Ruprecht-Karls-Universität Heidelberg
Fakultät für Wirtschafts-und Sozialwissenschaften
Institut für Politische Wissenschaft

Patterns of dualisation.
Coordinated capitalism and the politics of flexible labour markets in Germany and Japan, 1990-2010

Steffen Heinrich

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Erstgutachter: Prof. Dr. Uwe Wagschal
(Seminar für wissenschaftliche Politik, Albert-Ludwigs-Universität Freiburg)

Zweitgutachterin: Prof. Karen A. Shire, PhD.
(Institut für Soziologie und Institut für Ostasienwissenschaften, Universität Duisburg-Essen)

Steffen Heinrich
Schäferstr. 2a
40479 Düsseldorf
srheinrich@gmx.net

Für

Chiemi, Klaus und Roswitha

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Abbreviations

Term	English	German / Japanese
AEntG	Worker deployment act [DE]	Arbeitnehmerentsendegesetz
ALMP	Active Labour Market Policy	
ArbZG	Working time act [DE]	Arbeitszeitgesetz
Asahi	[newspaper, JA]	朝日新聞 [Asahi shinbun]
AÜG	Worker assignment act [DE]	Arbeitnehmerüberlassungsgesetz
AuR	[Journal on labour law published by the DGB, DE]	Arbeit und Recht
AVE	Ministerial declaration making collective agreements binding in a industry/region [DE]	Allgemeinverbindlicherklärung
BDA	Federal association of German employers [DE]	Bundesverband der deutschen Arbeitgeber
BDI	Federal association of German industry [DE]	Bundesverband der deutschen Industrie
BfA	Alliances for Jobs [DE]	Bündnis für Arbeit (1995-96 and 1998-2003)
BeschFG	Employment Promotion Act [DE]	Beschäftigungsförderungsgesetz
BetrVG	Works constitution act [DE]	Betriebsverfassungsgesetz
BMAS	Federal Ministry of Labour and Social Affairs [DE]	Bundesministerium für Arbeit und Soziales
BR	Federal Council [DE]	Bundesrat
BT	Federal German Parliament [DE]	Bundestag
BVerfG	Federal Constitutional Court of Germany [DE]	Bundesverfassungsgericht
CDU	Christian Democratic Union [DE]	Christlichdemokratische Union Deutschlands
CGP	Clean Government Party (also "new CGP") [JA]	公明党 [Koumei-tou]
CME	Coordinated Market Economy	
CO	Cabinet Office (since 2001) [JA]	内閣府 [Naikakufu]
CSU	Christian Social Union [DE]	Christlichsoziale Union
DPJ	Democratic Party of Japan [JA]	民主党 [Minshu-tou]
EAS	Employment Adjustment Subsidy [JA]	雇用調整助成金 [Koyou-chousei josei-kin]
EC	European Commission	

ECJ	European Court of Justice [EU/DE]	
EPL	Employment Protection Legislation	
ESL	Employment Security Law [JA]	職業安定法 [Shokugyou antei-hou]
EU	European Union	
FAZ	[newspaper, DE]	Frankfurter Allgemeine Zeitung
FDP	Free Democratic Party [DE]	Freie Demokratische Partei Deutschlands
GG	Basic Law [German constitution]	Grundgesetz
Greens	Green Party [DE]	Bündnis 90/Die Grünen
IG Metall	Industry union for the metal sector [DE]	Industriegewerkschaft Metall
ILO	International Labour Organisation [UN agency]	
IMF	International Monetary Fund	
IMF-JC	International Metal Workers' Federation - Japan Council [JA]	全日本金属産業労働組合協議会 [zen-nihon kinzoku sangyou roudou kumia kyougikai]
JLB	Japan Labour Bulletin [English-language publication on Japanese labour law published by the Japan Institute of Labour until 2003, JA]	
JLF	The JIL Labour Flash / The Japan Labour Flash [English-language newsletter published twice a month by the The Japan Institute for Labour Policy and Training between 2001-2007, JA]	
KSchG	Employment Protection Act [DE]	Kündigungsschutzgesetz
LCA	Labour Contract Act [JA]	労働契約法 [Roudou keiyaku-hou]
LDP	Liberal Democratic Party of Japan [JA]	自由民主党　(abbv. 自民党) [Jiyuuminshu-tou / Jimin-tou]
LH	Lower House of the Japanese Diet (House of Representatives) [JA]	衆議院 [Shuugiin]
LME	Liberal Market Economy	
LoR	Locus of Regulation	
LRAA	Labour Relations Adjustment Act [JA]	労働関係調整法 [Roudou kankei chousei-hou]
LSL	Labour Standards Law [JA]	労働基準法 [Roudou kijun-hou]
MHLW	Ministry of Health, Labour and Welfare (from 2001) [JA]	厚生労働省　（Jap. abbv. 厚労省）[Kousei roudou-shou / Kourou-shou]
MiArbG	Act on minimum standards of working conditions [DE]	Mindestarbeitsbedingungengesetz
MitbestG	Co-determination act [DE]	Mitbestimmungsgesetz

MoL	Ministry of Labour (until 2001) [JA]	労働省 [Roudou-shou]
MP	Member of Parliament	
MWA	Minimum Wage Act [JA]	最低賃金法 [Saitei chingin-hou]
Nikkei	[newspaper, JA]	日本経済新聞 [Nihon keizai shimbun]
OECD	Organisation for Economic Co-operation and Development	
OMC	Open Method of Coordination [EU/DE]	
PM	Prime Minister [JA]	
PMO	Prime Minister's Office (until 2001) [JA]	総理府 [Sourifu]
PNP	People's New Party [JA]	国民新党 [Kokumin shin-tou]
RENGO / JTUC	Japanese Trade Union Confederation [JA]	日本労働組合総連合会 [Nihon roudou-kumiai souren goukai]
SCAP	Supreme Commander of the Allied Powers [JA]	
SDP	Social Democratic Party [JA]	社会民主党 (abbv. 社民党) [Shakai minshu-tou / Shamin-tou]
SME	Small and Medium sized Enterprises	
SPD	Social Democratic Party of Germany [DE]	Sozialdemokratische Partei Deutschlands
SRN	[Journal published by the The Japan Institute for Labour Policy and Training, JA]	週刊労働ニュース [Shuukan roudou nyuusu]
SZ	[newspaper, DE]	Süddeutsche Zeitung
TUA	Trade Union Act [JA]	労働組合法 [Roudou kumiai-hou]
TVG	Law on collective agreements [DE]	Tarifvertragsgesetz
TzBfG	Law on part-time work and fixed-term employment [DE]	Gesetz zur Teilzeitarbeit und befristeten Beschäftigung
UH	Upper House of the Japanese Diet (House of Councillors) [JA]	参議院 [Sangiin]
ULC	Unit Labour Costs	
VERDI	United services union [DE]	Vereinte Dienstleistungsgewerkschaft (ver.di)
VoC	Varieties of Capitalism (literature)	
WDL	Worker Dispatching Law [JA]	労働者派遣法 [Roudou-sha haken-hou]

Note on conventions

Contrary to Japanese custom all personal names are written first name followed by surname. For Japanese words, names and transcriptions into *romaji* (Latin alphabet) three rules were followed:

1) If an official name or transcription exists or scholars have published in English the "official" names were used. Some Japanese organisations use English translations that bear little resemblance with their Japanese name. In these cases both the official Japanese name as well as the official English name is indicated.

2) Where no official translations or transcriptions exist, long vowels were extended using the letter "u". For words usually written in *katakana*, long vowels are "doubled" (aa, ii, uu, ee, oo).

3) All terms, names and titles have been reproduced in the original language as well as translated into English. In the case of Japanese names usually four readings are provided: an English translation, the English abbreviation if applicable, *romaji* transcription and original Japanese term. The aforementioned rules are not applied to commonly location names such as Tokyo.

For German organisations and laws official German abbreviations were used as this facilitates access to German-language sources. For all Japanese laws the text will provide official English abbreviations that are based on English translations of Japanese labour law published by Ministries or the Japan Institute of Labour Policy and Training (JILPT).

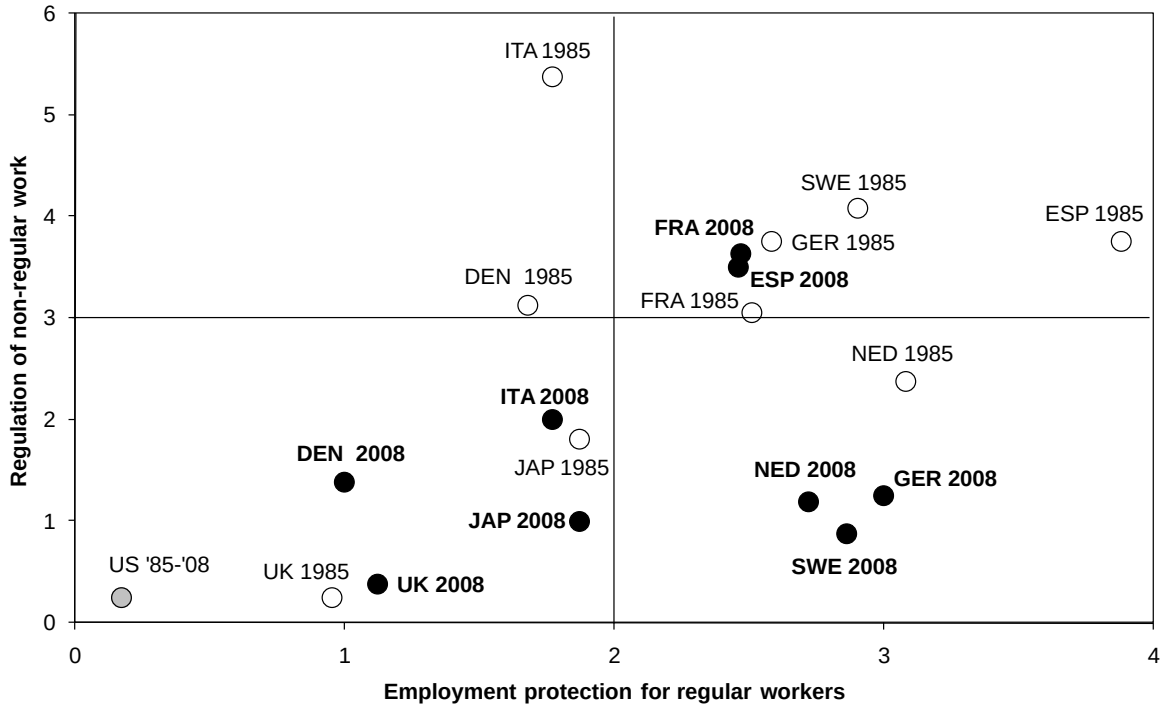
1. Do coordinated market economies reform differently?

After the collapse of US-financial firm Lehman Brothers in the fall of 2008, Germany and Japan received almost universal praise for their handling of the ensuing employment crisis. While other advanced economies such as the US, Spain, the United Kingdom or Italy experienced rapid and notable hikes in unemployment, the labour markets in Germany and Japan proved remarkably resilient, despite a retraction in GDP which was significantly larger than in most other countries. Some have interpreted this as a sign that German and Japanese capitalisms are (still) able to strike a sensible balance between necessary economic adjustments and desired social outcomes, i.e. employment stability in exchange for cuts in working time and wages. Several studies on the causes for this relative success point out that policies such as an massive expansion of short work schemes were only effective because of institutional particularities in both countries, e.g. the complementarity of state and corporate measures, helped by, in particular, the temporal flexibility firms and unions had achieved in preceding years (Boeri and Bruecker 2011; Hijzen and Venn 2011; OECD 2009b). Yet this admiration stands in curious contrast to the massive criticism that the German and Japanese political economies received before the crisis. Many domestic as well as international scholars, journalists and politicians had been arguing for many years that Germany and Japan should embrace market-oriented policies to improve their economic and employment performance and criticised institutional and politics resistance to change. The 2008 crisis seems to suggest, however, that many of the particularities of German and Japanese political economies have been instrumental for maintaining employment and revitalising economic growth. This raises questions about the extent and quality of institutional change German and Japanese political economies have experienced since the early 1990s. And it casts doubt on the conventional wisdom that absence of reform can be seen as proof of structural resistance to change (see the *Standortdebatte* and the *Reformstau* debate in Germany in the 1990s and the on-going discussion on the *lost decade(s)* in Japan).

This study argues that the politics of labour market reform can only be understood when it is viewed in the context of wider institutional change in the labour market arrangements as such. Only then is it possible to understand both the incidence and scope of labour market reforms and why they often defy standard

political science theory. In many ways Germany and Japan are typical examples for the kind of labour market reform, advanced democracies have experienced over the last 20 years. Regardless of whether connected to globalisation, the increasing labour market participation of women or unemployment, there has been more or less a consensus that labour markets need to become more flexible. For many observers and scholars such change is more or less synonymous with legislative reform and deregulation. Indeed it appears nearly all advanced democracies in the last two decades have experienced a phase of reforms unprecedented in the post-war era. However, unlike financial markets for instance, where measures of deregulation, liberalisation and marketisation, can be identified fairly easily, labour market reforms have not followed a comparably distinct pattern. On the contrary, figure 1-1 suggests that contemporary labour market arrangements across advanced democracies today look nearly as diverse as in the mid-1980s.

Figure 1-1 **Employment regulation in selected OECD countries (1985 to 2008)**



Source: Own compilation based on the OECD's EPL (employment protection legislation) indicator (OECD 1994a, 2004; Venn 2009). Latest available data in bold. Higher numbers indicate a higher level of protection/regulation. The figure compares the oldest with the most recent data available. Note: The direction of reforms within this period has not been linear in all cases and additional provisions that apply to collective dismissals have only been integrated since 1998. See annex A for details on the indicators' components and a detailed critical assessment.

A closer look at the regulatory pathways of individual countries also reveals that they defy broad categorisations along geographical boundaries, welfare capitalisms or varieties of capitalism. For example, Germany and Japan are

frequently called the prime examples of economically successful non-liberal capitalism that are dominated by long-term employment models. Yet, according to figure 1-1 they seem to rely on considerably different regulatory frameworks. This leads to the central question of this study: Are there patterns of reform that are related mostly to the type of capitalism of a country or do they reflect mostly the perspective of conventional policy theories with their emphasis on the importance of power and ideology?

1.1 Coordinated capitalism and institutional change

In the literatures on welfare reform and institutional change two reasons are given to explain why reforms of labour markets often appear rather cautious. One is that labour market affairs are inevitably highly political as they affect the lives of many employees and voters. For that reason they are among the most delicate, or politically risky issues in the eyes politicians. The underlying rationale for this is simple: As employment determines to a large extent the level of social protection, economic and social opportunities of individuals, voters should be wary of any change that may affect their employment status. Also, the larger the potential group of people that feels threatened by a reform, the larger the electoral risks reformers have to face. As a consequence, political scientists tend to assume that governments will usually try to minimise the risk of electoral retaliation by pursuing incremental rather than radical reforms.

The second reason for incremental reform can be derived from the political economy literature. In particular the *varieties of capitalism* (VoC) approach (Hall and Soskice 2001; Soskice 1999) can be used to explain why labour markets have changed defying narratives of "liberalisation" or "deregulation". According to VoC, the economic success of so called coordinated market economies (CME), such as Germany and Japan, depends on non-market based institutions whose interaction produces so called *institutional complementarities.* For instance, coordination within and between firms, labour and financial institutions is encourages long-term relationships, for instance between firms and their suppliers. While firms may have to settle for higher prices if they do not let suppliers compete with each other for business, they may be able to achieve better quality and tailor-made supplies that build on a long mutual experience and extensive knowledge about the needs and requirements of each side. Such a relationship may only be possible, however, if the

institutional environment in which firms operate is structured in a way that encourages cooperation rather than competition and which rewards long-term strategies rather than short-term successes, such as a hike in the share price. The *keiretsu* firm conglomerates in Japan and the German system of cross-shareholdings and *Hausbank*-financing ("Deutschland AG") until the 1990s are often described as such arrangements where *patient* sources of capital have enabled all actors to adopt a long-term perspective. Especially for products that require a high level of technology and precision (arguably the dominant type of industry in Germany and Japan), such an arrangement is deemed particularly beneficial by VoC-scholars. With regard to the labour market and employment policies, VoC assumes there is a complementary link between employment protection legislation and long-term employment practices. Firms and workers may be prepared to maintain long-term employment only if such a commitment appears credible and sustainable. Although employment protection may not be the crucial institution underlying this practice it certainly is an important factor for solidifying the arrangement as it signals workers that a long-term commitment to a firm is relatively safe. Firms, on the other hand, can control the skill acquisition of their workers according to their needs and thus can rely less on finding such skills on a competitive market or about losing precious expertise to competitors.[1] In contrast, firms in so called liberal market economies (LME), such as the UK and US, will satisfy their need for skills mostly on the external labour market where workers themselves are mostly responsible for skill acquisition. In times of crisis firms in LMEs are thus more likely to lay-off people while in CMEs it may be more "economical" to resist short-term adjustments and to find alternatives to dismissals. The aforementioned negotiated reduction of working hours during the 2008 crisis is an example for such a strategy.

Put in more general terms: Non-liberal institutions can be economically sensible and attractive even to employers. In some cases, they may even provide a *comparative institutional advantages* over firms in LMEs. As a consequence, employers and firms in CMEs should not per se be supporting attempts at deregulation and liberalisation. Rather, employers should have an interest in preserving the advantages of non-liberal capitalism and may thus prefer carefully

[1] The arguments are a highly condensed account of the vast VoC literature. This section is meant to merely illustrate that non-liberal arrangements can offer distinct economic advantages and in term of policy they may make alternatives viable that do not exist in other arrangements. See chapters 2 and 3 for a detailed discussion of VoC and its implications for labour market regulation.

drafted incremental changes over a programme of radical change that implements LME-style regulations.

Both literatures offer different explanations for incremental reform processes and they offer two different concepts about the underlying dynamic of institutional change in non-liberal capitalisms in general and labour markets in particular: contestation and coordination. Contestation points to the fact that the power of actors such as voter groups or vested interests is crucial for the content of reforms and decisions and how institutional change unfolds. Coordination implies that there could be an institutional rationale informing all main actors to forego immediate benefits (such as costs savings through dismissals or high wage hikes) for the benefit of complementary institutional arrangement that is stable over the long-term. Both perspectives can be used to explain incremental change and cases of cautious reforms, yet they face limitations in cases where *substantial* changes or bold reforms occur.

This study will show that the two perspectives are both helpful for explaining the labour market reform process since the early 1990s in Germany and Japan but that they need to be complemented with a concise concept of reform and an understanding of when politicians address change in the form of legislative reform. The study will show that there is not a single dynamic of reform, either contestation or coordination, but that both dominate at different instances and sometimes coincide. To explain the versatility of reform politics it is necessary to look at whether policymakers face incentives to address issues directly through legislation or to delegate decisions to other institutions of regulation, such as industrial relations. The study will also show that what is often considered by observers an incremental reform process in Germany and Japan conceals a comprehensive institutional change that stems from the interaction of changes in industrial relations, enterprise bargaining, corporate practices and legislation.

The study proposes a multi-dimensional analytic model that mirrors the complex nature of labour market regulation. It differs from previous studies on labour market reform by applying a more rigorous and detailed concept of change than has been the case in most historical institutional analyses so far. By focusing on the regulation of working conditions (i.e. working time, wages, training, and employment protection) and the question of flexibility-enhancement (which covers several aspects that will be discussed in chapter 4), the study can not only illustrate

how political and economic dynamics interact to enhance labour market flexibility but explain the observed outcomes. This approach has the advantage that it can integrate all sources of labour market regulation, such as legislation, industrial relations, enterprise bargaining, soft law and social pacts. Moreover, it allows to conceptualise institutional change more closely to how decisions are devised in reality.[2] Conventional studies tend to consider labour market reforms in the context of other welfare reforms and seek to reach conclusions on the development of the whole welfare state or the political economy. However, they thus ignore equally important institutional change emerging through interaction between legislation and non-legislative regulation that is specific to the issue of labour. Here, it will be argued that labour market politics is primarily informed by the institutions of the labour market arrangements and that this justifies an approach that confines itself only to this dimension.

1.2 Analysing the politics of reform and institutional change: State of the art

The analyses in this study reveal several patterns of labour market "dualisation" in Germany and Japan. While the fact that non-regular jobs have grown in Germany and Japan to levels of about 30% in recent years is now widely acknowledged, the impact of dualisation on regulation has hardly been noticed although, in my view, it constitutes an equally important and noteworthy case. This argument builds on the works of Streeck, Dore and many others[3] who have studied the particularities of German and Japanese capitalisms and, in particular, why both have maintained many non-liberal institutions despite massive pressure for change since the early 1990s. In addition, it draws from the literature on welfare and labour market dualism (e.g. Palier and Martin 2007b; Palier and Thelen 2010) and institutional change (Deeg and Jackson 2007; Swank, Martin and Thelen 2008). This particular strand of literature argues that CMEs, such as Germany and Japan, have not been resistant to change but instead of replacing existing institutions have added new institutions which are more market-oriented and entail less collective solidarity. Whether with regard to pensions, unemployment insurance or employment, two distinct institutional

[2] Until now, scholars often lump together reforms in different policy areas such as pensions, social assistance, unemployment insurance and labour market regulation to infer to the quality and extent of institutional change. However, in reality decisions on such issues are usually devised separately and each policy fields is governed by distinct institutional dynamics. See also chapter 3 for a more detailed discussion.

