Salaried Employees was given its own building. See Bonz (1989, pp. 138–141).

[143] "Bestimmung der Berufsgruppen der Angestelltenversicherung v. 8. März 1924", RGBl. I, p. 274, 410.

companies (Carl-Zeiss-Stiftung, Jena 1889) (Auerbach 1925; *100 Jahre Carl-Zeiss Stiftung*, 1989), communal insurance initiatives ("Insurance Fund against Unemployment in the Winter," Cologne, 1896; "Ghent Model") (Ritter 1983, p. 61), union benefits to the unemployed, small insurance solutions for salaried employees, or work procurement measures and emergency labor schemes. State assistance and self-help setups still seemed adequate, as well. The Reichstag examined the issue in 1902 and established a commission of inquiry, which in 1906 presented a report that compared Germany to other countries. The government hesitated about whether to follow the English example of an unemployment insurance (1911), but in the end decided not to.

The World War, however, forced the state to act because unemployment numbers surged. As early as December 1914, the communal unemployment assistance (*Erwerblosenfürsorge*) was set up, which was supposed to support individuals who were able and willing to work and had become unemployed and in need of help as a result of the war. Politically important in this process was drawing a line between this and the discriminatory poor relief; those made jobless by the war did not want to and should not find themselves on the same level as those who, in the prevailing opinion at the time, had created their situation by their own improvident behavior. This gave rise to the already mentioned doubling of "public assistance" and "elevated public assistance."

This doubling remained in place during the demobilization following the end of the war. The proclamation by the Council of the People's Representatives on 12 November 1918, highlighted the "support for the unemployed" as a special point. The following day saw the publication of the Decree on Unemployment Assistance, which explicitly prohibited the local communities from according the new branch of assistance, the *Arbeitsfürsorge*, "the legal character of poor relief" (RGBl. I, p. 1305). Half of the funds came from the Reich, one third from the respective state, and one sixteenth from the local communities. Assistance was given to those individuals above the age of 14 who were able and willing to work and "who find themselves in a situation of need from unemployment caused by the war." This was joined by a first attempt to curtail these assistance measures again through emergency labor schemes (RGBl. [1919], I, p. 1827, subparagraph 5). The unemployment assistance kicked in after a 1 week waiting period and lasted 6 weeks. As would become evident during the difficult years that followed, that was not enough, and so the decision was made in 1926 to follow this up with the grant of "emergency assistance." By the standards of systematic social law, this represented a hybrid interim solution. The Reich once again bore the main burden of this subsidy, three-quarters, while the respective local communities had to provide one quarter (RGBl. I: 489). Moreover, as with poor relief, there was a means test. On the other hand, there was a legal entitlement, and the committees of unemployment assistance were equally staffed by representatives of workers and employers. Both employers and workers/employees were to pay contributions as supplements to their sickness fund premiums. At this state one can therefore still observe the existence side by side of characteristic of welfare, social insurance, and public assistance. If there were such a thing as an "evolutionary theory of social law," this would be the prime example

for the transition from a benefit granted by sovereign authority to the needy to an insurance solution based on social solidarity (Faust 1987).

This transition was facilitated by the centralized employment agencies from the World War, which one could now use in peace time. Job-placement ranked ahead of unemployment insurance; ever since, the "linkage of job placement and unemployment insurance" shaped the thinking.[144] The first two drafts of such a dual law (1920, 1921) failed largely for financial reasons in the inflation of 1923. The undertaking was then brought to fruition in the years 1925–1927 thanks to a fairly broad consensus across parties. The "Law on Job Placement and Unemployment Insurance" of 7 July 1927 (RGBl. I, pp. 187, 320; Führer 1990) now assigned protection against the risk of unemployment to the state's sphere of responsibility. It encompassed the insured individuals from the classic insurance branches, but it left out more people than were covered there. Financing followed the model of pension insurance: i.e., employers and employees each paid half of the contributions, with contributions that were very small borne by employers alone. The benefit was "unemployment assistance" for 6 months. After that, "emergency assistance" kicked in for another 6 months as welfare-like assistance in cases of need. Once that had been exhausted, public assistance would be available to the long-term unemployed.

Organizationally, the state now created employment agencies, state employment offices, and a Reich Office for Job Placement and Unemployment Insurance as a public law body. Both the dominant insurance principle and the creation of these independent structures made clear that unemployment was not an individual "fate" or "failure," but a risk typical of a large and continually growing segment of the population in an industrialized world in which production was based on the free market.

The new insurance, however, stood on shaky ground. Already the initial assumptions about the number of the unemployed and the length of assistance (estimated at 3 months), were off. The insurance had barely been set up when reserves had to be drawn on. Because of the harsh winter of 1928/29 and the global economic crisis, the number of unemployed rose from 1.4 million (1928) to 3.4 million (1930), then 5 million (1931), and eventually 6.2 million (1932). In the end, about one third of the population was below the poverty line (welfare unemployed), and in the insurance was bringing in an ever shrinking number of contributions. The Reich Office was presiding over an enormous deficit. In the political quarrel over how to restructure it, the last truly democratic parliamentary government of the Weimar Republic was undone by its internal contradictions. Those on the side of industry (German People's Party) wanted cuts in benefits, while the Social Democrats wanted to preserve them and contemplated an emergency payment by all those on fixed wages and salaries, a raise in contributions of one half percent, and tax increases. In and of themselves these were negotiable positions, but in the

[144] "Arbeitsnachweisgesetz v. 22. Juli 1922", RGBl. I, p. 657.

crisis of the Weimar Republic they turned into an existential problem, even though a compromise carried by the Center Party, the German People's Party, and the German Democratic Party was on the table. The SPD parliamentary group abandoned its chancellor, which left the government no choice but to relinquish power (Huber 1984, pp. 718ff., 724ff.). From the perspective of economic policy, the social state might have seemed at the time and now as an obstacle to the hoped-for recovery (Borchardt 1976; Sommariva and Tullio 1987, p. 5; Berringer 1999), but politically the end of parliamentarism was an unmitigated catastrophe: not only because it de facto paved the way for the anti-parliamentary dictatorship, but also because the multi-party state's "inability to compromise" became engraved in political memory.

State Intervention Against Unemployment

However, the state sought to solve – or at least ameliorate – the problem of a lack of jobs not only through unemployment assistance, job placement, and unemployment insurance. It deployed other means as well. On the constitutional level, a "right" to work had its counterpart in a "moral obligation" to work (Article 163, WRV). To make that right a reality, the state, which saw itself immediately after the war as an interventionist state authorized to pursue all emergency measures, at first pursued coercive means. It acted through demobilization commissioners and intervened when companies were in danger of shutting down, thus placed severe restrictions on employers.[145] War veterans had to be given preference in hiring (Huber 1981, p. 1091).

An especially important law regulated the hiring of the severely disabled. Since the job market was not readily open to them, given the excess of workers, coercion was also used here. The Law on the Employment of the Severely Disabled of 6 April 1920,[146] could be seen as a special implementation of the right to work (Article 163, WRV). It stipulated that all private and public employers with more than twenty employees were obligated to hire Germans disabled by war or accident and with at least a 50% reduction in their ability to work.[147] All told, 2% of all jobs were to be made available for the severely disabled. This was achieved through the classic sovereign instruments, the imposition of an obligation to take affirmative

[145] "Verordnung betr. die Einstellung und Entlassung von Arbeitern und Angestellten während der Zeit der wirtschaftlichen Demobilmachung v. 3. September 1919", p. 1500, in the version of Febuary 12, 1920, RGBl., p. 218; "Verordnung betr. Massnahmen gegenüber Betriebsabbrüchen und –stillegungen v. 12. November 1920", RGBl., p. 1901; "Verordnung über Betriebsstillegungen und Arbeitsstreckung v. 15. Oktober 1923", RGBl. I, p. 983. See also Huber (1981, p. 1093f.).

[146] RGBl., p. 458, in the version of 12 January 1923, RGBl. I, p. 58.

[147] This created a certain overlap with the activities of the professional associations of accident insurance, which were also intent on making it possible for the victims of accidents to return to the labor market.

action, secured by the right of oversight and inspection on the part of the authorities, and the requirement that the main assistance-providing agencies approve job terminations. All in all, this mechanism has proved effective, and in principle it was also retained over the following decades.

But in an effort to preserve jobs, the legislator could also work through individual and collective labor law, for example, by expanding the protection of home-based work, maternity rights, and protection against dismissal (§§621–624, 626–628 of the Civil Code) in favor of older workers.[148] The Work's Council could now also raise the objection of "social detriment" to dismissals and force the employer to seek mediation, failure of which would then compel the court to decide.

In this way, the state guided the number of work contracts that had to be signed, it favored certain groups out of general political and social considerations, it laid down the framework conditions for the individual work contract, and in imposed a prohibition on job terminations or at least provided the workers' representation in the workplace with the procedural tools to make such terminations more difficult. One of the main points of this interventionism was the introduction of the 8-h day for workers and salaried employees outside of agriculture, which was a social achievement for the unions and the Social Democrats, but also an impediment in economically unusually difficult times (Preller 1978, pp. 253ff., 304ff.).

Changes in Labor Law and the Response of Jurisprudence

The First World War and the Revolution of 1918 led to "fundamental changes in labor law" (Hueck and Nipperdey 1959, p. 13), which later observers regarded as the "transition from individual to collective labor law" (Görlitz 1974, p. 42). While there had already been numerous collective bargaining agreements prior to 1914, especially in areas with a structure centered on small and mid-size businesses, it was only the union's *Burgfrieden* policy that led to their acceptance as the "appointed representatives of the workers." This found expression in the Central Working Group Agreement Between Employers' and Workers' Organizations on 15 November 1918 (Blanke et al. 1975, vol. I, pp. 181ff.). The Agreement, named the "Stinnes Legien Agreement" after its most prominent signatories, was submitted to the Council of the People's Deputies the very same day it was signed; the Council gave its emphatic approval and had the Agreement officially published immediately.[149] Although this did not grant the Agreement the character of a formal law, it did provide it with political sanction; for public sector enterprises, it assumed the binding character of an administrative order (Huber 1978a, p. 771). In addition to a recognition of the unions, the central stipulations were that the labor conditions for all

[148] "Hausarbeitsgesetz 1911 in der Fassung vom 30. Juni", RGBl. I, p. 472; "Gesetz über die Fristen für die Kündigung von Angestellten v. 9. Juli 1926", RGBl. I, p. 399; "Gesetz über die Beschäftigung vor und nach der Niederkunft v. 16. Juli 1927/29. Oktober 1927", RGBl. I, pp. 184, 325.

[149] Reichsanzeiger, 18 November 1918.

workers were to be set through collective bargaining agreements with the professional organizations of the employers, and that restrictions on the freedom of assembly for workers be prohibited (Weiss 1998). This led to a triumphal March of the collective bargaining contract in all areas of labor law, with the result that the year 1922 saw 10,768 collective agreements that applied to 890,000 businesses with 14.3 million employees (that is, 75% of all workers) (Hueck and Nipperdey 1963, p. 19). The "Decree on Collective Agreements, Workers' and Employees' Committees, and the Settlement of Labour Disputes" of 23 December 1918 (RGBl. I, p. 1456; Blanke et al. 1975, p. 19) boosted the legal effectiveness of collective bargaining contracts. Labor contracts that deviated from the norms of collective agreements were declared invalid and replaced with the standard regulations (§1 of the Decree). In addition, the Reich Labour Office that was established in October 1918 (under the leadership of its first head, the Social Democratic union leader and future Reich Chancellor, Gustav Bauer) was given the authority to declare collective agreements as generally binding upon request (§ 2).

From among the postwar legislation one should mention, not least, the relevant stipulations in the Weimar Constitution of 11 August 1919. They guaranteed freedom of association (Article 159) and assigned to the Reich the jurisdiction for the entire area of Labor Law (Article 7, Section 9). Alongside stood the design of an entire system of social and economic co-determination, composed of Works' Councils, District Worker Councils, a Reich Workers' Council, as well as District Economic Councils and a Reich Economic Council.[150] In that spirit, Article 165 declared that "workers and employees are called upon to participate, on an equal footing and in cooperation with the employers, in the regulation of wages and working conditions as well as in the economic development of productive forces." However, with the exception of Section 6, Article 165 was only "a legislative program, that is, future law" (Anschütz 1933, p. 747). All that was implemented were the temporary Reich Economic Council through a decree of 4 May 1920 (RGBl., p. 858) and the establishment of Works' Councils.[151]

A year later, then, the Works' Councils Act of 4 February 1920 (RGBl., p. 147; Blanke et al. 1975, pp. 211ff.), called for the establishment of works' councils in all enterprises with at least twenty employees. Their primary tasks were to support the "enterprise management with advice, in order thereby to ensure, along with it, the highest possible level of economic performance of enterprise management," agreement about joint official work regulations within the framework of collective

[150] On the economic constitution of the Weimar period see Huber (1981, pp. 1023ff.). On the forces, motives, and concepts that led to the anchoring of the council system in Article 165 of the Weimar Constitution see Ritter (1994); on the Reich Economic Council see Glum (1930).

[151] On the reasons for the "failure" of this legislative program, which must be sought above all in the decay of the council movement, in the strengthening position of employers, the fragmentation of the workers' movement, and the defeat of the Weimar coalition in the Reichstagelections of 1920, see Ritter (1994, p. 108f.), who also pointed to the "open" nature of Article 165 as a reason behind its "failure."

contracts, and the promotion of "concord among the workers and between them and the employer" (§ 66). In addition, they had the right to participate in a preliminary capacity in the appeal procedure in cases where workers were dismissed. Paragraph 84 allowed for an appeal to the Workers' or Employees' Council, among other reasons, if there was a suspicion that the dismissal was based on a person's political, confessional, or union activity or membership, and in cases of dismissals that "did not represent a hardship brought on by the conduct of the worker or employee or the circumstances of the enterprise." If no agreement could be reached with the employer, both the Works Council and the affected worker could take the case to court, initially to the Commercial Court (*Gewerbe- oder Kaufmannsgericht*), after 1927 the Labour Court (Huber 1981, p. 1092f.). The Works' Councils Act was flanked by the so-called Corporate Balance Sheet Act of 5 February 1921, which obligated businesses to reveal their annual balance sheet to the Works Council (RGBl., p. 159), and by the Law Concerning the Delegation of Employees to the Supervisory Board of 15 February 1922 (RGBl. I, p. 209), a precursor to co-determination in the workplace (Bieber 1998).

The Decree Regarding the Mediation System of 30 October 1923 (RGBl. I, p. 1043; Blanke et al. 1975, pp. 230ff.) and the related Second Mediation Decree of 29 December 1923 (RBGl. I, p. 1043), reorganized the state's mediation system, which had been regulated until then by the collective bargaining code. A distinction was made between private (voluntary) and state mediation bodies. Within their sphere of jurisdiction, the voluntary bodies had precedence over the state mediation offices (§3 Mediation Code) and were set up by the parties to collective bargaining agreements; if their activity did not end with a collective bargaining relationship, the jurisdiction of the state mediation organs took effect. Depending on the nature of the dispute in collective bargaining, the mediation authorities were the Mediation Committee, the mediators, and, at the highest level, the Reich Labour Minister, all of which acted as state authorities.

At least until 1928/29, the unions, too, were interested in avoiding labor disputes, with the fundamental idea of autonomy in collective bargaining predominating. But the Leipzig Professor of Labor Law, Lutz Richter, also expressed a widespread belief when he stated that "the generality, the population as a whole, the state because of the consumer need for the products of labor and because of the political dangers that can arise from idle means of production and the misery of masses of workers, must place value on settling the labor struggle and restoring orderly working conditions" (Richter 1928, p. 104). As a result of the shift in the power relationships in the economic crisis, state mediation, originally intended as the exception, became more and more the norm – and it did so at the urging of the unions, who would have been at a disadvantage in their dealings with employers without the support of government mediation (Bieber 1998, p. 59).

The discipline of labor law develop in parallel to the fundamental changes brought on by industrialization and the World War, which turned "work" into the fateful issue of the Weimar Republic (Mestitz 1984; Nutzinger 1998). It was cultivated in the legal departments and continuing education programs of the

workers' organizations and unions (Bieber 1998, pp. 15ff.), but increasingly also at the universities. Its pioneers were Philipp Lotmar, Hugo Sinzheimer, Ernst Fraenkel, Otto Kahn-Freund, Franz L. Neumann, Erwin Jacobi, Heinz Potthoff, Walter Kaskel, Wilhelm Herschel, Alfred Hueck, Erich Molitor, and others.[152] Their starting point was largely private law, on the basis of which they dealt not only with the individual labor contract with all its "public law" restrictions, but also with "collective labor law," which presented itself as a separate entity constituted by the interaction of social forces under state oversight. Needless to say, the new legal regulations of works' councils, the mediation system, the law on working hours, labor court jurisdiction, job placement, and unemployment insurance attracted the interests of those who wrote about the subject. The first analyses of the body of law (Neumann 1929; Kahn-Freund 1931) and the first textbooks appeared – the latter a sure indicator of the establishment of a subject within university teaching (Sinzheimer 1921, 2nd ed. 1927; Hueck 1922; Erdal 1923/1924; Melsbach 1923; Oertmann 1923; Groh 1924; Jacobi 1924; Kaskel 1920; 1925, 4th ed. 1932).

The discipline of "social law" experienced a parallel development, though the label is one we can assign only in retrospect. The consciousness that insurance for workers and employees, public assistance, the law on war victims, and the wealth of interventionist emergency measures by the state were held together by a common purpose had not yet formed at the time. The differences in the systematics, the institutions, and the still-modest approaches toward a scientific treatment of the field simply seemed to large. In the Weimar period, as well, legislating was a field of the ministerial bureaucracy, in this case the Reich Labour Ministry, the associations, and praxis. As during the Empire, scholarly contributions still came across the broad from academic outsiders. In the *Gründerjahre* (late 1860s, early 1870s), only the "law of workers' insurance" was taken note of, and it was still unclear whether it should be counted as part of private law or public law. Its character as an annex to the working relationship argued in favor of private law, its compulsory character and organizational forms argued in favor of public law. The law of occupation protection was the public law of warding of dangers, and poor relief was a special subfield of communal law. Thus, the conditions for the recognition of an overarching "social purpose" were not favorable.

One far-sighted founder of the field was the Freiburg public law jurist Heinrich Rosin (1855–1927). Not only did he make a very sophisticated contribution to dogmatics with his work *Die Rechtsnatur der Arbeiterversicherung* (Rosin 1908) (The Legal Nature of Workers' Insurance), which was in line with the then-current scholarly ideal of constructive jurisprudence, but he was also the founder of the first course on the science of insurance (Hollerbach 1993). And yet, a work that would have brought together the scattered pieces of "social" legislation and systematized them was still beyond the general horizon. The rapidly multiplying writings on

[152] Rückert (1993a, b), Benöhr (1993), von Brünneck (1988), Ramm (1980), Däubler (1988), Preuss (1988). An indispensable reference work is Rückert (1996).

social policy after 1919 were consistently aimed at the issue of how to reform special legal fields or at the creation of new areas, for example, youth welfare law. Only a few legal faculties set up lectureships for practitioners (Leipzig, Freiburg, Frankfurt am Main), even though legislation was continually providing new material, the constitution had guaranteed a "comprehensive system of insurances based on the critical contribution of the insured" (Article 161), and the Reich Labour Ministry had all essential powers of social law in its hand. It was only in 1931 that the young Leipzig public law jurists Lutz Richter (1891–1945), a student of Erwin Jacobi's, succeeded in writing the first systematic account of social insurance law, including miners' insurance and the new insurance against unemployment (Richter 1931; Stolleis 2003, pp. 215ff., 297). There also appeared textbooks on public assistance and youth welfare law, and the categories of "Introductions" and legal commentaries also grew rapidly. Still, the various fields of the law remained strangers; their structural commonalities, which could have led to an overarching "General Part," were not yet apparent. One cannot really find fault with that, considering that even in the Federal Republic of West Germany, this kind of integrative perspective was only pursued in the 1960s and achieved in the 1970s.[153]

5.5 *Labor Courts*

The Labour Court Act of 23 December 1926 (RGBl. I, p. 507) took effect on 1 July 1927, nearly contemporaneous with the unemployment insurance. In this field, as well, we can observe a tendency toward organizational independence and the emergence of a separate scientific consciousness, of the kind that had already taken hold of material law (social law, labor law, tax law, economic administrative law). Of course, the practice of separating disputes over labor law from the ordinary justice system because of the strong personal and social elements involved was older. The medieval guild courts, the miners' and merchants' courts, but also the local commercial courts of the nineteenth century banked on the special expertise of those involved in that they were either entirely corporative courts or at least included assessors (*Beisitzer*) from the occupational field involved. The fragmentation of the courts became increasingly bothersome as estate-based differences vanished during the Industrial Revolution and the homogenous mass labor relationship began to dominate the landscape. As a result, there were voices already before the First World War that called for a standardized labor law and a system of courts to go along with it. This became more urgent when the fragmentation increased during the war through mediation committees, economic councils, and agricultural councils. In 1919, Reich Labour Minister Bauer (SPD) took the initiative. The Decree Concerning Collective Bargaining Agreements, Workers' and Employees'

[153] The great document of this change is Zacher (1980).

Committees, and the Mediation of Labour Disputes of 23 December 1918, was already in place when the Weimar Constitution promised "uniform labor legislation" (Article 157). A partial fulfillment of that promise was the previously mentioned Works' Councils Act of 4 February 1920. However, "uniformity" also meant the independence of the judicial system that went along with the legislation, especially since mistrust of the regular judicial system had remained alive within the workers' movement. As a result, it wanted a system of courts that was as friendly as possible to workers: participation by the parties to collective bargaining, no obligation to be represented in court by a lawyer (a stipulation intended to favor union officials), a preceding conciliation procedure, and low fees.

