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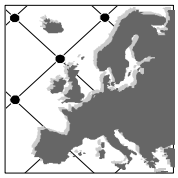

New demands for social protection – changing family structures, women´s roles and institutional responses.

The case of the German Long – Term Care Insurance

Kirsten Scheiwe

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The International Project on Family Changes and Family Policies, co-directed by Prof. Flora (University of Mannheim, Mannheim Centre for European Social Research) and Profs. Kamerman and Kahn (Columbia University School of Social Work, New York), analyses changes in family structures and family policies in a long-term and comparative perspective in 20 countries in Europe and overseas. Primary output will be publication of a 7-volume-series on family changes and family policies, including five volumes with country studies and two comparative volumes. Another major objective is the built-up of a family policy data base which will include regularly updated time series.
The project is supported by the Deutsche Forschungsgemeinschaft (DFG). Related to this project, the European Commission finances a training and mobility programme of young researchers, which concentrates on recent developments of families in the European welfare states in comparative perspective.

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Redaktionelle Notiz:

Kirsten Scheiwe, Juristin und MA phil., beschäftigt sich schwerpunktmäßig mit der interdisziplinären und vergleichenden Analyse von Rechtsinstitutionen und ihrer Geschlechterdimensionen in den Bereichen des Familienrechts und der sozialen Sicherung. Sie promovierte 1991 am Europäischen Hochschulinstitut, Florenz über 'Frauenzeiten und Männerzeiten im Recht' und habilitierte sich 1997 am Fachbereich Rechtswissenschaften der J.W. Goethe-Universität Frankfurt am Main ('venia legendi' in Zivilrecht, Sozialrecht und Rechtsvergleichung) mit einer Arbeit, die vergleichend die Rechtsmodelle der Kinderversorgung und ihre Auswirkungen auf Geschlechterungleich-heiten in vier Ländern untersucht. Kirsten Scheiwe ist am Mannheimer Forschungsprojekt 'Familienwandel und Familienpolitik' unter Leitung der ProfessorInnen P. Flora, S. Kamerman und A. Kahn beteiligt. Seit Oktober 1996 ist sie als 'Postdoc' im Rahmen des TMR-Programmes 'Family and the Welfare State' an der Universität Amsterdam beschäftigt.

Editorial Note:

Kirsten Scheiwe has a law degree, M.A. phil. and Ph.D. Her main research area is the interdisciplinary and comparative analysis of legal institutions and their gender dimension in the field of family law and social security. She received her doctorate from the European University Institute in Florence, Italy for her thesis on 'Male times and female times in the law'. She completed her habilitation (venia legendi for civil law, social law and comparative law) in the law department of the J.W. Goethe University in Frankfurt am Main with a comparative study on legal models of support and care for children in four countries and their impact upon gender inequality. Kirsten Scheiwe is also involved in the Mannheim research project 'Family Change and Family Policy', directed by professors P. Flora, S. Kamerman and A. Kahn. Since October 1996 she has been working at Amsterdam University as a postdoc within the TMR programme 'Family and the Welfare State'.

Contents

Abstract

The challenges to social security systems, the need for change and their capacity to adapt are a focus of attention in recent times. This paper concentrates on the new needs and risks affected by changes in family structures and the division of labour between generations and genders, and investigates which place family- and care-related needs and risks occupy in the changing German 'welfare mix'. The new German Long-Term Care Insurance implemented in 1995 is discussed in more detail as a major piece of welfare-state reform and expansion. The chances for the extension of social rights and coverage of 'new' risks related to unpaid work, care needs and activities, the economic consequences of divorce, lone parenthood and childrearing are discussed. Particular constraints which result from the German political system and power balances as well as from internal structures of the social security system are identified. This paper stresses the need for a comprehensive and sufficiently broad approach to coordinated reform in the social security provisions in order to embrace the complementary regulation of welfare-state and family law regulation. However, the chances for such a coordinated path of reform (as against a piecemeal strategy where reform takes place at the level of single institutions) look rather gloomy because of the complexity of such an endeavour, the multiplicity of actors involved, the power relations and split competences in the German political system. This reinforces the 'path dependency' of the German social security system, which allows for some, though limited, upgrading of care-related social rights for women. In a similar vein, the formerly 'private' life-risk of need for long-term care was transformed into a risk covered by insurance but within rather traditional parameters.

New demands for social protection – changing family structures, women 's roles and instituational responses. The case of the German Long – Term Care Insurance[1]

Demographic and social change in a changing institutional environment

Various factors have been identified as crucial in the broadening debate over social security and social change. While the importance of demographic and behavioural change has been widely emphasized, the relevance of legal institutions and the possible effects of institutional 'path dependency' as dimensions in their own right have attracted less attention. However, institutional definitions and legal concepts themselves can create new needs, or even traps (for example, the narrow definition of 'illness' as a risk covered by German health insurance excluded social insurance coverage of the need for long-term care of those whose condition was defined as 'not improvable', and instead relegated it to the private sphere of family solidarity and means-tested welfare benefits). Here I indicate briefly the main directions of change in the areas of demography, family structures, and institutional reform in a contextual way.

The increasing mobility, the drop in fertility[2], the higher longevity of women compared to men and the modernization of life-styles have led to a different *composition of households*. The number of one-person-households has increased steadily since 1945, and nowadays one-third of all German households consists of one person only[3] - the highest proportion besides Denmark in the EU. Among the elderly in one-person households, widowed women form the largest group. As in other countries, multi-generation households are in decline: two-generation families (parent/s with children) represent only a little more than one-third of all households, while three-generation households make up only one percent. It is evident that these changes make traditional forms of support and help with daily needs and routines among different generations within the family much more difficult, especially when intensive care or long-term care is needed, as for small children, ill persons or frail elderly. If one takes into account the

[1] This is a revised version of a paper prepared for the conference 'Beyond Equal Treatment: Social Security in a Changing Europe', held in Dublin Castle, 10-12 October 1996. The conference was organized by the Irish Department of Social Welfare and co- sponsored by the European Commission.
I wish to thank Harry Willekens, Mary Daly and Gretchen Wiesehan for their help with language proplems.