[3] Among the many seminal works directly comparing different facets of German and Japanese capitalisms are Thelen and Kume (1999), Dore (2000), Manow (2001), Streeck and Yamamura (2003), Streeck and Yamamura (2001)and Vogel (2003).

dynamics (e.g. liberal vs. non-liberal) and, in the course, two groups with distinct attributes can be identified. As to why Germany and Japan have engaged on a dualistic path of institutional change, political scientists and political economists offer different explanations. The former usually see the partisan make-up of the governments and the power resources vested interests possess as the main explanatory factors. The understanding is that *political contestation* based on varying partisan and power resource constellations explain variations in policy output and outcome (e.g. Allan and Scruggs 2004; Hibbs 1977). With regard to labour market regulation one can thus expect that centre-right parties and business associations promote liberal policies (e.g. lower employment protection, decentralisation of industrial relations) while centre-left parties and labour unions support collective bargaining and strict dismissal regulations (non-liberal policies). To explain dualism, scholars usually point to the more extensive power resources of labour market insiders (typically defined as unionised male full-time permanent employees), vis-à-vis labour market outsiders (often female, non-unionised and/or non-regular workers). While insiders can protect themselves better from changes, outsiders will experience relatively more change.

Political economists, in contrast, argue that *economic coordination* between and within the various stakeholders of an economy (labour, capital and the state) matter more than the distribution of power as long as this arrangement secures economically beneficial results. In other words, as long as non-liberal coordination offers economic advantages it should effectively limit the impact of *political contestation* because the maintenance of the arrangement critically depends on the mutual support of all stakeholders. Regardless of whether institutional complementarities which are at the heart of CMEs are intentionally designed or have gradually "emerged" over time, when it comes to reform and institutional change they suggest "a particular politics of institutional defence" (Hall and Gingerich 2009: 451). In particular, they make it more likely that stakeholder coordination will prevail over political contestation. Hence, logically for VoC scholars dualisation is the result of controlled exceptions to established standards, without abolishing them altogether. Both institutional arrangements can be seen as mutually stabilising, i.e. long-term employment becomes more viable when there is a "flexibility reserve" of non-regular workers. Non-regular employment is likely to remain attractive to

employers as long as permanent employment practices remain well protected and oriented toward the long term.

This study makes three major contributions to the literatures mentioned above and to the study of labour market reforms in advanced democracies. First, it proposes a model of labour market regulation which avoids common misconceptions of how labour market reforms are devised. In particular, the model allows integrating interaction effects which are usually neglected and may not exist to a similar extent other areas of social and economic policy. The second contribution is empirical: Building on analyses of legislative reforms, changing firm practices and collective bargaining, the study drafts a comprehensive and detailed picture of institutional change and combining insights from policy studies as well as political economy research. Thirdly, the study proposes a model of institutional change which is specific to labour markets. Basing the analysis on a predominantly economic model of labour market flexibility it advances political research beyond its dominant focus on employment protection legislation and spending but also expands the scope of VoC scholarship beyond its focus on decisions by firms.

Apart from the authors mentioned so far there are two studies which deserve particular attention. Vogel's (2003) approach comes perhaps closest to the one proposed here, in that he compares Germany and Japan on the basis of their political economies and, by doing so, discusses several spheres of institutional change including finance, welfare and labour markets. He recognises, as does this study, that in order to fully understand the extent of institutional change, policy reform should be seen in the wider institutional context, including institutions which may not exert direct but indirect influence on what is usually considered to be "policy". However, although Vogel strongly argues against the view that Germany and Japan could ever turn into something like a liberal market economy as the UK after the late 1980s, his perspective nonetheless strongly reflects a popular narrative which treats "liberalisation" as more or less inevitable. In my view, this concept is too narrow for the study of labour market politics as it does not take into account of the alternatives to (liberal) reform that may exist due to the institutional arrangement.[4] Vogel and other authors taking a similar stance are certainly right in considering the public

[4] To Vogel's credit, however, it should be said that this has been a rather strong narrative. Vogel quotes Norbert Walter, the outspoken former chief economist of Deutsche Bank, to illustrate this: "If we speak out, it would be counterproductive. We can do our research and disseminate it, but if we tried to exert influence directly it would backfire." Vogel (2006), p. 70, footnote 67. He thus argues that German business would have preferred more far-reaching reforms.

sentiment and dominant discourse of this period in their analysis about institutional change[5], yet in retrospect it is often difficult o link the often substantial changes such as the surge in non-regular employment since the early 1990s with the generally fairly sceptical public sentiment. This study also differs from Vogel and others in that it does not further explore connections between labour market reforms and industrial relations on the one hand and corporate finance, corporate governance and welfare on the other. Though without doubt important, this study is based on the understanding that the specific dynamics shaping the regulation of working conditions require more attention as they are particularly complex and different to most other welfare issues. For example, corporatist actors are often also important players in reform processes in health policy or public pensions but in labour markets they possess considerable direct regulatory responsibility. Moreover, in most other welfare areas there is no functional equivalent to industrial relations which can act as a secondary source of regulation or alternative to legislative reform.

A second approach that in many ways comes close the one proposed here is by Eichhorst and Marx (2009). Theirs is the only other study using a flexibility-centred framework for studying the politics of institutional change. To an extent Eichhorst and Marx develop similar arguments, in particular when it comes to the importance of industrial relations for enhancing labour market flexibility. Eichhorst and Marx argue that facilitating non-regular employment constitutes a case of institutional layering, that is, by adding an employment sector which is more flexible, policy-makers forced the regular employment tier to become more flexible as well. In contrast, here it will be argued that the extent of dualisation can only be understood if several layers of labour market arrangements and their interaction are considered. Whereas Eichhorst and Marx implicitly assume that legislation and the state are always the main drivers of institutional change regardless of the actual regulatory level, this study finds that processes of change are largely characterised by a conspicuous absence of the state. Their argument that the presence of non-regular workers can put labour market insiders under pressure is certainly plausible but there is little evidence for the claim it constitutes the main "causal mechanism" of dualisation. While this study agrees with the argument that sequencing or timing of measures is important to consider when explaining institutional change, it cautions that sequencing should not be understood only as the logically or strategically

[5] A typical example is an article by The Economist (2003) calling Germany and Japan a "pair of deadbeats".

linking of decisions over time. Also, a substantial part of the flexibility-enhancement in industrial relations Eichhorst and Marx credit to the deregulation of non-regular employment has actually preceded the reforms.

1.3 Who is in charge in non-liberal labour markets?

For assessing the politics of institutional change and legislative reform in the German and Japanese labour markets, it is crucial to acknowledge the multi-dimensionality of labour market regulation. Unlike in other fields where the state and legislation dominate working conditions are regulated at several levels, here called *loci of regulation* (LoR). LoRs can be understood as decision points where different constellations of labour, capital and the state negotiate and/or take decisions on regulation of working conditions.[6] Regulatory decisions are - inevitably - in a "dialogue" with each other, which means regulation from different LoRs can overlap, compete or enhance each other. Even if not all LoRs play a role formally in a decision it is highly likely that regulations on all levels are considered when a change is proposed. Table 1-1 specifies the main LoRs for the regulation in Germany and Japan. With regard to the mode of change, contestation in the conventional sense concerns mainly macro-LoRs such as parliamentary deliberations. However, contestation can also dominate in meso and micro LoRs, such as sectoral bargaining or negotiations between management and works councils (*Betriebsrat*) or in joint labour-management consultation bodies (*roushi kyougi-kai*). Signs of contention are strikes and conflicts may be resolved based on the distribution of power resources (e.g. ability to strike/lock-out). Similarly, coordination can occur on the macro level (e.g. policy corporatism) as well as between LoRs. For example, regulation of working conditions can be expected to be most effective if it builds or complements existing regulation on other levels.

This suggests that policy-makers on the legislative level when devising refirms regulation will be aware of regulatory trends on lower LoRs in a similar fashion as management and unions take legislation into consideration when negotiating over working conditions in collective bargaining processes. Regulations on different levels can be mutually enhancing but conflicts between LoRs are possible and may, for example, lead to political contestation or other forms of conflict resolution.

[6] LoRs are not the same as veto points or resemble veto games. Often they merely facilitate information sharing and contribute to issue framing. They possess important regulatory authority but this authority is not necessarily used.

Partisanship for instance may dominate under specific electoral conditions (e.g. upcoming election, situations of high unemployment) while "decentralisation" of industrial relations is likely to increase the importance of micro LoRs at the expense of meso LoRs. However, in a more general sense the regulatory model suggests that the ability and willingness of policy-makers to regulate depends to a large extent on what is happening in industrial relations and on the firm level. Also, it implies that coordination is the preferred mode of decision-making because effective regulation depends on the endorsement by several institutional stakeholders.

Table 1-1 **How work is regulated: Loci of regulation (LoR)**

	Locus of regulation	Germany	Japan
Macro Regulation	National politics	Coalitional and parliamentary (bicameral) negotiations	Coalitional and parliamentary (bicameral) negotiations
Macro Regulation	Corporatism	Social pacting (e.g. Alliance for Jobs)	*Shingikai* system
Meso regulation	Collective bargaining	Industry and regional bargaining	Industry bargaining *(shuntou)*
Micro regulation	Enterprise-level negotiations	Works councils Enterprise bargaining Co-determination	Enterprise bargaining Joint Consultation Committees

Source: Author's own.

The relevance and role of individual LoRs can vary over time and this in itself can be an indication of institutional change. More important in political terms is, however, that actors may choose between different channels for accomplishing desired changes. For example, concertation on the national level such as the famous Wassenaar Accord of 1988 in the Netherlands[7], can privilege the macro LoR vis-à-vis meso and micro LoRs. Likewise, decentralisation of industrial relations may shift a substantial part of regulatory authority from the meso to the micro level. Regardless of where changes are initiated, however, it is important to acknowledge that the different levels of LoRs are always latently present and thus have the potential to influence the process of change as well as the outcome.

1.4 The case for enhanced labour market flexibility

As has been pointed out , dichotomous concepts of liberal change vs. non-liberal continuity fail to pay justice to the versatility of recent changes. Yet, what would an

[7] The Wassenaar Accord is the most prominent example of national social pacting or concertation in recent European history. Unions and employers agreed on moderate wage increases and accepted the facilitation of of part-time work by the government. See Visser and Hemerijck (1998).

empirically suitable and theoretically stringent alternative concept look like? In this study it will be argued that *labour market flexibility* is a better suited for studying the dynamics of change and reform because it requires less strict assumptions on the nature of changes while allowing for several pathways to reach a goal. It is especially suitable for studying institutional change in labour market arrangements because flexibility has been a major concern for policy-makers, firms and even of trade unions in the last 20 years. It is one of the few issues where nearly all actor groups have agreed that changes toward more flexibility are necessary. Even though labour market flexibility carries a strong connotation towards a certain strand of economic thinking, in essence it includes many different pathways and dimensions many of which do not fit models of functioning free markets.

Nonetheless, many observers have understood "liberalisation" and "deregulation" basically as attempts to enhance labour market flexibility by abolishing "rigidities", e.g. legal limits on employment practices. Most prominent in both the academic as well as public discourse has been the issue of employment protection. High hurdles against dismissals are often perceived as indicative of two distinct labour market regulatory regimes (e.g. Ebbinghaus and Kittel 2005), one where the freedom of employers to dismiss employees is strictly regulated, and one where, apart from basic provisions on notice period and basic regulations for severance pay, the arrangement encourages labour mobility. Supposedly this is indicative of how other institutions in the labour market arrangements are regulated as well. However, employment protection legislation has been extraordinarily stable in recent decades (see again figure 1-1) while there has been a massive expansion of non-regular employment. To truely understand what has changed in the last 20 years, employment protection is arguably the least suited indicator.[8] Furthermore, the study will show that instead of focusing on isolated cases of legislation, legislative reforms must be seen in the context of industrial relations and enterprise negotiations as they interact and thus determine to a large extent the form and contents of legislation. Flexibility makes it possible to identify and illustrate such interaction effects.

The concept of labour market flexibility i goes well beyond numerical flexibility or the ease with which the workforce of a firm can be adjusted. It also includes

[8] Nonetheless, the fact that employment protection legislation has hardly changed in itself is an important piece of the puzzle.

dimensions such as temporal, functional and wage flexibility and for each dimension internal (inside the firm) and external (the labour market) flexibility can be distinguished. Enhanced flexibility in one dimension can even offset the need for more flexibility in another, e.g. enhanced downward adjustment of wages may smaller the benefits of enhanced numerical flexibility and high functional flexibility may enable firms to strike a reasonable trade-off with low numerical flexibility, which is one important rationale, as VoC scholars assume, for maintaining long-term employment practices common in large Japanese firms. Hence, another major advantage of using flexibility is that it does not imply a specific agenda of changes. Although flexibility can clearly be enhanced through abolishing restrictions on how firms can adjust their workforce, it can also be achieved by using channels that are already available, e.g. expanding functional flexibility through publicly funded training measure for of workers. Social pacts that try to coordinate decisions on different levels are another example. Typically they include provisions such as wage restraint (which can be interpreted as a temporary enhancement of wage flexibility) in return for targeted government spending (higher functional flexibility) and employment security guaranteed by firms (less numerical flexibility).

Linking the concept of flexibility with the theoretical perspective introduced in the first part of this chapter makes it possible to distinguish two different pathways to more labour market flexibility: one involving a polarised decision-making process and market-oriented changes, and one where actors more or less act in unison to maintain the comparative advantage of non-liberal institutions (see table 1-2). In the former case, state regulation would be crucial for setting minimum standards for regulation (which could often mean an increase regulation as the state is taking over responsibility from collective bargaining, for instance). The actual changes would reflect mostly the interests of the most powerful actor groups. For example, if business demands liberalisation, flexibility would be predominantly external, that is employers and workers primarily relying on market signals for their bargaining.

In the case of coordinated flexibility, the scope of government involvement is likely to be larger, although not necessarily in a legislative sense. Here policy is informed by the understanding that all stakeholders are prepared and able to cooperate to achieve commonly agreed outcomes, even though that does not necessarily mean that they always fully agree on means nor outcome. In such an environment flexibility is enhanced collectively, either through the coordination of

measures (e.g. social pacting) or through sequential coordination, that is, measures on one level of regulation are followed by matching regulation on others. For instance, if firms and unions find more flexible means of negotiating working conditions on an enterprise level, the need for legislative reform encouraging more flexible bargaining outcomes may either diminish or governments may simply "accompany" the process through passing matching legislation. However, the state would most likely not be the initiator of change but rather reflect developments on meso and/or micro LoRs. This suggests there is interaction between different sources of regulation which means that decisions taken on any level of the political economy impact the actions of actors on all other levels. So not only legislation may shape the behaviour of employers and unions but non-legislative regulations can also shape the incidence and contents of legislative reform.

Table 1-2 **Two pathways toward enhanced labour market flexibility in CMEs**

Mode	Process	Output
Market-oriented flexibility enhancement	▪ State-controlled transformation ▪ Contestation as dominant mode of decision-making	▪ Increase in plurality of regulation of working conditions (e.g. more idividualised bargaining, less comprehensive collective bargaining) ▪ Minimum working standards set by legislation
Coordinated flexibility effort	▪ Coordination as dominant mode of decision-making ▪ Moderation of positions	▪ Industrial relations and state policy as mutually enhancing ▪ Temporary or "controlled" exceptions in an otherwise stable regulatory framework

Source: Author's own. Note: This is merely to illustrate arguments which will be fully developed in chapters 3 and 4.

To clarify how such interaction plays out in detail, these theoretical considerations have to be put into the specific contexts of German and Japanese regulatory regimes (see 2.2 for details). But even in this basic form they illustrate nicely the different conceptions of how labour markets are regulated and how institutional change is commonly assumed to unfold. Flexibility is a useful analytic concept even in those cases where labour market flexibility has not been the primary focus of a reform as it is very likely that possible effects on labour market flexibility would have been considered even then: Actors are likely to be always concerned about they can mitigate the impact of decisions (or perhaps increase the effect of "positive" side effects) on flexibility. In other cases, decision may be a compensation for rigidities introduced elsewhere. For instance, higher spending on training

measures may be used to compensate unions for accepting an expansion of numerical flexibility. Therefore even measures which are not directly related to issues of flexibility enhancement can be indicative of the dominant pattern of change.

Another advantage of the flexibility concept is that it largely avoids the connotations and frequent misconceptions of commonly used terms such as liberalisation, marketisation or deregulation. Regini points out that there is a fundamental difference between labour market flexibility and deregulation and that this difference largely explains the differences between labour markets in European countries: "Labour market flexibility may be the outcome of deregulation but more often results either from a change in the regulatory regime or from informal adjustments to new pressures which leave the level of formal labour market regulation unchanged." (2000b: 14). Moreover, Regini suggests that actual legislative changes (as well as non-changes) depend to a large extent on what is happening elsewhere within a regulatory framework. National particularities with regard to details of this interaction thus explain regulatory differences between them. Conceptualising flexibility as a goal which can be achieved through different means and channels thus promises a much better empirical "fit" and a better foundation for advancing theory-building on institutional change in contemporary advanced democracies.

1.5 Patterns of dualisation: The argument in a nutshell

This study seeks to contribute to the remedy of the now widely acknowledged shortcomings of the literature on the politics and political economy of reform in advanced democracies: this concerns in particular the over-emphasis put on stability and continuity and the focus on a limited set of indicators that should be viewed together (e.g. legislation but not industrial relations, institutional complementarities but not political contestation). It will argue that an important part of the solution lies in the application of a more concise and rigid concept of reform that is sensible to the particular dynamics of the policy field under investigation. This means that a substantial part of the answer to current deficiencies lies in more careful conceptualising of institutional change and reform. It will be argued that labour market flexibility can be used as such a concept as several alternatives exist of how it can be achieved or enhanced, i.e market-oriented as well as coordinated pathways as depicted in table 1-2. Also, flexibility in one dimension may be able to compensate

rigidities in other dimensions and this should influence the content of legislative reforms.

The main argument of the study is that German and Japanese labour markets have experienced a dualisation both of jobs and labour market regulation. While one sector of the labour market continues to be governed by the traditional institutions of coordination, a growing second sector is more loosely connected to coordinated regulation and partially already following different dynamics. Despite the fact that coordinated bargaining between organised labour and capital has become weaker during the last 20 years the study demonstrates that coordinated institutions still matter economically for core firms and workers which constitute one important reasons why they are maintained. Another important reason is that this 'economic functionality' is underpinned by a second, 'political functionality'. As governments shun political risks related to labour market policy, non-legislative regulation continues to dominate and is even stabilised further as it offers the possibility to delegate responsibility and thus to manage electoral risks. As a consequence non-liberal institutions continue to set the regulatory pace for the whole labour market. This means that despite the fact that dualisation has led to a less comprehensive regulatory regime this has not prompted more a more comprehensive government-led regulation or even a stronger role of the state.

The model of LoRs, designed to explain policy decisions on the macro level, can thus be also used to understand the wider implication of institutional change in largely non-liberal labour market arrangements. This helps to put several often contradictory developments into perspective, for instance the sharp decline in coverage by collective bargaining - in Japan only 15% of workers were directly covered in 2008 while 33% were in the 1980s and in Germany the number stands at about 60% down from about 80% in the 1980s (data from Visser 2011) -, the relative stability of male employment (as of 2008, an overwhelming 82% work in permanent full-time jobs) or the phenomenon of rising aggregate job tenures.

1.6 Overview of chapters

The study is structured so that all relevant components of German and Japanese capitalisms and labour market arrangements are analysed together and directly compared. It is based on the understanding that the reform trajectories of Germany and Japan, despite several institutional differences, are comparable, so a mutual

underlying institutional dynamic can be identified and explained if indeed it exists. Instead of separate country chapters, the layers of labour market regulation will for the most part determine the composition of the study. Only when institutional arrangements require more detailed explanations a country-specific structure will be adopted. Chapters 2, 3 and 4 lay out the methodological, theoretical and empirical basis of the study. Since the scope of the study is broad, this part of the study is mainly concerned specifying the main institutions and clarifying what the theoretical perspectives imply for German and Japanese processes of reform. The analytic section itself is divided into three parts. In the first one (chapter 5), changes in legislation and policy-making since the early 1990s are assessed. The analysis will in particular assess the questions whether macro LoRs has gained in importance for regulation. The second analytic part (chapter 6) analyses regulation on lower LoR levels, industrial bargaining and explores possible interactions between micro, meso and macro regulations and to what extent the scope of state intervention has changed. In the third part (chapter 7) the findings in the previous analyses are applied to a more recent case, the global financial crisis. Here I argue that a two-fold dualisation powered by political as well as economic functions indeed explain well the policy response in both countries and thus confirms the relevance of this pattern for contemporary politics. Finally, chapter 8 summarises the findings of the study and proposes a modified theoretical model for future studies of labour markets in advanced democracies. It also illustrates the impact of rising electoral salience for policy and decision-making. The appendix provides additional empirical data on the aspects discussed in the study, i.e. political and economic background data (annex A), developments in industrial relations (annex B) and details on the legislative reforms analysed (annex C).