Resistance to this new system of courts from the ranks of employers, lawyers, the Association of Judges, and the German Lawyers' Association was considerable. The discussion of the four various blueprints was accordingly long, and it eventually produced a law that was adopted by the Reichstag with a large majority. The most important demands were met, except for independence, which existed only at the first layer of courts, while the State Labour Courts and the Reich Labour Court remained organizationally intertwined with the regular judicial system (Leich and Lundt 1987).

This branch of the judiciary began its work under difficult conditions. The courts were barely up and running when mass unemployment and wage cuts began. Burgeoning protest from the unions was repressed with reference to the "duty to maintain peace." In 1933, the anti-Semitic measures of the Nazi state affected especially the labor courts were severely. Their competencies were curtailed. "Trustees of labor" and "social honor courts" took over the regulation of troubles within an enterprise. Disputes arising from collective bargaining agreements and the Works' Councils Act vanished with the Law on Ordering National Labour of 20 January 1934 (Ramm 1983; Kranig 1983, 1984). As a result, the system of labor courts shrank during National Socialism and especially during the Second World War to the point of being meaningless. But the basis idea behind the Labour Court Act of 1926 had ceased to be visible as early as 1933.

5.6 Crisis Management Without Parliament

When the Weimar Republic, in 1929, stumbled into the economic and political crisis that would prove its death struggle, the "Emergency Decree" based on Article 48 of the constitution was once again the instrument of political crisis management (Stolleis 1984). Beginning in July 1930, the "Weimar presidential system" (Huber 1984, pp. 731ff.), carried by the Reich President and a chancellor dependent on him, employed this instrument to deal with the economic and socio-political problems. Its application gradually exceeded the boundaries spelled out only vaguely in the constitution. What had now longer been possible through party compromises was now decreed without parliament: an increase in the contributions to unemployment

insurance and in the Reich subsidy (RGBl. I, p. 311), wage and salary cuts in the public sector (RGBl. I, p. 517), and benefit cuts in unemployment assistance.

Sickness insurance had seen a rise not only in benefits, but also in the rate at which they were claimed. The cost pressure this created on the one hand drove contributions so high that the government had to take countermeasures through emergency decrees, and on the other led to measures that affected the sick. This included the co-payment for medications that first appeared in 1923, the sickness certificate fee, the waiting period, and a system of *Vertrauensärzte* (physicians who examine patients certified as long-term sick by their personal doctor) to be set up and funded by the sickness funds (RGBl. I, p. 311). Finally, the asset management by the sickness funds and the auditing of their books were regulated in greater detail. In accident insurance, pensions were eliminated in cases of minor impairments to earnings, and for the rest there were robust pension cuts averaging 10% and further restrictions (RGBl. [1932] I, p. 273).

A particularly dramatic situation had to be confronted in pension insurance: a decline in revenue during the global economic crisis and a simultaneous increase in applications for pensions. Restrictions began with the Emergency Decree of 8 December 1931: the general cuts in pensions, an increase in the waiting period from 200 to 250 weeks (for those voluntarily insured even to 550 weeks), the elimination of the child subsidy and widow's pension from the age of 15 on, and cuts to the drawing of multiple pensions. All told, however, even these measures were not able keep pension insurance from falling into a deficit of more than 12 billion RM (1933). Pensions were too low to provide real security for old age. Addition cuts were not possible if one wanted to avoid pushing the mass of pensioners toward public assistance and thus increase the political risk of radicalization.

Benefit cuts in employees' and miners' insurance were not quite as severe. The continuing preferential treatment of salaried employees was expressed in the fact that only this insurance could afford to take 60 year-olds who had been unemployed for a year out of the labor market through early retirement (RGBl. [1929] I, p. 75). Although the miners' insurance also experienced benefit cuts, it was supported by Reich funds in a way that one could even doubt whether it was an "insurance" at all (Preller 1978, p. 470).

Where insurances failed because they were close to collapse, state assistance filled the gap at best it could. But the benefits of public assistance also had to be cut. The introduction of a crisis tax was intended to tap a new source of funds. There followed further cuts to social security pensions and *Versorgungsrenten* (supplementary pensions), a reduction in unemployment assistance by more than half (1932), a reduction in entitlement to 6 weeks, and a cut in emergency assistance to the point where it was practically a return to the old welfare. Whatever could still be gained in this way from a squeezed system was to be simultaneously invested in measures to reduce unemployment (RGBl. 1931, I, p. 537). The beginning of a Voluntary Labour Service picked up the old idea of "public works" (RGBl. 1931, I, p. 279). Two months later, the state decreed rent reductions by 10% effective 1 January 1932, benefit cuts in sickness funds to "standard benefits," and benefit cuts

in accident and pension insurance as well as in the area of public assistance (RGBl. 1931, I, p. 699). However, Brüning's austerity policy went too far with additional interventions in collective bargaining autonomy in favor of employers and with wage and salary cuts of up to 10% in the entire public sector. Opposition came not only from the unions, but also from the state apparatus, which had already been hit disproportionately hard in the inflation of 1923.

To extricate themselves from these problems, the main actors in Berlin and Neudeck apparently believed that only another shift to the right would help. As Reich Chancellor, Franz von Papen initially continued the existing line on social policy, with further cuts in the area of social insurance, unemployment assistance, and provisioning down to the level of 1927. Once again, the public sector was hit up for a special sacrifice to benefit the unemployed. At the same time, however, tax increases and emergency work projects were to ease the pressure on the social institutions (Decree of 5 June 1931). It was only after an agreement about the de facto end to reparations was reached at the Lausanne Conference (16 June – 9 July 1932) could the government embark on a policy of deficit spending. Simultaneously, it loosened the strictures of collective bargaining agreements to push new hiring by cuts in wages – a measure it abandoned again in December 1932 following union protests. To provide the economy with an incentive for investments and the hiring of new workers, the government used emergency decrees to provide tax breaks by issuing vouchers for tax payments, bonuses for additional jobs, and funds to invest in emergency work projects in the public sector (Decree of 4 September 1932, RGBl. I, p. 425, Decree of 5 September 1932, RGBl. I, p. 433; Preller 1978, p. 467f.). In December 1932, the government set up an Emergency Organization for German Youth (Hasenclever 1978, p. 123).

The other measures of social policy that were attempted in the winter of 1932/33, after 3 December by the government of Chancellor Kurt von Schleicher, were symptomatic of the intractable situation: the regular administration was replaced with "commissioners" with special powers (Hintze 1941), in this case the Reich Commissioner for Job Procurement (RGBl. I, p. 543). On 28 January 1933, a mere 2 days before Hitler's assumption to power, he was still given a credit of 500 million RM for job creation measures. "Winter aid" was set up for recipients of public assistance, which was to distribute meat, bread, and coal free of charge.

All of these attempts were no longer able to alter the political game that was favoring the leader of the most radical party. But the crisis management of the presidential governments (transition to deficit spending, emergency work projects and labour service, abolition of collective bargaining autonomy, winter aid) continued uninterrupted under the "Hitler cabinet," though now, of course, under the light of a "national revolution" and accompanied by countless violations of the law. The instruments themselves did not change substantially, except that the element of compulsion intensified and the question of the legal forms that were employed became irrelevant, but social policy now mutated on a large scale into an instrument of pacification and discipline wielded by a regime that was rapidly shifting its focus toward war.

6 The Nazi State

6.1 Ruptures and Continuity

On 30 January 1933, the Hitler cabinet, on the outside a seemingly radical core surrounded by more moderate German Nationals and without a real majority, took over a virtually intact administrative apparatus. The civil service and the military, the leaders of the economy, and other bourgeois circles were in principle in agreement with the final abandonment of the parliamentary system, but they did not want to be delivered over to a "dictatorship of the street." They took a wait-and-see attitude, hoped for a speedy return of normal conditions, and were ready to put up with "excesses." Since the new regime was skillful at responding to their concerns, it won the loyalty of these groups, as well, especially after the spectacular murders that were part of the "Röhm putsch" in June of 1934, which were noted with a mixture of fear and relief. Moreover, there were few open differences as far as the content of policy was concerned. Even the approval for the programmatic points dealing with social hygiene extended well beyond the National Socialists. As for anti-Semitism, it was – of course, minus its murderous consequences – a more or less tolerated element of the bourgeois mindset, whose fear and envy in the economic crisis were now directed against a tiny minority. On foreign policy there was agreement over the struggle against the remnants of "Versailles," domestically the National Socialists lacked both a program and the requisite experts in nearly all areas. That applied to a high degree also to social policy.

The approaches that the new regime found in place were initially continued, in part unchanged, in part with much larger budget outlays, which could now be multiplied in a climate of nearly unchecked – if at first still concealed – deficit spending. This meant that the instruments familiar from the policies of the presidential dictatorships (state contracts, direct and indirect subsidies to the economy, material incentives for individuals, qualified approvals and prohibitions with or without the reservation of permission) continued to be employed. This was now joined, after the downfall of the parliamentary system, parties, and unions, by massive intimidation and propaganda. This set in motion a mechanism by which the successes of this policy seemed greater and greater in those areas where the regime was working with a combination of propaganda and coercion. The conviction that "liberalism was finished," which ran across all strata of the population, and that nothing more could be achieved with voluntariness or the forces of the free market, injected further energy into a mechanism that tended toward a militarization of society. The recipe of the front line soldier and autodidact Hitler, that the "community of the nation fused together" out of the community of the front line was capable of overcoming all difficulties and that the previous enemies would yield demoralized, seemed to find confirmation. Everything seemed to be pointing toward a "triumph of the will."

All this led to an ambivalent relationship to the social policy experts and lawyers that were concentrated in the Reich Labour Ministry and on whom the new regime

depended for legislation. The attitude of the party bigwigs was one of contempt for "experts," in most cases also fed by potent inferiority complexes. At the same time, however, the leadership agreed to leave the financing of state spending, for example, and labor market and social policy to the experts, if everything was done in line with the regime. If necessary, the regime could set its own accents through parallel or competing actions.

Accordingly, high-flying plans about a unification of social insurance into a single system that were initially entertained quickly dissipated. The Reich Labour Ministry, under German National leadership in the hands of the Stahlhelm chief Franz Seldte,[154] was as much opposed to a single insurance as were those party comrades who had moved swiftly into posts that were opening up in the various branches of social insurance and began to defend their turf (Zöllner 1981). Since the elimination of mass unemployment had the highest priority initially, if the regime wanted to consolidate itself by winning the loyalty of the masses (Narr and Offe 1975; Mason 1977, pp. 124ff.), social insurance, once the "Führer principle" had been introduced there and self-administration had been eliminated, was left untouched. There was all the more cause for restraint when it became evident that the funds it had accumulated could be used as inconspicuous additional funding for rearmament.

If we turn our attention to the civil servants, specifically the top echelons of social policy, we can speak of an extensive continuity between the policy of the presidential cabinets and the Nazi state. But the ruptures become clear if we look at the workers and the workers' movement. The new regime not only quashed the unions, the freedom of association, and the right to strike, it also eliminated co-determination within enterprises, cut social benefits, dictated working conditions through the "Trustees of Labour," restricted job choice, and in this way gradually moved to a new kind of economy.

The place of the destroyed unions was taken by the German Labour Front (Deutsche Arbeitsfront, DAF) headed by Robert Ley (Schulz 1985), which officially became part of the NSDAP through a decree of 24 October 1934. However, after the installation of the "Trustees of Labour" on 19 May 1933, this organization was not able to simply carry on the previous union functions in the area of social policy. A "de-unionization" of the DAF became already apparent in the second half of 1933, and under the influence of Ley it increasingly put propagandistic functions in the foreground. At the end of 1933, the employers' associations also joined the DAF, which now united within itself the "pillars" of workers and salaried employees, of employers, tradesmen, and members of the independent professions. The "Appeal to all productive Germans" of 27 November 1933, signed by the Reich Labour Minister, the Reich Economy Minister, Hitler's Party Deputy for Economic

[154] Franz Seldte (1882–1847), founder of the "Stahlhelm," since 1929/31 ("Harzburg Front") an ally of Hitler's, brought the Stahlhelm into the NSDAP on 27 April 1933, that is, he capitulated. He was simultaneously the Minister of Labour in Prussia. His letter of resignation in 1935 was rejected by Hitler. Berghahn (1966), Selig (1988).

Affairs, and the leader of the DAF defined the tasks of the organization as follows: "The great aim of the Labour Front is the education of all working Germans for the National Socialist state and for the National Socialist way of thinking" (Broszat 1988). The Law on the Organization of National Labour enacted almost 2 months later, 20 January 1934, restricted the tasks of the Labour Front on matters relating to collective bargaining and labor contracts to a purely advisory role.[155] There was one innovation, however: §66, Section 3 introduced (free) legal counseling offices of the DAF for those going before the labor courts; these offices were to be set up separately for employers and for workers and salaried employees.

The material and political losses of the workers' movement were in part covered up and in part genuinely compensated for by propagandistically exploited actions (construction of the *Autobahn*, Reich Labour Service, Winter Aid [Tennstedt 1987], NS People's Welfare, One-pot Meal, Strength through Joy), by the staging of collective action-for-action's sake, and by a series of de facto improvements. It seemed that the new "National Community" was able to overcome the old class barriers, a perception that was aided in no small measure by the fact that the leading politicians were able to present themselves as "men of the people." What was labeled "German socialism" (Huber 1934, 1939, pp. 469ff.) consisted of an emasculation of the worker's movement combined with ideological and material gifts to the workers, of intact structures of the private sector economy (in fact, stronger now through the removal of the unions), combined with certain restrictions from the slogan "the welfare of the community over the welfare of the individual" (*Gemeinnutz vor Eigennutz*), though these did not affect the substance of the private sector. Behind this stood a partly latent, partly implemented transition to a planned economy. This was a complex system of mutual toleration and reassurance, a mixture of "enticement and coercion" (Kranig 1983).

6.2 *Race and Population Policy*

For all the continuity, what set the social policy of the National Socialists apart was its racial components. Social law and social policy were no longer merely an "instrument for integrating the weak and disadvantaged, but served (also) to stabilize and intensify a racially defined inequality" (Ritter 1998a; Ayass 1999). The retention of the traditional systems thus took place in the shadow of the exclusion of significant groups like the Jews and other discriminated minorities from the system of social protection. This "biologization" of social policy began immediately after the Nazis assumed power in January of 1933. In the process, the National Socialists were able to link up with Social Darwinian and eugenicist

[155] RGBl. I, p. 45. On the final failure in 1935 of Ley's attempts to give the DAF greater weight on matters of social policy see Broszat (1988, p. 152f.). On the social planning of the DAF's Institute of Labour Science see Smelser (1991).

doctrines that had attracted strong attention from the public in the final years of the Weimar Republic.[156] The goals of these doctrines was to reduce the procreation of "genetic lines unfit for or dangerous to preservation" and to promote the procreation of "genetic lines fit for preservation and of superior quality." On the negative side the preferred means were marriage counseling, voluntary and compulsory sterilization, especially of so-called "asocials, the sick, and the less able," and on the "positive" side tax breaks for "normal" families, economic and intellectual promotion of "gifted families" with many children, and measures to prevent the "highly talented" from not marrying and not having children. Scientific institutes of Eugenics existed in 1933 in places like London, New York, and Berlin (Kaiser Wilhelm Institute of Anthropology, Human Heredity, and Eugenics); textbooks and monographs were published and journals were established.[157] This went hand in hand with an unvarnished aversion to including broader circles into public assistance. For example, we read in the first issue of the journal *Eugenik* published by the German Society for Racial Hygiene (1933): "The system of public welfare and assistance contribute – the undesired side-effect of an irrefutable duty – to preserving the hereditarily ill and bringing them to procreate further. A crushing and constantly growing ballast of humans who are unfit and unworthy of living is maintained and cared for in institutions – at the expense of the healthy, hundreds of thousands of which are today without their own housing and millions of which are struggling without a job" (Ayass 1995, p. 14).

Thus, the "measures" of the new regime did not require much advance work. One of the first legislative steps was the Law for the Prevention of Genetically Diseased Offspring of 14 July 1933 (Hereditary Health Law, RGBl. I, p. 529). This was supplemented by an Implementing Decree on 5 December 1933 (RGBl. I, p. 1021), which spelled out the sterilization process in minute detail. It affected all those who were diagnosed with "hereditary feeblemindedness, schizophrenia, manic-depressive insanity, hereditary epilepsy, hereditary chorea, hereditary blindness, hereditary deafness, severe hereditary deformities, and severe alcoholism" (§1, Section 2). Those entitled to file an application were, in addition to the affected person or his or her legal guardian, "the official physician" and the "head of an institution for patients in a hospital, sanatorium, psychiatric hospital, or prison" (§3). The decision lay with the Hereditary Health Courts.[158] Parallel with this, university chairs and institutes of racial science were set up, which were tasked with writing numerous expert opinions on sterilization cases (Weindling 1991). For example, beginning in 1934, about 1,000 individuals were annually examined at the

[156] Hammerschmidt (1999, pp. 33–53); on the continuities of eugenicist ideas between the Weimar Republic and the Third Reich see Castell-Rüdenhausen (1991).

[157] See Der Grosse Brockhaus, vol. 15 (Leipzig, 15th ed., 1933), entry "Rassenhygiene, Eugenik, Gesellschaftshygiene," 389, with additional references. On the history of Eugenics in Germany see Weingart et al. (1988).

[158] For a contemporary account see the report in the Frankfurter Zeitung of 20 December 1933, reprinted in Forsthoff (1935, p. 301, omitted from later editions).

Frankfurt Institute for Hereditary Biology and Racial Hygiene, which was headed by Otmar Freiherr von Verschuer. At the top of the list was the diagnosis of "hereditary feeblemindedness," which accounted for about 50% of the cases (Dorner et al. 1989, pp. 161ff., 168). For the Reich as a whole, 222,055 sterilization applications were filed in 1934, which turned into 84,330 requests for sterilization to the courts. Between passage of the law and the outbreak of the war, a total of about 430,000 such applications were submitted, three fourths of which led to a sterilization decision, which almost always meant that an actual sterilization procedure was carried out.[159] To these approximately 300,000 sterilizations in the prewar period we must add another 60,000 during the war (Bock 1986, pp. 230–246). The organizational framework for a standardized and complete geographic implementation of the Hereditary Health Law was created by the Law on the Standardization of the Health Care System of 3 July 1934 (RGBl. I, p. 531), which provided for the establishment of state Health Offices as of 1 April 1935. In addition to performing the tasks of official and court physicians and independent medical examiners, which had previously been assigned to the public health officer by state law, to providing medical advice on personal hygiene and exercise, health care in schools, and counseling for mothers and children, the Health Offices were charged above all with making medical determinations and rendering expert opinions on questions related to public health policy, especially the "cultivation of heredity and race," including marriage counseling (Süss 1998, p. esp. 63). This organization, which was set up within a few years (in 1938 the state Health Offices already had more than 23,792 employees), registered broad segments of the population in its genealogical charts and hereditary files, not least through applications for marriage loans – the indispensable prerequisite for a widely applied selection activity. By 1942, no fewer than ten million file cards had been completed. In view of these activities, the NSDAP's Offices for Public Health could limit themselves to ideological oversight (Labisch and Tennstedt 1991).

The regulations of the Hereditary Health Law were substantively supplemented by the so-called "Marital Health Law" of 18 October 1935 (RGBl. I, p. 1246). It contained prohibitions on marriage for those deemed to suffer from hereditary illnesses, for those placed under guardianship, and for individuals suffering from infectious diseases and in cases of "mental disturbances . . . that render marriage undesirable for the national community" (§1, Section 1). Only a few weeks earlier, the Law for the Protection of German Blood and Honor, part of the so-called Nuremberg Laws, had outlawed mixed marriages and prohibited "extramarital relations between Jews and citizens of German or kindred blood" (RGBl. I, p. 1,146; Tarrab-Maslaton 1993, pp. 80–97).

The battle against "inferiors" (*Minderwertige*) and "non-Germans" (*Artfremde*) included additional far-reaching measures against so-called "asocials," that is, chiefly "loafers," alcoholics, beggars, prostitutes, and criminal offenders

[159] See the approving statement by the Archbishop of Freiburg, reprinted in Forsthoff (1942, p. 433).

(Ayass 1995, 1998; Hammerschmidt 1999). The "beggars' week" of September 1933, a raid against the homeless, led to the arrest of approximately several tens of thousands of individuals, most of whom were set free again after a few weeks of detention. The reason for this action was chiefly the goal of taking pressure off the Winter Relief Program. With the "beggars' week," the workhouses that had been half-empty since the end of the Weimar Republic also saw a rise in the number of their inmates. These measures found their legal basis (still) in the regulations of paragraphs 361 and 362 of the Reich Penal Code of 15 May 1871, which stipulated that those sentenced for vagrancy, begging, prostitution, procuring, refusal to work, and "self-caused" homelessness could be placed into a work house for another 2 years after serving their sentence. Those regulations were toughened by the Law Against Dangerous Habitual Criminals and About Measures of Security and Improvement of 24 November 1933 (RGBl. I, p. 995), which, as a form of the "dual track nature of criminal law," allowed lifelong placement in a work house. In this "new spirit," the communal welfare offices dealt with the recipients of public assistance with a more vigorous application of §19 of the Reich Decree on Obligatory Assistance of 13 February 1924 (RGBl. I, p. 100), which allowed for making assistance benefits dependent on the recipient performing public service work. The same was true of §20, which allowed individuals who persistently refused to work to be placed in closed institutions, and of §13 of the Reich Principles for the Decree of Obligatory Assistance (also passed in 1924 [RGBl. I, p. 765]), according to which "refusal to work" and "obvious uneconomical behavior" could lead to institutionalization. On the basis of a "creative legal" application of these norms, numerous cities now pursued the institutionalization of groups deemed "in need of maintenance." Behind this stood the notion that liberal ideas, which had hitherto prevented such interference in personal liberty, were now "overcome." These individuals were placed either in existing work houses (Frankfurt) or in (already) specially erected "camps for closed care" (Hamburg, Stuttgart). With the expansion of concentration camps after 1938, these camps lost importance; they were closed or converted to different uses. Since these measures were limited to recipients of social assistance, Welfare Office stepped up their efforts to have individuals who were living from their own earnings (esp. prostitutes) declared legally incompetent. Finally, the Decree on the Implementation of the Ordinance Regarding Unemployment Assistance of 11 September 1939, excluded "asocials" entirely from this benefit, since they could not be put to work (RGBl. I, p. 433). Particular weight was given to the fight against "asocial families:" not only were they excluded from certain supportive measures (marriage loan, child subsidy, child recreation), but the goal – especially after the outbreak of the war – as to break them up by housing parents and children in separate camps.