[2] Already in the 1960s the fertility rate was among the lowest in the EC, and the share of families with three or more children was definitely the smallest. The fertility rate continues to decline. The total fertility rate was in 1994 1.34 children per woman in the former West and was significantly lower (0.77) in the former East, which still displays signs of the 'unification shock'. This means that approximately 25% of women born in 1960 are childless (Dorbritz and Gärtner 1995), a surprising feature even in international comparison.

[3] The main source for statistical indications has been the 1995 report on the demographical situation in Germany (Dobritz and Gärtner 1995). Additional source, especially for comparative data, was the special edition on 'Families in the European Union' (Family Policy Studies Center 1994).

relative scarcity of social care services for the elderly in the former West,[4] it is easy to imagine the burden which falls upon the decreasing share of persons who have to finance welfare-state spending and (affecting mainly women) who are engaged in caring activities. As far as the ageing of the population is concerned, the projected rate of increase of the elderly population in Germany is (along with the UK and Denmark) among the highest in the EU. It is expected that the proportion of people above the age of 65 will exceed 20% by 2025. The falling fertility rate contributes to this reshuffling of the population composition. As Glendinning and McLaughlin (1993:82) point out, this means that there will be roughly equal numbers of persons of working age on the one hand and of children and elderly on the other. The increase in longevity has led to an increasing number of persons over 80 who are particularly in need of long-term care. It is estimated that between 5% and 7% of those over 60 need regular care, while this proportion rises to one-fifth or one-quarter of those over 80.[5] Families provide most of this care, and this means that mainly women as daughters, daughters-in-law or wives invest very much in caring activities. However, at the aggregate level a diminishing number of potential care-givers is faced with increasing care needs of a growing elderly population - a situation which calls for social policy intervention.

Needless to say the social security system will have to adapt to the changing balances between the generations and reform the distributive effects - between the employed and 'not yet' or 'no longer' employed individuals, between households with and without children, between households with one or two income recipients,[6] and among generations and genders. This is obviously not an easy task, and the further differentiation of (more or less institutionalized) living arrangements contributes to the complexity of the issue. The marriage rate has fallen by one-third since the 1960s when Germany had the highest marriage rate within the EC (from 9.5 marriages per 1000 inhabitants in 1960 to 6.5 in 1990), although it still remains one of the highest marriage rates in the EU besides Portugal, the UK and Belgium. The vast majority of parents are married, and cohabitation in the FRG is mainly childless, since three-quarters of cohabiting couples do not have children (although the proportion of unmarried couples with children is increasing, and in the former East the majority of cohabiting couples has children). As elsewhere, divorce rates have gone up since the 1960s. The FRG occupies

[4] For a tentative comparison based on quantitive data of social care services for elderly and children see Anttonen and Sipilä (1996); for a national report of German health and social services for the elderly see Alber (1993).

[5] For details see Bundesministerium für Familie und Senioren/Infratest (1992).

[6] See the discussion in Cantillon (1994). With reference to the different needs of one- and two-income earner families, she points out that "the occurence of a social-risk event has divergent consequences in terms of need for different groups of beneficiaries. This leads to tensions within the social security system between the principle of solidarity and the principle of insurance. Because a risk-event is no longer a good indicator of need, it has become very difficult to satisfy in one universal system both 'guaranteed minimum income as a function of needs' and 'income maintenance as a function of risks and contribution payment." (ibid., p.47).

(besides France and the Benelux countries) a middle range position between the Southern EU member states with lower divorce rates and the more divorce-prone countries. Divorce affected more than 110 000 children in 1994: roughly 50% of all divorces in the old and 70% in the former East involved children, in most cases one child. While the consequences of divorce have been extensively regulated in the Marriage Reform Act 1977 and various redistributive rules to promote equity have been enacted with the intention of upholding the interests of the economically weaker party, such as pension-credit splitting in the case of divorce or rights to post-divorce maintenance of the ex-spouse caring for children of the marriage, judicial practice and economic reality do not live up to the statutory promises.[7] This means that the poverty risk of divorced mothers is relatively high. The family-law guided 'private path' to compensate partially for these risks means that compensation is economically viable only in the case of economically better-off partners (which is a small proportion of divorce cases). According to empirical research maintenance payments which covered the existence minimum were awarded only in 5% of all judicial divorce decisions (Willenbacher et.al. 1987). One consequence is that divorced mothers in Germany have higher employment rates than married mothers, since they have to be the main breadwinner (as is the case for lone mothers in general). The introduction of publicly advanced child-maintenance payments in 1979[8] was the major response to the economic needs of children living outside the traditional bonds between married parents. Since this benefit is not means-tested, but can be claimed by a child in case the absent parent does not pay, it is one of the few institutional responses that socializes a risk at a minimum subsistence level - it is shifted upon public authorities which attempt to recover the money from the absent father.