2. Reforms and institutional change in multi-dimensional settings

> "Es gibt keine einfachen Methoden, die uns von den Indizien zum dem Täter hinführen, sondern nur das mühsame Zusammensetzen aller Belege in einem Gesamtbild, dessen Stimmigkeit ein wichtiger Anhaltspunkt für uns ist, dass wir den wahren Täter dingfest machen."
>
> *Thomas Bartelborth* (2004: 37)

Comparing two country cases of reform trajectories there is presumably no "safety in numbers". For that reason many researchers criticise qualitative case studies on the ground that their findings are strictly limited to the cases investigated and dominated by the subjectivity of the analyst. This chapter will show that there are two strategies to solidify one's finding, one by choosing two cases that entail enough variety to view theoretical assumptions competitively and by, as Bartelborth's comment indicates, ensuring an appropriate variety and plurality in the evidence itself. In the case of this study this entails both exploring the cases horizontally (in the sense of covering several dimensions of regulation), and assessing a variety of institutions over a relative long period of two decades. Other challenges for qualitative analyses using an historical institutionalist approach stem from the central analytic concepts institutions and institutional change. Scholars tend to define institutions very differently. Moreover, the fact that institutions operate in the realm of other institutions and thus influence each other is rarely systematically assessed. This suggests that a successful institutional analysis which aims to contribute to theory building as well as to empirical knowledge has to develop all analytic concepts transparently and with a firm sense for critical reflection. This is what the following sections aim to accomplish. In addition, the chapter will introduce the underlying research design, justify case selection and clarify fundamental methodological and epistemological issues.

2.1 Institutions and institutional change

The literature on historical institutionalism has gained popularity in recent years and the same applies to efforts of theory-building concerned with the causes, mechanisms and forms of institutional change. All apply a similar definition of

institutions which can be formulated as "established patterns of behaviour, regarded as a higher-order, more general unit that incorporates a plurality of roles" (Abercrombie, Hill and Turner 1994: 216). Alternatively, institutions are often described as "rules of the game". Common to all definitions is that nstitutions in neo-institutionalist approaches are not necessarily formal institutions, e.g. enshrined in law, but are understood as social entities which emerge due to actions and interactions between actors. They can emerge and persist regardless of whether they are underpinned by formal rules, informal codes of conduct or implicit collusion. However, they critically depend on the willingness of stakeholders to adhere to the *rules*. Permanent non-compliance by important stakeholders would put the existence of the institution itself into question.

Douglass C. North (1990) describes institutions as incentives for or as constraints of actions, that is, institutions either encourage a specific action or behaviour or they constrain the number of viable rational actions available. Applied to multi-dimensional settings with inter-related institutions this implies that the behaviour of actors must be analysed in a broader institutional context and where the role of each institution for the behaviour of actors must be understood. For instance, this study will show that labour market reforms mirror the fact that other sources of regulation exist and that there will be interaction effects that need to be taken into account. Such connections between institutions, whether intentional or coincidental, are also a key argument in the VoC literature. It argues that the economic success of CMEs is based on institutional complementarities, that is, interactions between institutions which together produce an economically advantageous outcome (see also chapters 1 and 3). With regard to change it is therefore likely that actors take complementarities into account when considering or promoting changes. This concept matches well the reality of labour market regulation which, as chapter one has argued, is the result of a mix of legislative reform, soft law, sectoral or national collective bargaining, enterprise-level negotiations, and of the interactions of the above. Hence, processes of change cannot be seen as the exclusive product of government-enforced decisions and reforms should not be interpreted without taking the wider institutional context into account. This applies in particular to the issue of labour market flexibility: as has been pointed out , flexibility can be enhanced through a variety of means and flexibility in one dimension can partially moderate "rigidities" in another. For these reasons, an

institutional perspective is particularly useful because it allows addressing systematically these critical interactions. Conceptualising labour market arrangements as multi-dimensional also helps to address another weakness of conventional policy studies: the fact that it cannot adequately address political processes which involve several arenas of decision-making and where authority is spread over several LoRs. While legislative studies must ineluctably assume that the state is at the centre of decision-making, an institutional perspective can also explain cases of state inactivity (e.g. non-reform) and cases of delegation of regulatory authority. Moreover, it can follow shifts between different LoRs and use them as additional evidence for inferring to the quality and scope of institutional change.

There are some conceptual differences in how institutionalists explain cases of institutional change. Typically three different approaches are hereby distinguished: apart from historical institutionalism, these are rational choice institutionalism and sociological institutionalism (e.g. Gilardi 2004). Rational choice institutionalism is based on the assumption that all actors are rational and their actions shaped by their interests. Institutions in this view are either instrumental for achieving these interests or constrain actors' behaviour, e.g. by sanctioning particular actions. Institutional change therefore is the product of actors who find the existing institutional arrangement no longer helpful to fulfil their aims. Sociological institutionalism, on the other hand, assumes that actors' behaviour can be influenced by a variety of factors; though self-interest may be relevant sociological approaches more often stress the importance of ideas and problem perception as motives for pursuing change. Historical institutionalism, in contrast, is the least formalised of the three. It does not presuppose specific motives but works on the assumption that latently all of these motives matter and to understand causal processes better, researchers have to ask which of the reasons mattered. This particularity of historical institutionalism is described by Steinmo as follows: "If all (…) variables (…) are important in choice situations, then there can be no a priori way of knowing what one should study when trying to explain political outcomes. (…) How do you know which is the more important (self-interested, altruistic/collective or simply habitual) behaviour? The historical sociologist would go the historical records (also known as evidence) and try to find out" (Steinmo 2008: 126) [9].

[9] This goes without saying that the boundaries between all three types of institutionalisms can be fluent and should not be understood as strict differences. The typology is mostly influenced by how scholars have

2.1.1 Causes of institutional change: Interests, ideas and power

In this section three different causes of institutional change, referred to as interests, ideas and power will be introduced and discussed which allow linking institutional research to conventional public policy and political economy theories. In 2.1.2 an additional fourth perspective will be introduced based on the VoC concept of institutional complementarities. These institutional concepts will then be put into the context of reformatory politics in chapter three.

Institutional change and stakeholders' interests

Rational choice theories assume that actors are able to formulate their preferences in any given situation and will act accordingly. Institutions therefore emerge and persist only if they function in the interests of all institutional stakeholders or if they are in interest of a powerful stakeholder who can enforce compliance. Interests can be shaped by many different factors but rational choice approaches usually expect that actors act on their short-term interests and do not consider the interests of others actors unless they are instrumental for realising their own preferences. In the context of labour markets in particular, it is common to describe the relationship between capital and labour as a latently conflictual.

However, in multi-dimensional settings where several institutions overlap and offer interaction effects, there may be mechanisms to effectively moderate or avoid conflicts. Governments in advanced democracies, for example, have frequently applied compensatory policies to make up for the losses stakeholders suffer due to changes and thus to facilitate consensus-seeking. After the first Oil Shock, many countries encouraged wage restraint (i.e. wage demands close or even below inflation) by offering unions lower income tax rates or an expansion in targeted spending to compensate for the loss in income. This means that a direct confrontation of interests can be avoided by using another institution to contribute to the resolution of the process. However, welfare scholars have increasingly come to question whether Western democracies since the 1970s with surging budget deficits and high public debt are actually still capable of such compensatory politics. Pierson (2001a) has called this the emergence of a "new politics of welfare" where distributor conflicts have to be resolved through other means because compensation is no longer possible. Scharpf (1991) finds that this shift constitutes a problem

applied institutionalist concepts in their research. Rational choice institutionalism is usually used in large n studies, while sociological and historical institutionalisms are mostly used in qualitative research.

particularly for social-democratic parties in Western Europe as compensatory politics has been their key policy to console the interests of business and labour and thus to appeal to different groups of voters. With regard to labour market regulation this could mean that diminishing capabilities of governments to compensate for unpopular changes will lead to more and more intense conflicts within the group of labour. Contention, therefore, should under current circumstances become more common.

Yet, such claims have not remained unchallenged. For example, Thelen (1999) investigates why in the 1990s an increasing number of German employers defected from the system of collective bargaining by ending their membership in employer associations (who bargain on behalf of firms). While this trend was interpreted by many as an intensification of the latent conflict between the interests of organised labour and business, Thelen argues that the defectors usually showed little enthusiasm for alternative modes of wage bargaining and instead followed collective agreements more or less as before. These employers were not so much interested in a general overhaul of the system but rather in achieving marginal flexibility gains with regard to the application of agreements. This demonstrates that interests can vary more widely than simplified models of deregulation and decentralisation would have it (in which employers favour decentralisation) and it shows that it would be premature to assume either fundamentally contradictory or overlapping interests in the regulation of labour markets held by different actor groups. Instead, to what extent interests collide and where potential lines of conflict are located needs to be established empirically for each case.

Ideas and ideational change

In contrast, institutional approaches based on ideas and ideational change usually stress their role in facilitating cooperation. According to Braun and Busch ideas help to coordinate "expectations and are thus a necessary ingredient to keep up cooperation (…), not least in an institutional context" (1999: 199). They argue that ideas can contribute to establishing a similar perception of issues across actor groups which facilitates consensual decision-making. The economic benefits of long-term employment practices, for instance, could be interpreted as an "idea" shared by management, unions and governments that links wage bargaining strategies of Japanese enterprise unions, firms' HR strategies and decisions about targeted spending of governments.

Ideational changes could also provide a background for "coordinated changes. For example, assuming that perceptions across actors have changed about how markets should be regulated or how economies have to adjust, then this would facilitate implementing change. In this way numerous individual institutional changes could lead to a shift in the whole arrangement which would have been very difficult to implement had it been attempted consciously by a single actor. Some authors see the ascent of "neo-liberalism" as such ideational change which includes a shift toward supply-oriented economic policy but also the idea that firms need to increase profitability and attract external sources of finance. Such ideational learning may explain why unions in many countries have been prepared to give employment security priority over wage growth and have not resisted a change to "shareholder capitalism". The idea that labour markets have to become more flexible could also be described in such a way. While labour market regulation in the past aimed at expanding the social rights of workers vis-à-vis capital and the market, globalisation and other factors may have shifted the collective focus toward questions of employment flexibility. Although this does not imply specific measures and still leaves room for conflict about necessary concrete steps to be taken, it could explain why institutional changes in a variety of areas have developed in a similar direction.

Braun and Busch argue that ideas matter particularly in times of uncertainty, that is, when actors need to respond to unusual situations. This relates to Heclo's famous remark that "politics finds its sources not only in power but also in uncertainty – men collectively wondering what to do." (1974: 305). It implies that when confronted with new challenges, decision-makers will initially resort to a variant of measures that have been successful in the past. Only once they prove inadequate, will they consider novel policies. If accurate, this implies that periods of more radical institutional change should be precluded by periods where established measures have been tried but failed. Hence, ideational change may not be possible without prior "ideational failure" and thus institutional change is likely to be the result of such "collective learning". The analysis of labour market reforms has thus to establish whether changes are actually compromises between different interests or rather the result of commonly experienced ideational change.

Power and institutions

The distribution of power among actors is often used to assess the direction of future changes, for example, policy studies usually focus on shifts in the distribution

of power resources to understand the timing and content of a decision. For instance, if a stakeholder who enforced compliance looses this power, institutional change seems inevitable. Mahoney and Thelen even argue that institutions and thus institutional change should be seen mainly from a perspective of power politics. "What animates change is the power-distributional implications of institutions" (2010: 14). These implications essentially include two relationships: the distribution of power resources that have led or which support an institution and the effect an institution has on the power distribution between actors. So for Mahoney and Thelen changes are solely motivated by either veto opportunities or the comprehensiveness of institutional rules, e.g. the less comprehensive these rules are, the more space there is for tactical manoeuvres and thus potential for change.[10] Yet, power-related institutional change can also affect the wider institutional context. Häusermann, in her seminal study of pension reforms in Europe shows that the multidimensionality of policy areas can be used strategically and can constitute an important factor in decision-making. This enables her to formulate an answer to the puzzle why despite strong and considerable resistance, unpopular cuts on pensions were successfully implemented across Western Europe: It was possible, she argues, because policy makers deliberately "built on the plurality of reform dimensions, thereby dividing the opposition against retrenchment" (2010: 83). Although Häusermann only refers to dimensions entailed in legislation her concept of multi-dimensional politics is certainly useful for analyses of labour market regulation as well. Here too, as the previous chapter has shown, actors can employ different institutions strategically for specific purposes. This suggests that for understanding the political dynamics of contemporary labour market reform the distribution of power has to be conceptualised also in the context of institutions that are not directly related to legislative politics.

To do so two relationships between institutions and actors need to be investigated: institutions do not only shape the behaviour of actors but actors can also strategically change institutions either by targeting the institution itself or through its relationships with other institutions. This resembles to a large extent the actor-centred model of institutionalism (*akteurzentrierter Institutionalismus*) Mayntz and Scharpf (1995) developed in the 1990s. They contend that institutions should

[10] They suggest four trajectories of incremental institutional change originally developed by Streeck and Thelen (2005): Institutional layering, displacement, conversion and drift.

not be seen exclusively as the result of evolutionary processes and thus as stable and exogenous to the actions of actors. Instead, actors can also seek to change institutions and thus reverse the causal relationship between institutions and actors. Applied in the context of LoRs this requires that institutions are described in terms of their power distributional consequences but also with regard to the power resources that constitute them. This construct also avoids what Mayntz and Scharpf criticise as an exaggeration of state influence by political scientists: "Damit wird die 'Gesetzgeberperspektive' vieler politikwissenschaftlicher Untersuchungen vermindert, für die die gesellschaftlichen Regelungsfelder mehr oder weniger amorphe und passive Umwelt bleiben; statt dessen wird die Einbindung staatlicher und nicht-staatlicher Akteure in Strukturen betont, die ihr Handeln prägen" (ibid.: 44). In the cases of German and Japanese labour markets, where several non-state sources of regulation exist, this point is particularly relevant.

2.1.2 Causes of institutional change: Efficiency and institutional complementarities

In contrast to most sociological and political science approaches, VoC emphasises the economic efficiency of institutions and institutional arrangements. As a firm-centred theory, VoC is mainly concerned with the question whether firms and employers find specific institutional frameworks beneficial for economic performance. Non-liberal capitalism is thus maintained not because it is upheld by a powerful player or specific power constellations but because it offers economic benefits that are valued by firms. Although Hall and Soskice actually devote little space to the issue of institutional change, they do cite one example of how a fundamental transformations may unfold: "Financial deregulation could be the string that unravels coordinated market economies" and as a consequence it "may become more difficult for firms to offer long-term employment" (2001: 64). This means, as soon as key pillars of this arrangement change, such as corporate finance in the example of Hall and Soskice, institutional complementarities may cease to exist or decline to a point that prompts firms to push for change to either maintain the advantages or to change the overall arrangement as such. Due to the assumed existence of institutional complementarities (see chapter 1), this suggests that changes on one end will lead to changes on the other.

A second key argument of VoC concerns the overall economic success of different types of political economies. In the literature it is common to assume that

only LMEs and CMEs have proved to be economically successful types of capitalism over the long run (although this does not make economies that fit neither categorisation automatically to failures). Numerous studies have addressed the question whether such systemic differences can continue in the age of globalisation where there is an increasing pressure to improve the economic efficiency of institutional arrangements not least because capital is globally mobile and on the search for the highest possible returns. CMEs with their alleged focus on long-term growth could thus be disadvantaged in attracting capital. The empirical evidence so far is mixed, however, with some studies finding evidence for convergence on LMEss and others for reinforced divergence. This has led many authors, such as Hall and Soskice, to the conclusion that convergence, if at all, will resemble a "dual convergence" as there are two types of economically successful market economies, so all countries will over the long run either resemble the LME or CME type (for an overview on this debate see Howell 2003).

From this two central arguments for institutional complementarities and processes of institutional change can be derived. First, economic efficiency can be achieved even through non-market based coordination. This requires, however, an institutional environment where institutions mutually enhance each other, i.e. by rewarding cooperation, trust and long-term relationships. Secondly, economic success is a key factor for the formation of interests and motives of actors when it comes to institutional change. Therefore, as long as institutions help firms to be successful they will be maintained. If, however, institutions become or are deemed inefficient, one can expect that firms will vigorously push for changes. Hall and Soskice thereby find institutional dynamics not primarily connected to politics[11] but to the strategic "spheres" firms have to find solutions for: "because its capabilities are ultimately relational. Its [a firm's, the author] success depends substantially on its ability to coordinate effectively with a wide range of actors" (Hall and Soskice 2001: 6). Successful coordination can be achieved either through efficient markets where necessary skills and products can readily be obtained, but also through long-term relationships based on trust and mutual cooperation. In CMEs the preferred

[11] The role of government is crucial nonetheless. "Our premise is that many of the most important institutional structures – notably systems of labour market regulation, of education and training, and of corporate governance – depend on the presence of regulatory regimes that are the preserve of the nation-state." Hall and Soskice (2001), p. 4.

solution to all spheres involves coordination and cooperation, e.g. between firms or with unions and governments (see also 3.1.4).

Although state and national politics are not the main focus of Hall and Soskice's approach, their arguments can be used to infer to the dynamic of politics of reform one can expect in CMEs. In particular, it implies that "efforts to reform one sphere of the political economy may yield negative economic results if unaccompanied by parallel reform in other spheres" (Hall and Gingerich 2009: 451). And because the spheres of the political economy involve different actor groups and interests and several dimensions, any attempt at reform "is necessarily 'negotiated' change" (Hemerijck and Van Kersbergen 1999: 169). Put in more general terms, institutional complementarities in the understanding of VoC should encourage consensus-seeking and effectively "moderate" the interests of actors as all fundamentally share the interest in maintaining the economic benefits of the arrangement.

Discussion

The model developed by VoC, however, has not remained unchallenged. In particular, three criticisms have been made that are relevant in the context of this study. The first one concerns the question whether it is really justifiable to model the VOC-perspective as supplementary rather than complementary to politics-centred theories of public policy discussed earlier (see also Höpner 2009). Clearly, there are substantial overlaps, not least because VoC partially builds on the insights of policy. For instance, self-interest and power distribution may be as analytic concepts good enough to capture changes in interests whether they are motivated by concern over economic efficiency or political strategic considerations. Hence, VoC on this account may add few genuinely new insights for the studies of reforms and policy output. However, unlike most public policy theories, VoC offers explanations even for those cases where institutions emerge continue or change and where no clear connection to power distributional effects exists. Also, it encapsulates the idea of commonly share perceptions that inform the behaviour of actors. This may explain why labour market change may not require macro-steering but can develop in a organic manner. This means VoC extends the perspective of policy studies beyond power-related aspects and makes it possible to systematically integrate the role of institutional complementarities into the analysis.

The second criticism concerns the question to what extent collective actors actually take long-term developments and orientations and the multi-dimensional

implications of their decisions into consideration. Politicians often criticise political scientists for exaggerating the influence of specific patterns for events because in their perception they rather try to find specific solutions for unique problems[12] - often within a short time frame. Furthermore, Kitschelt has raised the question whether complementarities are the result of conscious creation or simply the result of more or less accidental historical developments (Kitschelt 2009: 201). If the latter, one cannot expect that complementarities are visible or consciously taken into account when for instance politicians policy-makers devise a reform. By following the process of institutional change for a period of over two decades, however, this study can trace whether complementarities matter and, if so, how they inform decisions.

The third criticism relevant to this study is that VoC suggests institutional stability due to its emphasis on the economic merits of coordinated capitalism. If these are true, there would be few reasons for why CMEs should change. VoC, some critics have said fails to explain the many cases of institutional changes in almost any CME (Deeg and Jackson 2007) and in particular, changes which imply a liberal logic – without making the CME into a LME. Yet, this criticism only works if the two types of political economies, CME and LME, are understood in a very formal and static sense. Hall and Soskice themselves contend that political economies are dynamic in nature and constantly change and this may make liberal institutions more attractive over time. The question is not, therefore, whether non-liberal capitalisms change but why and how exactly. Institutional complementarities and the condition of economic efficiency thereby provide valuable clues on how such processes of change unfold. Yet with regard to the direction of changes, VoC is arguably much less deterministic than some critics claim.

Alternative approaches and the significance of time

Many institutional analyses have defined institutional change in terms of critical junctures which are understood as "exogenous" events such as war or economic crisis that open up a window of opportunity for change. Critical junctures do not necessarily lead to "big bang reforms" or a sudden major transformation; they

[12] The underlying problem of communication between observers and practitioners has been expressed by Tocqueville as early as 1850-51: "I have come across men of letters who have written history without taking part in public affairs, and politicians who have concerned themselves with producing events without thinking about them. I have observed that the first are always inclined to find general causes whereas the second (...) are prone to imagine that everything is attributable to particular incidents (...). It is to be presumed that both are equally deceived." Quoted in Della Porta and Keating (2008).

could even change the course of institutional development only slightly. Yet critical juncture can open up new pathways that did not exist before and over the long term thus encourage major change. Researchers therefore need to identify first all critical junctures which may impact institutional development and then the changes that could have resulted because of them. This perspective, however, cannot convincingly handle processes of institutional change which are not marked by clearly identifiable singular events but which unfold, if at all, over a long period of time.