These measures reached an entirely new dimension in 1938 when the Reich began to actively combat these groups. In April, the Gestapo carried out a broad arrest sweep against "loafers," and the criminal police targeted chiefly the homeless (i.e. "vagrants, beggars, gypsies, and persons who move about like gypsies") with its "June action." With these sweeps the mass placement of "asocials" in concentration camps took on greater weight; political internees became the minority.

Some of the internees were released again over the next 2 years, though some – to date the exact number has not been determined – fell victim to the euthanasia of prisoners and the "destruction through work" (Ayass 1995, pp. 138ff.). There was little hesitation about sending Sinti and Roma to concentration camps. These groups were persecuted both socially and racially. As with the Jews, their persecution ended in genocide (Ayass 1995, pp. 196ff.), the so-called "Final Solution," the culmination of the gradually intensifying measures of discrimination and expulsion (Peukert 1989; Härter 1998).

6.3 Job Creation and Labor Law

The new government needed a decline in the number of the jobless. Unemployment was the most important domestic political problem, and it would decide whether the acts of violence and breaches of the law during the first months could be compensated for by visible results (Sauer 1960, p. 799). As a result, the new regime focused on this issue, initially by continuing the approach of awarding public works that the von Papen government had taken since the fall of 1932. A separate work-creation policy got under way with somewhat of a delay, starting in June 1933 (RGBl. I, p. 323). Now all conceivable means were deployed. The Reich spent a billion *Arbeitsschatzanweisungen* (long-term labor bonds) to finance public projects, for example, the previously planned but now accelerated construction of the *Autobahn* (RGBl. II, p. 509), other earth-moving works, and river control projects. The Reich Institute for Labour Placement and Unemployment Insurance also involved welfare recipients in this program (Frerich and Frey 1993, p. 254) and thereby reduced the burden on the heavily indebted communities. In addition, the 40-h week was introduced for 1 year to "stretch" the work. To free up jobs, the regime launched propaganda against "two-job holders," sought to place as many young women as possible either into domestic service jobs or encourage them to get married through marriage loans, loans that could also be repaid by the birth of children. Female civil servants had to give up their civil service status upon marriage (Thalmann 1982; Klinksiek 1982; Koonz 1987). Additional jobs were "opened up" by driving Jews, Social Democrats, Communists, and other undesirable groups from their. Their place was taken mostly by "old fighters" of the party or the SA, who had been waiting since the *Machtergreifung* to reap the reward for their service to the "movement."

As long as unemployment persisted, the regime continued to push employment through a bundle of measures: direct and indirect subsidies by way of tax breaks for certain jobs or things, and tax breaks for the rapid payment of taxes (RGBl. [1933] I, p. 651; Voss 1995, pp. 77–83). Added was the guidance of labor deployment to smooth out the over- or undersupply of workers (RGBl. [1934] I, p. 381). Finally, the reintroduction of conscription and 6 months of obligatory service in the Reich Labour Service for men and women between the ages of 18 and 25 helped to take pressure off the job market (RGBl. [1935] I, p. 609; RGBl. [1935] I, p. 769).

The successes achieved in this way were impressive. Unemployment, which had stood at just over six million at the peak, had already dropped to two million by 1935, and beginning in 1936 there was competition for skilled workers (especially for the purposes of armaments production), a typical feature of the Nazi years. Full employment was achieved around 1937.

If one judges the phase of work procurement based purely on its success and the approval ratings for the regime it generated, one can understand how the tackling of the first major problem boosted the government's self-confidence and impelled it to brush aside especially all financial concerns. Already by the end of 1934, the new regime had spent ten times on work procurement what the governments of von Papen and von Schleicher had expended. If one puts the armament goals – from the beginning explicit or not so latent – in the foreground, or if one criticizes the measures for not being "real" social policy (Mason 1977, pp. 126ff.), one probably comes close to Hitler's intentions, but misses the psychological state of the population. The formerly unemployed and their families credited the government with lifting the nightmare that had been weighing on them, even if they were still not doing well in material terms. And the willingness of medium-size businesses and industry to invest also rose in response to the regime's mantra – supported even by doctored statistics – that things were "looking up again." Thus, the approval rating for the regime spiraled upwards and created in Hitler and his supporters the illusion that every political goal could be achieved through "will," propaganda, repression, and a disregard for "bureaucratic" misgivings.

The model of a private market economy directed by politics that emerged only gradually in the process was not based on any real plan. Nor is it possible to reconstruct such a plan in retrospect. It was clear that rearming Germany would not be possible without cooperation from the economic sector, but that a guidance of production according to the "necessities of state policy" was in principle possible at the same time. And so the development, driven by the successes of deficit spending and the authoritarian setting of priorities, headed in the direction of a planned economy on a capitalist basis. In a climate that was anti-liberal in any case, freedom of movement and the free choice of work no longer played a role (Hachtmann 1989). The government therefore introduced the *Arbeitsbuch* (a booklet tracking a person's employment record) (1935), compulsory service for "tasks of special importance to state policy" (1938) (RGBl. I, p. 206), compulsory reporting of available jobs (1939) (RGBl. I, p. 444), and even outlawed the private placement of ads for jobs using box numbers. Under the pressure of the labor shortage that now began, the pendulum of women's policy also began to swing back (Frerich and Frey 1993, pp. 258–266): for example, young women who had taken jobs as domestics in the Netherlands were brought back in December 1938 with the threat of losing their citizenship (Henkes 1999).

Self-administration in unemployment insurance could not be reconciled with the anti-liberal principle of guidance for the entire labor market. The Reich took control of the entire labor administration, claimed the monopoly of job placement, and combined all labor-related assets into the public-law entity Reich Fund for Labour Deployment (*Reichsstock für Arbeitseinsatz*). The contributions that were now

flowing again because of the reduction in unemployment, and which were maintained at the existing level of 61/2%, generated substantial surpluses, which were used both to support pension insurance and for rearmament purposes (Federau 1962; Peters 1978, pp. 120–122).

Since the policy of the regime generally followed an unprincipled calculus of accumulating power, this undifferentiated view of revenue was only consistent. Now that the organizing principles were reduced to what was "beneficial to the national community" (Stolleis 1974, pp. 127ff.), the world of tax law in a state governed by the rule of law became as meaningless as other legal forms, which could now be regarded merely as obstacles. That applied to the entire "labor constitution" (Wahsner 1994; Hachtmann 1998, pp. 27–54) that now emerged, but also to the social policy of the labor market that followed in its wake. Self-administration, civil liberties, and legal forms were negotiable if their opposed the current definition of utility.

The "order of national labour," as the new "basic law" of the National Socialist Labour Law of 20 January 1934 was called,[160] gave a spectacular boost to the position of employers and the state (Kranig 1983). "Trustees of Labour" took over the function of the parties to collective bargaining and of mediators (RGBl. I, p. 285; RGBl. I, p. 520). Enterprises were supposed to follow the model of "leader and followers." The place of the works' council was taken by an emasculated "council of trust." The NSDAP gained a foothold via the National Socialist factory cells and the Councils of Trust. Although the "enterprise leaders" were freed from the unions and the works' councils, they were subject to oversight by the Trustees and the (new) "social honor jurisdiction" (*soziale Ehrengerichtsbarkeit*) Labor jurisdiction remained formally intact, but it declined to the point of being meaningless (RGBl. [1933] I, p. 276).

The scholarly literature on labor law that accompanied these dramatic changes was severely decimated by the expulsion or silencing of a large number of well-known names from the Weimar period (H. Sinzheimer, E. Fraenkel, O. Kahn-Freund, F.L. Neumann, E. Jacobi, and others). Those who remained in Germany and commented on labor law took a position that was in principle positive, with the range of possible expressions ranging from reserved, positivist commentary to enthusiastic approval. In most instances the writers intensified the anti-liberal and anti-individualistic lines that had been previously present, interpreted the formula of the overcoming of class struggle by the national community in their own way, for example in reinterpreting the labor relationship as a "community relationship" or in concretizing the consequences of the notions of "enterprise community" and social "honor." Both the "Law on the Order of National Labour" and the new laws that refocused the protection of home-based work (1934/39), working hours (1934/38), youth protection (1938), and the

[160] RGBl. I, p. 45. Parallel to this for the public sector, but without Councils of Trust and "social honor jurisdiction", was the Law for the Order of Labour in Public Administrations and Enterprises of 23 March 1934, RGBl. I: 220.

procedures of labor courts (1938) toward the needs of the regime, were provided with extensive commentaries.

The theoretical elements that were developed in the process (Ramm 1968, p. 108; Rüthers 1970, p. 97; Hientzsch 1970) did not disappear with the end of the regime. Significant fragments of the theory of labor law reappear later in the labor law of the Federal Republic (Ramm 1994), but also in that of East Germany – in spite of an emphatic denial of this tradition and under a different ideological banner. There are good explanations for both phenomena. In the West it was the incontrovertible continuities of personnel and the circumstances of a rebuilding society focused on consensus and the avoidance of labor conflicts. In the East the crucial factor was a structurally comparable labor ideology, which, in spite of its vocal anti-capitalism, exploited the individual's labor power (and nature) for the benefit of a fictive community, disregarding civil rights in the name of this community and seeking to compensate this loss through a guaranteed job and welfare state-like care.

6.4 Social Insurance

The chroniclers of social insurance during the Nazi era agree that the structure of the traditional system was able to survive, in spite of many changes in specific details.[161] What is more: whatever the motives of the regime may have been, there was an expansion of the circle of those covered by insurance and the creation of new and an increase in traditional benefits. Moreover, the reduction in the number of sickness funds and the forced cooperation of institutions were supposedly reasonable and progressive moves. This verdict accurately reflects the institutional situation and the self-conception of the specialized civil servants in the Reich Ministry of Labour. The wishes for a "uniform insurance" and a "uniform administration" that initially emanated from the NSDAP were rebuffed, as was the 1940 "Ley Plan," which intended to replace the contribution-financed old-age insurance with a tax-financed model. Detlev Zöllner summed it up this way: "The development of social insurance during this time followed in essence the objectively logical exigencies of the previous development."[162] Of course, "in essence" is the crucial qualifier.

[161] For example, Peters (1978, p. 105): "The years 1933–1945 saw extensive changes in the area of social insurance... However, the foundations of social insurance were not shaken by the National Socialist legislation. Rather, social insurance in its old, classic sense was retained in its core, and its structure was not touched." Wannagat (1965, pp. 87ff.), Hockerts (1983, pp. 308ff.), Gladen (1974), Hentschel (1983, p. 136), Lampert (1980).

[162] Zöllner (1981, p. 127). The ideas about reform concerning social insurance are documented in Schubert (2000).

The defenders of the traditional system, represented by *Staatssekretär* Johannes Krohn in the Reich Labour Ministry (Tennstedt 1982), argued skillfully in the early phase that the diversity in the system created greater closeness to the insured, preserved the interests in "own" institutions, and was cheaper and more effective. To be sure, there were excesses of diversity and a harmful fragmentation, especially in the system of sickness funds, which is why one should carry out a measured reduction there, promote cooperation, and combine the whole thing "tightly toward the top."[163]

The defenders of social insurance thus took the approach of taking the measures toward simplification that seemed necessary and to present a restructured Reich insurance system without altering its substance. This was done through the "Law on the Structure of Social Insurance" of 5 July 1934 (RGBl. I, p. 577). For all its bold preamble – "To eliminate fragmentation and confusion in social insurance and to enhance its effectiveness through a uniform centralization. . ." – and the introduction of the *Führer* principle, what did *not* come about was precisely what had been wished for in party circles: a unitary insurance with unitary management and financing. Rather, the "Reich Insurance" (sickness, accident, and pension insurance), "Pension Insurance" (disability, salaried employees', and miners' insurance), and the renamed "Insurance for Labour Deployment" existed side by side. Seventeen decrees were passed between 1934 and 1942 to concretize the Social Insurance Law, which provided the framework. This led to the merger of sickness funds, and to various mergers and simplifications among the institutions that were operated in parallel by sickness funds and state insurance funds.

In spite of these continuities, especially with the policy of the presidential governments, a deep rupture occurred in terms of organization and personnel. The self-administration of the social insurance carriers, already reduced since 1929, was now completely eliminated. "Social elections" no longer existed. The tasks of the previous organs were taken over by the "heads" (§7 Social Insurance Law).[164] On the "advisory councils" that existed alongside the heads but had no great significance sat "enterprise leaders" and workers/employees sent by the German Labour Front. The regime thus held the most important positions in its hands. It further reinforced this *Machtergreifung* in social insurance by carrying out a change in personnel with special propaganda fanfare. This was done on the basis of the Law for the Restoration of the Professional Civil Service of 7 April 1933 (Tennstedt 1979) and the Law on Honorary Posts in Social Insurance and the *Reichsversorgung* of 18 May 1933 (RGBl. I, p. 277). Under the slogan "war against the red boss rule (*Bonzentum*)," Jewish and Social Democratic civil servants, salaried employees, and unpaid officials, especially unionists, were stripped of their posts (e.g. Ronau 1933). Members of the SA and of the *Stahlhelm* as well as

[163] "Amtliche Begründung des Gesetzes über den Aufbau der Sozialversicherung v. 5. Juli 1934", RGBl. I, p. 577, quoted in Peters (1978, pp. 106–108).

[164] Hentschel (1983, p. 136) has rightly noted that the erosion of self-administration had already begun during the presidential governments.

"old fighters" moved into the positions that were opening up and in so doing immediately morphed into defenders of the segmented system.[165] At the same time, the NS state stripped "non-Aryan," "Socialistic," and otherwise allegedly "subversive" doctors and dentists of their license to practice as sickness insurance physicians. The whole thing was accompanied by a corresponding wave of propaganda. The primitive and pornographic polemics against Jewish dentists, for example, which appeared in Julius Streicher's *Der Stürmer*, were among the lowest and vilest outgrowths of the regime.

The assets of the Pension Insurance and the Reich Insurance as a whole, parallel to Unemployment Insurance, participated in the economic upswing, but the de facto income of pensioners, which even in 1939 remained well below the average of the Depression years, did not. Thus, the growth could be distributed in other ways for the time being. The "Restructuring Law" (RGBl. 1933, I, p. 1039) repealed the earlier breakthroughs of the pay-as-you-go principle (RGBl. 1939, I, p. 793). State subsidies were expanded and a "Reich guarantee" provided that the state would step in if contributions and subsidies did not cover expenses (RGBl. 1937, I, p. 1393). Since the restrictions imposed between 1929 and 1933 were enforced and contributions were not reduced, the systems recovered fairly quickly. The remaining deficits were eliminated in 1937 by setting lower levels for new pensions and by "cleansing" the ranks of pensioners by having some declared fit to work following a purely administrative review.

The total assets of the social insurances had grown from 4.6 billion RM (1932) to 10.5 billion RM (1939) (Hentschel 1983, p. 144). This capital stock was also used to finance the war, namely through a simple decree of 14 April 1938 (RGBl. I, p. 398), which directed that half of the assets of pension insurance be invested in debt register claims of the Reich. Until that half was reached, at least three-quarters of the annual surplus funds would be skimmed off. Incidentally, this money was used to finance the improvement in benefits that was believed to be necessary to maintain the public sentiment during the war.

6.4.1 Sickness Insurance

This insurance saw the most numerous dismissals of undesirable individuals, a reaction to the traditionally strong position of the Social Democrats and the unions, a strong reduction in the number of sickness funds (though the diversity of funds was retained), a new regulation of the statutory health insurance funds (*Ersatzkassen*), a takeover of the "community tasks" of the funds by the State Insurances, and a continuation of the old policy of expanding the circle of the insured. Compulsory insurance was now extended also to small groups of the

[165] Leibfried and Tennstedt (1979) collected an abundance of material on this in the form of pamphlets and cartoons. The central text of this documentation in Zeitschrift für Sozialreform (1979, pp. 129ff., 184–191). Scheur (1967, pp. 61, 65).

self-employed, but especially individuals who were important to the regime (midwives and maternity care providers, surviving dependents of servicemen, and after 1941 the pensioners whose contributions were paid by the Pension Insurance) (Peters 1978, pp. 111–115). This, in turn, allowed for an improvement in benefits, for example, an expansion of nursing care, and an extension of the maternity allowance to 6 weeks before and 6 weeks after giving birth (Peters 1978, p. 114).

Parallel to these changes, the new state forced the most important carriers of the health care system into compulsory corporative entities, though without accounting for the corporative principle by granting self-administration. As elsewhere, the regime practiced authoritarian leadership. All doctors were made compulsory members in the Reich Association of Physicians. Licensing entitled them to the fees paid by the sickness funds, which were now distributed by the German Federation of Panel Doctors (a public law body), which stood between the doctors and the sickness funds. The institutions and payment procedures for dentists were set up in an analogous manner (Webber 1988, pp. 178ff.).

6.4.2 Accident Insurance

Initially, this insurance, like the others, was affected by the political transformations I have mentioned. Overall, however, it continued to develop along the traditional tracks, for example, by updating the list of occupational diseases, including accidents in vocational and professional schools, extending automatic coverage to emergency helpers in accidents, and expanding accident protection in the agricultural sector (Peters 1978, pp. 115ff.)

A less conspicuous but quite important change in principle was the transition of accident insurance from the previous insurance coverage for "enterprises" to insurance coverage for "employees" (RGBl. 1942, I, p. 107). This meant that the crucial factor for protection was no longer the particular hazard posed by an enterprise in which an individual worked, but the personal status of being insured. Henceforth there were no longer "enterprise accidents" but "work accidents." One can see this as a long-overdue adjustment to the personal nature of the structures of the other kinds of social insurance, but also as a reaction to the changes in the modern conditions of production that were no longer invariably tied to enterprises. At any rate, this modernizing step, which was carried out during the war, is one example for the "objectively logical exigencies" (Zöllner 1981) that were able to assert themselves in social insurance, for all the political oversight to which it was subjected.

6.4.3 Pension Insurance

Disability insurance, which was particularly ailing in 1933, but also the two other systems of old-age protection, insurance for salaried employees and miners' insurance, had to be initially propped up with higher state subsidies. The declining unemployment slowly provided them with more contributions, with the result that it

was possible, over the long run, to switch from the pay-as-you-go method back to the capital-cover method (RGBl. 1933, I, p. 1039; Dobbernack 1933).

The goal of the restructuring, in conjunction with internal process of harmonizing the systems, was achieved in 1937 when excess funds of the unemployment insurance were redirected to pension insurance and the Reich not only paid large subsidies, but also assumed a general indemnity guarantee (RGBl. I, p. 1393). At the same time, the systems were opened to all Germans under the age of forty, including German nationals living abroad who wished to be insured voluntarily (RGBl. 1936, I, p. 1128). As a new occupational group, tradesmen were compulsorily enrolled in the salaried employees' insurance (RGBl. 1938, I, p. 1900), unless they were able to demonstrate that they had the right kind of life insurance. This was a piece of policy aimed at appeasing the *Mittelstand* (von Saldern 1985; Winkler 1977), but at the same time also the continuation of the most effective means of boosting revenue and diversifying risks by bringing in new members. The pull toward the dissolution of a society structured by occupational estates into a leveled mass society proved impossible to resist. A state that sought – with great propaganda fanfare – to dismantle class barriers in favor of the "national community," that wooed the workers by verbally placing the "*Arbeiter der Stirn*" (intelligentsia) and the "*Arbeiter der Faust*" (physical laborers) on an equal footing, invariably had to seek to dissolve also the "white-collar employees" as an "estate" (Prinz 1986; Ritter 1998b, pp. 95, 267, note 53f.).

Thanks to restructuring measures and the expansion of the circles of the insured, the regime was able to raise benefits in some areas and eliminate the restrictions of the years 1929–1932 (e.g. [1939], I, p. 739). Child subsidies and orphan benefits were once again paid up to the age of 18, there were higher child subsidies forlarge families, higher pensions for widows during wartime, and other improvements, behind which stood above all the goal of Nazi population policy and political sensitivities to the state of the war (RGBl. 1941 I, p. 443; Peters 1978, pp. 117–120). The old revenue collection system was also changed during the war: the literal "pasting" of contribution stamps was replaced by the withholding system implemented by employers. The sickness funds became responsible for collections overall (except for accident insurance). This innovation in 1942 no doubt reflected the practical needs of simplifications. But it was also symptomatic of the distance that had long since arisen between the insured person and "his" insurance, and of the de facto proximity of the social insurance contribution to a special tax on workers and employees, which was employed to siphon off funds that the regime by no means used only for social purposes.

6.5 *Welfare (*Fürsorge*) and Provisioning* (Versorgung)

The area of public welfare (*Fürsorge*), whose legal form attained in 1924 was in principle retained, concerned the Nazi government only in so far as the burden of the assistance benefits to the long-term unemployed was weighing down the relief

associations and the local communities. As unemployment declined, so did the importance of public assistance. A separate, positive interest in individuals unable to live up to the standards of productivity did not exist (Schleicher 1939; Hansen 1991). That the regime had no scruples in the end to free itself by force of "useless eaters" is evident from the so-called Euthanasia Action and the murder of "asocials" in the concentration camps.