The development of *nonmarital cohabitation*, of *lone parenthood and of births outside marriage* is one of the features which displays great variation between the old and the new *Länder*. Figures are generally higher in the ex-GDR. The proportion of births outside marriage is increasing somewhat in the old *Länder* and reached 12.4% in 1993, while it remained stable at a high level in the former East (41.1% in 1993) despite the dramatic fall of fertility as part of 'unification shock'. The share of lone parents is much higher in the former East: nearly one third of all parents are lone mothers (85% of lone parents are women). At 5% the corresponding figure is much lower in the former West. While nearly three-quarters of cohabiting couples in

[7] The proportion of divorced wives with children who receive post-divorce maintenance for themselves is estimated at between 18% and 40% (Willenbacher et.al. 1987:103). Caesar-Wolf and Eidmann (1987) found that in only 17% of all divorces was maintenance awarded to the ex-spouse, and even the obligatory 'pension-splitting' was implemented in only 60% of all divorce cases. Therefore they speak of a severe under-use of the divorce regulation designed to promote more equity for the economically weaker partner, i.e. the divored wife.

the whole of Germany live without children, the majority of cohabiting unions in the Eastern parts have children. However, the trend in the former West is that nonmarried cohabitation involving children is on the increase (19.8% of all cohabiting couples in the FRG in 1993). While younger cohabiting couples are predominantly childless, a closer look at cohabitation with children shows that this is often the living arrangement following the break-up of a former marriage: 61% of cohabiting women with children are above the age of thirty and 35.6% are divorced (Dorbritz and Gärtner 1995:416).[9] 63% of these cohabiting divorced mothers are employed, mainly in skilled occupations. Cohabiting partners are still barred from access to various welfare state benefits or advantages reserved exclusively for married couples. These are tax advantages which are designed mainly to favour the traditional breadwinner-housewife marriage, free co-insurance of a dependent spouse in sickness insurance and the new Long-Term Care Insurance, and access to widow/ers pensions. These important parts of the German welfare mix for families are still marriage-centred,[10] and this feature is perpetuated even by some new rules (such as the regulation of free co-insurance of a dependent spouse in the new Long-Term Care Insurance). If one judges the capacity of a social security system to adapt to social change on the scale 'orientation towards marriage-centered or towards child-orientated benefits', those few benefits in the social insurance sector with a family-dimension and tax provisions in the FRG are particularly marriage-centered.

The changing employment patterns and the increasing labour force participation rates of women, particularly of married women, have increased the need for new care arrangements. It is particularly interesting to know about parental solutions for combining child care and employment, and which solutions are offered in institutional settings. As far as married couples with children of the age group between 25 and 35 years are concerned, the proportion of those with the husband as sole earner is higher than that of dual-earning couples (49.7 versus 43.8% in 1993) in the former West. However, interruptions in wives' employment will often be temporary, since the share of dual-earner couples increases to 59% for the following age group above 35 years. Patterns in the former East are still different despite high unemployment which hits women disproportionately, and the former socialist model of the 'working mother' who combines full-time employment and motherhood persists at a rather high rate (and is, in fact, a main shield against the risks of unemployment and inpoverishment which hit one-earner families, particularly lone parents, hardest). In the former East, double-earner couples reach

[8] This scheme was based on the introduction of a right of children born out of wedlock to a sort of a (low) 'flat-rate maintenance payment' by the father (Regelunterhalt) in 1969 as part of the reform of the rights and legal status of children born out of wedlock.

[9] This result is confirmed also by Erler (1996:11) who notes that in the former East 48.4% of women with children in nonmarital unions are divorced, while the corresponding figure for the former West is 38.2%.

levels between 61% and 81% of all married couples of different age cohorts. Although the percentage of double-earner couples out of all married couples in the former West is lower, the trend is nonetheless that the 'housewife model' of marriage is losing ground. While in 1981 'one earner with housewife' was the predominant type of living arrangement between married couples, even if they were childless, it figured between 11.7% and 29.5% for different age groups in 1993. These changes underline the need to disconnect social protection in the social insurance sector from the institution of marriage on the one hand and from the purely individualized model of the (male) full-time wage earner on the other hand. Social protection should be orientated more towards stronger support for children and carers than towards marriage as an institution, and more towards the provision of minimum benefits under social insurance schemes than status maintenance which redistributes more to high earners. It should be taken into account, too, that needs are different for one- or two-income households with or without children. Neither the traditional 'breadwinner-with-dependants'model nor the purely individualized, earnings-related provision of wage replacements take these different needs adequately into account. But in which direction should change go? Which parts of the social security system should provide for these needs - the insurance sector, means-testing, universal benefits or even the tax system? Besides the lack of consensus on these questions, there are also various difficulties which result from systemic factors, such as the separate organization and financing of social insurance branches on the one hand and split legislative competences and financing systems for various social policy areas. Before going into this subject matter which will be illustrated by the case of the new Long-Term Care Insurance, some more general remarks on the changing nature of socially-insured 'risks' and the shifting allocation of responsibility for different needs to the family sphere or the public sphere seem appropriate.

The shifting definitions of needs and risks, 'public' and 'private' responsibilities, the subsidiarity principle and the construction of hierarchies

Let us base our distinction upon two types of risks, *the 'classic' risks* which are predominantly related to male lifestyles (based on continous full-time employment), and *family-related risks,* which are connected to care duties and support obligations, mainly for children or others in need of financial support or care. Family-related risks are widely a synonym for *female risks,* due to the gendered division of labour, since women do the main bulk of unpaid work and care and are therefore mainly affected by the opportunity costs of these activities (lost income and fewer employment-based social rights, devaluation of human capital, higher risks of a financially dependent partner in case of divorce, risks of lone motherhood). But as far as the

[10] For details see Scheiwe (1996) where also the treatment of cohabitation under different schemes is explained.

financial burdens of having children or supporting other family members are concerned, it is obvious that family-related risks also affect men, since they are mostly the main income providers. Therefore we will follow Daly (1996), who suggests distinguishing between male and female risks,[11] while Rolf (1989) makes a three-fold distinction between 'classic' risks, family-related risks and particularly female risks. We will look at the development of welfare state coverage over the past years to figure out how institutions have adapted to social and demographic change. We consider institutions located in different areas of state regulation (social insurance, universal social rights or means-tested benefits, family law) since they are complementary and have to be understood as an interacting system. A further investigation of women's risks and their place under welfare state regulation has been presented by Holtmaat (1992).[12]