Related to this is Pierson's concept (2000a) of increasing returns of past decisions. This approach is related to the critical junctures perspective in that it argues that processes of institutional formation shape the evolution of the whole institutional arrangement in the future. One example for this is that institutions that are formed later will likely be adapted in such a way that it suits the existing institutional framework. Over time trying to change a single institution will translate into growing opportunity costs or "increasing returns" of the existing arrangement. Path dependence can be used to explain, for instance, the stability of, employment models geared toward the male breadwinner. Such models are underpinned by specific welfare arrangements that encourage women to take care of children and to not work full-time. This, in turn, discourages women to invest in skill-acquisition will leads to women being severely underrepresented in many occupations, reinforcing male-dominated employment patterns. This example shows that in many cases it is not enough to change only one institution but that institutional interaction needs to be addressed, too. Yet this makes changes even "costlier" or more difficult to accomplish. Path dependence indeed offers an alternative explanation to the VoC-based argument for incremental change. Instead of complementarities, it could simply be the complexity of the institutional arrangement that makes a strategy of radical change difficult to pursue. However, the difference between path dependency and complementarities should be distinguishable not least because path dependency is more likely to be associated with contestation. If actors indeed feel limited in their ability to pursue change, they should be particularly keen on exploiting "windows of opportunities", such as an economic crisis that casts doubt on the efficiency of the existing arrangement. Complementarities, on the other hand, are more likely to bring about a politics of coordination as actors who continue to share common convictions will try to change the existing framework in a consensual manner.

2.1.3 Analysing institutional change in multi-dimensional arrangements

Most authors studying institutional change in advanced democracies seem to find that changes unfold incrementally and happen at a slow pace. Indeed big bang reforms seem to be rare in most countries. It is not surprising therefore that recent contributions to the study of reforms have mostly focused on incremental change because it is now perceived as more important than assumed. For instance, Palier and Thelen (2010) argue that institutions can be converted to serve different aims as before which means that beneath a surface of institutional continuity there significant changes may occur. Streeck and Thelen (2005) call most changes in advanced political economies "gradual" although this entails the possibility that several gradual changes accumulate to large institutional change over time. Culpepper (2005) emphasises that joint belief shifts can occur which lead to a transformation of an institution due to a collective shift in ideas of actors. The institution itself is not abolished but serves different purposes. Djelic and Quack (2003) argue that even in newly emerging regulatory areas early decisions often "fortify" institutional evolution and thus effectively narrow the path within change can occur. They refer to this as "stalactite institutional change" which in many ways is similar to Pierson's concept of increasing returns of past decisions. Vail (2009) points out that institutional change itself may only be temporary, e.g. when actors agree to suspend institutional rules and re-instate them later. "Bending the rules" processes may thus leave the institutional arrangement as such intact while adding a dynamic which has been absent .

All of these concepts of non-radical institutional change indicate that even incremental institutional change is significant and thus worthwhile studying in detail. When it comes to modelling causal processes, they are often described as "mechanisms". These are commonly defined as "portable concepts" which link a cause to a specific outcome (Falleti and Lynch 2009) and can be found in many areas and cases. This means that beyond the context of a specific case, mechanisms are comparable. For instance, rational behaviour understood as a mechanism can be found in many instance, however, it can lead to very different behaviour depending on circumstances and environment (=context). Identifying a mechanism, therefore, does not mean that an outcome can be projected or instantly explained because the

context remains the crucial.[13] To think of institutional change in terms of mechanisms can certainly help to systematically speculate about the underlying causal processes in complex arrangements. However, focusing solely on pre-set assumed mechanisms would derive institutional approaches of their most important advantage over other approaches, that is, the ability to conceptualise process of change in detail and from several perspectives.

2.2 Case selection: Why compare Germany and Japan (again)?

Thanks to a substantial comparative literature on the political economies of Germany and Japan (among other, Dore 2000; Manow 2001; Streeck and Yamamura 2003; Thelen and Kume 1999a, 1999b, 2003, 2006; Vogel 2003), the understanding of similarities and differences of German and Japanese capitalism is already very advanced. Moreover, several studies on the impact of specific political parameters on policy reform (Ebbinghaus 2001, 2006; Kitschelt 2003) provide a framework within which more detailed analyses of policy processes are possible. This also allows addressing still common scepticism that Japan is not suitable for comparative research because it is conceived as too different to most other advanced democracies due to historical and cultural reasons. Esping-Andersen for instance finds it inevitable to address Japanese welfare capitalism in a separate study (1997) after his seminal study about the three worlds of welfare capitalism (1990). Japan, as Esping-Andersen himself acknowledges, sits uneasy with his typology of welfare capitalisms. At the same time, Japan has become a popular reference point for large n policy studies. So much in fact that authors with a background in area studies occasionally criticise the lack of depth in studies on Japan and argue that the particularities of the Japanese case need to be explicitly acknowledged (see for instance Grew 2002; Günther, Hijiya-Kirschnereit and Koch 2002). This study, however, assumes that both cases are essentially comparable if one takes into account what Estévez-Abe (2008) and Kasza (2006) call "functional equivalents" in welfare and labour policy. This concept is helpful because relying solely on formal institutions that have been known to be central in Western European democracies would often mean in the Japanse case to look at institutions that are seemingly without relevance or seem to function differently to expectations. The Japanese welfare system is a case in point: on the one

[13] In their own words: "a causal explanation requires the analyst to specify the operative causal mechanism and to delineate the relevant aspects of the surroundings—that is, those that allow the mechanism to produce the outcome." Falleti and Lynch (2009), p. 1152.

hand it combines a small public welfare state (when looking at public expenditure) as in the US with a strong corporate welfare element which, however, does not equal privatised welfare provision as is typical for most liberal welfare states. For instance in the case of labour markets, the state is arguably more active in order to stabilise employment. Implicit employment policy (consisting of ALMP, subsidies for re-structuring industries, public spending and industrial policy) and product market regulation (e.g. limiting market entry by foreign competitors) have arguably been functionally equivalent to European welfare policy in that they limit the reliance of individual workers on the market (de-commodification) by taming or at least softening market pressures. Another example is corporatism. While the lack of formal social pacts and the low visibility of organised labour on the national political stage suggest weak corporatism in Japan (Pempel and Tsunekawa 1979) the *shingikai* suggest almost the opposite. Formally, merely bodies that advise Ministries, *shingikai* have at times provided substantial veto opportunities for labour on legislation related to employment (e.g. Kume 1998). Both examples suggest that more qualitative research is necessary for developing a better understanding of Japanese policy-making processes and for conceptualising meaningful quantifiable indicators that can illustrate differences and similarities between countries adequately.

Although a substantial literature now exists comparing German and Japanese capitalisms directly, the analytic advantage of choosing Japan for a comparative policy study – which lies in the fact that reform processes which appear similar to those found in most Western European countries, can be studied in a very different political context - has so far not been used systematically. Comparing the trajectories of Germany and Japan in terms of labour market reforms resembles in many respects a most dissimilar case study design. While Germany features a traditionally strong social democratic movement represented by the SPD and, to some extent at least, the two Christian Democratic parties CDU and CSU, Japan has been dominated by the Liberal-Democratic Party (LDP) which can be best characterised as a business-friendly, fiscally and socially conservative party. The first non-LDP Prime Minister after 1955 (the year the LDP was founded) did not come into office until 1993, while in Germany changes in government parties have been fairly common since the 1960s. With regard to industrial relations the difference is even more striking: Japan's system of semi-centralised collective bargaining has never reached a comparable

rate of coverage as in Germany. In this respect Japan seems to resemble more the LME of the US (see annex B), even though Japan and Germany are usually considered prime examples of CMEs. This means that a number of political-institutional factors can be assessed that differ in both countries considerably and suggest different reform processes.

To take advantage of the particular constellation, qualitative within-case studies are arguably best suited as they allow considering a wide range of factors and institutions and do not require a preliminary limitation to specific indicators as in most large n studies. However, in order for such designs to be effective, case selection is critical because researchers must choose them based on factors whose that are of prime interest to the researcher. This entails at the same time that cases should be homogeneous in those characteristics which are outside the interest of the analysis or, as Ebbinghaus argues: "Am wesentlichsten ist, dass die untersuchten makrosozialen Einheiten (…), aus denen wir unsere Fälle auswählen, hochgradig kongruent, weil Ergebnis historischer und politischer Prozesse[,] sind." (Ebbinghaus 2009: 209). As has been pointed out before, the comparison of Germany and Japan allows comparing a range of explanations based on public policy and political economy theories simultaneously, as they resemble partially a similar case study design (VoC) and a most dissimilar design (e.g. power resources).

However, comparative qualitative research design and its requirement to choose strategically cases from a limited population (at least, as far as advanced democracies are concerned) do face some serious challenges. Given the fact that all comparative research designs will be compromised to some extent due to the fact that country attributes cannot be influenced by the researcher, some question the validity of such research designs. However, in essence, this problem affects all comparative research designs as they draw essentially from the same sample. More relevant may be the critique that "qualitative measurement is error-prone" (King, Keohane and Verba 1994: 31) due to the fact there are no "objective criteria" but only those established "subjectively" by the researcher. Critics of qualitative research often claim that qualitative comparative case studies can offer few genuinely new insights since their findings cannot be applied beyond their immediate context. Some may even argue that welfare and labour market policies have already been studied so intensely that there is little left that could justify further "exploration" through qualitative research. Indeed, already substantial sub-literatures exist on social pacts,

industrial relations, precarious employment, corporatism, welfare and employment policy, to name but a few. Yet, all these criticisms largely apply to other methodologies as well and, moreover, they miss the actual problems in comparative research on welfare and social policy reform. It is not a lack of studies and explanations but a lack of concise explanatory models which manage to "knit together" the different approaches and their explanatory models. Stiller and van Kersbergen (2005) make a similar argument when they write, "The problem [of current scholarship on welfare, the author] seems to lie in inadequate research strategies failing to test rival theories competitively, weak causal theorizing and methodological difficulties." This means that studies regardless of whether they apply a large n or small n research design fundamentally need to fulfil the same criteria: stringent theorising leading to competing explanations, contextual knowledge and a high level accuracy and transparency when modelling assumed causalities. Fundamentally, however, there is no difference in the quality and reliability of findings based on different research designs and methods.

2.3 Tracing processes of reform and institutional change

The approach used in this study draws from two qualitative approaches typically used for investigating the details of particularly noteworthy policy changes. The first is commonly called *systematic process analysis* (henceforth process tracing), the second *analytic narrative*. Although widely used, both approaches are sometimes applied and understood differently by researchers. For process tracing, which is somewhat less strictly defined than analytic narratives, George and McKeown offer the following definition: "A process-tracing approach entails abandonment of the strategy of 'black-boxing' the decision process; instead, this decision-making process is the centre of investigation" (1985: 35). For Reilly "Process tracing permits the study of complex causal relationships, especially those characterized by multiple causality, feedback loops, nonlinear dynamics, tipping points, and complex responsive processes." (2009: 736). This means that process tracing not only tries to connect an observed outcome to a cause but perceives the process of decision-making as equally instructive for understanding causal relationships. Such a perspective appears particular helpful in the context of German and Japanese labour market arrangements with their complex trajectories of institutional change and continuity, overlapping regulatory authority and its multi-dimensional frameworks

of labour market regulation. In particular in the context of complex multi-dimensional frameworks it is essential to combine several perspectives (micro, meso and macro) and to maximise the scope and diversity of the evidence. This is why Hall advises researchers to "seek as many and as diverse a set of predictions and observations possible. In general, this means predications not only about ultimate outcomes and the general shape of processes but about the specific actions expected from various types of actors, statements that reveal their motivation, and the sequences in which actions should occur." (Hall 2003: 394).

Hence, either method can only be effective if researchers cautiously explore the context of the phenomena they want to explain and if they develop a set of stringent and competing explanations for them. For both methods identifying the main causal relationships that have led to an observed outcome, is the ultimate goal. And both approaches require that the researcher bases any analytic narrative on a variety of sources and data. Last but not least, both argue that because as social phenomena are rarely mono-causal only a comprehensive qualitative analysis can expect to establish a better understanding of how causes and outcome are connected.

A noticeable difference between process tracing and analytic narratives, however, concerns the underlying ontology. Bates et al (2000) describe their approach as firmly based on rational choice. For them social processes follow clearly identifiable mechanisms which can be modeled analogue to non-cooperative game theory. This way, they claim, analytic narratives can serve as "a means of connecting the seemingly unique event with standard social science" (ibid.: 697). Like Falleti and Lynch, Bate et al argue that scholars should focus their attention on identifying causal mechanisms which underlie complex social processes. One example of how analytic narratives can be applied in the context of social policy is suggested by Ganghof (2006). In his study of reform blockades to unpopular structural reforms, Ganghof emphasises the crucial difference between strategic and actual (candid) disagreement of actors. Both can be rational positions in specific context and can be identified, he argues. For Ganghof the optimal way of applying analytic narratives is to develop a set of explanations based on 'plausible hypotheses' which are not only based on common sense but on plausible assumptions on the preferences of actors

derived from previous studies and theories and in-depth knowledge about context.[14] This means, however, that such a concept of rationality offers insights that go beyond the inevitable reduction necessary for game theory based reasoning, that is, precise knowledge about relative gains and losses of specific decisions (see also Pierson 2000b: 89-91).

Process-tracing or "systematic process analysis" (Hall 2003) asks the analyst to look at all plausible explanations in a field and to test them comparatively. "From each theory, the investigator (…) derives predictions about the patterns that will appear in observations of the world if the causal theory is valid and if it is false, with special attention to predictions that are consistent with one theory but inconsistent with its principal rivals." (Hall 2003: 391). This allows qualitative researchers to increase confidence about their findings even when no quantitative tests are possible. In particular in cases that defy standard explanations, it may be the only viable approach before other methodologies can be used effectively. Last but not least, process tracing is better suited to address equifinality, that is, the phenomenon that an observed outcome can develop through very different means or pathways. As process tracings consider and weigh a variety of factors they are less at risk of ignoring cases of equifinality. Even though there is no guarantee that "researchers using the process-tracing technique will be able to attain the same degree of confidence in their conclusions (…) as would be possible if they could readily employ standard experimental or quasi-experimental methods; [the criteria for systematic process tracings, the author] do imply, however, that the conclusions that emerge (…) are less a product of the subjective state of the researcher than is often supposed" (George and McKeown 1985: 37).

An additional advantage is that process tracings can take a broader view of what is rational in a given institutional and strategic context. As Elster points out, it is not only the rationality of actors that matters as "rational choice theory is often inadequate because people may not conform to the canons of instrumental rationality." (Elster 2000: 692). By this he means that rationality is often defined based on a very functionalist view of institutions but which tends to neglect strategic behaviour (e.g. logrolling, cross-issue deals) and also "irrational behaviour" which can emerge in situations where actors have to deal with complex issues and limited

[14] According to Ganghof the purpose of inference to the best explanation is "aus seiner Menge von plausiblen Hypothesen oder Theorien diejenige auszuwählen, die eine gegebene Menge erklärungsbedürftiger Tatbestände am besten erklärt. (…)", Ganghof (2006).

knowledge.[15] Often it is not possible to develop clear expectations about the consequences of a decision due to temporal constraints. In this study such limitation are minimised by using a research design that combines cross-sectional and longitudinal perspectives. Even if explanations do not work for every single case of reform, a long-term perspective and the possibility to choose from a set of plausible explanations both help effectively to mitigate this problem. It also offers a remedy to the problem that, as Elster as well Ganghof caution, researchers need to be aware of the fact that there may be a significant gap between what actors hope to accomplish and what they do.

Alternative methodologies

In contrast to most small n qualitative case studies, large n studies rely on quantitative assessments of regulatory characteristics of labour markets. Research questions typically focus on economic effects of different regulatory and institutional arrangements, such as the effect of employment protection on unemployment or economic growth (e.g. Nickell 1997; Nickell and Layard 1999), the relationship between economic performance and institutional complementarities (Hall and Gingerich 2009), or the political determinants of labour market reforms (e.g. Botero et al 2004; Jäkel and Hörisch 2009). An important recent contribution to this line of research is the ICTWSS database (Visser 2011) which covers a wide range of regulatory attributes of labour markets including regulation through industrial relations (see also annex B, 1.16). The most widely used indicator for labour market regulation, however, has been the EPL indicator developed by the OECD (see also figure 1-1 and annex A, 1.1) which has been used in a number of studies to identify the major political determinants of labour market reforms. A huge challenge for this line of research remains the validity and reliability of the indicators on which it is based. For instance, the EPL indicator does not systematically integrate provisions set by collective bargaining and court decisions even though they may be highly relevant when comparing levels of regulation. Also, international databases on labour law, such as the ILO's Natlex or the OECD's EPL, are neither complete nor up-to-date, so the verification of regulatory arrangements across a large sample of

[15] Elster criticizes that all case studies included in the volume "Analytic narratives" by Bates et al, fail at plausibly retracing the intentions of actors as they are not based on actual evidence on actors' interests. According to Elster such a model "is acceptable only if (1) the sources do not permit us to establish intentions and beliefs directly, (2) the observed empirical fit is very good, (3) other implications of the imputed intentions and beliefs are deduced and verified, and (4) plausible alternative explanations are given a good run for their money and then rejected." Elster (2000).

countries remains difficult. In short, findings in large n comparative studies may produce mixed results because they have to rely on incomplete measurements.

A similar limitation applies to quantitative measures of political-economic factors, such as power resources or corporatism. Depending on author and method, Japan is judged anything from highly corporatist to predominantly pluralist (Kenworthy 2003) which implies that the Japanese variant of corporatism and the relevance of its components for processes of change are not understood well enough to quantify them reliably. This also makes a methodological "third way", such as fuzzy set analysis (Ragin 1987), difficult. Fuzzy-set analyses combine both qualitative assessments and statistical-quantitative methods to reach a comparable level confidence regarding central relationships between factors as in quantitative-statistical studies. It could be used, for example, to study the necessary and sufficient conditions for specific labour markets reforms, such as liberalisation of temp agency work. This would require, however, that these conditions can be reliably identified and quantified. Given the differences between labour market arrangements and the scarcity of single reforms which are directly comparable (since they are set in different regulatory settings or have different "starting points") across countries, fuzzy-set approaches likely face too many serious measurement challenges for being used effectively in this context.

Another important strand of literature on the politics of reforms relies on discourse analysis. In particular two authors use this approach to shed light on the politics of reform and welfare reforms in particular: Schmidt (2002b) and Seeleib-Kaiser (2001) study the welfare policy in advanced democracies on the basis of how actors have framed the impact of globalisation on welfare arrangements and social policy in general. Both show that discourses can be strategically "framed" and connected to specific policies or policy ideas. Also, national discourses are not isolated from one another. In particular, institutional learning and "best practices" are common and can shape domestic discourses. Such international dialogue is furthered actively by international organisations such as the OECD, the IMF, the World Bank but also by the European Commission and the international financial press. They all have a global outreach and have adopted best practice sharing and "benchmarking" as instruments or "points of reference" to influence national discourses. There is a lot of evidence, as this study will also demonstrate, that this communication does indeed feed into national discourses. From an analytic point of

view this means that understanding how these larger discourses develop and influence domestic actors can help to explain why specific reforms are addressed while others are ignored.

To this one could also add that governments rely on international discourses and external advice as they cannot readily obtain all information themselves. This applies to domestic actors as well because regulators need feedback from those regulated in order to understand what is necessary and how regulations should be designed (Culpepper 2002). Furthermore, they are likely to obtain such feedback mostly from specific actors, i.e. large firms and powerful organised interests while the problem perception of SMEs and smaller unions is likely to be less prominent in policy discourses. Hence, the way issues are "framed" or understood, are instrumental for understanding which and how measures are being adopted. However, in comparative constellations, effective discourse analysis relies on directly comparable issue areas and can only address issues which are clearly voiced in public discussion. Implicit or latent institutional relationships which may be important remain outside of such approaches. This means that both large n studies relying on quantification as well as discourse analyses analysing what has been explicitly expressed in discourse, do offer important insights but at the same time face limitations when dealing with more complex patterns of change. These limitations can best be overcome through qualitative tracings of processes. Yet, discourse analyses and quantitative approaches should be seen as complementary to the aims of this study rather than as alternative approaches.

2.4 Conclusion

This chapter has argued that only an approach based on historical institutionalism is versatile enough to systematically assess and explain economic, political and institutional motives for institutional change and reform in multi-dimensional and highly interdependent arrangements. It has been shown that interests, ideas, power constellations and relationships between institutions can all play decisive roles in processes of change. However, in order to arrive at competing explanations it is sensible to summarise the four explanatory models of institutional change discussed so far into two rival explanations of institutional change: power distributional aspects of institutions and institutional complementarities. While the former implies contestation as the usual mode of change fuelled by shifts in power between

stakeholders, the latter expects policy coordination between different interests. Either dynamic can, in principle, be influenced by ideas, interests, power or complementarities, but it is likely that power and interests-centred change will lead to similar developments whereas processes of change dominated by overarching ideational changes and/or institutional complementarities are most likely to unfold in a similar manner, that is, following a coordinated, consensus-seeking pathway.

Table 2-1 illustrates the motives for institutional change discussed in this chapter. The following chapter will now contrast the institutional perspective with public policy theories and formulate concrete hypotheses based on these insights in the context of German and Japanese political-institutional arrangements.

Table 2-1 **Political and economic motives for institutional change**

Mode	Political motives	Economic motives
Coordination	- Commonly shared ideas and interests facilitate coordination - Power distribution requires coordination/compromise	- Economic efficiency can be re-gained within existing institutional framework - Changes need to be carefully adapted into existing arrangement
Contestation	- Ideational change increases potential for contestation - Changes in power distribution or 'windows of opportunity' to promote desired changes	- Institutional framework has lost its comparative advantage - Diverging interests between and within capital and labour

Source: Authors' own.