Assistance and welfare were under a new banner: not humanity or altruism were the central concerns of Nazi national welfare, but national health, for which "constructive prevention" was the highest commandment. The guiding image was no longer an individualistic "sentimental compassion;" its place had been taken by "heroic strength" and "help to help oneself" (Vorländer 1988, esp. pp. 118ff.). In *Mein Kampf*, Hitler had denounced "charitable flim-flam" (*Wohlfahrtsduseleien*) and had attributed the traditional welfare policy to the hated Weimar state (Hitler 1940, I, p. 38). Nevertheless, since the twenties a self-help organization had emerged within the NSDAP (as in all other parties), which offered practical help in a more or less loose form to SA men in need. In addition, at the local level there were organizations like the "Brown Sisters" or the "Red Swastika Sisters." They found a new home in the National Socialist People's Welfare (*Nationalsozialistische Volkswohlfahrt*, NSV), which was founded in April 1933 as a registered association. A decree by Hitler on 3 May 1933, recognized it as the official welfare organization of the NSDAP.[166] The NSV very quickly achieved a membership of 16 million (1942), which made it the second-largest party organization behind the DAF with 24 million members (Vorländer 1988, p. 4). Its strong membership was the result not least of the restructuring of the system of charitable organizations in 1933. According to the joint decree of the Reich Labour Minister and the Reich Minister of the Interior of 25 July 1933, only four Reich umbrella welfare organizations would be recognized henceforth: in addition to the NSV, these were the Protestant *Innere Mission* (Internal Mission), the "*Caritasverband*," and the German Red Cross. The latter, however, was restricted to task in the medical section of the Wehrmacht. The *Arbeiterwohlfahrt* was dissolved in 1933, the *Paritätischer Wohlfahrtsverband* was forcibly merged with the NSV, the *Zentralwohlfahrtsstelle der Juden in Deutschland* (Central Welfare Agency of the Jews in Germany) had to be incorporated into the Jewish self-governing bodies that were still authorized (Kaiser 1991). Among large segments of the population, the NSV stood for the NSDAP's competency on social matters and enjoyed considerable popularity. The organization found its main area of activity in street collections for the exceedingly popular "Winter-Relief Program of the Germany People" (*Winterhilfswerk des Deutschen Volkes*, WHV), in the aid program "Mother and Child," and in the "Support for Every Volk Comrade."[167] During the war a new activity was added, one that was

[166] Der Große Brockhaus, vol. 21 (Leipzig, 1935), entry "Nationalsozialistische Volkswohlfahrt", p. 573.

[167] Der Große Brockhaus, 21 (1935), "Nationalsozialistische Volkswohlfahrt;" on the work of the individual aid organizations see Hammerschmidt (1999, pp. 397ff.).

very effective in terms of public relations: caring for the victims of the air raids on Germany's large cities. The "Brown Sisters" of the NSV distributed hot soup to those bombed out of their homes, arranged emergency shelter, and organized the *Kinderlandverschickung* (a program that sent children out of the cities into the countryside), which made them an indispensable element of Joseph Goebbels's *Durchhaltepropaganda*, which called on Germans to stay the course.

Conflicts with the confessional welfare organizations were unavoidable, as the state's interference in the work of the churches increased steadily until 1941. Already during the preceding years, the regime, once more following its anti-liberal course, had displaced the churches and the private charities from competing for the donations collected from the people.[168] The NSDAP, its sub-organizations, and its affiliated associations were allowed to collect freely, all others were covered by a blanket prohibition that could be suspended with a special permit. In the struggle with the churches, even collections in churches were prohibited in 1937 and clergymen were sentenced for violations (Glenz 1936; Boos 1938; Kühn 1939). At the same time, the regime took over welfare services that were useful for propaganda purposes and expanded them into the large-scale actions referred to above (Vorländer 1988). It was only in the summer of 1941 that Hitler felt the need to reverse course to some extent. Concerned about the support of the part of the population that was loyal to the churches, he forbade party agencies (by means of the so-called "Stop Decree") to appropriate any more of the day-care centers and reformatories run by the churches (Hammerschmidt 1999, p. 447).

The same pattern of preserving the legal foundations and instrumentalizing existing institutions and programs for the war-oriented political goals is also found in the law dealing with care of veterans and victims of the war. National Socialism did not add anything essential to the foundations created during the Weimar Republic (Reich Provision Law), except for a few amendments,[169] additions, and a summarizing reissue of the Reich Provision Law in April 1939 (RGBl. I, p. 633). The Law on War Damages to Individuals was changed (RGBl. 1934, I, p. 135), the Deployment Assistance and Deployment Provision Law and the Decree on Harm to Persons, both from 1939, were newly issued (RGBl. I, p. 1217. See Hudemann 1991, pp. 269ff.).

6.6 Social Policy in the War State

As during the First World War, social policy and social law were dominated by the "purpose" of winning the war. To be sure, even in times of peace social services and

[168] RGBl. 1934, I, p. 1086, amended 24 September 1939, RGBl. I, p. 1943 and on 23 October 1941, RGBl. I, p. 654. The law was repealed only in 1966 by the Federal Constitutional Court (BVerfGE 20, 150). See Rupp (1966), Hammerschmidt (1999).

[169] RGBl. 1934, I, p. 541, amended on 19 March 1937, RGBl. I, p. 327, and on 10 August 1937, RGBl. I, p. 886.

benefits are not provided for their own sake; they are always part of a matrix of political purposes and goals (Reidegeld 1998). Now, however, the goals of the war and of the regime's racial and population policy were turned into supportive social policy without impediment. The traditional social contentiousness between parties and organizations no longer functioned. A parliament no longer existed. The ministerial bureaucracy had largely lost its function of objectification and neutralization. The distance between state and society had been eliminated in favor of an authoritarian and anti-democratically led "national community." Protective civil rights, enforced by an independent judiciary, had ceased to exist. The Nazi state had incorporated the traditional systems of protection, "purged" them of real or presumed enemies, but had not – or had been unable to – change them structurally in any real way. Whether this can be seen as resistance from "tried-and-true institutions," as some liked to claim later, or whether the state simply made pragmatic use of them because of their effectiveness and adaptability, remains an open question. In the economic system that was characteristic of National Socialism, which K. D. Bracher has described as "a mixture of private and state capitalism, which under conditions of rearmament and a war economy were increasingly directed from above and outside, but which never became anti-capitalist or anti-monopolistic, let alone socialist" (Bracher 1979, p. 360), social policy played merely a subservient role to the extent that it offered propaganda material to provide psychological support for the "national community."

Social policy was thus "subservient" during the war in several ways (Recker 1985, pp. 17ff., 1991, pp. 245ff.). The remnants of a free choice of workplace and contractual freedom shrank rapidly (Linne 1995). The systems of sickness, accident, and pension insurance, as well as unemployment insurance were restructured, in part through the policy of job-creation driven by rearmament, in part through a diversion of funds, and in part through an increase in the Reich subsidies (the financing of which, though, was highly unsound). Restructuring, in turn, provided the opportunity to skim off funds to finance the war, and to increase benefits where the regime saw a need: population growth, care for the sick,[170] for workers feeling the strain, and for war victims.

There was certainly a method to all the contradictions within the Nazi social policy that we have seen. Within the context of the system, it was "rational" to free up positions in the social bureaucracy for "old fighters" in need of a job, to give in to pressure from "Aryan" doctors by eliminating their "non-Aryan" competition, and to politically instrumentalize the major insurance schemes under German-National leadership in the Reich Labour Ministry, but otherwise leave them unchanged. It was equally "rational" to continue to demand large contributions from the workers, to keep the real wage levels low, but to celebrate the "honor of work" and compensate the material deficits with propaganda. The restructured insurance assets could then be used in the ways described above. It would also have been "rational"

[170] For example, the decree of 2 November 1943, RABl. II, p. 485. The documents on the planned "Gesundheitswerk des Deutschen Volkes" 1940–1942 in Schubert (2000, pp. 586ff.).

to use the destructive and leveling energy that was unavoidable in the war to dismantle differences in social protection that were no longer justifiable and create a uniform system for all citizens. Such tendencies did exist in the so-called "Robert Ley Plan" (1940), which could even point to the NSDAP's party program of 1920 that had promised a "generous development of old-age insurance" (Point 15). These tendencies were less specific to National Socialism that it may have appeared later in the phase of rebuilding the classic social insurance. Those who after 1945 came out against a "uniform insurance" or even a system of security for citizens independent of contributions not only affirmed the intent of the experts whose views had been shaped by the traditional social insurance, but also signaled opposition to National Socialism and Communism, an important thing to do at the time. These plans were therefore swept away by a general verdict against anything associated with the National Socialists. Still, it is striking how much the Ley Plan paralleled the Beveridge Plan of 1942 (Beveridge 1942; Recker 1985). It is possible that the western industrial states, under the pressures of war and quite independent of fundamental ideological differences, had discovered a fundamental problem of modern social policy, which always seems to recur when traditional structures of social protection clash with dramatic changes in the world of work, a society's age structure, and the rhythms of life.

7 Long-Term Perspectives on Social Protection

The often-heard question what one can learn from history, in general, and from the history of social protection, in particular, leads to the paradox of two seemingly contradictory statements: (1) There is nothing to learn because history never repeats itself, and because no normative statements can be derived from descriptive ones; (2) Everything we ever learn, we learn from "history," namely from individual and collective experiences – we only know where we have been, not where we are going. In this latter sense, one can certainly bundle typical constellations and experiences into some kind of theses. What we can deduce from them bears all the uncertainties that come with all projections. Moreover, experiences have to be evaluated: that is, in the final analysis societies decide on the basis of normative goals predominant within them which forms and benefits of social protection they want and which they reject.

1. The most general and stable observation of the historical development of protections against typical social risks reveals a direct dependence of these protections on the respective ways in which people associate to form a society. Specific societal forms give rise to specific protections to care for children and the old, the sick and the disabled, the poor or the victims of accidents – or occasionally even to expel them. There always emerges a balance between way of life, resources, and the specific needs of life situation's in a society – a balance

that must be achieved if the form of society wishes to attain a certain degree of stability and vitality.

This has given rise to a bewildering abundance of forms of protection: from family and clan to special kinds of communities for living together or warding off dangers, and from there to special "social" professions and institutions. In the process, the simplicity or complexity of these forms of protection invariably reflects the simplicity of complexity of the underlying social formations. Nomads protects themselves differently against risks than farmers, agrarian community differently than technologized industrial worlds with a division of labor. Impoverished and affluent societies have both different "social" problems and different strategies for solving them. The important factors are climate and other geographic conditions, the level of the national product, societal-political structures, the level of education, the degree to which exchange transactions are monetarized, and much more.

Within this tableau, the social protections schemes of the European–American industrialized states of the twentieth century assume a singular historical place. They are atypical, not only compared to other countries in today's world, but also and even more so in historical terms. Never before did such institutional apparatuses of redistribution exist, never before was so much redistributed. The sheer number of professionals working in the social sector is without parallel. Nowhere are so many social benefits offered and consumed as in the affluent northern countries of the world, while about a third of humanity lives on less than a dollar a day.

2. If one derives from the historical development of human societies a "law" that simpler formations are replaced by more complex ones, because greater complexity offers greater evolutionary advantages,[171] this should have consequences also for the supplementary systems of social protection. One would then have to conclude that the consistent advancement of a division of labor and the accumulation of wealth could create more leeway for the distribution of surpluses. Higher redistribution would then mean a higher degree of social pacification and inner stability.

   At first glance, this perspective draws its persuasive power from the experiences of four to five generations in the highly industrial European societies, which means that the temporal and regional field of observation is fairly small. This alone weakens the evidentiary value of this observation. Moreover, the success of the way of life in industrial societies has by no means been guaranteed indefinitely. It is a historical experiment, in the same way that other cultures of world history have been experiments. The model's basic political, economic, and economic conditions are subject to their own inherent dynamic and are in no way programmed to achieve the optimal state. In other words, breakdowns are possible, for the simple reason already that the questions about resources and the

[171] On the unspoken assumptions of this presumed upward movement see Kössler (1998).

ecological framework remain open. In addition, the suspicion remains that an excessively optimistic success model of social protection in industrial societies might have incorporated elements of an idealistic developmental model similar to the evolutionistic theories of the nineteenth century, which posited necessary "stages" from lower to higher (wildness-barbarism-civilization). Applied to social protection, one could lay out a parallel model of stages: from the self-provisioning of small unities to solidarity-based solutions among members of the same profession or community, to the solidarity of all within a national or even pan-European framework; from small to increasingly larger institutions, because the potential participation of "all" reduces the financial risks; from the performance of all functions by a single hand to the gradual development of specialized knowledge, to ever increasing specialization and professionalization. The history of science and human knowledge teaches us, however, to be cautious with constructing such models. The belief in what is essentially an upward moving development of human social association has, at the least, developed cracks. The pride of a Eurocentric worldview was badly shaken in two world wars. And the division into a "First, Second, and Third World," which attests to a certain condescension with its implied stages of civilization, is losing its meaning. By now, these worlds are so closely interconnected that they should rather be seen as the mutually interacting subsystems of a single, unified world. We can see that while the wealthy countries are still able to maintain their affluence and their social protections, they are threatened by an aging society and economic competition from more vigorous and demographically younger regions. At the same time, it is becoming clear that the wealth of the northern hemisphere is accompanied by growing poverty, rising illiteracy, and a rapidly increasing population density in the southern hemisphere. A more secure way for a more balanced distribution of wealth, energy reserves, the consumption of common goods, and of social protections is currently not in sight. Finally, there are skeptical questions aimed at problems intrinsic to the systems of protection: Could the reduction of the financial risk by shifting it onto the shoulders of potential everyone at the same time increasing the political risk again, because the smallest tremor within the social protections now affect the entire population? Could the shift of life's risks onto external institutions, which has been practiced now for generations, cause the capacity for solidarity in smaller units to atrophy? What repercussions does the fact that the comprehensive systems of protection permanently claim a large percentage of the social product have on the acquisitive behavior of entire societies?

3. In spite of all the skepticism about extracting long-term trends from the historical material, the focus on smaller and more concretely defined fields of observation seems to be the most promising approach. While this increases the falsifiability in a global framework, it increases certainty in the field of study itself. Statements can be verified against the historical material and national statistics. In this sense one can say this about the development in Germany until 1945:

(a) The forms of social protection characteristic of the present stem from different historical layers. Today, the oldest and newest forms still exist side by side. The oldest include familial and neighborly aid and communal poor relief, the latter of which already presupposes structures of a smaller community and a certain specialization of tasks. Beginning in the Middle Ages, we find special institutional forms of the Church, for example, orders devoted to the care of the sick along with their hospitals, as well as a wealth of other charitable institutions. These, too, have persisted down to our day. Also beginning in the Middle Ages, we have seen vocation-specific organizations of solidarity, in part for particularly dangerous occupation (sailors, miners), in part on the basis of shared interests in a multitude of guild-like associations. These did not vanish; instead, they merged with the institutions of social insurance that emerged from them. In addition, "social" compensatory mechanism emerged for cases of injustice committed by the state, the failure of the state, or harm inflicted by the state, the more state and society became visible as entities separate from each other and it was possible to call the state (or at least the treasury) to account for the material consequences of its actions. These institutes and institutions, as well, have continued from early modern times to this day in the form of provisioning law (*Versorgungsrecht*). Finally, the social question of the industrial age slowly gave rise to social insurances, which were created in part independently, and in part through the adoption of older institutions.[172]
Over the course of the twentieth century, all of these systems of protection were woven into the dense social web of the welfare state, both through inherent growth (parallel to the rise in the social product and the growth in population), and through the external pressures in the wake of wars and inflation. By now there are countless internal interactions of this historically evolved and on the whole "unsystematic system," to use a paradoxical label. Accordingly, the understanding that the basic ideas behind the individual elements are derived from very different historical stages and have different underlying principles is getting lost. The longer the interweaving persists and increases, the more difficult it becomes to legitimize separate institutions with their own tradition, financing, and clientele. The comprehensive social state, which is also politically guided in uniform way, tends toward the elimination of peculiarities, no matter how much those who benefit from peculiarities might protest. Since civil servant pensions, assistance for war victims, contribution-financed benefits, cash benefits and services are all funded from the gross national product, the wish is articulated time and again for an elimination of the organizational differentiation on the income side, at least as long as it is still possible to make adequate differentiations on the spending side based on the principles of justice and

[172] This is the focus of Hockerts (1996); from the perspective of modernization see the study by Alber (1987).

fairness. Politics, too, which shifts funds "improperly" from prospering subsystems into ailing subsystems, is contributing in its own way to a leveling of the various kinds of revenue.

(b) A second long-term observation concerns the growing externalization of protections. What was originally handled in the spatially and physically tangible proximity of the social unit of the "house" is gradually shifting outside. The more the way of life becomes concentrated in urban centers, and the more the individual moves within various social roles, the more it is possible for life risks to be managed in special institutions and by bringing in specialists. Serious illnesses are moved to the "hospital" or into houses outside the city walls. All kinds of healing and support vocations arise. At the same time, the externality of economic security develops through the shifting of the risk from the individual or his family onto larger communities of solidarity. And the latter in turn continue to grow, the more people make the experience that larger communities of solidarity are also financially more resilient.

At the end of this long development stands the modern phenomenon that hardly an existential life risk is experienced and suffered through any longer within a person's own life circle. In the vast majority of cases, birth and death have been banished from the home and are experienced in special clinics and wards. But all of the other, more difficult problems are "outsourced" by the small nuclear family oriented around a two-income household. Neither the layout of the average home nor the modern work rhythm allow for a sustained attention to "problem cases." The handicapped are cared for in special pedagogical institutions, those in need of medical attention are looked after in nursing homes, and the elderly in old-age homes. The same holds for drug addicts, problem children, and other individuals and groups that do not meet the average mold in terms of their willingness/capacity to work and orientation toward the social norms. Society relieves itself of the burden by raising the funds and assigning the social problems to alternating groups of specialists. It relieves itself organizationally because the "normal" patterns are thereby kept intact. But it also relieves itself psychologically. Psychologists and sociologists have observed for some time that human suffering, a painful death, even death itself are seen as interruptions in a happy life to which people believe they are entitled. In view of the hope – nourished by modern medicine – that in principle anything can be cured, death no longer seems like a natural endpoint, but as the irksome failure of medical care that has not yet been perfected. Advertising, which usually works with positive, upbeat images, contributes to the attitude that humans are normally beautiful, healthy, and wealthy. That is why poverty and its accompanying manifestations are not only semantically covered up, but are now also pushed out of the upscale shopping centers of the cities (Terwiesche 1997; Bindzus and Lange 1998).

(c) Between 1883 and 1927, the material risks of illness, accident, disability, old age, and unemployment were shifted onto external social insurances.

The latter are far removed from the old institutions of solidarity of those facing a shared danger or engaged in a common profession. The sheer size and complexity, the compulsory character, the state guidance of burdens and benefits, the subsidies from tax revenues, and the social "self-administration" largely drained of any genuine participation by the insured confirm all the theorems of modern organizational sociology: distancing and bureaucratization, an intrinsic dynamic within the apparatuses, and feelings of being controlled by outsiders on the part of those concerned.

Of course, one should not be too quick to attach obvious cultural-critical overtones to these well-documented manifestations of the externalization of risks by shifting them to teams of specialists and specialized institutions. Externalization also means an increase in professionalism and greater freedom for the individual. The system of social protection, which has become so complex and efficient in the course of its historical evolution, allows for a level of top-notch medical care and a pervasiveness of provisioning that would have seemed utterly inconceivable to previous epochs. The direct connection between the construction of the great security systems, on the one hand, and the spread of medical and social professions and relevant institutions, on the other, is quite evident. The more productive these systems became, they more they pulled in material resources and human energy. Those who handed themselves over to these systems, or had to because of compulsory insurance, gave up some freedoms, but at the same time they gained the "freedom from fear."

This meant at the same time a relief for families, which developed from the "extended family," which was simultaneously a social network, into the "nuclear family," and the latter appears to be dissolving into even smaller units (temporary partnerships, single parents, singles). The individual was "untethered" in this way, even if in an ambiguous way. Thanks to the externalized and monetarized support systems, he could free himself from the "helping intervention" of his immediate environment and exist in self-chosen independence. For many elderly who do not wish to be "a burden" on their children, the modern social protections mean real freedom. In the same way, young people today can decide much more freely than before whether to remain within the family unit or leave. The same holds for women, who have gradually freed themselves from dependence on a "breadwinner," especially through gainful employment of their own and through the attendant transformation of accessory security into independent social protection.

Thus, there have been gains and losses. As a gain one can rate the growth in personal freedom and the qualitative and quantitative expansion of the network created to protect against the typical risks of life. For countless people, the social protection that exists today means freedom from the fear of hunger, cold, disease, and the daily struggle to survive, but above all also freedom from personal dependencies. Average life expectancy has grown by more than a generation over the last 100 years (1891: men 37.1, women 40.2; 1996: men 73.7, women 80). People are obviously willing to devote

substantial portions of their income for a life defined as dignified in these terms. However, they simultaneously experience as a loss the feeling of being at the mercy of anonymous bureaucracies, the sense of alienation in "external" institutions, and the monetarization of human relations.