Basic institutional features of social insurance covering the *'classic' social risks* (illness, employment injuries and occupational disabilities, maternity, unemployment, old age, and death of the breadwinner with dependants) have survived surprisingly well since the beginnings of a social insurance system under Bismarck in 1883. Social insurance transforms the *needs* of a certain category of people into a better protected social *right* in case of a *risk* event. This means that when the risk occurs, neither the particular need of the individual nor the existing means of his or her family to cover it are tested in the individual case; but upon the occurrence of the event defined as a risk, need is generally assumed, and benefits at standard rates are granted as a right. The family dimension inherent to means-tested systems of poverty relief and income support has been cut off under social insurance schemes, and the intrinsic links between social insurance and employment based on male lifepatterns leave unpaid work and risks related to the family largely outside social insurance coverage.

In the German 'Bismarckian' tradition, the coverage of the 'classic' social risks outlined in *Table 1* is neatly tied to the former level of contributions paid, and to the length and continuity of employment based on 'time politics' which favour male activity patterns. Minimum benefits or flat-rate payments are unknown in today's social insurance design, and previous rules relating to increases for dependants or minimum provision have been abolished over time. The same

[11] 'Male' risks refer to the contingencies typical of male lifestyles (such as retirement, industrial accidents, unemployment), while 'female risks' relate to those of women (widowhood, family caring and pregnancy). Daly investigates in a comparative study the gendered welfare state provisions in the UK and Germany. Important aspects of her framework are the universe of covered risks, the unit of entitlement, the construction of dependants and of dependency relations and the treatment of different family types.

[12] With 'women's risks' she means the risks of losing an income or of being obliged to pay large sums of money as a result of female biologic constitution (childbearing) or as a result of the social role of women (caretaking). She defines these risks more in detail and analyzesto which parts of the Dutch social security system these risks are allotted to - as insured risks or means-tested needs, and dedicates special attention to the problems related to the risk of divorce.

happened to family-related supplements or benefit increases for a dependent spouse or children, which were abolished in the 1970s. Only child-related benefit increases were revived in the 1980s and after extended. Means-tested elements do not exist under insurance schemes apart from the entitlement conditions to unemployment assistance, the second tier of German unemployment benefits, and since 1985 (when entitlement was extended to widowers) a limited means-test has been required for the cumulation of widow/ers' pensions exceeding a certain amount and other income sources of the survivor. The lack of family-related benefit increases and supplements distinguishes the 'Bismarck'-type of social insurance from familialist systems, such as the French or the Belgian,[13] and the lack of flat-rate or minimum benefits distinguishes it from the 'Beveridge'-type systems, such as in Ireland. And the status-maintenance effects and weak redistribution towards low-income earners and one-earners with dependants departs from both the familialist and the Beveridge model.

[13] For a discussion of the French model of the family under social security provision im comparison with Germany see Schultheis (1995), for a comparison between Belgium, Germany and the UK see Scheiwe (1994b).

Table 1: Risk coverage under social insurance schemes

Risk covered	Insurance branch	Entitlement conditions	
		employment-related	family-related
Unemployment	Unemployment Insurance	yes	Higher wage replacement rate for beneficiary with child Means-test for entitlement to unemployment help
Illness	Health Insurance	yes	Free co-insurance of dependent spouse and children
Pregnancy and maternity		yes (maternity pay during maternity leave)	Benefits in kind for co-insured wife
Care for a sick child		yes (sick pay during leave)	no other carer at home available
Employment injuries	Accident Insurance	yes	Supplement for care by another person; survivor pensions (also for dependent parents)
Old age	Pension Insurance	yes	Survivor pensions for spouse (up to 1977 also for divorced spouse) or children
Pension credits for child-care periods		no (universal right to pension credits up to three years per child)	
Need of long-term care	Long-Term Care Insurance	no	Free co-insurance of dependent spouse and children

The employment-centered character of German social insurance and the narrow definition of the risk of ‘illness’ was one factor which excluded long-term care from coverage by health insurance and contributed to the pressing need for a ‘long-term care insurance’. The need for care was covered only in case of ‘illness’ (mainly through medical treatment in hospitals and only in certain cases through professional care at home), with the expectation of full recovery in the near future. Where rehabilitation seemed unlikely with no hope of improvement because the person is continuously helpless, handicapped or suffers from ‘natural old age diseases’ and long-term care was needed, such a case was exluded from coverage by health insurance (and sent away from hospital). Health insurance provides services, sick pay and payment for care only in case of illness, but not in case of an ongoing and continuous need for care. These needs had to be met privately, i.e. through the provision of informal care or by paying for local public or private services. The last resort was means-tested income support if private

resources were insufficient to make ends meet, and local authorities would try to recover the money from liable relatives (including the descendants of the beneficiary). This rigid legal distinction between 'illness' and 'need for long-term care' led to the exclusion of certain care needs of persons without perspectives for employment, for example young handicapped persons or elderly people.

As *Table 1* displays, the main family-related elements under German social insurance are based upon marriage of the insured person (survivor benefits and the free co-insurance of a dependent spouse under health insurance). The widow of a properly insured man is the typical lone mother covered through insurance provision, although widowhood is nowadays of minor importance as a trajectory to lone motherhood. Even the risk of divorce of the ex-spouse had been taken into consideration for access to widow's pensions up to 1977.[14] While in general the insurance benefits are highly individualized and employment-related, excluding family-related increases, the status maintaining effects of widow/widower/s'-pensions are based on employment *and* marriage status - a classic example of a traditional social security provision inadequately adapted to social change. *Table 1* shows that the family-related provisions of German social insurance are very limited. The close links to employment have been loosened in two cases in recent years: the recognition of child-care periods under pension insurance since 1986, and the introduction of the Long-Term Care Insurance as a new insurance branch in 1995. Childcare-related rights of employed parents have been extended through the introduction of parental leave provision in 1986. Important for parents are also the rights to time off to care for a sick child and a corresponding allowance under health insurance. Thus, for the first time since the introduction of maternity leave and maternity pay, specific family-related needs of employed mothers have been recognized.