A challenge for researchers that remains is to develop criteria which allow identifying reliably institutions and cases of institutional change. This is anything but trivial because institutions, as Thelen (2009) points out, are constantly "applied" in an ever changing circumstances and they are often ambiguous in what they imply. In fact, the need for such interpretations can itself be an important source for institutional change, Thelen argues. That makes it necessary to develop an understanding on how larger changes can be distinguished from dynamic "applications". For this reason the next chapter will discuss the main institutions of political decisions making and chapter four will discuss the main labour market institutions in some detail. However, this study is not primarily concerned with categorising change but seeks to assess the impact of multi-dimensionality for processes of institutional change and reform. It is based on the understanding that within such frameworks a latent possibility always exists that individual institutional changes are consciously linked with other institutions and thus used strategically. To

analyse such processes effectively, scholars must first try to understand relevant individual institutions as well as possible interdependencies before trying to conceptualise the underlying causal processes leading to change. In order to be effective, any institutional analysis needs to define transparently and concisely the institutions of interest to the analysis. This will be done in the following two chapters.

3. Contestation and coordination – A theoretical framework

> "One of the more crippling misconceptions in recent social science has been the presumption that original research consists solely in original data gathering. The result is a scholarly premium on writing new accounts and a dearth of cumulative studies trying to knit together what has already been learned."
>
> *Hugh Heclo* (1974: X)

The quote from Heclo's seminal study of social policy is an acknowledgment that this study is not addressing 'unchartered territory' but rather builds on a rich and versatile body of literature. This study aims to contribute to it by connecting two specific strands of scholarship that are usually treated separately, public policy and political economy. It will show that the limits each set of theories encounter when confronted with complex and non-linear patterns of institutional change can be resolved if they are systematically linked. So in a sense the following chapter will "knit together" established approaches to generate a wider explanatory scope rather than create a new approach from scratch. On the basis of the theoretical framework stands the assumption that if political economists are correct in emphasising the comparative institutional advantages, then this should have a significant and measurable impact on political decision-making and decisions, e.g. in the form of additional policy options and/or coordinated decision-making and the ability to strike multi-dimensional deals. Likewise, if public policy theory is correct in assuming that the governance structure and the distribution of power resources are crucial factors for policy output and institutional change, then it seems only consequential that they will also influence how actors approach desired changes. Yet only if both perspectives are considered simultaneously is it possible to explain the versatility of decisions one finds in both countries since the early 1990s that both confirm and challenge established approaches. The following sections will discuss all relevant established theoretical perspectives that suggest distinct political and economic motives for institutional change and continuity. These explanations will then be put into the concrete context of German and Japanese governance structures in the second part of the chapter before a set of concrete hypotheses is formulated.

3.1 Theoretical perspectives on the politics of reform and institutional change

Standard public policy theories more or less share the notion that political decisions are fundamentally a matter of power, that is, the more a specific actor has the chance to influence a decision, the more it will mirror that actor's interests. With regard to the politics of reform, it is common to describe political decision-making and in particular structural reforms as situations where the ability of actors to act according to their interests is constrained by institutions. For instance, coalitional governments consisting of a wide range of partisan ideologies will find it much more difficult to agree on change than a single party government that shares a cohesive ideology. To succeed proponents of reform will need more careful political manoeuvring to avoid blockage in the first than in the second scenario. Political economy theory, on the other hand, suggests that -under specific institutional conditions- actors share long-term interests which enable them to avoid or mitigate both constraints and power-based conflicts related to institutions. Rather than simply pushing through desired or blocking undesired change, they may be able to broker "multi-dimensional" deals which cater to the interests of all stakeholders.

These insights can be applied to the model of labour market regulation developed in the previous chapters: A multi-dimensional arrangement for labour market regulation must fulfil two *functions*: first, it must ensure a fair amount of economic efficiency and, second, provide for a certain level of social stability. In other words, the arrangements must offer an efficient or even economically advantageous framework for the main labour market stakeholder (employers and employees) and, at the same time, provide social protection and stability for employees. This translates into political stability for governments. From this follows that there are two potential motives for institutional change: either the existing institutional arrangement proves politically unsustainable (e.g. high unemployment may put pressure on governments to intervene/modify the arrangement), or economically inefficient (e.g. employers may feel the arrangement put them at a disadvantage compared to foreign firms). The crucial questions are then where pressure for change originates (economic or political) and how it is transformed into actual decisions. Related to this is the question whether decisions are informed mostly by considerations of power or by institutional complementarities which

encourage long-term orientation of actors and cooperation. This chapter will provide the analytic basis on which these questions can be addressed in subsequent chapters.

The theoretical contribution of this study lies not in confirming one strand of thinking about reform and changes processes and rejecting another. It does not expect, for instance, to find that power has not played a role and institutional complementarities explain both change and stability or vice versa. Instead this study aims to identify dominating patterns of decision-making processes and changes therein. This also entails aspects such as when actors utilise strategies associated with power politics and when they prefer moderation and coordination. Knowledge about such implicit boundaries of specific institutional dynamics allows linking observed but -based on standard theories- often unexpected outcomes with specific causes and, in addition, it provides a much better basis for understanding contemporary processes of reform. Hence, the approach thus contributes to both the public policy and political economy literatures on contemporary reform processes.

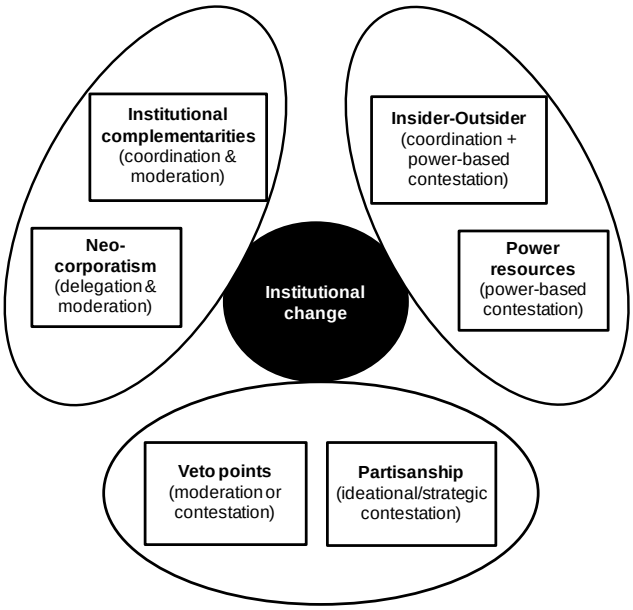
This chapter will initially discuss four different theoretical perspectives on institutional change and legislative reform[16] devised from a total of six formal theories as shown in figure 3-1.[17] The figure summarises the key insights of each perspective with regard to the process of change as well as outcome. Moreover, it indicates how the relevance of each explanatory perspective can be assessed. One key indicator for identifying the actual dynamic of change is thereby whether reforms and other forms of change are accompanied with notable polarisation between actors or are brought about in relative consensus. Yet, one indicator alone would not be sufficient as several explanations may suggest a polarised process of change. Hence, in order to be able to distinguish between the different explanations the implications of each perspective need to be spelled out in some detail. This makes

[16] Here a clarification may be at order: Institutional change and legislative reform are not synonyms. Legislation (reform) has the potency to create, alter, replace or abolish institutions and institutional arrangements and thus to cause institutional change. However, institutional change can also occur without reform. Institutional change is thus a concept that encompasses all forms and means of regulatory change, whether legislative or not.

[17] Here I follow Schmidt, Ostheim, Siegel and Zohlnhöfer (2007) and other researchers currently and formerly associated with the Institute of Political Science at Heidelberg University who typically distinguish six schools (known to insiders as the "six-pack") to explain national variations of welfare states: (1) Socio-economic development (e.g. policies mirror the socio-economic advancement of a country); (2) Internationalisation (e.g. globalisation "requires" certain structural reforms such as retrenchment of welfare benefits), (3) partisanship (e.g. policies differ depending on parties in government); (4) Government structure (e.g. the more veto players in a governance structure the less likely reforms); (5) Institutional path dependency (e.g. institutional inertia such as found in pension systems); (6) Power resources (e.g. the ability of actors to influence decisions). Höpner (2009) argues that the varieties of capitalism could be regarded as a separate school of public policy since 'institutional complementarities' are critical for policy decisions. This study takes a similar stance as Höpner yet excludes theories which are too unspecific as with regard to labour market regulation, i.e. the "socio-economic school" and "globalisation".

it then possible to "infer to the best explanation". This requires, however, in-depth knowledge of the political systems and political economies of Germany and Japan which will be addressed in the second half of the chapter (3.3 and 3.4) as well as in chapter four.

Figure 3-1 **Six perspectives on the causes and modes of institutional change**



Source: Author.

3.1.1 Veto points and the complexity of decision-making processes

For many political scientists it seems almost natural now that "structural" factors can often be as decisive as ideological or economic ones for whether a reform is implemented and to what extent it will entail a departure to existing regulations. In particular with regard to a "new politics" of unpopular and painful structural reform since the 1970s, some scholars have argued that differences between the reform trajectories of countries can mostly be explained with differences between their political systems. Arend Lijphart (1984) has been among the first and most influential scholars to systematise such differences. His typology distinguishes advanced democracies by major structural differences and consists of the two types majority and consensus democracies. Majority democracies concentrate political power in a central executive which is aided by a majority vote electoral system (typically in single member districts as in the UK) which facilitates the formation of single party governments, and a pluralist competitive political arena where collective interests compete with each other for influence but do not dominate or compete with the authority of government. Majority democracies tend to favour government-

centred and centralised decision-making. Differences between parties should therefore be visible as soon as a change in government occurs. In consensus democracies, in contrast, power is distributed more widely among a diverse group of actors and institutions. These democracies are typically corporatist, which means the state grants some collective actor groups, such as business associations and labour unions, a privileged status in policy-making and in some cases even entrusts them with regulating some domains autonomously (e.g. job training). Consensus democracies also tend to be federalist and decentralised, that is several branches of government share power. Last but not least, they rely on proportional electoral systems which tend to produce coalition governments.[18] With regard to policy-output and policy-process, Lijphart argues that political systems which concentrate political power in a powerful executive are more likely to produce comprehensive and swift reform, whereas consensus democracies are more likely to produce incremental changes and "piecemeal reform" as they require a stable consensus among diverse actor groups.

More recent contributions have emphasised that individual situations of decision-making can have a major impact largely defying Lijphart's simplified typology. For instance, Tsebelis' (2002) seminal work on the importance of institutional decision-making structures for policy outcomes suggests that all legislative processes can be understood as "veto games", where the consent of partisan and institutional veto players is required to achieve passage of a bill. While the number of institutional veto players is largely determined by constitutions (e.g. by installing a second chamber), the number of partisan veto players mainly depends on electoral requirements: If several parties are needed to form a government, all participating parties should be viewed as separate collective veto players while in single party government there will be one collective veto player. Yet, the cohesiveness of collective players such as parties is also important. Although veto players do not exert their veto power per se, Tsebelis argues that the number of veto players is indicative of the kind of changes one can expect. As a rule of thumb he suggests that the higher the number of veto players, the smaller the space for

[18] Lijphart proposes ten criteria for assessing a political system (majority democracies vs. consensus democracies): (1) Single party government vs. coalition government; (2) Executive dominates the legislative vs. balance between executive and legislative; (3) Two party systems vs. multi-party systems; (4) Majority vote electoral systems vs. proportional systems typical; (5) Pluralism vs. corporatism. (6) Centralised governance structure vs. federal system. (7) Unicameral parliamentary system vs. strong bicameral system. (8) Dominance of politics over the judiciary vs. influential constitutional courts (9) Dependent central bank vs. independent central bank. (10) Low hurdles for constitutional reform vs. stable constitutional provisions.

compromise will be, so any reform, if it gets enacted at all, will tend to be incremental. This means in situations of contested legislation, it depends to a large extent on how many and which veto players interact in a given situation whether a reform will be enacted and for how "radical" it will be.[19]

Immergut (1990) and Kaiser (1998) offer a third important perspective on political decision-making processes. Instead of veto players they suggest to identify crucial "veto points" whose relevance and very existence depends on the policy field and political-partisan factors. Immergut argues that "Political decisions require agreement at several points along a chain of decisions made in different arenas [thus] the fate of legislative proposals (…) depends upon the number and locations of veto points along this chain" (1990: 396). Veto points, so Immergut, can even grant those actors a strong voice in decision-making who neither organise a large constituency nor command over extensive financial resources. For instance, they may be able to veto decisions in arenas which are vital for legislation, delay pressing decisions or withhold or "frame" needed expertise. This explains, so Immergut, why in some countries even small organisations can have a large impact on decisions, while in others large organisations can appear surprisingly powerless. In particular in complex policy arenas such as the regulation of the financial or the health service sectors, small groups of actors who exclusively possess specific expertise can influence decisions as there is no alternative source of information. In Germany the practice of banks and international law firms seconding employees to Ministries to assist in law formulation, has been criticised precisely because of this. Veto points also allow actors to veto reforms or change at points which lay outside the formal scope of legislation. The long reform debate on the reform of sick pay (*Lohnfortzahlung im Krankheitsfall*) in Germany in the 1990s is a case in point. Unions in Germany fiercely opposed a substantial cut the in the length of provision which was eventually implemented in 1996 by a CDU/CSU/FDP coalition government. After unions failed to stop the reform bill, some of the more powerful industry

[19] This is a highly simplified depiction of Tsebelis' theoretical model. A meaningful application his approach would however require comprehensive data on the relative preferences of actors. For instance, the exact policy positions of all veto players would have to be identified in order to assess the policy space available for compromises. Another crucial argument concerns the cohesiveness of actors. Less internal heterogeneity of collective veto players generally means more veto power, while more heterogeneity makes it more likely that compromise can be found. The caucuses in the US-Congress are one example for this. It is common that individual caucus members vote with the opposing party on some issues which can lead to successful votes in favour of the minority party while this is uncommon in most European political systems.

unions negotiated provisions with employers which required firms to maintain the old system on a voluntary basis thus effectively rendering the change ineffective.

Unlike Tseblis, who considers every veto player as crucial as his explicit consent is always required for any chance to be passed, Immergut and Kaiser define veto points merely as veto opportunities. A veto point is "eine institutionell angelegte Anreizstruktur für politische Akteure, Einflusschance zu nutzen. Ob diese von der gegeben Möglichkeit Gebrauch machen, ist damit nicht determiniert" (Kaiser 1998: 537-538). They also differ with Tsebelis- who, for instance, does not consider constitutional courts to be veto players as they cannot be active on their own even though in some countries they routinely block or repeal laws (for a critique see Wagschal 2006) -, in that they define veto power less formally and not necessarily connected with elections or constitutional provisions. Instead, Kaiser devises four types of veto points which are relevant for labour market regulation but not all of which are "formal" in Tsebelis' sense: (1) consensual veto points, which emerge due to institutions that foster cooperation and consensus-seeking such as proportional electoral systems. Proportional systems facilitate the representation of minorities which may thus be granted influence they would not enjoy in majority systems. (2) Veto points through delegation, that is, non-government actors are given or traditionally hold the responsibility for some policies or there are tripartite institutions where regulations are discussed and coordinated. (3) Veto points based on expertise. Some institutions may regulate or decide autonomously of national politics, such as labour tribunals or industrial bargaining. (4) Legislative veto points which resemble mostly Tesebelis' concept of institutional veto players. Kaiser's approach is better suited to study labour market regulation as it can integrate non-legislative as well as non-state veto points and decision-making. In addition, it is applicable to situations where several decision points play a role at the same time.

So what can be expected on the basis of theories of veto players and veto points with regard to labour market regulation? First of all, they offer an alternative explanation to the political economy argument that actors coordinate their actions mainly in line with long-term institutional complementarities. Moderation of positions may thus be simply the result of decision-making processes where the consent of several actors is needed or many veto points exist. Advocates of change are likely to adopt a strategy of incremental change or piecemeal reform for which they have to compromise, at least temporarily. So instead of being informed by a

rationale of institutional complementarities, actors choose to forego desired changes out of sheer necessity. In addition, advocates of change may choose to act pre-emptively by formulating their proposals in such a way that the time for negotiations is minimised. Another strategy may be to offer compensation, that is, to give offer support or compromise on other issues (known as logrolling). Last but not least, if several trajectories of change exist, proponents of change are likely to choose the route that offers the least complex decision-making process or, in other words, the route with the fewest veto points.

Discussion and research agenda

Applied to policies aiming at enhanced labour market flexibility, this could mean for instance that a comprehensive veto power of unions in the legislative process may make a strategy of expanding external flexibility through legislative reform unattractive. Employers and even the government may thus prefer to achieve flexibility through other means, e.g. collective bargaining and industrial relations, for example, or furthering alternative systems of regulation (e.g. by encouraging competing unions). Furthermore, the presence of strong non-legislative veto points may make a strategy of encouragement (e.g. through soft law or the threat of reform) rather than enforcement (obligatory provisions in labour law) the most viable option for governments. Last but not least, it raises the issue of windows of opportunities. For instance solid majorities for governments in both chambers of the parliament arguably make it easier to achieve reforms while cases of divided majorities make it more difficult. Hence, if veto points are a decisive factor for decision-making processes, actors should try to exploit such opportunities as much as possible as they are temporary and often short-lived. However, if such legislative opportunities are not used or not as public policy theories suggest, this can be seen as evidence that other motives such as institutional complementarities dominate the strategic calculation of actors. Last but not least, the study needs to identify the structure of veto points in the political economies of Germany and Japan. If differences exist between the two, then differences with regard to institutional change and reforms should be observable.

3.1.2 Power resources and the politics of dualisation

At the base of all power resource approaches are two crucial questions to which authors give surprisingly different answers: Who holds power resources, and, what

constitutes a power resource? Probably because it seems rather intuitive to most that vested interests are powerful and thus de facto possess power resources or institutionalised influence few seem to object to a lax use of the term and its rather versatile application. However, in case studies that cover a long period of time, a detailed understanding of both elements is critical as otherwise changes cannot be made visible and a competitive test against other theories would not be possible. The following discussion will thus limit its scope to those power resource approaches that are particularly relevant for questions of regulation and dualization, that is, that can be utilised to formulate concise expectations for processes of institutional change and reform.

In contrast to veto points power resource theory is more comprehensive in that it can include legislative as well as non-legislative means of decision-making and influence. Indeed, in its original form power resource theory assumes that the classes in advanced capitalist societies (such as the working class or the capitalists) possess distinct interests and try to influence, depending on their ability to exert power, the politics of a country policies and regulation ranging from welfare to labour market regulation will differ between countries and periods. Power resources are generally understood as opportunities for influence whichare not necessarily formally enshrined in law. For example, powerful unions may be able to organise general strikes or protests against measures which may force governments to comply with demands of unions. Hence, power resources can be used to describe power ranging from the potency of parties in governments to shape policies (e.g. Merkel 1993) to the multi-dimensional influence of classes on policy areas (e.g. Korpi 1978). Among the most influential representatives of power resource theory is Esping-Andersen who explains the differences between national welfare arrangements on the basis of the power resources of organised labour. The extensive welfare states of Scandinavia are thus a consequence of the fact that the working class commanded over several channels of influence, a partisan one in the form of a dominant social democratic party and a social one through a strong labour movement with high organisation rates of trade unions (Esping-Andersen 1990).[20]

[20] Esping-Andersen (1990) finds three distinctive types of welfare state arrangements in the developed world. Although elements of these arrangements may fit a different type than the dominant one, he argues that overall the country patterns are fairly consistent. Social-democratic welfare states typically rely on a relatively large public sector, universal coverage, state organisation of welfare and re-distribution of wealth. Liberal welfare states provide mostly poor relief through the state while most welfare provision is privately organised and financed. Conservative welfare states rely mostly on social insurance which re-distribute over

The liberal nature of public welfare (emphasising means-tested poor-relief rather than comprehensive re-distribution) in the USA or the UK is thus due to the weaker influence of organised labour in these countries. In very general terms, it can be said that the stronger organised labour, the more a "politics against markets" will be visible which includes extensive welfare benefits regardless of job status and income redistribution, high social protection and de-commodification (the independence of an individual's economic well-being of market pressures). Strict employment regulation and specific and detailed regulation of labour market and working conditions are also elements of such a labour-friendly non-market approach. Although such policies do occur even in systems where organised labour is relatively weak, there is a consensus in the literature that differences in the power resources of socio-economic classes explain well the differences between national welfare arrangements (c.f. Schmidt et al 2007).

Contemporary perspectives

Power resource theory, however, faces the same "new politics of welfare" challenge as other established public policy theories as contemporary reform processes tend to defy "established" explanations based on the post-war period of welfare expansion. For example, many scholars have been convinced that dwindling membership rates and the crumbling organisational base of labour union associations has made liberal labour market policies politically 'feasible' in the course of the 1980s, 1990s and 2000s because unions have lost much of their ability to resist them (e.g. Streeck and Hassel 2003; Thelen and Kume 2006; Whittaker 1998). According to this view labour market reforms therefore mirror a shift in the balance of power between employees and employers, to the advantage of the latter. However, studies struggle to conceptualise measures of power resources which are representative of the actual situation and which reliably capture re-balancing of power (see e.g. Kenworthy 2003 on the problems of measuring corporatism). Instead, one finds welfare states embracing different kinds of reforms yet at the same time there is no clear and comprehensive trend toward convergence. This 'pattern of heterogeneity', as has been shown in chapter 1, describes well the recent development of labour market regulation as well. Hence, it is vital that power

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the life-cycle rather than across incomes. Benefits are not necessarily universal but very much dependent on employment status. Conservative welfare states thus tend to secure attained status rather than to promote status improvement actively as in social-democratic welfare states.

resource theory is modified to re-gain their (any) explanatory scope in current processes.