4. Finally, the construction of the great social systems of protection over the last century has had reverberations back onto politics. This phenomenon must be distinguished from the always present external motives driving social policy. Of course, the very first state initiative to improve worker protection, the system of sickness funds, or liability for accidents in the workplace were already motivated by politics. And that is even more true for the target build-up of the social insurances. But only after social budgets and the bureaucracies that administer them attained a certain weight did we begin to see influences reverberating back onto the political sphere from what was now a large and developed complex. It is obvious in the commitment of what were once unimaginably large financial resources to the area of social services. And it is equally obvious in the growth of personnel in the sector of public social services, in the intertwinement of state and non-state institutions, and in the now established, collective – if sometimes diffuse – belief on the part of all citizens that the state is "responsible" for the areas of health care and care of the elderly, the labor market, the provision of a basic livelihood, and concern for certain risk groups. The expectations that are linked to this belief guide politics.
   Externally this is evident not only in the multifarious institutions of the "structured system," in their budget resources, and in the number of personnel they employ, but also in the emergence of the modern system of organizations and associations. The latter system found in the "social sphere" one of its primary areas of activity, especially if we include the shaping of working and economic conditions by organizations of workers and employers. The society of the nineteenth century, which still contained traces of the estate-structure of the eighteenth century, gave rise to the mass society of the twentieth century. Meaningful groups that can afford not to work at all no longer exist. The differences that initially still existed between workers and employees have been crushed under the pressure of the postulate of equality, in the same way that the freedom of the self-employed has. In the end, the latter were brought – willingly or under legal compulsion – into the systems that were gradually expanding into a "national insurance." This means that the vast majority of all citizens, who endow politics with its basic legitimacy at the ballot box, are simultaneously also carriers and beneficiaries of the social protections. The latter, in turn, in keeping with their basic constellation, depend on the presence of "work" or, in the case of supplementary state subsidies, on a tax system that draws off some of society's productivity. In other words: the citizen, the contribution payer, and the recipient of benefits are three sides of the same person. The citizen and the contribution payer respond to the political signals that move him with his vote, the contribution payer, if the burden becomes too oppressive, can prompt the citizen as voter or seek to escape the burdens more or

less illegally, for example, in the shadow economy. Finally, experience shows that the benefit recipient does not exactly behave in a spirit of solidarity, but as a "homo oeconomicus" seeks to obtain as many benefits as possible or the highest possible level of benefits. But all three sides of the modern person can resort to the organization of shared interests – whether in political parties or other associations – to increase their clout. That organization is all the more successful, the more socially recognized these interests are. It fails in the end if only dire poverty constitutes the shared element. We know from experience that organizations of social assistance recipients have little capacity for engaging in conflictual politics. That is why this area has seen the formation of organizations that advocate on their behalf, citizens' initiatives, or clearing-houses for relevant organizations, such as the German Association for Public and Private Assistance (Münsterberg 1896; Orthbandt 1980).

However the question of the representation of the various interests and their organization in the struggle over setting and distributing the social expenditure rate is decided, the *grosse Politik* (grand politics) of the western industrialized states must take this into account. Over the course of its historical evolution, that politics has become dependent on the availability of work and on the social protection that accompanies and supports its. Parliamentary legislation and corrective court decisions are interconnecting this sensitive area intimately with all other spheres of politics. Since mass loyalty depends crucially on the functioning of social protection, disruptions within it have a direct effect on the other areas. All western parliamentary systems operate in this way, and they use the balancing pole of legislation not only to reconcile "equality" and "justice," but also to convey a sense of that reconciliation to the three aspects of the modern person – as citizen, contribution payer, and benefit recipient.

5. However, the historically demonstrable reverberations of the systems of social protection onto politics have not yet been fully described. They are found not only in the ambivalence of the gain in individual freedom, a longer life span, and high-quality, professional care and provisioning, on the one hand, and the restriction of political maneuvering room, on the other. Rather, social protection has reshaped the entire process of material transfer in the western industrialized states. Via transfers, society today finances the health care system and the old-age provisioning of pensioners for the additional duration of an entire generation. This transfer, generated by the higher productivity of a labor output greatly multiplied by machines and by the productivity increases in other countries, constitutes an important factor in the stabilization of purchasing power. Under democratic premises, this factor is virtually immobile; its rise can be gently slowed, but it cannot be truly cut back, especially in a Germany that still remembers the political consequences of the austerity policy pursued by the Brüning and von Papen governments. Economically one should therefore bear in mind, alongside the usual complaints about the excessively high non-wage labor costs in Germany, that social benefits and services have a stabilizing effect on the economy and domestic politics. Historical experience teaches us that free-market systems are well advised to redistribute a high percentage of the wealth

they generate. By doing so they preserving purchasing power, ease domestic political tensions, and dampen excessive economic fluctuations (Huf 1998). And that holds true not only within a nation, but also in relations between rich and poor nations within a federation of states and for the world as a whole. During the French Revolution it was said that a society without guarantees of human rights and without a division of power had no constitution (Art. 16 of the French Constitution of 3 September 1791. Mohnhaupt and Grimm 1995, p. 106). Similarly, we can say for the twenty-first century that a state under the conditions of an industrial society cannot exist without social protections; a maxim, incidentally, that also seems to apply to the dictatorships of the twentieth century.

Social protections in their stability correspond to the equally stable expectations of their beneficiaries. To be sure, there are different forms and benefit levels among these protections (Hauser 1999; *Rentenversicherung im internationalen Vergleich* 1999). However, adjusting systems of social protection downwards if and when the national income declines is politically extremely risky and difficult to carry out. And yet, if one looks back over the development since the Industrial Revolution, one cannot ignore the fact that a secondary system that is linked inescapably to productivity will run into problems if the most important parameters shift. It is therefore not a foregone conclusion that the social insurance that has proven itself for more than 100 years will be able to survive intact the demographic challenge of the next generation (Zacher 1993a; Stolleis 1999). If it does not, for example because the factor of dependent labor undergoes a fundamental change, it would have to be replaced – in the most gentle way possible – by a system that redistributes in a similar way and accords with the fundamental principles of equality and fairness.

References*

Abelshauser W (ed) (1987) Die Weimarer Republik als Wohlfahrtsstaat. Stuttgart
Adickes F, Beutler G (1903) Die sozialen Aufgaben der deutschen Städte. Leipzig
Adler L (ed) (1931/1998) Neuzeitliche Mietshäuser und Siedlungen. Berlin. Reprint 1998, Berlin
Aeppli S (1988) Das beschränkte Wahlrecht im Übergang von der Stände- zur Staatsbürgergesellschaft: Zielsetzungen des Zensuswahlrechts. Zürich

* Note on changes in the name of the Federal Ministry of Labour in the Federal Republic of Germany: The *Bundesministerium für Arbeit und Sozialordnung* (Federal Ministry of Labour and Social Order) was split into the *Bundesministerium für Gesundheit und soziale Sicherung* (Federal Ministry of Health and Social Security) and a section of the *Bundesministerium für Wirtschaft und Arbeit* (Federal Ministry of the Economy and Labour) in October 2002, to be merged again in November 2005 under the name *Bundesministerium für Arbeit und Soziales* (Federal Ministry of Labour and Social Affairs).

Agand K (1902) Kinderarbeit und Gesetz gegen die Ausnutzung kindlicher Arbeitskraft in Deutschland. Jena

Alber J (1987) Vom Armenhaus zum Wohlfahrtsstaat. Analysen zur Entwicklung der Sozialversicherung in Westeuropa, 2nd edn. Frankfurt am Main

Alber P-P (1974) Die Geschichte der Öffentlichkeit im deutschen Strafverfahren. Berlin

Althoff H (1940) Erinnerungen aus den Anfängen der Invalidenversicherung. Zentralblatt für Reichsversicherung und Reichsversorgung

Anschütz G (1933) Die Verfassung des Deutschen Reichs vom 11. August 1919, 14th edn. Berlin

Arendsee M (1932) Wieviel braucht der Mensch zum Leben? Proletarische Sozialpolitik 5(5)

Aribas N (1981) Die Entwicklung der landwirtschaftlichen Krankenversicherung in Deutschland. Dissertation. Bonn

Auerbach F (1925/1989) Das Zeisswerk und die Carl-Zeiss-Stiftung in Jena 1925, 5th edn. Jena

Ayass W (1995) "Asoziale" im Nationalsozialismus. Stuttgart

Ayass W (ed) (1996) Arbeiterschutz, vol 3. In: Born KE, Henning H-J, Tennstedt F (eds) 1993–1997: Quellensammlung zur Geschichte der Deutschen Sozialpolitik 1867–1914. I. Abt. Von der Reichsgründung bis zur Kaiserlichen Sozialbotschaft (1867–1881). Stuttgart

Ayass W (1998) "Gemeinschaftsreform". Quellen zur Verfolgung von "Asozialen" 1933–1945. Koblenz

Ayass W (1999) Rezension Gerhard Albert Ritter: Soziale Frage und Sozialpolitik in Deutschland seit Beginn des 19. Jahrhunderts. Zeitschrift für Sozialreform: 890ff

Ayass W, Nickel K-H, Winter H , Czaplinski M, Roeder E (eds) (1997) Arbeitsrecht, vol. 4. In: Born KE, Henning H-J, Tennstedt F (eds) (1993-1997) Quellensammlung zur Geschichte der deutschen Sozialpolitik 1867-1914. I. Abt. Von der Reichsgründung bis zur Kaiserlichen Sozialbotschaft 1867–1881. Darmstadt

Baare L (1880) Gesetzentwurf betreffend die Einrichtung einer Arbeiter-Unfall-Versicherungskasse nebst Motiven. Elberfeld

Badura P, Hofmann H (1965) Der Herrschaftsvertrag. Neuwied

Barta H (1984) Entstehung und Funktion der sogenannten Theorie der wesentlichen Bedingung. Der Weg vom frühen zivilen, industriell/gewerblichen Haftpflichtrecht zur öffentlich-rechtlichen Gefährdungshaftung der Arbeiter(unfall)versicherung. In: Steindl H (ed) Wege zur Arbeitsrechtsgeschichte. Frankfurt am Main, pp 205–249

Bauer C (1974) Georg von Hertling als Sozialpolitiker. In: Carlen L, Steinegger F (ed) Festschrift für Nikolaus Grass. Innsbruck München, pp 187–203

Becker H (1983) Das Evangelische Johannesstift in Berlin-Spandau, seine Geschichte von 1858 bis 1983. Berlin

Becker M (1995) Arbeitsvertrag und Arbeitsverhältnis in Deutschland. Vom Beginn der Industrialisierung bis zum Ende des Kaiserreichs. Frankfurt am Main

Becker W (1991) Sozialpolitische Vorstellungen der Kirchen und ihre Realisierung im 19. Jahrhundert (bis zu Rerum novarum). In: Pohl H (ed) Staatliche, städtische, betriebliche und kirchliche Sozialpolitik vom Mittelalter bis zur Gegenwart. Stuttgart, pp 177ff

Bender G (1984) Strukturen des kollektiven Arbeitsrechts vor 1914. Ein Beitrag zu den historischen Grundlagen der rechtsförmigen Steuerung des industriellen Konflikts. In: Steindl H (ed) Wege zur Arbeitsrechtsgeschichte. Frankfurt am Main, pp 251–293

Bender G (1991) Die schwierige Koalitionsfreiheit. Eine Studie zu Rechtsprechung und Gesetzgebung im Jahrzehnt der Reichsgründung. In: Mohnhaupt H (ed) Rechtsgeschichte in den beiden deutschen Staaten (1988–1990). Frankfurt am Main, pp 466–490

Benöhr H-P (1993) Hugo Sinzheimer (1875–1945). Mitbegründer des Arbeitsrechts. In: Heinrichs H (ed) Deutsche Juristen jüdischer Herkunft. München, pp 615–630

Benöhr H-P (1997) Fast vier Tropfen sozialen Öls — Zum Arbeitsrecht im BGB. In: Köbler G, Nehlsen H (ed) Festschrift für Karl Kroeschell. München, pp 17–38

Berg W (1985) Arbeits- und Sozialverwaltung einschliesslich Sozialversicherung und Reichsversorgung. In: Jeserich K, Pohl H, von Unruh GC (eds) Deutsche Verwaltungsgeschichte, vol 4, § 8. Stuttgart, pp 231ff

Berghahn VR (1966) Der Stahlhelm. Düsseldorf
Berringer C (1999) Sozialpolitik in der Weltwirtschaftskrise. Die Arbeitslosenversicherungspolitik in Deutschland und Großbritannien im Vergleich 1928–1934. Berlin
Beveridge W (1942) Social insurance and allied services. Her Majesty's Stationery Office. London (German: Der Beveridgeplan. Sozialversicherung und verwandte Leistungen, 1943. Zürich New York)
Beyreuther E (1962) Geschichte der Diakonie und Inneren Mission in der Neuzeit. Berlin
Bichler B (1997) Die Formierung der Angestelltenbewegung im Kaiserreich und die Entstehung des Angestelltenversicherungsgesetzes von 1911. Frankfurt am Main
Bieback K-J (1976) Die öffentliche Körperschaft. Berlin
Bieber H-J (1998) Die Rolle von Gewerkschaften und Wirtschaftsverbänden bei der Entstehung des Arbeitsrechts. In: Nutzinger H-G (ed) Die Entstehung des Arbeitsrechts in Deutschland. Marburg, pp 15–69
Binder H-O (1971) Reich und Einzelstaaten während der Kanzlerschaft Bismarcks 1871–1890. Eine Untersuchung zum Problem der bundesstaatlichen Organisation. Tübingen
Bindzus D, Lange J (1998) Die Saarbrücker Bettelsatzung macht weiter von sich reden. Juristische Schulung: 696–701
Blaich F (1979) Staat und Verbände in Deutschland zwischen 1871 und 1945. Wiesbaden
Blanke T, Erd R, Mückenberger U, Stascheit U (eds) (1975) Kollektives Arbeitsrecht. Quellentexte zur Geschichte des Arbeitsrechts in Deutschland, vol 1 (1840–1933). Reinbek
Blasius D (1971) Lorenz von Steins Lehren vom Königtum der sozialen Reform und ihre verfassungspolitischen Grundlagen. Der Staat 10:33–51
Bock G (1986) Zwangssterilisationen im Nationalsozialismus. Studien zur Rassenpolitik und Frauenpolitik. Opladen
Bogs H (1973) Die Sozialversicherung im Staat der Gegenwart. Berlin
Bogs W (1977) Das Bundesversicherungsamt im Rückblick. In: Schewe D (ed) Die Praxis des Bundesversicherungsamtes. Bonn-Bad Godesberg, pp 195ff
Bogs W (1979) Sozialrechtspflege vor Einführung der Sozialgerichtsbarkeit. In: Deutscher Sozialgerichtsverband: Festschrift 25 Jahre Bundessozialgericht, vol 1. Köln Berlin
Bogs W (1981) Die Sozialversicherung in der Weimarer Demokratie. München
Bonz H-J (1989) Berlin als Standort des zentralen Trägers der Rentenversicherung der Angestellten. In: Mitteilungen des Vereins für die Geschichte Berlins 85:138–141
Boos K (1938) Reichssammlungsrecht. Reichsverwaltungsblatt 59: 129–136
Borchardt K (1976) Wachstum und Wechsellagen 1914–1970. In: Aubin H, Zorn W (eds) Handbuch der deutschen Wirtschafts- und Sozialgeschichte, vol 2. Stuttgart, pp 685–740
Born KE (1960) Die Motive der bismarckschen Sozialgesetzgebung. Die Arbeiterversorgung, pp 33ff
Born KE, Henning H-J, Tennstedt F (eds) (1993–1997) Quellensammlung zur Geschichte der Deutschen Sozialpolitik 1867–1914, 18 vols. Stuttgart (1997: Darmstadt). I. Abt. Von der Reichsgründung bis zur Kaiserlichen Sozialbotschaft (1867–1881), vol 1 (1994) Tennstedt F, Winter H, Ayass W, Nickel K-H (eds) Grundfragen staatlicher Sozialpolitik. Die Diskussion der Arbeiterfrage auf Regierungsseite vom preußischen Verfassungskonflikt bis zur Reichstagswahl von 1881. Stuttgart et al; vol 2 (1993) Tennstedt F, Winter H, Domcinski H (eds) Von der Haftpflichtgesetzgebung zur Ersten Unfallversicherungsvorlage, Stuttgart et al; vol 3 (1996) Ayass W (ed) Arbeiterschutz. Stuttgart et al; vol 4 (1997) Ayass W, Nickel K-H, Winter H, Czaplinski M, Roeder E (eds) Arbeiterrecht. Darmstadt.; Abt. II. Von der Kaiserlichen Sozialbotschaft bis zu den Februarerlassen Wilhelm II. (1881–1890); vol 2/1 (1995) Tennstedt F, Winter H, with Domeinski H, Roeder E (eds) Von der Zweiten Unfallversicherungsvorlage bis zum Unfallversicherungsgesetz vom 6. Juli 1884. Stuttgart
Bracher KD (1971) Die Auflösung der Weimarer Republik, 5th edn. Villingen
Bracher KD (1979) Die deutsche Diktatur, 6th edn. Köln
Brand J (1990) Untersuchungen zur Entstehung der Arbeitsgerichtsbarkeit in Deutschland, vol 1/1. Pfaffenweiler

Brand J (1998) Zunft, Zunftwesen. Handwörterbuch zur Deutschen Rechtsgeschichte, vol 5, columns 1792–1803
Bräunche E-O (1997) Zur Wohnungssituation in Karlsruhe vom Kriegsende 1918 bis zum Bau der Dammerstocksiedlung 1929. In: Franzen B, Schmitt P (eds) Neues Bauen der 20er Jahre. Karlsruhe, pp 23ff
Brentano L (1881) Der Arbeiter-Versicherungszwang. Berlin
Broszat M (1988) Der Staat Hitlers, 10th edn. München
Brück T (1994) Korporationen der Schiffer und Bootsleute. Untersuchungen zu ihrer Entwicklung in Seestädten an der Nord- und Ostseeküste vom Ende des 15. bis zum Ende des 17. Jahrhunderts. Weimar
Buchheim K (1972) Zeitgeschichtliche Hintergründe zur Geschichte des Deutschen Caritasverbandes. In: Fischer A (ed) 75 Jahre Deutscher Caritasverband. Freiburg im Breisgau
Bundesministerium für Arbeit und Soziales, Bundesarchiv (eds) (2001–2008) Geschichte der Sozialpolitik in Deutschland seit 1945, vols 1–11. Baden-Baden (See footnote page 158).
Bunte T (1995) Überwindung der Wohnungsnot – Sieg der Wohnkultur. Gemeinnütziger Wohnungsbau in der Weimarer Republik am Beispiel der Ravensberger Heimstätten e. G.m.b.H. Bielefeld
Büsch O, Feldman GD (eds) (1978) Historische Prozesse der deutschen Inflation 1914–1924. Berlin
Castell-Rüdenhausen AGz (1991) Kommunale Gesundheitspolitik in der Zwischenkriegszeit. Sozialhygiene und Rassenhygiene am Beispiel Gelsenkirchens. In: Frei N (1991) Medizin und Gesundheitspolitik in der NS-Zeit. München, pp 67–80
Cemy J (ed) (1992) Wer war wer in der DDR, 2nd edn. Berlin
Claussen K-E (1985) Justizverwaltung. In: Jeserich K (ed) Deutsche Verwaltungsgeschichte, vol 4. Stuttgart
Coing H (1989) Europäisches Privatrecht 1800–1914, vol 2. 19. Jahrhundert. München
Conze W (1962) Das Spannungsfeld von Staat und Gesellschaft im Vormärz. In: Conze W (ed) Staat und Gesellschaft im deutschen Vormärz 1815–1848. Stuttgart
Craemer R (1940) Bismarcks Erbe in der deutschen Sozialversicherung. Berlin
Croner F (1962) Soziologie der Angestellten. Köln Berlin
Däbritz W (1953) Baare. Neue Deutsche Biographie 1:477
Damaschke A (1922) Aufgaben der Gemeindepolitik, 10th edn. Jena
Däubler W (1988) Otto Kahn-Freund (1900–1979). Ideologiekritik und Rechtsfortschritt im Arbeitsrecht. In: Kritische Justiz: Streitbare Juristen. Eine andere Tradition. Baden-Baden: 380–389
Der Große Brockhaus (1931) vol 8. Leipzig
Der Große Brockhaus (1933) vol 15. Leipzig
Der Große Brockhaus (1935) vol 21 (Suppl). Leipzig
de Mandeville B (1968) Eine Abhandlung über Barmherzigkeit, Armenpflege und Armenschule. In: de Mandeville B (ed) Die Bienenfabel, Ausgabe. Frankfurt am Main
Deutsche Sozialpolitik 1918–1928 (1929) Erinnerungsschrift des Reichsarbeitsministeriums. Berlin
Dobbernack W (1933) Die Finanzlage der deutschen sozialen Rentenversicherungen. Zeitschrift für das gesamte Versicherungswesen: 275ff
Doeberl M (1904) Innere Regierung Bayerns nach dem Dreißigjährigen Krieg. München
Domann P (1974) Sozialdemokratie und Kaisertum unter Wilhelm II. Die Auseinandersetzung der Partei mit dem monarchischen System, seinen gesellschafts- und verfassungspolitischen Voraussetzungen. Wiesbaden
Dommer J (1926) Wie man in Karlsruhe baut und wohnt. In: Behrendt O (ed) Karlsruhe, Das Buch der Stadt. Stuttgart
Dorner C et al (1989) Die Braune Machtergreifung. Universität Frankfurt 1930–1934. Frankfurt am Main
Dreher W (1978) Die Entstehung der Arbeiterwitwenversicherung in Deutschland. Berlin