Let us now turn to *family-related social risks* which are closely linked to the maintenance and care for those dependent upon support and which are based on unpaid work for family members (care for children, care for frail elderly or housework in general) and seriously affected by the direct and indirect costs of children. *Table 2* shows that universal, not means-tested and not insurance-based coverage of family-related and 'female risks' exists only in a few cases. The direct costs of children are partially subsidized, and child allowances are the most important universal benefit.[15] Advance maintenance payments partially cover the special

[14] Up to the Marriage Law Reform 1977, a divorced wife had a claim to a widow's pension if she had obtained maintenance from the deceased (i.e. had not been guilty) and had not remarried. After the reform of divorce law and the introduction of a procedure to equalize pension credits acquired during marriage between the divorcees, derived social insurance rights of a divorced widow were abolished.

[15] Since 1996, child allowances have again become truly universal (before various means-tested elements had been introduced), and the up-take of child allowances or of child-related tax rebates have been

risks of lone parenthood, but only with regard to the direct costs of children, and only at a minimum level. The risks linked to employment interruptions of carers are covered only to a limited extent. The parental allowance has been transformed step by step into a means-tested benefit which requires a below-average income. Lone parenthood is not particularly covered outside means-tested schemes, apart from some tax advantages (which are, nonetheless, lower than the potential marriage-related tax advantages) and preferential access to a number of services. The risk of divorce is a purely private matter, and the risks linked to unpaid work as a housewife are covered in a traditional fashion, based on marriage, through tax splitting which benefits the 'housewife' marriage and high-income earners most. Summing up, the coverage of family-related risks and 'female risks' remains unsatisfying and appears rather contradictory.

The new 'Long-Term Care Insurance' - Who benefits, and who is burdened?

In April 1994 the Long-Term Care Insurance was institutionalized as the fifth branch of the German social insurance system. About 1.65 million persons need long-term care, and 75 per cent of them are living at home. Only 4 per cent of people above the age of 65 are in institutional care - a figure that is rather low in international comparison (however, for the population above the age of 80 this proportion is already 20 per cent (Bäcker 1989:130). Mainly women provide care at home as partner (24% of all carers), daughter (26%), daughter-in-law (9%) or mother (145), while men are involved as husbands (13% of all carers) (*Bundesarbeitsblatt* 1994:9). Most female carers are already above pension age (60%), while one out of ten women in gainful employment gave up her job to look after a person in need (Thiede 1986:127). At the beginning of the 1990s, only one-fifth of the people in need of care living at home received partial support

Table 2: Coverage and non-coverage of family-related risks and 'female risks'

established as a mutually exclusive choice. This strenghtened the solidaristic logic of these benefits (before, tax-payers with high incomes benefited most).

Risk or need	Coverage or non-coverage	Universal, insurance-based or means-tested	Regulatory system
Direct costs of children	*Partial subsidies*: Child allowances or tax rebates for a child Advance maintenance payments for child with one absent parent who fails to support Housing allowances, educational grants, income support	Universal Universal Means-tested	Tax law Social law Social law
Indirect costs of children Risks related to employment interruptions for child care	*Limited coverage* through parental leave Parental allowance, Pension credits for child care Leave to care for sick children and allowance	for all employees Means-tested Universal Subsidiary right of all employed parents (if no one at home is available to care)	Labour law Social law Pension insurance Labour law and social insurance
Risks of housewives	*No direct coverage*, no coverage against risks of work accidents or disability, *indirect coverage via marriage:* marriage-based tax advantages, derived social insurance rights	 Universal Insurance-based	 Tax law Social insurance
Need for long-term care **Risks of care providers**	*Limited covera*ge for all insured after a waiting period of five years; provision of professional at-home care services and/or benefits (flat-rate care allowance or payment of costs of institutional care up to a maximum) *Limited coverage* through recognition of pension credits; person in need of care can pass on the care allowance to care giver	Insurance-based Insurance-based	Social insurance Social Insurance
Divorce risks	*No coverage* outside family law and divorce law; divorce law contains provisions for splitting of pension credits		
Risks of lone parenthood	*Very limited coverage* through tax provision, preferential access to some services (child care, public housing) *Subsidiary coverage* through means-tested income support	Universal Means-tested	Tax law Social law Income Support Regulation

through local ambulant care services (Bäcker 1991:92). These developments had long been debated, but it took twenty-five years until a final compromise was reached. In 1994, a broad

majority of parliament voted for the Long-Term Care Insurance Act[16] in a sort of a 'grand coalition', embracing the governing Christian Democrat-Liberal coalition and the opposition party SPD, and the *Bundesrat* agreed unanimously. In times of welfare state retrenchment, this is a remarkable extension of social protection and an inclusion of a risk formerly defined as 'private' under a public insurance scheme.