In contrast to scholars who see a permanent shift of the balance of power towards business and employers since the 1970s, Korpi (2006) argues that socio-economic differences and classes are still highly insightful for social research. For Korpi, there is no empirical proof a permanent shift has actually taken place. Yet analytic concepts, Korpi argues, must in current circumstances conceptualised differently and less rigidly than in the past. Although societies no longer fit the traditional image of class society, socio-economic differences remain decisive. For instance, "economically well endowed categories [= high socio economic status, the author] with relatively low risks are likely to prefer to situate distributive processes within a market-property-nexus; those with higher risks and lesser economic resources are likely to support extension of social citizenship in order to counter the effects of differences in resources and risks" (Korpi 2006: 202). This suggests that preferences for politics against markets are no longer an issue of class but of individual risk exposure. As a result, the "working class" may no longer be viewed as monolithic blocs unified by common interests and facing similar risks. Instead social risks may now be distributed rather unevenly among its members. Several authors have come to similar conclusions and have analysed how different constellations of social risks affect the policy preferences of individuals (e.g. Häusermann and Schwander 2009; Kitschelt and Rehm 2006; Rueda 2005; Swank, Martin and Thelen 2008; Taylor-Gooby 2004). Most authors agree that recent economic and political transformations have elevated existing or even created new social risks which stem from de-industrialisation (tends to benefit highly skilled workers over unskilled ones), immigration (e.g. increasing competition for unskilled work), globalisation (e.g. competition for the site of manufacturing may put wages under pressure and increase the pressure for downsizing), or austerity (e.g. governments may introduce elements of means-testing into formerly universal welfare provision to cut costs). Particularly relevant in the context of labour market regulation is however the idea that recent reforms of welfare and social protection have not been the result of classic class conflict but rather have benefitted some groups while disadvantaged others. This qualifies power resources further, which means the implications are more diverse than most traditional studies assume.

The politics of labour market dualisation

This points to the importance of politics for the distribution of social risks and highlights the fact that individuals or socio-economic groups do not possess an equal share of power resources to "insure" themselves against the negative results of reforms. This is also the central insight in the literature on labour market dualism. The economists Lindbeck and Snower (1988) were among the first to suggest that there may be fundamental conflicts of interests between workers with different "employment status". In their model high employment protection legislation is actively promoted by workers who hold permanent jobs. They are motivated by their desire to fight off the challenge of unemployed workers who would work for lower pay and/or worse working conditions. High employment protection stabilises the status of insiders (with permanent jobs) in two ways: First it makes dismissals costly and time-consuming, secondly, it motivates firms to invest in the skills of insider workers to make them as productive as possible which makes them even more valuable for those firms. Unions are thus in a relative good bargaining position to prevent downward adjustment of wages which may be worse if employment protections were less strict.

The downside to this is however, that the threshold for outsiders to find a (secure) job is rising also because the threshold for hiring new workers in economies with high employment protection tends to be higher than in countries where employment protection is marginal. As a consequence, struggling outsiders should prefer no or low employment protection. David Rueda (2005, 2007) argues that conflicts in interests are not limited to employed and unemployed workers and go well beyond the issue of employment protection. In dualised labour markets the actual conflict runs, he believes, between workers in relatively secure permanent full-time positions (the insiders) and those with less secure jobs (outsiders). Most non-regular jobs (fixed-term, marginal jobs, part-time and temporary agency jobs) fall into the second category and this is also relevant because it has been mainly reforms of the 1990s and 2000s that have created or considerably expanded such forms of employment. Furthermore, workers in non-regular jobs are less likely to be organised in labour unions and to be underrepresented in corporate consultation processes. They may thus welcome a stronger role of state-centred regulation to counter their disadvantage on the corporate and industrial level.

Rueda also suggests that the deepening division between the two labour groups has also consequences for party politics as both groups have very different preferences in regard to employment protection but, potentially, also in other areas such as ALMP and PLMP. Even though empirical evidence so far seems somewhat inconclusive whether his assumptions are indeed valid (see for instance Emmenegger 2010), Lindbeck/Snower and Rueda's theories point to an important aspect of contemporary labour markets, that is the possibility of diverging interests between worker groups which could lead to a collision of interests within the labour camp and thus a situation where the distribution of power resources lastly determines whose interests prevail. Palier and others (e.g. Palier and Martin 2007a; Palier and Thelen 2010) even argue that 'dualisation' and diverging interests are not limited to labour and employment policy but also mark contemporary reforms of welfare, e.g. pensions and social assistance where some groups enjoy better capabilities to insulate themselves from changes than others.[21] Theories of dualisation thus suggest that power resources should increasingly matter as interests and preferences increasingly diverge and pressures such as austerity make cuts and adjustments increasingly likely. Hence, classes no longer act as monolithic blocs but dissolve into several sub-actors with varying influence and interests. One can thus expect that actor groups with relatively few power resources are more likely to carry the costs of adjustments and those with better capabilities are more likely to influence changes to their advantage.

Pluralisation of interests is not limited to labour. Several authors suspect that clashes of interests between domestic and export-oriented firms, growing and declining industries or industries which profit from coordinated labour market arrangements, such as firms in precision manufacturing, vs. those who do not, may become more relevant (e.g. Thelen and Kume 2006). Also, large firms often have different interests than smaller firms. For instance, large manufacturers have often tried to raise profitability and to cut costs by increasing pressure on their suppliers to lower prices thus passing on the need for adjustment. Since large firms tend to be

[21] Many authors argue that conservative welfare states are particularly prone to develop a pattern of labour market dualism, e.g. Miura (2001a), Palier and Thelen (2010), Pierson (2001b), Rueda (2007), as they tend to protect the status a worker has attained rather than offering universal and equal protection. Insofar the phenomenon of divergence is not new. However, governments have reinforced dualisation through recent reforms. One example for this is the new German unemployment insurance regime. Prior to 2003, former contributors to the unemployment insurance were treated more or less equally with all receiving a similar replacement rate. A reform in 2003, however, created two groups of beneficiaries. Full entitlements are now granted for the first year only and then become are reduced to social assistance levels which requires considerably harsher means testing.

better integrated in political decision-making this could mean that some non-liberal labour market arrangements are maintained not because a large coalition of businesses support them but rather a group of powerful players. Indeed, many experts interviewed for this study confirmed that business associations with the most institutionalised influence on the national stage are biased towards large firms and particular industries. This may also explain why quantitative indicators of power resources, such as organisation of union members or the degree of centralisation of collective bargaining or corporatism scales, tend to produce inconclusive results. Rather than organisational power of labour and capital, it may be access to decision-making of powerful sub-groups that matters most.

Critical assessment and research agenda

Power resource theory has invited numerous criticisms. The problem of reliably measuring "resources of power" is seen by some as a major obstacle for formulating any meaningful insights based on it. Heclo in his comparative study of social policy in the UK and Sweden, for instance, argues that the explanatory scope of power resource theory is essentially limited: "The creation of modern social policies (…) cannot be said to have resulted from the electoral rise to power of a working class intent on legislating its own interests; alternations of party power in government have far more frequently maintained the momentum of existing policy than given expression to parties' deliberately announced and campaigned-for alternatives" (1974: 305). Pierson (2000a) and others have something similar in mind when they describe institutional processes as path dependent (see also the previous chapter), that is, institutions created in the past have become so entrenched that changing them would create costs that outweigh the potential benefits of a desired change. These costs can be economic (for instance the capital needed to switch from a pay as you go to a capital-based pension scheme) but also political, such as the opportunity costs of having to convince a highly critical electorate. Moreover, these costs may increase ("increasing returns") the more time passes as those established institutions influence the formation and development of later institutions.

Although governments are not entirely determined by path dependence, according to Pierson it usually takes critical junctures for institutional equilibria to change fundamentally. For instance, the post-war period in the UK may have presented a critical juncture for establishing several social-democratic elements of

social policy such as the National Health Service (NHS), because the British public was well aware of the shortcomings of the existing system due to the shared experience of war. Even if the public grew more critical of the NHS later, no critical juncture emerged which would have allowed forming a new consensus. So even governments keen on reforming the NHS such as those headed by Thatcher, were not able to do so (e.g. Pierson 1994: 132-135).

Yet, path dependencies can exist for very different reasons. For instance, pension systems are difficult to reform radically because they usually involve a considerable amount of sunk costs. On the other hand, a typical source of resistance consists of the often substantial group of beneficiaries of specific programmes who are unlikely to give up privileges or to readily accept cuts to entitlements if they have a realistic chance for influencing decisions. If these groups possess power resources (e.g. are electorally significant) they may be able to avert or to modify proposed reforms. Hence, what proponents of path dependency often describe as essentially a similar and "transferable mechanism" (Falleti and Lynch 2009) of institutional development needs to be differentiated further. As for the difficulty for assessing power resources objectively, systematic process tracing allows to describe the resources and the distributions in detail as it does not have to rely on broad indicators. As for critical junctures and the relevance of disruptive events, this study takes an alternative approach by focusing on the critical moment of change in the last 20 years, flexibility, rather than single events.

The distribution of power resources should not only matter for macro contestation and coordination but also for meso and micro processes. In fact, the balance between LoRs is likely to change due to shifts in power resources. For instance, if "reformers" encounter too much resistance on one LoR they may move toward another to achieve their aims. So specific LoRs may be used strategically depending on their power distributional compositions. For instance, a move toward corporate bargaining, away from industrial, regional or even national bargaining processes could be a sign that employers push for more flexibility on the corporate level because collective bargaining and national politics have not been responsive to their demands.

3.1.3 Ideology, salience and blame: Theories of partisanship

The idea that policy is shaped mostly by the ideological orientation of the parties in government is in many ways similar to approaches focusing on the distribution of power resources. In its original formulation, partisan theory suggests that to understand why specific policies are chosen one has to look at the programmatic orientation of the party (or coalition of parties) in government. As parties differ in their ideology and the constituencies they represent, there are several "programmatic" factors to explain differences in the responses of governments facing similar and when legislating comparable policy areas. Scholars have for instance explained differences in the size of public welfare states across advanced democracies (e.g. Huber, Ragin and Stephens 1993) or differences in macro-economic policy in response to the Oil Crisis (Hibbs 1977) by comparing the strength of left-of-centre parties in government. However, partisanship theory also pays attention to electoral-strategic questions: in particular, political scientists expect governments and parties to be highly aware of social and economic consequences of labour market developments as these are vital for their electoral prospects. This means, that governments are not only driven by their programmatic orientations but also by the strategic rationale of the circumstances in which they act. The following paragraphs will address both dimensions of partisan theory before addressing their practical implications for the politics of institutional change and reform in Germany and Japan.

<u>The programmatic dimension</u>

For scholars comparing European cases of policy reform it is common to distinguish parties according to "party families" which more or less represent similar constituencies, policy approaches and ideologies. Due to its relative homogeneity and its presence in virtually all advanced Western European democracies, it is not surprising that social-democracy has received the most attention in comparative research. In general, programmatic differences are believed to relate to differences in the core constituencies of parties, such as organised labour in the case of social-democratic parties, or self-employed and business owners in the case of many conservative and liberal parties. This mirrors what Lipset and Rokkan (1967) call the transformative revolutions of modern party systems, with the conflict between capital and labour as the most important cleavage (defined as latent social conflict) shaping present-day party systems. Social democratic parties are identified as the

political ally of the industrial working class and low-income groups. In terms of policy, social-democrats are supposed to favour universal state-centred welfare arrangements rather than privatised ones where coverage and benefits depend on the capabilities of market participants. Furthermore, they are in favour of furthering the protection of individuals against social risks, such as unemployment. Protection means the establishment and expansion of social insurance but also includes regulation, e.g. employment protection legislation with the aim of stabilising jobs and strengthening the bargaining position of workers vis-à-vis employers.

However, social-democracy should not be understood as solely furthering the interests of the working class. Scharpf (1991), for instance, finds that the electoral appeal of Western European social democracy lies in successfully consoling business interests with those of workers, that is, social democrats have for many decades successfully furthered both economic growth as well as wide participation of society in the benefits of growth. This is echoed by Kitschelt who writes that "social democrats (...) present themselves as better political managers of capitalism, because their commitment to comprehensive social policies (…) builds on the insight that sometimes a judicious use of nonmarket arrangements assists a productive economy more than an ideological zeal to assert the rules of the marketplace in all matters of economic governance" (1999: 323). This suggests that social democratic parties may be somewhat more inclined to use non-liberal institutions and arrangements to seek a consolidation of business and labour interests than other parties but it does not limit them to specific policies.

However, theorists on party families find it more difficult to group other parties into a single programmatic group. However all major parties, whether Christian-democratic or conservative or liberal, essentially face a similar challenge of offering a policy package that promises to achieve both economic and social objectives. Partisanship can in that sense can be described as a balancing act between both goals which also depends on the salience of both issues (that is, voters may give stronger preference to one or the other at a given moment) and explain why parties position themselves differently over the course of time. For example, the Liberal Democratic Party (LDP, *jimintou* 自民党) at one point in the early 1970s called itself Japan's "welfare party", and its policy of shielding domestic markets from international competition can also be interpreted as social policy allowing domestic firms to offer corporate welfare benefits and high job security. Furthermore, even

within Europe differences between parties of the same family can be substantial. Merkel and Petring (2007), for instance, distinguish between modernised, liberal and traditional social democratic parties to highlight significant differences in their views on the role of the state and state-led regulation.[22] This indicates how wide the programmatic space can be parties even within a relatively homogeneous party family occupy. Hence, conceptualising partisan difference based on party families with relative rigid ideologies seems no longer justifiable. Instead, programmatic orientations of parties should be seen as relative preferences which are constantly re-interpreted in a dynamic context. All parties who seek to appeal to the median voter (that is those parties who thrive to become the majority party) essentially need to balance economic and social goals to appeal to a wide electorate. For that reason alone one cannot expect partisan competition to be dominated by bold ideological confrontation but rather contestation based on policies. The relationships to specific constituencies and organised interests offer clues which policies are more likely to be pursued by a party. Yet, in a volatile electoral market they cannot per se expected to determine their actions.

Blame avoidance and electoral risk management

Political scientists frequently argue that a government's main concern is electoral retaliation by voters. Indeed, a lot of research suggests that governments cannot easily get away from the electoral impact of unpopular reforms. Some explain the current relative weakness of European social democracy with the burden of structural reforms many social-democrats governments have implemented in the last 10 to 15 years, which stood in sharp contrast to the electoral promises of the "social democratic golden age" of the 1950s to 1970s.[23] Yet fundamentally, all government parties should face strong incentives to minimise the negative impact of decisions, as they appeal to voters across socio-economic divisions. For that reason applying a strategy of "blame avoidance" (Weaver 1986) should be an attractive option for any partisan actor in government. In practice, this can mean that governments try to avoid taking unpopular decisions or that they obscure responsibility for them. In EU member countries for instance, it is common that national governments lament

[22] With regard to labour markets, Merkel and Petring, take "activation policies" as the main threshold to distinguish between different social democracies. Activation emphasises incentives to take up work rather than protection from social risks associated with unemployment through generous unemployment benefits.

[23] In contrast, the so called "Nixon goes to China" argument developed by Cukierman and Tommasi (1998) suggests that voters will be more receptive to arguments supporting reform if "credible actors" promote them, e.g. social democrats arguing in favour of welfare cuts.

"pressure from Brussels" even if they have been directly involved in decisions taken by the Council of the European Union. In corporatist systems the possibility to delegate regulatory responsibilities away from the national political arena can make it difficult for voters to "address blame" as political accountability remains diffuse. This suggests that multi-dimensional arrangements and corporatist practices offer the possibility of managing "blame" and this may be used deliberately by governments to mitigate electoral risks.

Although rarely systematically addressed in political research, salience – here defined as the relevance of regulatory issues for voters – is another important element of strategic partisanship. Culpepper points out that in modern democracies government decisions are not necessarily politically salient: "Many issues in capitalist democracies are not subject to a popular vote. Politics always involves conflicts among different groups, but the most effective weapons in those conflicts vary - depending, critically, on whether the issues at stake are of high or low political salience" (2010: 5). As a consequence, Culpepper argues, parties adopt very different strategies; trying to actively shape regulation if electoral stakes are high while adopting a more passive attitude if salience is low. In the latter case, interest groups with strong preferences stand a better chance of influencing regulation than when partisan politics is actively involved. Highly salient issues leave parties little choice but to take a position because they matter to voters and thus directly impact their electoral fortunes. Under such conditions consensus-seeking with the main stakeholders is not impossible but less likely because parties are under pressure to demonstrate their commitment to a cause (e.g. passing an act or blocking a reform). Policies of low salience, on the other hand, may allow to delegate the responsibility to other LoRs or to apply a strategy of gradual implementation without explicit regulations. This way, governments can avoid the risk of electoral retaliation. Multi-dimensional institutional frameworks of regulation can therefore also be interpreted as a resource to manage the salience of issues.

This is not to say that parties per se will try to keep salience low and avoid polarisation. Indeed, parties may strategically try to increase the salience of issues, for example, to mobilise their core constituencies in close elections. Yet, in most situations parties and governments are more likely to try to present themselves as moderate managers of issues because they need to appeal to a growing group of swing voters. Another electoral reason for moderation may stem from the fact that

the interests within constituencies have also pluralised. Here, the argument of dualisation of the workforce is highly relevant because it assumes that the linkage between parties and their constituencies has changed fundamentally. For example, King and Rueda assert that a new class of 'cheap labour'[24] has emerged in all advanced democracies whose political interests differ from those of better paid workers. Electorally this would mean that in particular labour parties will find it increasingly difficult to address the conflicting demands of labour groups and to mobilise them as appealing to one group may alienate the other. However, it has to be kept in mind that the "existence of two distinct groups within labour only affects the strategies of partisan governments when there is a conflict between insiders and outsiders" (Rueda 2005: 62). Governments, therefore, may want to avoid such conflicts by mitigating the salience of an issue.

Rueda (2005, 2007) assumes that labour market dualisation is a problem mainly for social-democratic parties because the labour vote has traditionally been the backbone of its electoral support. However, if labour market dualisation does indeed increase the salience of labour market regulation as such because conflicts between insiders and outsiders matter, this will likely affect all parties as situations of polarised politics require all parties to position themselves. Hence, dualisation should increase the relevance of partisan contestation for regulation. As a consequence, regulatory outcomes should then clearly reflect the partisan composition of governments and parliaments.

Discussion and research programme

While for Schmidt partisan difference "compared with many other hypotheses in the public policy literature, (…) can be regarded as a relatively successful candidate" (Schmidt 2002a: 173), scepticism about the applicability of conventional partisan theories in the context of increasingly volatile electoral markets and general de-ideologisation since the collapse of communism in 1989 has grown in recent years. For example, the few quantitative-statistical studies on labour market regulation so far have produced mixed results: On the one hand, Botero et al (2004) find a clear difference between the degree of the "leftist orientation" of governments and the level of regulation; on the other hand, Jäkel and Hörisch (2009) find no

[24] Instead of differentiating between regular and non-regular workers, King and Rueda identify a growing class of 'cheap labour' which includes many who hold regular jobs. 'Cheap labour' lacks adequate representation in industrial relations, social protection and, most importantly, earns low pay. King and Rueda also argue that this group holds political views markedly different from workers with more favourable working conditions, especially regarding employment protection legislation and welfare policy.

significant link between the partisan composition of governments and the incidence of reform in advanced OECD countries. One reason for these conflicting results may be that regulation cannot be easily placed in the context of conventional conceptualisations of programmatic differences as bold and stable. As has been argued earlier, it thus appears more sensible to conceptualise parties' positions as relative and as dynamic; that is, they can be driven by ideology as well as by strategic calculations. Plus, there is considerable leeway in how –if at all- they are transformed into concrete policies or policy proposals. The salience of regulatory issues is thereby a key indicator to assess the relevance of partisanship.

As long as institutional complementarities exert the strongest influence on actors, one can expect, however, that strategic as well as programmatic considerations only play a minor role for processes of reform and change. One indication for this would be governments ignoring "windows of opportunities" such as comfortable parliamentary majorities to legislate controversial changes. Visible public contestation on acts and policies, on the other hand, would indicate that partisan competition does play a significant role for the main mechanism of institutional change and reform. The following analyses must thereby take into account programmatic differences between parties as well as strategic motives which mostly depend on the degree of political salience of an issue.

3.1.4 Institutional complementarities and the politics of change

In terms of institutional change and policy reform the main argument of VoC can be summarised as follows: the particularities of the political economy of a country make certain policies and institutional developments more likely than others. For example, CMEs like Germany and Japan should be hesitant to adopt liberal or market-oriented policies as they do not conform to the institutional rationale of the non-liberal institution which emphasises coordination rather than competition, at least as far as vital relationships with financers, employees and suppliers are concerned. Non-market based coordination, so the central argument in Hall and Soskice's model of CMEs, can be an effective "mechanism" to solve problems in 5 "spheres": (1) Inter-company relations, i.e. relations with suppliers and clients, but also issues such as skill transfer can be solved through cross-share holding or mutual financing models. (2) Corporate governance, in particular coordinating the interests of shareholders, management and creditors so the firm is attractive as an employer for skilled staff, as

an investment while securing enough capital for its short-term and long-term business strategies. Long-term relationships with other firms and banks can help to balance these interests. (3) Industrial relations: Firms need to balance demands of workers and profit-maximising. Standardisation of working conditions within an industry or region may be helpful to achieve this as it helps to keep external market pressures at bay, e.g. competitors hiring skilled employees. (4) Vocational training and education: Firms need to find employees with desired skills or encourage them to acquire such skills and, once they have done so, to stay with the firm. (5) Coordination with employees. Firms have to ensure that their employees apart from their individual demands, work in the interest of the firm and support its strategic goals.