Duda D (1982) Die Hamburger Armenfürsorge im 18. und 19. Jahrhundert. Eine soziologisch-historische Untersuchung. Weinheim
Ebel W (1964) Quellen zur Geschichte des deutschen Arbeitsrechts. Göttingen
Eickhoff AF (1932) Georg von Hertling als Sozialpolitiker. Köln
Engelsing R (1967) Die wirtschaftliche und soziale Differenzierung der deutschen kaufmännischen Angestelltenschaft 1690–1900. Zeitschrift für die gesamten Staatswissenschaften 123:347–380
Englberger J (1995) Tarifautonomie im Deutschen Reich. Berlin
Erdal A (1923/1924) Das Arbeitsrecht, 2 vols. Leipzig
Erler A, Kaufmann E (eds) (1971–1998) Handwörterbuch zur Deutschen Rechtsgeschichte, vols 1 (1971), 2 (1978), 3 (1984), 4 (1990), 5 (1998). Berlin
Esser J (1941/1969) Grundlage und Entwicklung der Gefährdungshaftung, 1st edn. 1941. München Berlin. 2nd edn. 1969. München
Faust A (1986) Arbeitsmarktpolitik im Deutschen Kaiserreich. Stuttgart
Faust A (1987) Von der Fürsorge zur Arbeitsmarktpolitik. Die Errichtung der Arbeitslosenversicherung. In: Abelshauser W (ed) Die Weimarer Republik als Wohlfahrtsstaat. Stuttgart, pp 260ff
Federau F (1962) Der Zweite Weltkrieg — Seine Finanzierung in Deutschland. Tübingen
Feldman GD (1966) Army, industry and labor in Germany 1914–1918. Princeton
Feldman GD (1974) Der Organisierte Kapitalismus während der Kriegs- und Inflationsjahre 1914–1923. In: Winkler HA (ed) Organisierter Kapitalismus. Voraussetzungen und Anfänge. Göttingen, pp 150–171
Feldman GD (1984) Vom Weltkrieg zur Wirtschaftskrise. Studien zur deutschen Wirtschafts- und Sozialgeschichte 1914–1932. Göttingen
Feldman GD (1993) The great disorder. Politics, economics and society in the German inflation, 1914–1924. Oxford
Felisch P (1917) Ein deutsches Jugendgesetz. Berlin
Fisch S, Haerendel U (eds) (2000) Geschichte und Gegenwart der Rentenversicherung in Deutschland. Berlin
Fischer W (1962) Der Staat und die Anfänge der Industrialisierung in Baden 1800–1850, vol 1. Berlin
Fögen MT (1974) Der Kampf um Gerichtsöffentlichkeit. Berlin
Forsthoff E (1935) Deutsche Geschichte seit 1918. Leipzig
Forsthoff E (1942) Deutsche Geschichte 1918–1938 in Dokumenten, 3rd edn. Stuttgart
Forsthoff E (1972) Lorenz von Stein. Frankfurt am Main
Frank A (1994) Die geschichtliche Entwicklung der gesetzlichen Krankenversicherung. Dissertation. München
Frerich J, Frey M (1993) Handbuch der Geschichte der Sozialpolitik in Deutschland, vol 1. München
Frevert U (1979) Vom Klavier zur Schreibmaschine – weiblicher Arbeitsmarkt und Rollenzuweisungen am Beispiel der weiblichen Angestellten in der Weimarer Republik. In: Kuhn A, Schneider G (eds) Frauen in der Geschichte. Düsseldorf, pp 82ff
Friedeberg E, Polligkeit W (1930) Das Reichsgesetz für Jugendwohlfahrt, 2nd edn. Berlin Köln
Fröhlich S (1976) Soziale Sicherung bei Zünften und Gesellenverbänden. Berlin
Fuchs M (1998) Bewertung der Arbeit von Klaus Rother: Die Reichsversicherungsordnung 1911. Das Ringen um die letzte große Arbeiterversicherungsgesetzgebung des Kaiserreichs unter besonderer Berücksichtigung der Rolle der Sozialdemokratie. Zeitschrift für neuere Rechtsgeschichte: 160–163
Führer KC (1990) Arbeitslosigkeit und die Entstehung der Arbeitslosenversicherung in Deutschland 1902–1927. Berlin
Gall L (1980) Bismarck. Der weiße Revolutionär. Frankfurt am Main Berlin Wien, pp 684–708
Gasser CA (1997) Philipp Lotmar (1850–1922), Professor der Universität Bern. Sein Engagement für das Schweizerische Arbeitsrecht. Frankfurt am Main
Gerhard U (1990) Unerhört. Die Geschichte der deutschen Frauenbewegung. Reinbek

Gessner D (1982) Die Industriealisierung, staatliche Gewerbepolitik und die Anfänge des industriellen Ausstellungswesens in Deutschland. In: Mai E, Pohl H, Waetzold S (eds) Kunstpoltik und Kunstförderung im Kaiserreich. Berlin
Geyer M (1987) Die Reichsknappschaft. Versicherungsformen und Sozialpolitik im Bergbau 1900 bis 1945. München
Gladen A (1974) Geschichte zur Sozialpolitik in Deutschland. Wiesbaden
Glenz W (1936) Sammlungsgesetz und Sammelvermögen. Dissertation. Giessen
Glum F (1930) Der Reichsverwaltungsrat. In: Anschütz G, Thoma R (eds) Handbuch des Deutschen Staatsrechts, vol 1. Tübingen, pp 578–585
Gömmel R (1991) Merkantilstaatliche und kommunale Sozialpolitik. In: Pohl H (ed) Staatliche, städtische, betriebliche und kirchliche Sozialpolitik vom Mittelalter bis zur Gegenwart. Stuttgart
Gönner NT (1804) Deutsches Staatsrecht. Landshut
Gönner NT (1808) Der Staatsdienst aus dem Gesichtspunkt des Rechts und der Nationalökonomie betrachtet. Landshut
Görlitz A (1974) Arbeitsrecht. In: Görlitz A (ed) Handlexikon zur Rechtswissenschaft, vol 1. Reinbek, p 42
Gräser M (1995) Der blockierte Wohlfahrtsstaat. Unterschichtjugend und Jugendfürsorge in der Weimarer Republik. Göttingen
Grebe P (1937) Bismarcks Sturz und der Bergarbeiterstreik vom Mai 1889. Historische Zeitschrift 157:84–97, with futher references
Grebing H (1966) Geschichte der deutschen Arbeiterbewegung. München
Groh W (1924) Deutsches Arbeitsrecht. Breslau
Grunwald M (ed) (1897) Englische Sozialreformer. Leipzig
Habermann N (1976) Die preußische Gesetzgebung zur Herstellung eines frei verfügbaren Grundeigentums. In: Coing H, Wilhelm W (eds) Wissenschaft und Kodifikation des Privatrechts im 19. Jahrhundert, vol 3. Frankfurt am Main, pp 3–43
Hachtmann R (1989) Industriearbeit im “Dritten Reich". Untersuchungen zu den Lohn- und Arbeitsbedingungen in Deutschland 1933–1945. Göttingen
Hachtmann R (1998) Arbeitsverfassung. In: Hockerts HG (ed) Drei Wege deutscher Sozialstaatlichkeit: NS-Diktatur, Bundesrepublik und DDR im Vergleich. München, pp 27–54
Hahn E (1995) Rudolf von Gneist 1816–1895. Ein politischer Jurist in der Bismarckzeit. Frankfurt am Main
Hahn H-W (1998) Die Industrielle Revolution in Deutschland. München
Hammerschmidt P (1999) Die Wohlfahrtsverbände im NS-Staat. Die NSV und die konfessionellen Verbände Caritas und Innere Mission im Gefüge der Wohlfahrtspflege des Nationalsozialismus. Opladen
Hansen E (1991) Wohlfahrtspolitik im NS-Staat, Motivationen, Konflikte und Machtstrukturen im “Sozialismus der Tat” des Dritten Reiches. Augsburg
Hansen E, Heisig M, Leibfried S, Tennstedt F (1981) Seit über einem Jahrhundert. . . . Verschüttete Alternativen in der Sozialpolitik. Köln
Hardtwig W (1997) Genossenschaft, Sekte, Verein in Deutschland. Vom Spätmittelalter bis zur französischen Revolution, vol 1. München
Härter K (1971–1998) Zigeuner. Handwörterbuch zur deutschen Rechtsgeschichte, vol 5, columns 1699–1707
Härter K (1993) Entwicklung und Funktion der Policeygesetzgebung des Heiligen Römischen Reiches Deutscher Nation im 16. Jahrhundert. lus Commune XX
Härter K, Stolleis M (eds) (1996/1998/1999) 32 Repertorium der Policeyordnungen der Frühen Neuzeit, vol 1, 1996: Deutsches Reich und geistliche Kurfürstentümer (Kurmainz, Kurköln, Kurtrier). Frankfurt am Main, vols 2/1, 2/2: Simon T (ed) (1998) Brandenburg/Preußen mit Nebenterritorien (Kleve-Mark, Magdeburg und Halberstadt). Frankfurt am Main, vols 3/1, 3/2: Schilling L, Schuck G (eds) (1999) Wittelsbachische Territorien (Kurpfalz, Bayern, Pfalz-Neuburg, Pfalz-Sulzbach, Jülich-Berg, Pfalz-Zweibrücken). Frankfurt am Main

Hasenclever C (1978) Jugendhilfe und Jugendgesetzgebung seit 1900. Göttingen
Hattenhauer H (1993) Geschichte des Beamtentums, 2nd edn. Köln
Hauser R (ed) (1999) Alternative Konzeptionen der sozialen Sicherung. Schriften des Vereins für Socialpolitik (new series), vol 265. Berlin
Hautmann G (1984) Die Zusatzversorgung im öffentlichen Dienst und ihre Rechtsverhältnisse. Heidelberg
Hedemann JW (1930) Die Fortschritte des Zivilrechts im XIX. Jahrhundert, vol II/1. Berlin
Heffter H (1969) Die Deutsche Selbstverwaltung im 19. Jahrhundert. Geschichte der Ideen und Institutionen, 2nd edn. Stuttgart
Heidenreich U, Kohlmann W (1983) 150 Jahre Das Rauhe Haus 1833–1983 “Brunnenstube" der Inneren Mission. Hamburg
Hellwig F (1936) Carl Freiherr von Stumm-Hallberg. Heidelberg Saarbrücken
Henderson WO (1958) The state and the industrial revolution in Prussia. Liverpool
Henkes B (1999) Heimat in Holland. Deutsche Dienstmädchen 1920–1950. Straelen
Henning FW (1978) Das industrialisierte Deutschland 1914 bis 1976, 4th edn. Paderborn
Hentschel V (1975) Die deutschen Freihändler und der volkswirtschaftliche Kongress 1858 bis 1885. Stuttgart
Hentschel V (1983) Geschichte der deutschen Sozialpolitik 1880–1980. Frankfurt am Main
Hesse H (1971) Die sogenannte Sozialgesetzgebung Bayerns Ende der sechziger Jahre des 19. Jahrhunderts. München
Heymann E (1921) Die Rechtsformen der militärischen Kriegswirtschaft als Grundlage des neuen Industrierechts. Marburg
Hientzsch U (1970) Arbeitsrechtslehren im Dritten Reich und ihre historische Vorbereitung. Marburg
Hintze O (1941) Der Commissarius und seine Bedeutung in der allgemeinen Verwaltungsgeschichte. In: Hintze O (ed) Gesammelte Abhandlungen, vol 1. Staat und Verfassung. Leipzig, pp 232–264
Hirsch M (1875) Die gegenseitigen Hülfskassen und die Gesetzgebung. Berlin
Hitler A (1940) Mein Kampf, vol 1, 6th edn. München Berlin
Hockerts HG (1983) Sicherheit im Alter. Kontinuität und Wandel der gesetzlichen Rentenversicherung 1889–1979. In: Conze W, Lepsius MR (eds) Sozialgeschichte der Bundesrepublik Deutschland. Stuttgart, pp 296–323
Hockerts HG (1996) Die historische Perspektive – Entwicklung und Gestalt des modernen Sozialstaats in Europa. In: Walter-Raymond-Stiftung (ed) Sozialstaat- Idee und Entwicklung, Reformzwänge und Reformziele, vol 35. Köln, pp 27–48
Höffner J (1956) Sozialpolitik im deutschen Bergbau. Münster
Hofmann H (1977) Das Problem der cäsaristischen Legitimität im Bismarckreich. In: Hammer K, Hartmann PC (eds) Der Bonapartismus. Supplement of Francia, vol 6. München, pp 77ff
Hofmann H (1986) Recht – Politik – Verfassung. Studien zur Geschichte der politischen Philosophie. Frankfurt am Main, pp 181ff
Hofmann H-H (ed) (1967) Die Entstehung des modernen souveränen Staates. Köln Berlin
Hollerbach A (1981) Das Staatskirchenrecht in der Rechtssprechung des Bundesverfassungsgericht. Archiv für öffentliches Recht 106:218–283
Hollerbach A (1993) Heinrich Rosin (1855–1927). Pionier des allgemeinen Verwaltungs- und des Sozialversicherungsrechts. In: Heinrichs H (ed) Deutsche Juristen jüdischer Herkunft. München, pp 369–384
Howard J (1780) Über Gefängnisse und Zuchthäuser. Leipzig
Howard J (1784) The state of the prisons in England and Wales with preliminary observations and an account of some foreign prisons and hospitals. London
Howard J (1791) Nachrichten von den vorzüglichsten Kranken- und Pesthäusern in Europa. Leipzig
Huber ER (1934) Die Gestalt des deutschen Sozialismus. Hamburg
Huber ER (1939) Verfassungsrecht des Großdeutschen Reiches. Hamburg

Huber ER (1969–1984) Deutsche Verfassungsgeschichte seit 1789, vols 4 (1969), 5 (1978a), 6 (1981, rev 1993) and 7 (1984). Stuttgart
Huber ER (1978b/1986) Dokumente zur deutschen Verfassungsgeschichte, vol 1/2, 3rd edn. Stuttgart
Huber ER, Huber W (eds) (1983) Staat und Kirche im 19. und 20. Jahrhundert. Dokumente zur Geschichte des deutschen Staatskirchenrechts, vol 3, no 126. Berlin
Hudemann R (1991) Kriegsopferpolitik nach den beiden Weltkriegen. In: Pohl H (ed) Staatliche, städtische, betriebliche und kirchliche Sozialpolitik vom Mittelalter bis zur Gegenwart. Stuttgart, pp 269ff
Hueck A (1922) Handbuch des Arbeitsrechts, 2 vols. Stuttgart
Hueck A, Nipperdey HC (1959/1963) Lehrbuch des Arbeitsrechts, vol 1, 6th edn, 1959; 7th edn, 1963. Berlin Frankfurt am Main
Huf S (1998) Sozialstaat und Moderne. Modernisierungseffekte staatlicher Sozialpolitik. Berlin
Hugo C (pen name Hugo Lindemann) (1897) Städteverwaltung und Municipal-Sozialismus in England. Stuttgart
Hugo C (pen name Hugo Lindemann) (1901/1906) Die deutsche Städteverwaltung. Ihre Aufgaben auf dem Gebiet der Volkshygiene, des Städtebaus und des Wohnungswesens, Stuttgart, 2nd edn. unter Lindemann, 1906. Stuttgart
100 Jahre Carl-Zeiss-Stiftung (1989). Jena
Imle F (1905) Gewerbliche Friedensdokumente. Jena
Isensee J (1995) Die karitative Betätigung der Kirchen und der Verfassungsstaat. In: Listl J, Pirson D (eds) Handbuch des Staatskirchenrechts der Bundesrepublik Deutschland, vol 2, 2nd edn. Berlin
Jacobi E (1924) Einführung in das Gewerbe- und Arbeitsrecht, 4th edn. Leipzig
Jellinek G (1905) System der subjektiv-öffentlichen Rechte. Tübingen
Jütte R (1984) Obrigkeitliche Armenfürsorge in den deutschen Reichsstädten des frühen Neuzeit. Köln
Jütte R (1995) The causes of poverty: the European context. In: Scribner R, Ogilvie S (eds) Germany: A. new social and economic history, 1450–1630, vol 1. London
Jütte R (1996) Syphilis and confinement. Hospitals in early modern Germany. In: Finzsch N, Jütte R (eds) Institutions of confinement. Cambridge
Kadritzke U (1975) Angestellte – Die geduldigen Arbeiter. Zur Soziologie und sozialen Bewegung der Angestellten. Frankfurt am Main
Kafka F (1961) Eine kaiserliche Botschaft. In: Kafka F(ed) Die Erzählungen. Frankfurt am Main
Kafka F (1984) Amtliche Schriften. Edeited by Hermsdorf K, with Poßner W, Louézil J (eds). Berlin
Kahn R (1918) Rechtsbegriffe der Kriegswirtschaft. Ein Versuch der Grundlegung des Kriegswirtschaftsrechts. München
Kahn-Freund O (1931) Das soziale Ideal des Reichsarbeitsgerichts. Eine kritische Untersuchung zur Rechtsprechung des Reichsarbeitsgerichts. Mannheim
Kaiser J-C (1991) NS-Volkswohlfahrt und freie Wohlfahrtspflege im “Dritten Reich”. In: Otto H-U, Sünker H (eds) Politische Formierung und soziale Erziehung im Nationalsozialismus. Frankfurt am Main, pp 78–105
Kammerloher-Lis S (1994) Die Entstehung des Gesetzes über die religiöse Kindererziehung vom 15. Juli 1921. Frankfurt am Main
Kaschke L (2000) “Nichts als Bettelgelder?” Wert und Wertschätzung der Alters- und Invalidenrenten im Kaiserreich. Historische Zeitschrift 48(2)
Kaskel W (1920) Das neue Arbeitsrecht. Berlin
Kaskel W (1925/1932) Arbeitsrecht, 1st edn, 1925; 4th edn, 1932. Berlin
Kaufhold KH (1982) Fragen der Gewerbepolitik und der Gewerbeförderung. In: Mai E, Pohl H, Waetzold S (eds) Kunstpolitik und Kunstförderung im Kaiserreich. Berlin, pp 95–109
Kaufhold KH (1991) Die Diskussion um die Neugestaltung des Arbeitsrechts im Deutschen Reich und die Novelle zur Reichsgewerbeordnung 1891. Zeitschrift für Arbeitsrecht: 277–322

Keidel F (1929) EGBGB, 1. Teil. In: von Staudinger J (ed) Kommentar zum Bürgerlichen Gesetzbuch, vol 6, 9th edn. München Berlin Leipzig, pp 357ff
Kelsch W (1933) Ludwig Bamberger als Sozialpolitiker. Dissertation. Jena
Kessler G (1907) Die Deutschen Arbeitgeberverbände. Leipzig
Kindleberger C (1973) Die Weltwirtschaftskrise. München
Kleeis F (1928/1981) Die Geschichte der sozialen Versicherung. Berlin. Reprint 1981. Berlin Bonn
Kleinschrod GAK (1789) Ober die Strafe der öffentlichen Arbeiten. Würzburg
Klinksiek D (1982) Die Frau im NS-Staat. Stuttgart
Klumker CJ (1918) Fürsorgewesen. Leipzig
Koch P (1971) Von der Zunftlade zum Grossbetrieb. Kleine Geschichte der privaten Krankenversicherung. Karlsruhe
Kocka J, Prinz M (1983) Vom "neuen Mittelstand" zum angestellten Arbeitnehmer. Kontinuität und Wandel der deutschen Angestellten seit der Weimarer Republik. In: Conze W, Lepsius MR (eds) Sozialgeschichte der Bundesrepublik Deutschland. Stuttgart, pp 210–255
Kögler P (1974) Arbeiterbewegung und Vereinsrecht. Berlin
Köhler P (1990) Entwicklungslinien der 100jährigen Geschichte der gesetzlichen Rentenversicherung. Die Zeit von 1891–1957. In: Ruland F (ed) Handbuch der gesetzlichen Rentenversicherung. Neuwied Frankfurt am Main
Köhler P, Zacher HF (eds) (1981) Ein Jahrhundert Sozialversicherung in der Bundesrepublik Deutschland, Frankreich, Grossbritannien, Österreich und der Schweiz. Berlin
Koonz C (1991) Mütter im Vaterland. Frauen im Dritten Reich. Freiburg im Breisgau. American first edition 1987. New York
Koselleck R (1967) Preußen zwischen Reform und Revolution. Allgemeines Landrecht, Verwaltung und soziale Bewegung von 1791–1848. Stuttgart
Kössler R (1998) Entwicklung. Münster
Köttgen A (1931) Die Krise der kommunalen Selbstverwaltung. Tübingen
Kranig A (1983) Lockung und Zwang. Zur Arbeitsverfassung im Dritten Reich. Stuttgart
Kranig A (1984) Arbeitsrecht im NS-Staat. Texte und Dokumente. Köln
Kraushaar M (1995) Die Gewerbegerichte im Deutschen Reich und Vorläuferinstitutionen. Arbeit und Recht 1995:313–317
Kreiker S (1997) Armut, Schule, Obrigkeit. Armenversorgung und Schulwesen in der evangelischen Kirchenordnungen des 16. Jahrhunderts. Bielefeld
Kühn R (1939) Strafrechtliche Zweifelslagen zum Sammlungsgesetz. Deutsche Justiz 1939, p 1734
Labisch A, Tennstedt F (1991) Gesundheitsamt oder Amt für Volksgesundheit? In: Frei N (1991) Medizin und Gesundheitspolitik in der NS-Zeit. München, pp 36–66
Lampert H (1980) Staatliche Sozialpolitik im Dritten Reich. Hamburger Jahrbuch für Wirtschafts- und Gesellschaftspolitik 25:149–174
Leibfried S, Tennstedt F (1979) Berufsverbote und Sozialpolitik 1933. Die Auswirkungen der nationalsozialistischen Machtergreifung auf die Krankenkassenverwaltung und die Kassenärzte. Bremen
Leich S-H, Lundt A (1987) Zur Geschichte der Berliner Arbeitsgerichte. 10 Jahre Berliner Arbeitsgerichtsbarkeit 1927–1987. Berlin
Lentze H (1971) Handwerk. In: Erler A, Kaufmann E (eds) Handwörterbuch zur Deutschen Rechtsgeschichte, vol 1. Berlin
Liese W (1922) Geschichte der Caritas, vol I. Freiburg im Breisgau
Lindemann M (1990) Patriots and Paupers, Hamburg 1712–1830. New York
Lindenlaub D (1967) Richtungskämpfe im Verein für Sozialpolitik. Wiesbaden
Lingnau J (1965) Das System sozialer Hilfeleistungen für die Bergarbeiter in der Knappschaftsversicherung des Ruhrbergbaus 1767–1961. Köln Opladen
Linne K (1995) Die "innere Front". Deutsche Arbeitsfront und staatliche Sozialpolitik. Zeitschrift Geschichtswissenschaft 43:15–26