What are the *main elements* of the Long-Term Care Insurance (abbreviated *LTCI* in the following)? The LTCI is institutionalized as a separate insurance branch, but linked to the structure of health insurance. All those who are obligatorily insured in the statutory health insurance have to join the LTCI as well. This includes also pensioners and opens free co-insurance to a dependent spouse and children of the insured person (as under health insurance).[17] This should cover approximately 92% of the population. But several 'good risks' - the missing 7% of the population - are exempted and assigned to private insurance coverage, such as the higher strata of civil servants (*Beamte*), self-employed and high-income earners above the threshold for obligatory health insurance.[18] These exemptions from obligatory insurance under the statutory scheme and allowing this group to be diverted to private insurance continue the path of fragmentation of the German social insurance system and weaken the redistributive effects towards the poorer strata and 'bad risks'. Attempts to fix higher ceilings (as, for example, under pension insurance) and to institutionalize a more 'solidaristic' logic of the system proved unsuccessfull. The LTCI insurance is financed through contributions fixed at 1.7% of the relevant income, to be paid by employers and employees jointly. However, employers who argued that this would increase labour costs too much have been compensated for their contributions through the abolition of one public holiday, falling always on a working day. This is another departure from the traditional principles governing social insurance, since it means that in fact employees pay more than half of the contribution rate.

Benefits and services provided by the LTCI are not means-tested and encompass benefits in kind and in cash: the use of professional at-home care provided through the LTCI, a care allowance paid to the person in need of care (who can pass it on to an informal carer),

[16] Long-Term Insurance Act , published in the Federal Law Gazette (*Bundesgesetzblatt*) Part I, no.30 of 28th May 1994.
[17] This reproduces the privileges of marriage compared to nonmarital cohabitation and can bar persons who lack the proper 'employment link' (for example, part-timers with less than 16 hours a week) or link to an insured person from access to insurance.
[18] This threshold is fixed at an annual gross income of ECU 37,742 in the former West and ECU 30,968 in the former East.

subsidies for institutional care, and some extra benefits.[19] One purpose is to promote the provision of long-term care at home. Consideration of the well-being of the person cared for who can remain in her own home also played an important role for obvious financial reasons. Benefits and services for care at home are graduated according to three categories of need (considerable, severe and extreme need for care) which have to be defined by the medical service of the insurance. This limits the power of doctors who have an important position in decision-making for purposes of health insurance, and shifts it more towards other medical professions. It should be emphasized that benefit levels are not designed to cover the total costs or provide the full range of services needed, but rather the limits imposed imply that additional support by the family (care or financial support) and the investment of personal means or means-tested assistance will still be necessary, especially in the case of institutional care, particularly since the maximum amounts of subsidies (which are not indexed) for institutional care are already below average costs now. Cost containment considerations influenced the decision that no state financing to cover possible deficits of the LTCI is foreseen (in contrast with the principles governing other social insurance branches). Together with the fact that flat-rate benefits are not indexed, this may lead to a downward spiral in the value of benefits and services. This more minimalist design departs from the relatively high level of wage replacement benefits under other social insurance schemes.

Another important aspect of the LTCI concerns the social rights of the caregivers, who are predominantly women. Pension contributions up to a maximum of 75% of average pension points (graded according to the need of care) can be paid by the LTCI for a carer if her employment does not exceed 30 hours per week. The time period for which pension contributions can be accredited is not limited, and these pension credits for care can be accumulated simultaneously with personal employment-related pension credits. This provision is an improvement over regulations on child-care credits in the pension system, which penalize those caring for children and working outside the home at the same time, and are time-limited

[19] *Subsidies for institutional care* are provided since January 1996 up to DM 2800 monthly. The costs of residence (room and board in institutional care) have to be taken over by the person herself. In the case of *home care* benefits are scaled according to the degree of need of long-term care (three categories: considerable, severe and extreme need of care). If professional care services are provided at home, the maximum costs for this professional help are fixed between DM 750 DM monthly for category 1 and DM 2800 for category 3. The *care allowance* granted if the person in need prefers informal care by a person of his or her choice ranges between DM 400 and DM 1300 monthly. A mix of professional at-home services (benefits in kind) and use of the care allowance is possible as well. Another benefit is available if the informal carer is not available (for example, on a holiday). In this case the LTCI fund pays the expenses for a substitute up to four weeks a year, up to a maximum of DM 2800. *Extra benefits* for short-term care are available (up to DM 2800 per year for short-term care and up to DM 2100 per month for day and night care), and certain appliances and home remodeling measures at home are subsidized. Training courses are offered free of charge to informal carers and family members.

to a maximum of three years.[20] Furthermore, the registered carer is now also insured against accident and injury during her informal care services, and unlike housework (which is not covered by accident insurance) her activities are now covered on an equal par with other volunteer activities such as donating blood, providing first aid or informally helping with the construction of a neighbour's private home. Care periods up to five years can also be taken into account for the rather complicated entitlement conditions to a particular unemployment benefit during training measures on the same terms as child-care periods. Finally, the LTCI shall offer special training courses for carers and family-members or other volunteers for free. This part of the package definitely improves the social rights of informal caregivers, to whom also the care allowance paid to the person in need of care can be passed on. From this point of view women are among those who benefit from the new care insurance. The main criticism with regard to women's situation has been that the new regulation failed to use the opportunity to improve care facilities through expanding public services and thus creating new employment possibilies for women. Further, no employment-related rights for employed carers (such as a care leave or rights to reduced working hours) have been considered.