Coordination therefore can only be maintained if institutional incentives on all levels contribute to aligning the behaviour of several stakeholders. Applied to the micro level of actors this means that the institutions of coordination in the labour market arrangements directly and consciously shape the interests and the behaviour of actors unless there is a major shift which changes these incentives.

Is concertation inevitable in coordinated market economies?

This then leads to the main question of this study: Does it matter for the politics of reform in Germany and Japan that their political economies rely on non-liberal institutions? As a firm-centred theory, VoC does not provide detailed assumptions on the behaviour of governments or the politics of reform in general. The question goes beyond conventional assumptions that CMEs tend to rely on corporatist practices and strong organisations of labour and capital. For Regini the relationship is still ill-understood and researchers thus tend to over-emphasise the relevance of formal pacts such as the Wassenaar Accord in the Netherlands which have been rare elsewhere. Instead, "one should observe the features of the economic and social policies that lie at the very heart of any dialogue between governments and social partners. This dialogue may take many forms: explicit bargaining, informal consultation, or the drawing up of a regulatory framework in which relationships can develop. What matters is (…) the answer to the following question: can the specific features of these policies be considered the consequence of a concerted regulation of the economy which characterizes some countries more than others?" (Regini 2003: 255). VoC provides an economic rationale for a particular politics of regulation and

hints at how it unfolds politically. However, it does not specify its forms and processes.

What can be said is that VoC assumes pressure for change will stem from a change of interest of firms and this could either mean that institutional incentives to coordinate cease to exist or that a distinct process of change will unfolded based on the underlying institutional logic of labour market arrangements.[25] In the latter case, labour market reforms would not only look differently compared to common liberal concepts of reform but would also be implemented in distinct ways because, as Thelen and Kume put it, "employers themselves have become invested in various institutions (including centralized wage bargaining in some of Europe's corporatist democracies, and also [...] lifetime employment and seniority wages in Japan's coordinated market economy)" (2006: 12-13). An complete overhaul therefore may be unlikely because, as Regini (2000a) argues, comprehensive deregulation is not in the interest of employers as coordination can lower information costs, provide for stable labour-management relations and provide many other economic advantages.

However, VoC is not per se dismissive of the idea that the distribution of power can be a crucial factor for the persistence of non-liberal institutions and processes of change. Rather, VoC should be seen as an extension of conventional approaches in that it emphasises there may be a comparative institutional advantage of firms in CMEs non-liberal institutions: „Es liegt daran, dass die Institutionen dieser Ökonomien bei der Erzielung von Vereinbarungen, etwa in Lohnfragen, effektiver sind als die anderer politischer Ökonomien. Und angesichts von Interessengegensätzen gründet der Bestand dieser Institutionen letztlich auf der Machtbalance zwischen Organisationen, wie etwa Gewerkschaften und Arbeitgeberverbänden, die Gruppen mit konfligierenden Interessen repräsentieren." (Hall 2006: 189). Hence, power constellations do matter and changes therein impact how institutions develop. Yet, VoC does not provide details on how both perspectives relate to each other. Hall and Soskice however suggest that coordination is underpinned by "institutions of deliberation": "Deliberative proceedings in which the participants engage in extensive sharing of information

[25] VoC assumes different temporal orientations of firms in CMEs and LMEs. While firms in LMEs are more likely to adjust their workforce in line with demand, firms in CMEs should be less sensitive to short-term changes. They are likely to try harder than LME firms to avoid dismissals e.g. to protect their skill investments. Such differentiations should, however, not be understood as absolute. Some firms in CMEs may actually prefer short-term adjustment and some firms in LMEs may well rely on long-term employment practices. However, there should be considerably more firms with long-term orientation in CMEs than in LMEs and vice versa.

about their interests and beliefs can improve the confidence of each in the strategies likely to be taken by the others" (2001: 11).

This is interpreted by some as concertation being the "natural response" of non-liberal capitalism to economic challenges (Rhodes 1997). Yet, there is considerable disagreement on how the comeback of concertation should be evaluated, that is, whether it represents similar mechanisms as in earlier decades. Culpepper is one of several authors who claim that there is a distinctly new thinking behind negotiated reforms and neo-corporatist policy-making in the 1990s as opposed to macro-economic steering of the 1970s. It stems from the need of governments to obtain information for effective policy-making it. This is "the product of a period in which states depend on local information and relational information in order to succeed, but have no good avenues for securing either sort of information" (Culpepper 2002: 778). While some cases can be explained very well using Culpepper's insight, it is much more difficult to envision information gathering as the main motive for consensus-seeking tactics in labour market policies in general. As previous studies have shown, periods of intensive coordination are often short-lived although the need for information-gathering would be, following his rejected, constant. Yet this does not mean that Culpepper's point should be dismissed as such. Rather he points out that motivations for coordination can vary and are not necessarily merely connected to economic considerations.

From the VoC perspective one can infer to the following motives concerning the actions and strategies employed by actors. Although actor groups in CMEs will be concerned about short-term issues just like actors in non-CMEs, they have an additional institutional incentive to forego short-term goals or gains for the benefit of long-term gains and benefits. In addition, they should be aware of the risk that applying a confrontational tactic can trigger retaliation on different issues and/or other levels of the political economy and thus may impact negatively on the whole arrangement. Actors keen on changes may have strong incentives to strike a balance between all interests concerned or by offering compensation. This implies that complementarities should not only tame the preferences of actors and their strategies but also transform individual preferences for change into collective efforts. Even if this does not amount to comeback of corporatism of the 1990s, it does suggest that in CMEs no particular actor group should dominate as all stakeholder and various institutions need to be involved.

The VoC perspective thus underlines the importance of multidimensionality of institutional arrangements. Even though power is not absent from this perspective its implications are tamed if overall institutional arrangements contribute to economically efficient processes and do not produce political incentives for governments or other actors to challenge the arrangement as such.

A critical assessment of the VoC approach

In addition to the critique on VoC discussed in the previous chapter, there are three critical points with regard the implications of VoC for politics that need to be addressed. First, the idea that employers have become invested in non-liberal institutions and thus support them, is challenged by Korpi (2006). He criticises the assumption that institutions of welfare and social policy should be seen as complementary to "productions regimes" (Estévez-Abe, Iversen and Soskice 2001; Iversen 2005). This criticism could also be applied to the view that decisions on different LoRs are connected through an implicit agreement that the arrangement as such is beneficial. Although Korpi concedes that there are cases where employers have agreed to welfare expansion this should not, in his view, be understood as a strong preference for more welfare to contribute to the production regime. Likewise, non-liberal institutions such as skill formation regimes in Germany and Japan, which involve coordination between different actor groups and emphasise long-term commitments from capital and labour, may simply exist because, as Korpi argues, they are positive-sum games, in which all sides can gain in contrast to zero-sum games where one side has to concede to the demands of the other. However, this means that at least with regard to employment there is virtually no gap between Korpi's perspective and VoC as both assume that non-liberal employment practices can be beneficial for all stakeholders and, under this condition, are sustainable. Although Korpi may be right that employers have not been keen on developing and institutionalising non-liberal practices, it may be a very different question whether they are ready to give them up easily when circumstances change. After all, there may be considerable insecurity about the implication of a new arrangement and institutional development has centred on non-liberal coordination.

The second criticism refers to the question whether coordination, cooperation and corporatism can be seen as intrinsically related to economically beneficial complementarities. Lijphart (1984), Estévez-Abe (2008) and Iversen (2007), among other, suggest that political institutions, such as the electoral system also play a

decisive role. LMEs usually apply majority systems which encourage single party governments and discourage representation of small parties. CMEs, on the other hand, usually apply more proportional electoral systems. The German system, for instance, makes coalition government very likely and this alone encourages cooperation between parties representing different constituencies thus furthering "consensus" as the dominant pattern of decision-making. It may therefore be a matter of political-institutional arrangements how underlying conflicts are dealt with rather than (exclusively) economic or power-distributional factors. It cannot be denied, however, that political cultures emerge which emphasise consensual strategies even though they are not officially enshrined or protected by law or some other form of sanctions (e.g. the 'magic formula' of coalition government in Switzerland). Hence, whether complementarities are actually causing specific behaviour must be established in the context of the specific policy field under investigation and against explanations emphasising political-institutional factors.

The third criticism concerns the question to what extent it is justified to subsume rather heterogeneous and drastically changing employment patterns under a compact concept such CME which stresses long-term orientation and stability as the main characteristics of labour market arrangements. Against the background of soaring numbers of low-pay jobs King and Rueda for example argue that "our understanding (…) still reflects the now disappearing realities [of] the 'golden age' of social democratic welfare". This still dominant but outdated view, they believe, obscures the fact that precarious employment has been expanding to such levels that it inevitably "will politically test the foundations of the European coordinated market economy" (2008: 294). In particular, they expect that issues of labour market regulation will become much more polarised than in the past as the number of workers who are not adequately covered in the traditional arrangement will increase. If accurate, this would mean that the salience of labour market regulation will inevitably increase and this may not only cause a more politics-dominated regulatory process but also ask for more direct state commitment in regulating working conditions in the first place.

Research agenda

What are the implications of this discussion of the VoC literature for the following analyses? With regard to macro LoRs concertation and multi-dimensional reform deals can be seen as clear indications that complementarities matter

politically, although only a detailed process tracing can confirm these assumptions. Developments on micro and meso LoRs should generally be in line with what is happening on the macro level and vice versa, this means changes should enhance and complement each other rather than lead to competing institutional arrangements or institutionalised contestation. Even so, power and other strategic considerations are not completely outside the picture, power-based politics should only be decisive under specific conditions, such as economic crisis or high unemployment which not only put the economic efficiency of the institutional arrangement at question but also increase electoral risks for governments as economic development can be decisive for swing voters. However, if economic efficiency is more or less sustained, the incentive for governments to dominate processes of institutional change through legislation is small. In contrast to power-based explanations, VoC suggests that processes and outcomes of change where one actor group dominates are unlikely in CMEs. Instead, one can expect cross-issue or cross-dimension deals as well as accompanying compensatory policies by governments.

3.1.5 Synopsis of the theoretical perspectives

Public policy and political economy theories on reform and institutional change display similar deficiencies. Neither can easily handle more complex reform trajectories where change coincides with stability. Instead of looking for a compact explanation for all observed phenomena it seems therefore more sensible to use the theoretical perspectives discussed so far to distinguish different dynamics which can interact but which are not necessarily present all the time. Most likely are, however, turning points where one dynamic is succeeded or replaced by another. Such changes can be used as additional evidence to identify and then to explain instances of significant institutional changes. In more general terms, the public policy and political economy theories can be understood as representing two institutional equilibriums. Public policy theory suggests that stable institutional arrangements rest on a political equilibrium which fulfils one of two requirements: Either some institutional stakeholders are so powerful to enforce compliance and thus block any change would impact their vital interests. The second scenario suggests that there is no strong motive for radical change because, on the whole, the institutional environment serves the interests of all stakeholders fairly well. Public economy theory suggests that stable institutional arrangements mainly represent an economic

equilibrium, that is, an institutional arrangement is stable if is economically efficient. Institutional change then only occurs to maintain or re-instate efficiency. Adjustments in the political and economic equilibria can both involve contestation as well as coordination but in order to be able to distinguish the causes for either dynamic, the political as well economic structure of the cases under investigation have to be studied in detail.

Sections 3.2. and 3.3 will now provide details on the governance system and the macro, meso and micro LoRs in Germany and Japan. This then provides the basis to formulate a set of concrete hypotheses guiding the analyses in subsequent chapters.

3.2 Policy-making and macro regulation

Political scientists typically focus on macro-regulation and decision-making because here they find all the institutions and processes that are essentially political: Parliamentary debates, negotiations between both parliamentary chambers and across political parties, elections campaigns and public debates, to name but a few. At the centre of such analyses usually stands a policy decision which is interpreted on the grounds to what extent it mirrors the interests of different actor groups. The complex interplay of modes of decision-making, strategies, electoral pressures, power, ideas, institutional constraints and interests is sufficiently complex to justify research even on a single bill. In multi-dimensional settings, however, another crucial question can be addressed, that is, why some legislation is implemented while other is not. In order to be able to answer both questions about why specific forms of regulation and reform were chosen and to what extent they mirror institutional and power constellations, it is essential to get a clearer picture of the institutional and political context in which these decisions are derived. This section will discuss in comparative terms the macro LoRs in Germany and Japan and thereby look at veto structure, partisan competition and power resources of labour, capital and potential sub-groups therein (such as insiders and outsiders). While the focus here is on power distribution, chapter 4 will explore the issue of economic and political complementarities in more detail.

3.2.1 Veto points and centralisation of power

The theoretical discussion in the first half of this chapter has shown that there are several competing explanations for why actors prefer coordination over contestation or vice versa. Motives for either behaviour can stem from institutional

complementarities but also from power constellations, such as the opportunity of vested interests to influence decisions. In order to assess the relevance of complementarities, it is necessary to analyse the political systems of Germany and Japan with regard to their political-institutional incentives for contestation and coordination. This sub-section discusses the evidence by looking at political-institutional incentives for moderation and contestation that stem from the political system as such.

For Katzenstein contestation is not a typical feature of German politics because the governance structure encourages a "semi-sovereign" state who does not dominate policy decisions. One example for this is a lack of partisan conflict: "If viewed comparatively, West Germany is striking for its lack of new policy initiatives (as distinct from political rhetoric)" (1987: 4). Katzenstein attributes this to the fact that Germany is organised as a corporatist state which delegates many regulatory responsibilities to non-state actors. Many other authors have expressed similar views. Schmidt (2003), for example, sees German social policy firmly set on a "mittlerer Weg" with regard to social policy, that is, it avoids extremes such as full marketisation or state dominance due to a high number of veto players but also because both major parties, the CDU/CSU and the SPD mobilise across socio-economic divisions (e.g. both parties have labour wings and groups organising "entrepreneurs"). Vail (2009) describes the German state as *primus inter pares* who normally seeks consensus with the actors concerned and acts on its own only in exceptional circumstances, e.g. when it is under high electoral pressure as in the case of the Hartz reforms. Other authors such as Lijphart (1984) point out that the German political system features few institutions that concentrate power but rather distributes power across several governance levels (federalism) and institutions such as the powerful constitutional court (*Bundesverfassungsgericht*, BVerfG) and the Federal state (*Länder*). To this one could also add an independent central bank (Bundesbank and European Central Bank) which has made macro-economic steering employing monetary policy impossible. The German parliament, the Bundestag, is constrained by a powerful second chamber, the Bundesrat, which frequently gives the opposition a voice (see figure 3-2) in legislative decisions. Last but not least, coalition governments have been the norm in German post-war history both at the Federal and Länder (Federal states or *Bundesländer*) levels. Inside coalitions the *Koalitionsausschuss* (coalition meeting) can constitute an additional veto point

controversial legislative initiatives have to pass. In order to secure legislative success and enter government, German parties therefore routinely need to seek consent with others and have to compromise on their positions.

Japan, in contrast, has been one of only few advanced democracies which for decades has been dominated by a single party. The LDP has been in power from 1955 (the year of its founding) until the early 1990s and has remained the main political force until 2009. While in Germany several powerful bodies exist and different levels of government often compete over regulation, political power in Japan appears to be highly concentrated. The central government decides most regulatory issues and leaves only the execution of legislation to prefectures and municipalities. Furthermore, the Japanese Supreme Court[26] is politically almost insignificant as it tends to avoid concrete rulings on politically contested issues and the Bank of Japan has become independent only in the mid-1990s (as a result of the financial "Big Bang" reform package under PM Hashimoto). In addition, until 1993 coalition governments were virtually unknown in Japan. Even in earlier cases where the LDP lacked a formal parliamentary majority it could usually rely on "independents" who were often de-facto-LDP-members. This way the second parliamentary chamber, the Upper House of the Japanese Diet (UH; official name: House of Councillors, *sangiin*参議院), played only a marginal role until 1989 because the LDP commanded over absolute majorities in both houses (see figure 3-3). Except for the relative extensive role of the UH, which can veto the budget and the conclusion of international treaties and postpone all other legislation, and the electoral system (which through a proportional list facilitates minority party representation), Japan largely resembles the British Westminster system, where power is concentrated in the hands of the majority party, the cabinet and the Prime Minister. This leads to the curious phenomenon that despite common criticism Japanese politics was unable to implement structural reform, "by any ordinary measure (…), Japan comes out as a political system with very few veto players." (Estévez-Abe 2008: 11).

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[26] In Japanese *saikou saiban-sho* (最高裁判所). One example for the Japanese court's reluctance to get involved is the long going conflict about electoral districts. Although the Court ruled several times that disparities between urban and rural areas were unconstitutional, its verdicts were not attached with a time frame or other forms of penalties and widely ignored by Japanese policy-makers until the 1990s. In Germany, the BVerfG is regularly voted the most trusted national institution. The BVerfG has been responsible for several landmark cases and some of its verdicts have been political contested. For example, the "Kruzifixurteil" in 1995 requires public schools to end the practice of mandatory crucifixes in classrooms as this infringes on the state's neutrality toward religions. However, in most cases German governments have followed the court's rulings.

This implies that the Japanese government should enjoy a much stronger position in policy-making than its German counterpart and thus should play a stronger role in regulation on the whole. However, scholars assess the Japanese political system very differently. For instance, George Mulgan finds Japan deviates "from the Westminster model in that the power of the executive is undermined by two alternative power structures: the party and the bureaucracy." (2003: 76). She notes that actual decision-making takes place within the LDP through a system requiring all legislative projects to be reviewed by specialised Policy Affairs Research Councils (PARC)[27] before they are forwarded for approval by the Diet. For Ono (2007b) this internal review process constitutes the major veto point in Japanese policy-making at least as long as the LDP dominates in both chambers of the Diet. For him the LDP's Central Council (*soumu-kai* 総務会) where 40 senior LDP members discuss the PARC's recommendation is the most powerful body because leading figures of the LDP factions (*habatsu* 派閥) are directly involved so that programmatic as well as strategic interests are present. As council decisions are by tradition taken unanimously, the council can in some instance be a key veto point for policy.[28]

While the argument of party-internal conflict implies contestation to be the dominant mode of change in Japanese policy-making, the assumption of a strong bureaucracy suggests an only mildly polarised proce-ss. The role of bureaucrats in policy-making has been analysed by several generations of political scientists and remains a key research topic to this day. Typically those seeing Japan's ministerial bureaucracy as exercising excessive influence usually point to three arguments: first, the LDP and the bureaucracy entertain strong personal ties with leading bureaucrats who often start a career in the LDP after retiring. Also, until 1993 the LDP more or less controlled promotions within ministries and "post-retirement jobs" in state-run firms or related bodies and organisations.[29] Second, nearly all bills that become law

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[27] *Seimu chousa-kai*, abbreviated *seichoukai* (政調会). PARCs are constituted like shadow cabinet parallel to the ministries. All Diet members (UH and LH) of the LDP are members in at least one council. Under the old SNTV electoral system this structure presumably helped individual LDP politicians to build up a specialist portfolio which is particularly relevant for their constituency. For instance, LDP politicians in rural districts often concentrated on infrastructure projects. The DPJ also maintains PARCs.

[28] Factions are not identical to party wings in Western European but mainly represent close personal ties between faction members. The importance of personal ties in the context of factions may also explain why political dynasties have been so dominant in Japan. For instance, of the last 5 Prime Ministers (as of 2012), 3 are direct descendants of former cabinet ministers or Prime Ministers (Abe, Aso, Hatoyama).

[29] Career bureaucrats used to "retire" in their mid-fifties and then were either re-hired by their ministries on a different contract (often with lower pay) or hired by "independent" regulators, firms with strong ties to a ministry, lobby groups or political parties. The practice is known as *amakudari* (*descent from heaven*) and still common.

are drafted by the bureaucracy and then introduced into the Diet by the LDP. Amendments through parliamentary negotiations are rare, as Pempel (1974) noted as early as the 1970s. Bills which are drafted outside the ministries are hardly ever approved by the Diet. Third, ministries possess a range of regulatory means of their own which gives them regulatory authority for which Diet or cabinet approval is not needed. In particular, ministerial ordinances (*shourei* 省令) which provide details for the execution of laws, are, at least for Pempel, potent political tools because the "power to provide the technical interpretation of a law can often be tantamount to the power completely to revise the original intentions of that law, in contrast to the implications of a rigidly hierarchical Weberian model of a bureaucracy in which 'policy' is made 'above' and is meticulously 'administered' by those 'below'." (ibid: 654).