Listl J (1994) Die Ordensgemeinschaften und ihre Angehörigen in der staatlichen Rechtsordnung. In: Listl J, Pirson D (eds) Handbuch des Staatskirchenrechts der Bundesrepublik Deutschland, vol 1, 2nd edn. Berlin, pp 841–863
Lohmann T (1878) Die Fabrik-Gesetzgebungen der Staaten des europäischen Kontinents. Berlin
Lorenz R (1991) Zur rechtlichen Regelung der Arbeitsverhältnisse in Preußen in der Zeit zwischen Reformen und Revolution (1800–1848). Ein Beitrag zur Vorgeschichte des Arbeitsrechts. In: Mohnhaupt H (ed) Rechtsgeschichte in den beiden deutschen Staaten (1988–1990). Frankfurt am Main, pp 491–513
Lotmar P (1902–1908) Der Arbeitsvertrag nach dem Privatrecht des Deutschen Reiches, 2 vols. Leipzig
Luther R (1971) Handwerk. In: Erler A, Kaufmann E (eds) Handwörterbuch zur Deutschen Rechtsgeschichte, vol 1. Berlin
Macfarlan J (1785) Untersuchungen über die Armuth, mit Anmerkungen und Zusätzen von Christian Garve. Leipzig
Machtan L (ed) (1995) Mut zur Moral. Aus der privaten Korrespondenz des Gesellschaftsreformers Theodor Lohmann, vol 1 (1850–1883). Bremen
Maier H (1980/1986) Die ältere deutsche Staats-und Verwaltungslehre, 2nd edn (1980); 3rd edn (1986). München
Malthus R (1798) An essay on the principle of population, as it affects the future improvement of society. London
Margold EJ (1931/1998) Bauten der Volkserziehung und Volksgesundheit (Reprint 1998). Berlin
Marperger PJ (1733) Wohlmeynende Gedanken aber die Versorgung der Armen, Wes Standts, Alters, Leibs- und Unglück-Constitution nach selbige auch seyn möchten. Leipzig
Martiny M (1976) Integration oder Konfrontation? Studien zur Geschichte der sozialdemokratischen Rechts- und Verfassungspolitik. Bonn-Bad Godesberg
Marx K, Engels F (1969) Manifest der Kommunistischen Partei. Stuttgart
Mason TW (1977) Sozialpolitik im Dritten Reich. Arbeiterklasse und Volksgemeinschaft. Opladen
Mayer G (1911) Unbekannte Briefe Lassalles. Archiv für Geschichte des Sozialismus und der Arbeiterbewegung I:176–197
Mayer-Maly T (1967) Römische Grundlagen des modernen Arbeitsrechts. Recht der Arbeit:281–286
Mayer-Maly T (1998) Vertragsfreiheit. Handwörterbuch zur Deutschen Rechtsgeschichte, vol 5, columns 855–858
Melsbach E (1923) Deutsches Arbeitsrecht. Berlin
Menger CF (1983) Entwicklung der Selbstverwaltung im Verfassungsstaat der Neuzeit. In: Mutius A von (ed) Selbstverwaltung im Staat der Industriegesellschaft. Festgabe für Georg Christoph von Unruh. Kiel, pp 25–40
Mestitz F (1984) Zur Wirkungsgeschichte des Arbeitsrechts. In: Steindl H (ed) Wege zur Arbeitsrechtsgeschichte. Frankfurt am Main, pp 1–28
Mieck I (1965) Preußische Gewerbepolitik in Berlin 1806–1844. Berlin
Miller S (1974) Marie Juchacz. Neue Deutsche Biografie 10:633
Moenning M (1927) Die Stellung der deutschen katholischen Sozialpolitiker des 19. Jahrhunderts zur "Staatsintervention" in der sozialen Frage. Dissertation. Münster
Mohnhaupt H, Grimm D (1995) Verfassung. Zur Geschichte des Begriffs von der Antike bis zur Gegenwart. Berlin
Molkenbuhr H (1902) Zur Frage der Arbeitslosenversicherung. Die Neue Zeit: 724ff
Möller W (1908) Die Herrschaft der Sozialdemokratie in der deutschen Krankenversicherung. Berlin
Möller H (1997) Weimar. Die unvollendete Demokratie, 6th edn. München
Möller H, Raulet G, Wirsching A (eds) (1993) Gefährdete Mitte? Mittelschichten und politische Kultur zwischen den Weltkriegen: Italien, Frankreich und Deutschland. Sigmaringen

Mommsen W (1993) Das Ringen um den nationalen Staat. Die Gründung und der innere Ausbau des Deutschen Reiches unter Otto von Bismarck 1850 bis 1890. Berlin
Mommsen W (1995) Bürgerstolz und Weltmachtstreben. Deutschland unter Wilhelm II. 1890 bis 1918. Berlin
Mors A (1986) Die Entwicklung der Schulpflicht in Deutschland. Dissertation. Tübingen
Morsey R (1957) Die oberste Reichsverwaltung unter Bismarck, 1867–1890. Münster
Mueller R (1952) Die Stellung der liberalen Parteien im deutschen Reichstag zu den Fragen der Arbeiterversicherung und des Arbeiterschutzes bis zum Ausgang des 19. Jahrhunderts. Dissertation. Jena
Mügel O (1927) Das gesamte Aufwertungsrecht, 5th edn. Berlin
Münsterberg E (1887) Die Deutsche Armengesetzgebung und das Material zu ihrer Reform. Leipzig
Münsterberg E (1896) Generalbericht über die Tätigkeit des deutschen Vereins für Armenpflege und Wohltätigkeit. Leipzig
Münsterberg E (1903) Das Elberfelder System. Leipzig
Narr W-D, Offe C (1975) Wohlfahrtsstaat und Massenloyalität. Köln
Neukamm KH (1987) Diakonie. In: Evangelisches Staatslexikon, vol 1, 3rd edn. Stuttgart, pp 610–618
Neumann FL (1929) Die politische und soziale Bedeutung der arbeitsgerichtlichen Rechtsprechung. Berlin
Neundörfer K (1923) Widerstreitende Mächte in dem Reichsgesetz für Jugendwohlfahrt. O.O
Nipperdey T (1976) Verein als soziale Struktur in Deutschland im späten 18. und frühen 19. Jahrhundert. In: Gesellschaft, Kultur, Theorie. Gesammelte Aufsätze zur neueren Geschichte. Göttingen, pp 174–205
Nutzinger H-G (ed) (1998) Die Entstehung des Arbeitsrechts in Deutschland. Aktuelle Probleme in historischer Perspektive. Marburg
Oertmann P (1923) Deutsches Arbeitsvertragsrecht. Berlin
Oexle OG (1982) Die mittelalterliche Zunft als Forschungsproblem. Blätter für Deutsche Landesgeschichte 118:1–44
Ogris W (1967) Geschichte des Arbeitsrechts vom Mittelalter bis in das 19. Jahrhundert. Recht der Arbeit: 186–197
Oncken H (1906) Albert Schäffle, Lebenserinnerungen. Historische Zeitschrift: 243–258
Orthbandt E (1980) Der Deutsche Verein in der Geschichte der deutschen Fürsorge 1880–1980. Frankfurt am Main
Padoa-Schioppa A (ed) (1997) Legislation and justice. The origins of the modern state in Europe, 13th–18th Century. Oxford
Palme R (1991) Städtische Sozialpolitik bis zum 16. Jahrhundert. In: Pohl H (ed) Staatliche, städtische, betriebliche und kirchliche Sozialpolitik vom Mittelalter bis zur Gegenwart. Stuttgart
Pauli CW (1838) Was kann unter uns wider das zunehmende Branntweintrinken geschehen? Lübeck
Peitzsch W (1968) Kriminalpolitik in Bayern unter der Geltung des Codex Juris Criminalis Bavarici von 1751. München
Peters H (1978) Die Geschichte der sozialen Versicherung, 3rd edn. Bonn – Bad Godesberg
Peters K-H (1984) Wohnungspolitik am Scheideweg. Berlin
Petersen J (1907) Die öffentliche Fürsorge für die hilfsbedürftige Jugend. Leipzig
Petersen K (1995) Zensur in der Weimarer Republik. Stuttgart Weimar
Peukert D-J (1989) Rassismus und "Endlösungs"-Utopie. Thesen zur Entwicklung und Struktur der nationalsozialistischen Vernichtungspolitik. In: Kleßmann C (ed) Nicht nur Hitlers Krieg: Der Zweite Weltkrieg und die Deutschen. Düsseldorf, pp 71–82
Plessen M-L (1975) Die Wirksamkeit des Vereins für Sozialpolitik von 1872–1890. Studien zum Katheder- und Staatssozialismus. Berlin
Plessner H (1969) Die verspätete Nation, 5th edn. Stuttgart
Preller L (1949/1978) Sozialpolitik in der Weimarer Republik. Reprint 1978. Stuttgart

Preu P (1983) Polizeibegriff und Staatszwecklehre. Die Entwicklung des Polizeibegriffs durch die Rechts- und Staatswissenschaften des 18. Jahrhunderts. Göttingen
Preuss UK (1988) Franz L. Neumann (1900–1954). Demokratie als unvollendetes Projekt. In: Kritische Justiz: Streitbare Juristen. Eine andere Tradition. Baden-Baden: 390–400
Prinz M (1986) Vom neuen Mittelstand zum Volksgenossen. Die Entwicklung des sozialen Status der Angestellten von der Weimarer Republik bis zum Ende der NS-Zeit. München
Quandt O (1938) Die Anfänge der Bismarckschen Sozialgesetzgebung und die Haltung der Parteien. Berlin
Quaritsch H (1986) Souveränität. Berlin
Quellensammlung zur Geschichte der Deutschen Sozialpolitik (1867–1914): See Born KE et al (1993–1997)
Ramm T (1968) Nationalsozialismus und Arbeitsrecht. Kritische Justiz: 108–120
Ramm T (1978) Die Arbeitsverfassung des Kaiserreiches. In: Triffterer O (ed) Festschrift für Walter Mallmann. Baden-Baden, pp 191ff
Ramm T (1980) Otto Kahn-Freund und Deutschland. In: Gamillscheg F (ed) In Memoriam Sir Otto Kahn-Freund. München, pp XXI–XXXII
Ramm T (1983) Nationalsozialismus und Arbeitsrecht. In: Kritische Justiz Der Unrechts-Staat. Recht und Justiz im Nationalsozialismus. Baden-Baden
Ramm T (1994) Die Arbeitsrechtswissenschaft nach 1945. In: Simon D (ed) Rechtswissenschaft in der Bonner Republik. Studien zur Wissenschaftsgeschichte der Jurisprudenz. Frankfurt am Main, pp 449–528
Ratzinger G (1868) Geschichte der kirchlichen Armenpflege. Freiburg im Breisgau
Real W (1958) Die Sozialpolitik des neuen Kurses. In: Berges W, Hinrichs C (eds) Zur Geschichte und Problematik der Demokratie. Festgabe für Hans Herzfeld. Berlin, pp 441–457
Recker M-L (1985) Nationalsozialistische Sozialpolitik im Zweiten Weltkrieg. München
Recker M-L (1991) Sozialpolitik im Dritten Reich. In: Pohl H (ed) Staatliche, städtische, betriebliche und kirchliche Sozialpolitik vom Mittelalter bis zur Gegenwart. Stuttgart, pp 245ff
Reichold H (1990) Der "Neue Kurs" von 1890 und das Recht der Arbeit – Gewerbegerichte, Arbeitsschutz, Arbeitsordnung. Zeitschrift für Arbeitsrecht: 5–41
Reicke S (1932) Das deutsche Spital und sein Recht im Mittelalter. Stuttgart
Reidegeld E (1998) Staatliche Sozialpolitik in Deutschland. Historische Entwicklung und theoretische Analyse von den Ursprüngen bis 1918. Opladen
Reiss-Vaseck E (1934) Zentrum und Sozialpolitik zur Zeit Bismarcks. Gelbe Hefte 10:590
Richter L (1928) Grundverhältnisse des Arbeitsrechts. Berlin
Richter L (1931) Sozialversicherungsrecht. Berlin
Rindt M, Saffert H (1968) Das Bundesministerium für Arbeit und Sozialordnung. Geschichte, Gestalt, Aufgaben. Berlin
Ritter GA (1983) Sozialversicherung in Deutschland und England. Entstehung und Grundzüge im Vergleich. München
Ritter GA (1991) Der Sozialstaat. Entstehung und Entwicklung im internationalen Vergleich, 2nd edn. München
Ritter GA (1994) Die Entstehung des Räteartikels 165 der Weimarer Reichsverfassung. Historische Zeitschrift 262:73–109
Ritter GA (1997) Sozialpolitik im Zeitalter Bismarcks. Historische Zeitschrift 265:683–720
Ritter GA (1998a) Soziale Frage und Sozialpolitik in Deutschland seit Beginn des 19. Jahrhunderts. Opladen
Ritter GA (1998b) Über Deutschland. Die Bundesrepublik in der deutschen Geschichte. München
Ritter GA (1998c) Bismarck und die Entstehung der deutschen Sozialversicherung. Pforzheim
Ritter GA, Tenfelde K (1992) Arbeiter im deutschen Kaiserreich. 1871 bis 1914. Bonn
Ritter UP (1961) Die Rolle des Staates in den Frühstadien der Industrialisierung. Berlin
Rodbertus JC (1880) Briefe und sozialpolitische Aufsätze. Berlin
Roeck B (1993) Außenseiter, Randgruppen, Minderheiten. Göttingen
Röhrich W (1972) Sozialvertrag und Bürgerliche Emanzipation von Hobbes bis Hegel. Darmstadt

Ronau C (1933) Die roten Hochburgen. Die Schuld der roten Sozialversicherung an Deutschlands Niedergang. Berlin
Röper U (ed) (1998) Die Macht der Nächstenliebe. 150 Jahre Innere Mission und Diakonie. Berlin
Roscher W (1894) System der Armenpflege und Armenpolitik. Stuttgart
Rosin H (1908) Die Rechtsnatur der Arbeiterversicherung. In: Festgabe für Paul Laband. Tübingen. Reprint 1987: Staatsrechtliche Abhandlungen. Frankfurt
Rother K (1994) Die Reichsversicherungsordnung 1911. Das Ringen um die letzte große Arbeiterversicherungsgesetzgebung des Kaiserreichs unter besonderer Berücksichtigung der Rolle der Sozialdemokratie. Aachen
Rothfels H (1921) Zur Bismarck-Krise 1890. Historische Zeitschrift: 123
Rothfels H (1925) Otto von Bismarck. In: Der Staat; ausgewählte Dokumente
Rothfels H (1927) Theodor Lohmann und die Kampfjahre der staatlichen Sozialpolitik (1871–1905). Nach ungedruckten Quellen. Berlin
Rothfels H (1935) Prinzipienfragen der Bismarckschen Sozialpolitik. Königsberg
Rothfels H (1962) Prinzipienfragen der Bismarckschen Sozialpolitik. In: Rothfels H (ed) Bismarck, der Osten und das Reich. Darmstadt, p 166
Ruck M (1987) Der Wohnungsbau – Schnittpunkt von Sozial- und Wirtschaftspolitik. Probleme der öffentlichen Wohnungspolitik in der Hauszinssteuerära 1924/25–1930/31. In: Abelshauser W (ed) Die Weimarer Republik als Wohlfahrtsstaat. Zum Verhältnis von Wirtschafts- und Sozialpolitik in der Industriegesellschaft. Stuttgart, pp 91–123
Ruck M (1988) Die öffentliche Wohnungsbaufinanzierung in der Weimarer Republik. Zielsetzungen, Erwartungen, Probleme. In: Schildt A, Sywottek A (eds) Massenwohnung und Eigenheim, Wohnungsbau und Wohnen in der Großstadt seit dem Ersten Weltkrieg. Frankfurt am Main New York, pp 150–200
Ruck M (1997) Das Karlsruher Finanzierungsmodell als Beitrag zur Reform der öffentlichen Wohnungsförderung Ende der zwanziger Jahre. In: Franzen B, Schmitt P (eds) Neues Bauen der 20er Jahre. Karlsruhe, p 41
Rückert J (1990) Entstehung und Vorläufer der gesetzlichen Rentenversicherung. In: Ruland F (ed) Handbuch der gesetzlichen Rentenversicherung. Neuwied Frankfurt am Main, pp 1–50
Rückert J (ed) (1992a) Philipp Lotmar, Schriften zu Arbeitsrecht, Zivilrecht und Rechtsphilosophie. Frankfurt am Main
Rückert J (1992b) "Frei" und "Sozial". Arbeitsvertrags-Konzeptionen um 1900 zwischen Liberalismen und Sozialismen. Zeitschrift für Arbeitsrecht 23:225–294
Rückert J (1993a) Franz Leopold Neumann (1900–1954) – ein Jurist mit Prinzipien. In: Lutter M (ed) Der Einfluss deutscher Emigranten auf die Rechtsentwicklung in den USA und in Deutschland. Tübingen, pp 437–474
Rückert J (1993b) Philipp Lotmar (1850–1922). Römisches Recht, Rechtsphilosophie und Arbeitsrecht im Geiste von Freiheit und Sozialismus. In: Heinrichs H (ed) Deutsche Juristen jüdischer Herkunft. München, pp 331–353
Rückert J (ed) (1996) Beschreibende Bibliographie zur Geschichte des Arbeitsrechts mit Sozialrecht, Sozialpolitik und Sozialgeschichte. Baden-Baden
Rückert J (1998) Die Verrechtlichung der Arbeitsbeziehungen in Deutschland seit dem frühen 19. Jahrhundert. In: Nutzinger H-G (ed) Die Entstehung des Arbeitsrechts in Deutschland. Aktuelle Probleme in historischer Perspektive. Marburg, pp 213–229
Rückert J, Friedrich W (1979) Betriebliche Arbeiterausschüsse in Deutschland, Großbritannien und Frankreich im späten 19. und frühen 20. Jahrhundert. Eine vergleichende Studie zur Entwicklung des kollektiven Arbeitsrechts. Frankfurt am Main
Rudloff W (1999) Die Wohlfahrtsstadt. München
Rundstein S (1906) Die Tarifverträge und die moderne Rechtswissenschaft Eine vergleichende Untersuchung. Leipzig
Rupp H-H (1966) Das Urteil des Bundesverfassungsgerichts zum Sammlungsgesetz. Neue Juristische Wochenschrift: 2037–2040
Rüthers B (1970) Die Betriebsverfassung im Nationalsozialismus. Arbeit und Recht: 97

Saam G (1936) Quellenstudien zur Geschichte des Deutschen Zuchthauswesens bis zur Mitte des 19. Jahrhunderts. Berlin Leipzig
Sachße C, Tennstedt F (1980/1988) Geschichte der Armenfürsorge in Deutschland, vol l, 1980; vol 2: Fürsorge und Wohlfahrtspflege 1871 bis 1929. 1988. Stuttgart
Saile W (1958) Hermann Wagener und sein Verhältnis zu Bismarck. Tübingen
Sauer W (1960) In: Bracher KD, Schulz G (eds) Die nationalsozialistische Machtergreifung. Studien zur Errichtung des totalitären Herrschaftssystems in Deutschland 1933/34. Köln Opladen
Schäffle A (1884) Der korporative Hülfskassenzwang, 2nd edn. Tübingen
Schäffle A (1905) Aus meinem Leben, vol 2. Berlin
Schaffner L (1964) Gönner. Neue Deutsche Biographie 6:518f
Scheller B (1987) Die Zentralwohlfahrtsstelle, Der jüdische Wohlfahrtsverband in Deutschland. Eine Selbstdarstellung. Frankfurt am Main
Scherner K-O (1979) Das Recht der Armen und der Bettler im Ancien Régime. Savigny-Zeitschrift für Rechtsgeschichte (Germanistische Abteilung), pp 55–99
Scherner K-O (1996) Sozialrechtsgeschichte der Neuzeit. Stand der Forschung und offene Fragen. Zeitschrift für Neuere Rechtsgeschichte 18:102–148
Scheuner U (1977) Robert von Mohl, Die Begründung einer Verwaltungslehre und einer staatswissenschaftlichen Politik. In: Festgabe 500 Jahre Eberhard-Karls-Universität Tübingen. Tübingen, pp 515ff
Scheur W (1967) Einrichtungen und Massnahmen der sozialen Sicherheit in der Zeit des Nationalsozialismus. Dissertation. Köln
Schewe D (2000) Geschichte der sozialen und privaten Versicherung im Mittelalter in den Gilden Europas. Berlin
Schildt A (1998) Wohnungspolitik. In: Hockerts HG (ed) Drei Wege deutscher Sozialstaatlichkeit. NS-Diktatur, Bundesrepublik und DDR im Vergleich. München, p 154
Schilling H (1997) Disziplinen oder Selbstregulierung der Untertanen? Ein Plädoyer für die Doppelperspektive von Makro- und Mikrohistorie bei der Erforschung der frühmodernen Kirchenzucht. Historische Zeitschrift 264:675–691
Schilling L, Schuck G (eds) (1999) Repertorium der Policeyverordnungen der frühen Neuzeit, vols 3/1, 3/2: Wittelsbachische Territorien (Kurpfalz, Bayern, Pfalz-Neuburg, Pfalz-Sulzbach, Jülich-Berg, Pfalz-Zweibrücken). Frankfurt am Main
Schleicher R (1939) Die Wandlung der Wohlfahrtspflege durch den Nationalsozialismus. Ludwigshafen
Schlickum G (1978) Die Tariffähigkeit der Arbeitnehmer-Organisationen in der Weimarer Republik. Dissertation. Frankfurt am Main
Schlosser H (1996) Grundzüge der Neueren Privatrechtsgeschichte, 8th edn. Heidelberg
Schmale W (1997) Archäologie der Grund- und Menschenrechte in der Frühen Neuzeit. München
Schmid F (1909) Über die Bedeutung der Verwaltungslehre als selbständiger Wissenschaft. Zeitschrift für die gesamten Staatswissenschaften 65:193ff
Schmid F (1981) Sozialrecht und Recht der sozialen Sicherheit. Die Begriffsbildung in Deutschland, Frankreich und der Schweiz. Berlin
Schmidt G (1907) Das öffentliche Armenwesen der Stadt Mainz. Mit besonderer Rücksicht auf die im Jahre 1895 begonnene Neuordnung. Mainz
Schmidt MG (1998/2005) Sozialpolitik in Deutschland. Historische Entwicklung und internationaler Vergleich, 2nd edn (1998); 3rd edn (2005). Wiesbaden
Schmoller G (1874) Die soziale Frage und der preußische Staat. Preußische Jahrbücher: 342
Schnur R (ed) (1978) Forsthoff, Lorenz von Stein; Staat und Gesellschaft. Studien über Lorenz von Stein. Berlin
Schönhoven K (1987) Die deutschen Gewerkschaften. Frankfurt am Main
Schott C (1978) Armenfürsorge, Bettelwesen und Vagantenbekämpfung in der Reichsabtei Salem. Bühl