A major change brought about by the LTCI is the shift in the definition of the need for long-term care: it is no longer a private life risk to be covered first through private means, including recourse to family support, and only thereafter through means-tested public income support. The need for long-term care is nowadays acknowledged as a proper 'risk' in social insurance terms and covered within the limits of flat-rate benefits, subsidies and at-home services available. This relieves many elderly people, mainly those in need of expensive institutional care, from having to ask their adult children for financial support or having to rely on means-tested income support which went directly to the care institution and left them as receivers of paltry pocket money. However, it also serves the interests of potential heirs of better-off people who are not forced to sell property items and rely on personal income before having a claim to public support. Since the benefits are flat-rate (an innovation within the German social insurance system), and not all the costs are covered (for example, room and board in institutional care must be paid for privately), persons in need of long-term care will nonetheless be forced to use private means. The average costs of institutional care are about 4000 DM monthly (Landenberger 1994:328), far higher than an average pension, and even personal property assets would be easily exhausted if burdened with these costs. As a consequence, before the introduction of the long-term care insurance 70% of all costs for institutional care for the elderly were financed through income support paid by the local municipalities and the *Länder*. No wonder that financial considerations and worries about the 'cost explosion' played a major role during the painful process that gave birth to the LTCI. Income support expenditure

[20] For details on the treatment of care periods under pension insurance see Scheiwe (1994a).

on long-term care trebled between 1970 and 1976 and more than doubled during the subsequent decade (Statistisches Bundesamt 1994:20). Thus, at the beginning of the 1990s more than one-third of all income support payments was spent for people severely in need of care, and 90% of this monetary flow went to nursing homes. Since income support is financed by the *Länder* and local municipalities, not by the Federal State, striving for relief or a reshuffling of this financial burden was one of the main incentives for change.

Götting, Haug and Hinrichs (1994) give a remarkable evaluation of the redistribution of burdens and benefits for long-term care by the introduction of Long-Term Care Insurance:

> „The states and municipalities will be relieved of considerable quantities of means-tested long-term care expenditure; well-to-do people requiring care will retain their assets and high incomes (or, at the very least, large parts of it); and people performing informal care work will benefit from the reform, when they receive a remuneration and earn public pension credits. Set against this, all people required to contribute to the long-term care insurance scheme ... will be burdened; the condition of people in need of care who have low incomes and no assets will not change greatly; and deficits in providing adequate care to all people in need and problems in recruiting sufficiently trained nurses cannot be expected to be redressed soon." (ibid., p. 304).

The most important innovation is that the need for long-term care (that was to be covered primarily within the family system and only subsidiarily by public income support) was turned by the LTCI into an 'insured risk' covered, although in a limited way, by a new insurance branch. The risk as such is much less employment-related than is usually the case under German social insurance, and it occurs much more frequently among the non-employed in old age (but also handicapped people who never entered employment and were therefore formerly excluded from access to insurance benefits are now covered). One should note that the pressing need for care insurance was in a way an institutional effect in itself, since it was the narrow and employment-focused former definition of the risk of 'illness' under health insurance discussed above which shifted heavy burdens onto families and female carers, and - as a result of cost explosion - onto an increasing elderly population and onto taxpayers. And the inappropriateness of private means to cope with the costs of institutional care also over-burdened the finances of local municipalities and the *Länder* who have to finance income support and secure basic service provision. In a way, this provision contributed to the relative scarcity and sometimes low quality of services for long-term care.[21] These changes called for

[21] Some authors claim that the inadequacy of services for long-term care was a result of the former institutional arrangements: as long as services outside hospitals (ambulant and stationary care) were generally not paid for by social insurance, but privately, they were underused and underdeveloped. It was often criticized that these services were insufficient in terms of quantity and quality. It is hoped that this state of affairs will change under the new Care Insurance, since services can be contracted by the insurance administration to private suppliers, and national uniform standards for the quality and the price level of these services can be legally implemented.

social coverage of a long-standing need which had made its way into the public sphere, but had not yet found a proper place between the different segments of the social security system. A tax-financed system and universal provision seemed to be a more appropriate solution, but for various reasons no majority could be found for such a measure. The establishment of the Long-Term Care Insurance within the social insurance system breaks somewhat with the traditional employment-links of insured risks. The introduction of non-indexed maxima and flat-rate benefits is also innovative in the context of German social insurance and more closely resembles provision under more 'Beveridgean' systems. Sociological research tells us why no other solution was possible and considers this another instance of 'path dependence' in welfare state development (Götting, Haug and Hinrichs 1994). Major social policy reforms in the FRG have been enacted by a sort of a 'grand coalition' between the CDU, FDP and SPD, and it is especially bicameralism[22] and federalism which form structural impediments to simple majority voting in Parliament.

'Path dependency' of the German social protection system and institutional constraints which limit the leeway for change

I argued initially that under the German social protection system the chances for the extension of social rights and coverage of 'new' risks related to unpaid work, care activities, the consequences of divorce and lone parenthood are somewhat limited, due to particular constraints which result from the German political system and power balances as well as from internal features of the institutions themselves. It has been shown above that some innovation has taken place which led to a limited coverage of child-care related risks, extended the social rights of informal carers of persons in need of long-term care, and established this need as an insured risk. However, these important new developments occurred mostly within the traditional boundaries set by the fragmented system of a strong employment-related social insurance sector with strong stratifying and status-maintaining distributive effects, universal rights and public services which are comparatively less developed, and subsidiary means-tested schemes with a strong family dimension. The institutional constraints reinforcing the path dependency shall be discussed now more in depth.

'Path dependency' means that institutional change remains mainly within the parameters of institutional frames set up as long ago as the last century, and that the main path of development is smooth adaptation, minor change at the microlevel of single provisions, but no overhaul. Radical change and break with existing principles will happen only under extreme

[22] Since 1990, the SPD-governed *Länder* have a majority in the Bundesrat, the representation of the *Länder*, which has to confirm parliamentary decisions in most policy areas and has therefore a kind of a veto

conditions and with a certain delay if the dysfunctionalities of the existing institutional structures become overwhelming. ‘Path dependency’ means stability and continuity in two directions: they impede a sudden welfare state retrenchment as well as radical innovation beyond traditional parameters and established principles. From this point of view, institutions (including institutionalized lobbies, bureaucracies and interest groups) create their own needs and push the path of reform in certain directions, limiting it within given systemic boundaries. Which are the particular constraints under the German system?