Schraepler E (1964) Quellen zur Geschichte der sozialen Frage in Deutschland, vol 1, 3rd edn. Göttingen
Schröder R (1988) Die Entwicklung des Kartellrechts und des kollektiven Arbeitsrechts durch die Rechtsprechung des Reichsgerichts vor 1914. Ebelsbach
Schröder R (1992) Das Gesinde war immer frech und unverschämt. Gesinde und Gesinderecht vornehmlich im 18. Jahrhundert. Frankfurt am Main
Schubert E (1983) Arme Leute, Bettler und Gauner im Franken des 18. Jahrhunderts. Neustadt an der Aisch
Schubert W (ed) (2000) Akademie für Deutsches Recht 1933–1945. Protokolle der Ausschüsse, vol X. Frankfurt am Main
Schuck G (1995) Überlegungen zum Verhältnis von Arbeit und Policy in der Frühen Neuzeit. Ius Cummune: 121ff
Schulin B (1980) Fragen der gesetzlichen Krankenversicherung bei Ordensleuten. Vierteljahresschrift für Sozialrecht 8:165–167
Schulz U (1985) Robert Ley. Neue deutsche Biographie 14:424f
Schulze W (1987) Gerhard Oestreichs Begriff der "Sozialdisziplinierung in der frühen Neuzeit". Zeitschrift für Historische Forschung 14:265–302
Schulze W (ed) (1988) Ständische Gesellschaft und soziale Mobilität. München
Schwennicke A (1993) Die Entstehung der Einleitung des Preußischen Allgemeinen Landrechts von 1794. Frankfurt am Main
Selig W (1988) Franz Seldte. In: Benz W, Graml H (eds) Biographisches Lexikon zur Weimarer Republik. München, p 311
Simitis S (1989) Die Loi le Chapelier: Bemerkungen zur Geschichte und möglichen Wiederentdeckung des Individuums. Kritische Justiz: 157–175
Simon H (1916) Das Jugendrecht. Berlin
Simon T (ed) (1998) Repertorium der Policeyverordnungen der frühen Neuzeit, vols 2/1, 2/2: Brandenburg/Preußen mit Nebenterritorien (Kleve-Mark, Magdeburg und Halberstadt). Frankfurt am Main
Sinzheimer H (1907–1908) Der korporative Arbeitsnormenvertrag, 2 vols. Berlin
Sinzheimer H (1921/1927) Grundzüge des Arbeitsrechts. Jena, 2nd edn, 1927. Gera
Smelser R (1991) Die Sozialplanung der Deutschen Arbeitsfront. In: Prinz M, Zitelmann R (eds) Nationalsozialismus und Modernisierung. Darmstadt, pp 71–92
Sohnrey H (1907) Aus der sozialen Tätigkeit der preußischen Kreisverwaltungen. Berlin
Söllner A (1967) "Ohne Arbeit kein Lohn". Archiv für die civilistische Praxis 167:132
Sommariva A, Tullio G (1987) German Macroeconomic History 1880–1979. New York
Spree R (1978) Wachstumstrends und Konjunkturzyklen in der deutschen Wirtschaft von 1820–1913. Göttingen
Steindl H (1984) Entfesselung der Arbeitskraft. In: Steindl H (ed) Wege zur Arbeitsrechtsgeschichte. Frankfurt am Main, pp 29–135
Steinmetz G (1993) Regulating the social. The welfare state and local politics in imperial Germany. Princeton
Stolleis E (1931) Das internationale Arbeiterschutzrecht. Kallmütz
Stolleis M (1974) Gemeinwohlformeln im nationalsozialistischen Recht. Berlin
Stolleis M (1976) Die bayerische Gesetzgebung zur Herstellung eines frei verfügbaren Grundeigentums. In: Coing H, Wilhelm W (eds) Wissenschaft und Kodifikation des Privatrechts im 19. Jahrhundert, vol 3. Frankfurt am Main, pp 44–117
Stolleis M (1979) Entstehung und Entwicklung des Bundessozialgerichts. In: Deutscher Sozialgerichtsverband (ed) 1979: Sozialrechtssprechung. Verantwortung für den sozialen Rechtsstaat. Festschrift zum 25-jährigen Bestehen des Bundessozialgerichts. Köln Berlin
Stolleis M (1984) Notverordnungsrecht. In: Erler A, Kaufmann E (eds) 1990/1998: Handwörterbuch zur Deutschen Rechtsgeschichte, vol 3. Berlin
Stolleis M (1987) Besatzungsherrschaft und Wiederaufbau deutscher Staatlichkeit 1945–1949. In: Isensee J, Kirchhof P (eds) Handbuch des Staatsrechts, vol 1, § 5. Heidelberg

Stolleis M (1989) Die Entstehung des Interventionsstaates und das öffentliche Recht. Zeitschrift für Neuere Rechtsgeschichte:129ff
Stolleis M (1990) Sozialrecht. In: Erler A, Kaufmann E (eds) Handwörterbuch zur Deutschen Rechtsgeschichte, vol 4. Berlin, columns 1730–1733
Stolleis M (1992) Geschichte des öffentlichen Rechts in Deutschland, vol 2 (1800–1914). München
Stolleis M (ed) (1995) Juristen. Ein biographisches Lexikon. München
Stolleis M (ed) (1996) Policey im Europa der Frühen Neuzeit. Frankfurt am Main
Stolleis M (1997) Die "Idee des souveränen Staates". Der Staat. Suppl 11
Stolleis M (1998a) Industrielle Revolution und Sozialversicherung. In: Ruland F (ed) Verfassung, Theorie und Praxis des Sozialstaats, Festschrift für Hans Friedrich Zacher zum 70.Geburtstag. Heidelberg, pp 1081–1099
Stolleis M (1998b) Wohlfahrt. Handwörterbuch zur Deutschen Rechtsgeschichte, vol 5, columns 1486–1488
Stolleis M (1999) Die grosse Aufgabe der Sozialpolitik. Neue Juristische Wochenschrift 52: 699f
Stolleis M (2003) Geschichte des Sozialrechts in Deutschland. Stuttgart
Stradal H (1971a) Genossenschaft. In: Erler A, Kaufmann E (eds) Handwörterbuch zur Deutschen Rechtsgeschichte, vol 1. Berlin, columns 1522–1527
Stradal H (1971b) Gilde. In: Erler A, Kaufmann E (eds) Handwörterbuch zur Deutschen Rechtsgeschichte, vol 1. Berlin, columns 1687–1692
Stratmann M (1976) Wohnungspolitik in der Weimarer Republik. Stuttgart 1976
Strätz H-W (1974) Bergmännisches Arbeitsrecht im 15. und 16. Jahrhundert. In: Ebert K (ed) Festschrift Nikolaus Grass. Innsbruck, pp 533–558
Stürmer M (ed) (1978) Bismarck und die preußisch-deutsche Politik 1871–1890, 3rd edn. München
Stürmer M (1983) Das ruhelose Reich, Deutschland 1866–1918. Berlin
Suhr S (1930) Die weiblichen Angestellten. Berlin
Süss W (1998) Gesundheitspolitik. In: Hockerts HG (ed) Drei Wege deutscher Sozialstaatlichkeit: NS-Diktatur, Bundesrepublik und DDR im Vergleich. München, pp 54–97
Tarrab-Maslaton M (1993) Rechtliche Strukturen der Diskriminierung der Juden im Dritten Reich. Berlin
Tennstedt F (1976) Sozialgeschichte der Sozialversicherung. In: Blohmke M, von Ferber C et al (eds) Handbuch der Sozialmedizin, vol 3. Stuttgart, pp 385–492
Tennstedt F (1977) Geschichte der Selbstverwaltung in der Krankenversicherung von der Mitte des 19. Jahrhunderts bis zur Gründung der Bundesrepublik Deutschland. Bonn
Tennstedt F (1979) Sozialpolitik und Berufsverbote im Jahr 1933. Zeitschrift für Sozialrecht:129–153
Tennstedt F (1981) Vorgeschichte und Entstehung der Kaiserlichen Botschaft vom 17. Nov. 1881. Zeitschrift für Sozialrecht:663–710
Tennstedt F (1982) Johannes Krohn. Neue Deutsche Biographie 13:69
Tennstedt F (1983) Vom Proleten zum Industriearbeiter. Arbeiterbewegung und Sozialpolitik in Deutschland 1800 bis 1914. Köln
Tennstedt F (1984) Das Reichsversicherungsamt und seine Mitglieder. In: Deutscher Sozialrechtsverband (ed) Entwicklung des Sozialrechts, Aufgabe der Rechtsprechung. Festgabe aus Anlass des 100jährigen Bestehens der sozialgerichtlichen Rechtsprechung. Köln Berlin, pp 47–82
Tennstedt F (1987) Wohltat und Interesse. Das Winterhilfswerk des deutschen Volkes. Die Weimarer Vorgeschichte und ihre Instrumentalisierung durch das NS-Regime. Geschichte und Gesellschaft 13:156–180
Tennstedt F (1991) Der Ausbau der Sozialversicherung in Deutschland 1890 bis 1945. In: Pohl H (ed) Staatliche, städtische, betriebliche und kirchliche Sozialpolitik vom Mittelalter bis zur Gegenwart. Stuttgart, pp 225–243

Tennstedt F (1994) Sozialreform als Mission. Anmerkungen zum politischen Handeln Theodor Lohmanns. In: Kocka J, Puhle HJ, Tenfelde K (eds) Von der Arbeiterbewegung zum modernen Sozialstaat. Festschrift für Gerhard A. Ritter. München, pp 538–559

Tennstedt F (1995) "Nur nicht privat mit Dividende und Konkurs". Der deutsche Weg zum Sozialstaat – auch eine Folge von Bismarcks Ansichten über private Unfallversicherungsgesellschaften. In: Heinze M, Schmitt J (eds) Festschrift für Wolfgang Gitter. Wiesbaden, pp 993–1004

Tennstedt F, Winter H (1993) "Der Staat hat wenig Liebe – activ wie passiv". Die Anfänge des Sozialstaats im Deutschen Reich von 1871 – Ergebnisse archivalischer Forschungen zur Entstehung der gesetzlichen Unfallversicherung. Zeitschrift für Sozialrecht 39:362–392

Tennstedt F, Winter H, with Domcinski H (eds) (1993) Von der Haftpflichtgesetzgebung zur Ersten Unfallversicherungsvorlage, vol 2. In: Born KE, Henning H-J, Tennstedt F (eds) 1993–1997: Quellensammlung zur Geschichte der Deutschen Sozialpolitik 1867–1914, 18 vols. Stuttgart. I. Abt. Von der Reichsgründung bis zur Kaiserlichen Sozialbotschaft (1867–1881)

Tennstedt F, Winter H, with Domeinski H, Roeder E (eds) (1995) Von der Zweiten Unfallversicherungsvorlage bis zum Unfallversicherungsgesetz vom 6. Juli 1884, vol 2/1. In: Born KE, Henning H-J, Tennstedt F (eds) 1993–1997: Quellensammlung zur Geschichte der Deutschen Sozialpolitik 1867–1914. Abt. II. Von der Kaiserlichen Sozialbotschaft bis zu den Februarerlassen Wilhelm II (1881–1890). Stuttgart

Terwiesche M (1997) Innenstädte – eine obdachlosenfreie Zone? Verwaltungsrundschau:410–415

Thalmann R (1982/1984) Frausein im Dritten Reich. München Wien (frz. Paris 1982)

Thielmann H (1960) Die Geschichte der Knappschaftsversicherung. Bonn-Bad Godesberg

Thissen O, Trimborn C (1910) Soziale Tätigkeit der Stadtgemeinden, 4th edn. Mönchengladbach

Töns H (1983) Hundert Jahre gesetzliche Krankenversicherung im Blick der Ortskrankenkassen. Bonn

Töpfer I (1970) Die Verhandlungen des Vereins für Sozialpolitik und die Rechtspolitik der späten Bismarck- und Wilhelminischen Zeit. Dissertation. Frankfurt am Main

Treue W (1970) In: Gebhardt, Bruno: Handbuch der deutschen Geschichte, vol 3, 9th edn. Stuttgart

Uhlhorn G (1895) Die christliche Liebesthätigkeit, 2nd edn. Stuttgart

Ullmann H-P (1981) Unternehmerschaft, Arbeitgeberverbände und Streikbewegung 1890–1914. In: Tonfelde K, Volkmann H (eds) Streik. Zur Geschichte des Arbeitskampfes während der Industrialisierung. München, pp 194–208

Ullmann P (1977) Tarifverträge und Tarifpolitik in Deutschland bis 1914. Entstehung und Entwicklung, interessenpolitische Bedingungen und Bedeutung des Tarifvertragswesens für die sozialistischen Gewerkschaften. Frankfurt am Main

Umlauf J (1980) Die deutsche Arbeiterschutzgesetzgebung 1880–1890. Berlin

Valentin V (1947/1998) Geschichte der deutschen Revolution von 1848–1849, vol 1. Berlin. Reprint 1998: Weinheim Berlin

Verband Deutscher Rentenversicherungsträger (ed) (1999) Rentenversicherung im internationalen Vergleich. Frankfurt am Main

Vogel W (1951) Bismarcks Arbeiterversicherung, ihre Entstehung im Kräftespiel der Zeit. Braunschweig

von Brünneck A (1988) Ernst Fraenkel (1889–1975). Soziale Gerechtigkeit und pluralistische Demokratie. In: Kritische Justiz: Streitbare Juristen. Eine andere Tradition. Baden-Baden: 415–425

von Campenhausen A (1997) Der Stiftungsgedanke in heutiger Zeit. In: Institut der Wirtschaftsprüfer (ed) Stiftungen. Rechnungslegung, Kapitalerhaltung, Prüfung und Besteuerung. Düsseldorf

von Gneist R (1869) Verwaltung, Justiz, Rechtsweg, Staatsverwaltung und Selbstverwaltung nach englischen und deutschen Verhältnissen. Berlin

von Meyer PAG (1859) Corpus juris Confoederationis Germanicae, part II, 3rd edn. Frankfurt am Main
von Moeller E (1972) (frist published 1906) Die Elendenbrüderschaften. Ein Beitrag zur Geschichte der Fremdenfürsorge im Mittelalter. Leipzig
von Reitzenstein F (1887) Die ländliche Armenpflege und ihre Reform, Verhandlungen des deutschen Vereins für Armenpflege und Wohltätigkeit. Freiburg im Breisgau
von Schanz G (1895) Zur Frage der Arbeitslosenversicherung. Untersuchungen. Bamberg
von Schanz G (1897) Neue Beiträge zur Frage der Arbeitslosenversicherung. Berlin
von Saldern A (1985) Mittelstand im "Dritten Reich". Handwerker – Einzelhändler – Bauern, 2nd edn. Frankfurt am Main New York
von Berlepsch H-J (1987) "Neuer Kurs" im Kaiserreich? Die Arbeiterpolitik des Freiherrn von Berlepsch 1890 bis 1896. Bonn
von Staudinger J (1929) Kommentar zum Bürgerlichen Gesetzbuch, vol 6, 9th edn. München Berlin Leipzig
von Treitschke H (1874) Der Socialismus und seine Gönner. Preußische Jahrbücher 34:67–110, 248–301
von Willard P (1997) "Mitten im Aufbruch". 300 Jahre frankesche Stiftungen Halle an der Saale 1698–1998. Halle an der Saale
Vorländer H (1988) Die NSV, Darstellung und Dokumentation einer nationalsozialistischen Organisation. Boppard
Voss R (1995) Steuern im Dritten Reich. München
Wagnitz HB (1791–1794) Historische Nachrichten und Bemerkungen über die merkwürdigsten Zuchthäuser in Deutschland, 2 vols. Halle an der Saale
Wahsner R (1994) Arbeitsrecht unter'm Hakenkreuz. Baden-Baden
Wannagat G (1965) Lehrbuch des Sozialversicherungsrechts, vol 1. Tübingen
Webber D (1988) Krankheit, Geld und Politik: Zur Geschichte der Gesundheitsreformen in Deutschland. Leviathan:156 (178ff)
Wehler H-U (1995) Deutsche Gesellschaftsgeschichte: Von der "Deutschen Doppelrevolution" bis zum Beginn des Ersten Weltkrieges 1849–1914, vol 3. München
Weinacht P (1968) Staat. Studien zur Bedeutungsgeschichte des Wortes. Berlin
Weindling P (1991) "Mustergau" Thüringen. Rassenhygiene zwischen Ideologie und Machtpolitik. In: Frei N (ed) Medizin und Gesundheitspolitik in der NS-Zeit. München, pp 81–97
Weingart P, Kroll J, Bayertz K (1988) Rasse, Blut und Gene. Frankfurt am Main
Weiss J (1994) Von den Gewerbegerichten zu den Arbeitsgerichten. Die Arbeitsgerichtsbarkeit: 7587
Weiss M (1998) Tarifvertrag. In: Erler A, Kaufmann E (eds) Handwörterbuch zur deutschen Rechtsgeschichte, vol 5. Berlin
Wichern JH (1849) Die innere Mission der deutschen evangelischen Kirche. Eine Denkschrift an die deutsche Nation im Auftrage des Centralausschusses für die innere Mission. Hamburg
Wickenhagen E (1980) Geschichte der gewerblichen Unfallversicherung. Wesen und Wirken der gewerblichen Berufsgenossenschaften. München
Wieacker F (1953) Das Sozialmodell der klassischen Privatrechtsgesetzbücher und die Entwicklung der modernen Gesellschaft. In: Wieacker F (ed) 1974: Industriegesellschaft und Privatrechtsordnung. Frankfurt am Main, pp 9–35
Wieacker F (1966) Pandektenwissenschaft und Industrielle Revolution. In: Wieacker F (ed) 1974: Industriegesellschaft und Privatrechtsordnung. Frankfurt am Main, pp 55–78
Wieacker F (1967) Privatrechtsgeschichte der Neuzeit, 2nd edn. Göttingen
Wieacker F (1974) Industriegesellschaft und Privatrechtsordnung. Frankfurt am Main
Williams J (1972) The home fronts. Britain, France and Germany 1914–1918. London
Willoweit D (1978) Struktur und Funktion intermediärer Gewalten im Ancien Regime. Der Staat. Suppl 2. Gesellschaftliche Strukturen als Verfassungsproblem. Berlin: 9–27
Winkel H (1977) Die deutsche Nationalökonomie im 19. Jahrhundert. Darmstadt

Winkler HA (1972) Mittelstand, Demokratie und Nationalsozialismus. Die politische Entwicklung von Handwerk und Kleinhandel in der Weimarer Republik. Köln
Winkler HA (1977) Der entbehrliche Stand. Zur Mittelstandspolitik im "Dritten Reich". Archiv für Sozialgeschichte 17:1–40
Winkler HA (1993) Weimar 1918–1933. Die Geschichte der ersten deutschen Demokratie. München
Winkler W (1979) Die Entwicklung des Bergrechts im 19. Jahrhundert. In: Coing W (ed) Wissenschaft und Kodifikation des Privatrechts im 19. Jahrhundert, vol 4. Eigentum und industrielle Entwicklung. Frankfurt am Main
Witt P-C (1979) Inflation, Wohnungszwangswirtschaft und Hauszinssteuer. Zur Regelung von Wohnungsbau und Wohnungsmarkt in der Weimarer Republik. In: Niethammer L (ed) Wohnen im Wandel. Beiträge zur Geschichte des Alltags in der bürgerlichen Gesellschaft. Wuppertal, pp 385–407
Wollasch H-J (1978) Der Deutsche Caritasverband: Entwicklung und Aufgaben. In: Wollasch H-J (ed) Beiträge zur Geschichte der Deutschen Caritas in der Zeit der Weltkriege. Freiburg im Breisgau, pp 1ff
Wright WJ (1977) Reformation contributions to the development of public welfare policy in Hesse. Journal of Modern History (On-Demand-Supplement) 49:1145–1179
Wunder B (1978) Privilegierung und Disziplinierung. Die Entstehung des Berufsbeamtentums in Bayern und Württemberg (1780–1825). München
Wunder B (1982) Hof und Verwaltung im 17. Jahrhundert. Daphnis 11:5–14
Wunder B (1985) Pfarrwitwenkassen und Beamtenwitwen-Anstalten vom 16.–19. Jahrhundert Die Entstehung der staatlichen Hinterbliebenenversorgung in Deutschland. Zeitschrift für Historische Forschung 12:429–498
Wunder B (1989) Die Stellung der Subalternen und Unterbeamten in Baden während des 19. Jahrhunderts. Jahrbuch für Europäische Verwaltungsgeschichte 1:187–206
Zacher HF (1970) Entschädigungssysteme. Die Öffentliche Verwaltung:6
Zacher HF (ed) (1979) Bedingungen für die Entstehung und Entwicklung von Sozialversicherung. Berlin
Zacher HF (1980) Sozialpolitik und Verfassung im ersten Jahrzehnt der Bundesrepublik Deutschland. Berlin
Zacher HF (1993a) Alterssicherung – Spiegel der gesellschaftlichen Entwicklung (1987). In: Zacher HF (ed) Abhandlungen zum Sozialrecht. Heidelberg, pp 498ff
Zacher HF (1993b) Grundfragen des internationalen Sozialrechts. In: Zacher HF (ed) Abhandlungen zum Sozialrecht. Heidelberg, p 433
Zacher HF, Ziegler T (1984) Die Versorgung der Beamten, Richter und Soldaten. Heidelberg
Ziekow J (1997) Über Freizügigkeit und Aufenthalt. Tübingen
Zöllner D (1981) Ein Jahrhundert Sozialversicherung. Landesbericht Deutschland. In: Köhler P, Zacher HF (eds) Ein Jahrhundert Sozialversicherung. Berlin, pp 57ff

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