The *political system of power balances, established in the bicameralism and federalism*, mean a strong pressure towards a grand coalition if major issues of social policy are at stake, since otherwise the parliamentary majority of the Christian Democrat-Liberal Coalition can be vetoed by the *Bundesrat*, the second chamber and representation of the *Länder*, which has to confirm legislation in various important social policy areas. Since 1990 the *Länder* governed by the Social Democrats have a majority in the Bundesrat and have therefore an important bargaining position. The enactment of the Long-Term Care Insurance was only possible as the result of such a grand coalition based on complicated compromises and deals among the various actors involved. Other major reforms in the past (such as the Employment Promotion Act 1969 or the Health Reform Act) have been passed in Parliament in a consensual manner. The structural barriers to majority rule within the German political system (especially bicameralism) demand a high degree of coordination and cooperation between parliamentary parties (Schmidt 1993). The federal system of the FRG does not offer favourable conditions for active reform policy, thus incrementalism is the predominant policy-style in the FRG (Benz 1995).

The *Federal Constitutional Court* (*Bundesverfassungsgericht*) founded in 1951 with its far-reaching competences to overthrow legislation considered to be in breach of German Basic Law is another element in the system of ‘checks and balances’ which reinforces trends towards continuity, even if its interpretation may run counter to parliamentary majorities. Certain principles developed in the case law of the Federal Constitutional Court, such as the interpretation of social insurance entitlements of insured persons as a kind of ‘property rights’ which have to be guaranteed within certain limits, impede disruptive change of the social insurance system. The extraordinary position of this Court has influenced the strongly ‘legalized’ political culture in the FRG, since the Federal Constitutional Court has a sort of ‘ultimate decision-making power’ and can force the legislator to comply with certain requirements based on its interpretation of constitutional rights. This underpins the trend towards consensual decision-making of political parties when it comes down to vote on major issues of social policy. Sometimes the Federal Constitutional Court forced the reluctant

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position.

Parliament to implement certain constitutional claims, as was the case with the principle of equality between men and women especially in the 1950s, or the implementation of the principle of non-discrimination against children born out of wedlock in the 1960s. Another important consensual reform between the CDU, FDP and the SPD implemented in 1996, the restructuring of the system of child allowances and child-related tax rebates, was also initiated by case law of the Federal Constitutional Court of 1990. This case law strengthened the importance of social guarantees for the existence minimum for families with children and led towards a more solidaristic logic in the system of child allowances and child-related tax rebates for children which are now one of the few family-related universal rights. Thus, innovation must not only pass the hurdles drawn up by political structures, but also comply with the interpretation of the German Basic Law as enshrined in the case law of the Federal Court of Justice - something of an obstacle course.

Finally, the *bifurcated system of social protection* split into the provision of monetary benefits (mainly financed and provided by social insurance) and social services (mainly provided and financed by the local municipalities and the *Länder*, and then delegated to churches and private organizations according to the subsidiarity principle) hinder a coordinated path of social innovation. The decentralization of social service provision and the complicated financing competences as well as the subsidiarity principle which give private organizations and charities a strong position (inherited from the strong influence of the Catholic *Zentrumspartei* in the 1920s) lead to a multiplicity of political actors with very divergent interests, who are often engaged in various conflicts over finances and competences. The more actors involved, the more difficult is coordination, and radical innovation becomes more difficult and much less probable. This contributes to the relatively low public (state or municipal) involvement in the provision of care services for children or the elderly. The extension of public services has been a central element of more egalitarian social policies in the interests of consumers and with a view to promoting female employment. However, the pursual of such a strategy is difficult in the bifurcated system of monetary benefits and service provision in Germany, and is blocked by decentralization, split competences and financing and the subsidiarity principle. Innovative steps, such as the introduction of a right to a kindergarten place for each child above the age of three, have seen the light of the day only under the influence of the German reunification and the resulting need for the harmonization of abortion law, which gave rise to some new coalitions crossing traditional party boundaries. The implementation of such a universal right to a social service is, nevertheless, faced with difficulties stemming from the above mentioned roots.[23] Also the Long-Term Care Insurance includes an option for contracting out services to

[23] Local municipalities are responsible for the provision and financing of child-care facilities (together with the *Länder*), while no federal subsidies are granted. Originally the right to a kindergarten place should have

private associations and churches, who - based on the principle of subsidiarity - are seen as the ‘first providers’. As Alber (1995) has argued in a comparative investigation of social service provision for the elderly, three factors have a major impact upon differences between countries (and upon the relatively low level of provision in the FRG): regulation of financing, of competences and responsibilties and of providers. Some hypotheses which are relevant in our context are based on this argument: The more divided the institutional competences, the greater the need for consensus in decision-making processes, and the longer social policy reform will take. The more fragmented the structures of supply and demand, the greater the coordination problems. To overcome these problems, special coordinating agencies are necessary. Where private organizations with partial public subsidies dominate the supply of social services, the impetus for expansion is rather low, since consumers’ interest receive little consideration and since planning and implementation are very difficult to coordinate.

These institutional constraints contribute to the strong path dependency of the German social security system, which allows for some, only limited upgrading of care-related social rights of women and the limited extension of social coverage of a need, such as the need for long-term care within the traditional boundaries of the fragmented system of social protection. However, the emergence of ‘new’ risks, many of them predominantly female, from the private sphere would require a comprehensive and sufficiently broad approach to coordinated reform, embracing the complementary regulation of welfare state and family law provision. The chances for such a coordinated path of reform (as against a piece-meal strategy where reform takes place at the level of single institutions) look rather gloomy because of the complexity of such an endeavour, the multiplicity of actors involved, the power relations and split competences in the German political and legal system, which together all contribute to continuity and stability within traditional institutional patterns and reinforce path dependency.

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been implemented by August 1998, but due to interventions by the *Länder* and local communites implementation can be postponed until the end of 1998. Fights over financing were, once again, an important driving force in social policy-making.

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