Yet, despite its weight in policy-making, scholars do not see the bureaucracy as an additional actor independent of politics but as one who is intrinsically linked to politics. A comparative study by Muramatsu and Krauss (1984) of elite bureaucrats in West Germany, Italy, the UK and Japan shows that Japanese bureaucrats are considerably more critical of partisan contestation than their counterparts in other countries and see it as their responsibility to console political conflicts and provide compromises. The dedication of the ministerial bureacracy to moderation and coordination may also explain why many issues do not become an issue of partisan contestation. Kume's assessment of the *shingikai* (審議会 or deliberation council) which are officially characterised advisory bodies to the ministries, providing expertise on labour market issues, confirms this. Since the 1970s, Kume argues, it has been common practice to invite the main interests to discuss *all* legislative projects: "In the labour policy area, [shingikai] are very important. Council members include both union and employer representatives, and the councils usually adopt a unanimous ruling. In other words, union representatives have a de facto veto over labour policy, although so do employers" (Kume 2001: 6). Interestingly, cabinet ministers or elected politicians have seldom been members in the shingikai which implies that bureaucratic "issue management" has been dominating regulatory processes while the electoral salience of regulation has remained limited at least for a long period of time.

In comparison, therefore, it seems fair to say that in both countries decision-making is not dominated by a strong central government but is spread over several institutions or delegated to semi-political institutions below the national political arena. As both systems integrate labour and capital in decision-making this likely leads to low or moderate salience of regulatory issues as all main stakeholders are participating although outside formal bodies of political contestation such as the parliament.

Coalitions, bicameralism and the politics of reform

Coalitional dynamics and the bicameral structure of the German and Japanese parliaments have received growing interests among policy analysts in the 1990s and 2000s because the many reforms have required intensive cross-party talks in order to be passed. Also, in contrast to earlier periods, the situations where the majority party needs the support of other parties for passing bills have increased noticeably since 1990 as figures 3-2 and 3-3 indicate. For many political scientists coalitions and diverging majorities in bicameral parliaments are relevant because they see them as additional veto points which slow policy-making processes and provide institutional incentives for policy moderation and consensus-seeking strategies. Even the ability to postpone the passage of a bill can according to Money and Tsebelis (1992) be a strong incentive for a government to compromise, especially if it is under pressure to pass legislation quickly. Ono (2007b) sees a strong parallel between Germany and Japan in that their bicameral systems has had a similar effect on labour market reform processes until the early 2000s, basically delaying decisions and thus causing "incremental change". There is some empirical evidence for this claim.[30] Figures 3-2 and A-5 (annex A) indicate that since 1966 German governments have usually been forced to negotiate to some extent, either because the opposition held a majority in the Bundesrat (33% of cases) or because they had no majority of their own (31%). "Windows of opportunity", that is, when Bundesrat majorities match those in the Bundestag, make up only a third of all cases and since the 1990s they have become even rarer. For instance, the SPD-Greens coalition coming into office in

[30] Formally, Bundesrat and Bundestag are independent legislative bodies, so in a strict sense the German system is not a bicameral one. The Bundesrat is not directly elected but appointed by Länder governments (who are elected in state elections). Länder votes vary with population size. The GG foresees the participation of the Bundesrat only when the autonomy and the responsibilities of the Länder are impacted. Yet, this has been interpreted rather broadly since 1949 so that the Bundesrat is involved in a majority of bills. Another reason is that bills are often "bundled" into larger legislative packages on which the Bundesrat gets to vote even if only peripheral provisions are of Länder concern. The Bundesrat can then often broker deals on issues beyond its formal responsibilities. Two reforms in the early 2000s have tried to reduce the number of contested bills (*Föderalismusreform I* and *II*) but to limited effect.

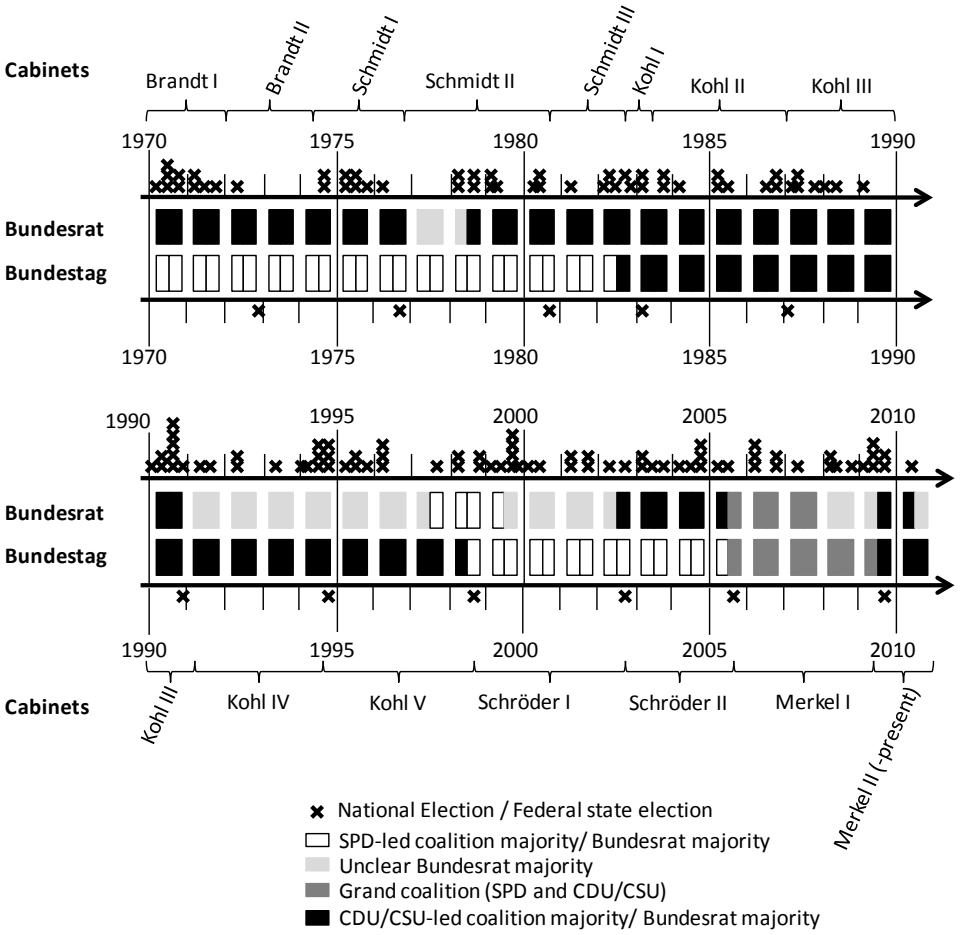
1998 lost its Bundesrat majority after one year as did the CDU/CSU-FDP coalition that emerged from the 2009 Bundestag election.

Historically, situations of a *twisted Diet* (*nejire kokkai* ねじれ国会), that is when the opposition holds the majority in the UH, have been rare in Japan (4% of cases since 1966 whereas coalitional consultation amounts to 23%, see figure A-5) but, as in Germany, they have become more common in the course of the 1990s and 2000s (figure 3-3). To counter the growing role of the UH, majority parties have tended to form surplus coalitions (although cabinets formally only require a majority in the LH) to either reach a two thirds majority in the Lower House (which can overturn all vetoes by the UH) or to achieve a majority in the UH. As the UH still uses a SNTV electoral system variant combined with a national proportional list, minority parties enjoy somewhat better electoral chances in the UH while LH majority parties find it somewhat more difficult to achieve a majority in the second chamber.[31] Cross-party negotiations are more likely to be limited to coalition partners (leading to a government-opposition dichotomy), whereas in Germany there frequently is a necessity to reach across the aisle because coalitions on the Länder level often defy the government-opposition divide in the Bundestag.

Formally, the UH is more powerful than the Bundesrat because it gets to vote on all legislative initiatives and can censure ministers and the PM, whereas the German government's survival is completely independent of the second chamber. Nonetheless, it seems that the Bundesrat has a stronger strategy taming effect because it fosters comprehensive and almost constant cooperation among parties while in the Japanese case a clear government-opposition dichotomy is visible most of the time. This means that partisan competition and incentives for contestation should be stronger in Japan as party cooperation usually is limited to coalition-building. Nonetheless this itself marks a noticeable departure from the '1955 system' where decision-making processes within the LDP mattered most. So it can be said

[31] Since a reform in 1994, the LH electoral system is a "parallel system" where the majority of seats are elected in single member districts (300 of a total of 480), and the remainder (initially 200 seats, since 2000 180 seats) in 11 regional lists. Like the German system (*personalisierte Verhältniswahl*) it combines majority vote with elements of proportional representation. However, some see the Japanese system more clearly oriented toward majority rule and the German system more oriented toward proportional representation. Both are similar in that they allow for limited minority representation and benefit the majority party. See Heinrich (2007), p. 107-108. The UH election system is a Single Transferable Vote System (similar to the LH system until 1994) with several multi-member districts and also regional lists. Mobilisation strategies for both chambers therefore differ considerably.

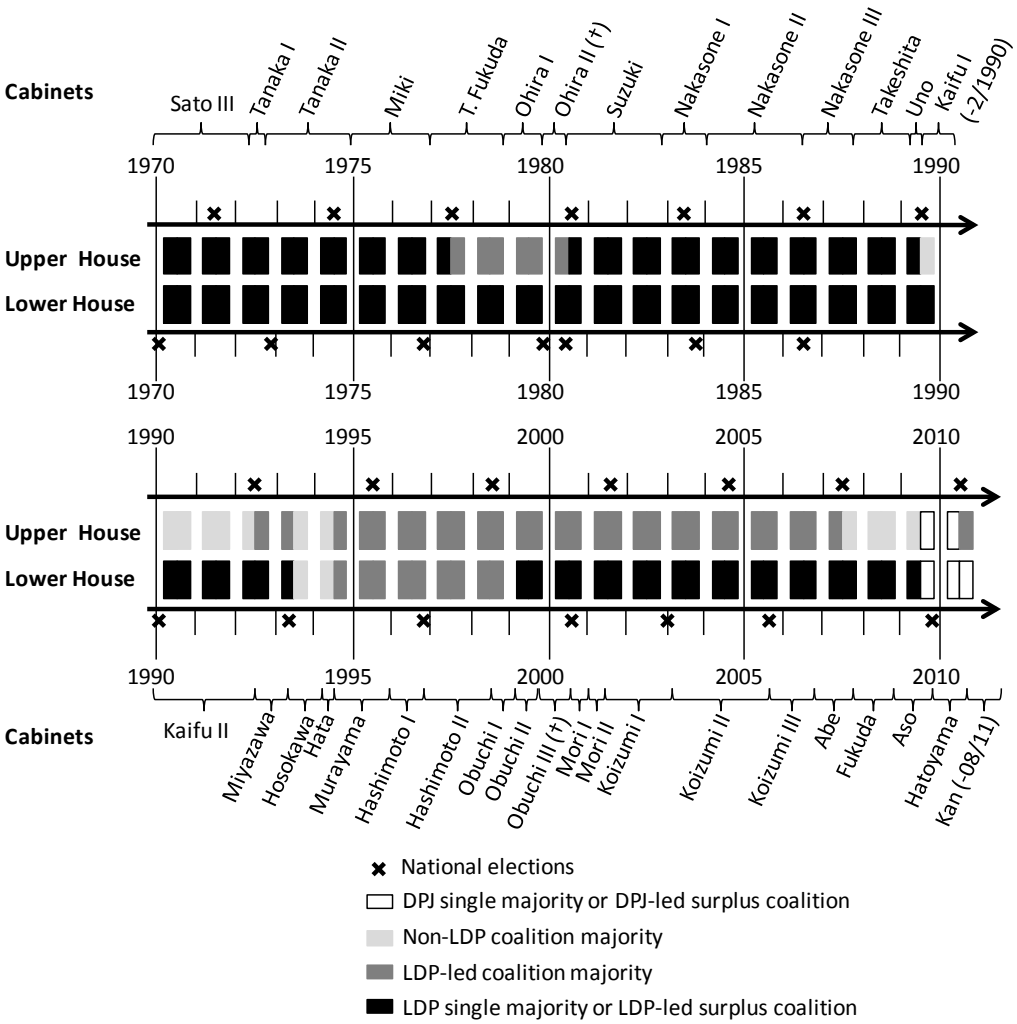
Figure 3-2 **Elections, cabinets and majorities in Germany, 1970-2010**



Source: Election dates and details on majorities in the Länder and on the Federal level were obtained from the electoral archive of the German television news broadcast *Tagesschau*. Available at http://stat.tagesschau.de/wahlarchiv/archiv/. See also table A-5 in annex A.
Note 1: Xs above the upper arrow stand for federal state elections, those below the lower arrow for elections to the Bundestag.
Note 2: Category "coalition majority" includes only coalitions of one major (SPD or CDU/CSU) and one junior party (FDP or Greens).The category "unclear Bundesrat majorities" was chosen when neither the government nor the opposition held a clear majority, e.g. due to coalitions involving government and opposition parties.

that since the 1990s there are more veto points in Japanese policy-making processes than in the past but still considerably fewer than in Germany.

Figure 3-3 **Elections, cabinets and majorities in Japan, 1970-2010**



Source: Based on data obtained from the Encyclopaedia of Japan (accessed through CrossAsia), the Asahi Shinbun and Heinrich (2007). See also tables A-6 and A-7 in annex A.
Note 1: Xs above the upper arrow stand for UH elections, those below the lower arrow stand for LH elections.
Note 2:"LDP-led surplus coalition" and "DPJ-led surplus coalition" mean that the LDP / DPJ held single majorities in the LH but still opted to form a formal coalition with minor parties.

Corporatism and power resources of capital and labour

The tumultuous transformation of Japan's party system[32] from the early 1990s until about 2000 also raises questions about how the role of organised interests in policy-making and regulation may have been affected. In both countries, organised interests have been suffering from a substantial loss in membership and thus arguably from a loss in influence but also the close personal ties between organised interests and parties have changed. Until the 1990s Keidanren had been the most active organisation on the side of business in Japanese politics. It maintained close

[32] See Ibid., p. 51-57. All parties have been affected by drastic re-alignments and the LDP lost several members to other parties. Most noticeable is, however, that the formation of a second major party to rival the LDP took almost 8 years. Only since 2000 is the DPJ the LDP's main rival.

personal ties to the LDP and served as the key source of financial funds for the party and individual politicians. A comparative network analysis on the ties between parties and interest groups in Germany, the US and Japan in the 1990s shows that in comparison the LDP has held exceptionally close connections to organised business and agriculture but has been at the same time strikingly distant from organised labour (Knoke et al 1996). Although Keidanren gradually stopped political donations in the 1990s responding to growing public discontent with collusion and corruption, scholars still see the LDP as clearly oriented toward business's interests, and thus business, at least as long as the LDP is in government, in a privileged position with regard to policy-making.

This is in line with how scholars have described the Japanese variant of corporatism. Unlike in Western European countries, the national labour union associations remained in a noticeably weaker position with regard to policy[33]. According to the famous characterisation of Japan as "corporatism without labour" by Pempel and Tsunekawa (1979), this is partially due to historical precedents, in particular political attempts to strategically weaken the union movements by promoting an enterprise-based union structure and an economic development strategy led by ministerial bureaucrats. Until 1986 trade unions had several national umbrella associations and a clear division between public sector and private sector unions. The former was represented by Souhyou which had close ties to the Japan Socialist Party (JSP) and the private sector mainly by Doumei the main backer of the Democratic Socialist Party (DSP). Doumei was generally considered to be more pragmatic and moderate in its demands and thus deemed more compatible with the LDP's policy position. Considering its relatively small size until the privatisation of the 1980s, it played a relative significant role in policy-making (c.f. Seifert 1997). On the other hand, Doumei's political ally, the DSP, never even reached half of the JSP's vote share until the 1990s. Due to its greater membership base and the relative electoral strength of the JSP, Souhyou could not be ignored entirely however even

[33] The pattern of bureaucracy of large businesses and the LDP and a peripheral role of organised labour movement can be seen as a historical continuity. For Pempel and Tsunekawa Japanese post-war governments tried "to systematically exclude labor from the national-level organizations and to incorporate them at the individual plant level, thus neutralizing their potentially disturbing influence" (1979), p. 268. Before the war, labour parties and unions enjoyed only few years in which they could organise relatively freely. After the war the American-led SCAP (then dominated by 'New Dealers') actively encouraged the organisation of labour for a very short period until unions in the 1950s organised more than half of all workers. However, successive conservative governments were worried about the relative high strike rates and looked for ways to pacify industrial relations. Furthering enterprise unionism was seen as a way to accomplish a less politicised system of industrial relations.

though it was more politicised and also demonstrated a strong commitment to various non-labour related issues such as foreign policy. Large-scale privatisations, in particular of the once strike-prone railway sector, however, considerably weakened the role of public sector unions by the early 1980s and lead to a moderation of labour-firm relations.

According to Suzuki (2007) the political participation of unions in Japan has experienced several major strategic changes in the post-war period (see also annex B, table B-2). After an initial period of direct confrontation with governments (also fuelled by the brief high in organisation rates, see figure B-1) the union movement then was nearly non-existent on the national stage apart from large-scale strikes in the public sector. This only changed in the 1970s, when business and government became concerned about the impact of the Oil Shock on Japan's economy and allowed labour a stronger voice in decision-making in exchange for wage restraint and moderation. As a consequence of this incremental process of inclusion, the labour movement also became more active in policy-making, sometimes cooperating with governments and sometimes choosing direct confrontation or cooperation with opposition parties (see also table B-2, annex B). It also began a slow process of organisational consolidation to strengthen its voice on the national level. Yet only in the 1980s did the Japanese labour movement succeed in forming a unified national umbrella organisation, Rengou (*Nihon roudou-kumiai souren goukai* 日本労働組合総連合会) - comparable to the *Deutscher Gewerkschaftsbund* (DGB) - which represents all main unions on the national stage (see figure 3-4). A major motive for forming Rengou in 1986 had been to strengthen the political voice of unions. However, this coincided with a steady decline in union membership, which according to some, has outweighed the growing political participation of unions (figure 3-4). In 2009 Rengou did not even represent a quarter of salaried employees. This means that despite organisational consolidation, unions in Japan have remained somewhat handicapped in the political participation never reaching a comparable role to corporatist European countries. On the other hand, they have not been as absent or insignificant as Pempel and Tsunekawa's characterisation suggests.

In Germany a similar organisational decline of unions is observable since the 1970s. There also has been a trend toward organisational consolidation with several unions joining forces to create unified umbrella organisations such as VERDI

(*Vereinigte Dienstleistungsgewerkschaften*, united services union founded in 2001). In a corporatist country, the decline in membership may even be more significant because the privileged role of organised interests crucially depends on their ability to represent large constituencies. As "West German tripartism was distinguished by a conjuncture of a weak and fragmented 'semi-sovereign' state with a strong organised and centralised society" (Streeck and Hassel 2003: 103), the gradual disintegration of the "organised society" may force the state to regulate more autonomously than in the past. Indeed, in Germany not only unions are affected by falling membership rates but also employer associations (see figure B-3, annex B). Moreover, a study by Trampusch (2005) indicates that the once close personal ties between both large parties and trade union organisations have markedly declined since the 1980s. While dual membership in a party and a union or organisation was common until the 1990s, labour market and welfare policy have increasingly become the domain of "professional politicians" who may change their portfolio after some time. This implies that unions can no longer rely on parties sharing their problem perception or parties readily adopting their positions. So in a sense, there seems to be a similar development of weakening power resources in both countries.

A similar development is visible on the side of organised business. In 2002 *Keidanren*, politically the most important business associationn, merged with *Nikkeiren* (abbr. of *nihon keiei-sha dantai renmei*日本経営者団体連盟), the national association of employers, to form *Nippon Keidanren* (abbr. of *nihon keizai dantai rengou-kai* 日本経済団体連合会).[34] As none of the business associations provide details on membership, it is impossible to say, however, whether it has lost organisational capability in the course of the 1990s and 2000s. However, like its German counterparts BDA (*Bundesverband der deutschen Arbeitgeber*) and BDI (*Bundesverband der deutschen Industrie*) it is dominated by large firms and their political interests. The merger of two established associations, however, hints at organisational deficits. Moreover, some new economy firms have openly criticised the orientation of business organisation toward old industries and conglomerates

[34] Before the merger there were four major business organisations, in addition to those mentioned, the Japanese Chamber of Commerce and Industry (abr. Nisshou 日商) and the Japan Association of Corporate Executives (*keizai douyuu-kai* 経済同友会). Of these Keidanren has been the most politically active and has maintained strong relationships with the LDP and its politicians in particular. "Although the group ceased channelling donations to political parties in 1994, it still maintains close relationships with politicians through unofficial gatherings between its senior members and leading politicians." Yoshimatsu (1998), p. 330.

Figure 3-4 **Percentages of unionised employees, 1986-2009**

Sources: ICTWSS database, MHLW (2007): Basic survey on labour unions [労働組合基礎調査], DGB homepage (www.dgb.de, last accessed in November 2011).
Note: The German figure exaggerates union membership as it includes union members which are unemployed, retired or do not work for other reasons. If non-working members are excluded, the organisation rate stands at 33% in 1986 and at 18% in 2009. The hike in the early 1990s is due to the gradual expansion of unions to East Germany. For Japan it is less clear whether non-working union members could distort the numbers in a similar way (Visser reports the same numbers for net and nominal rate of membership) but it is likely that the difference is smaller as unions are tied to specific enterprises. Once an employment relationship is terminated, there are few incentives to retain membership.

with many rejecting membership. Rengou has long sought to create a party which could compete with the LDP-Keidanren coalition and has actively promoted the merger of opposition parties (at one point even fielded its own candidates in the UH to increase the pressure on the fragmented opposition). It is now the largest institutional backer of the Democratic Party of Japan (DPJ, *minshu-tou* 民主党).

Moreover, several Japanese governments have since promised to weaken the influence of the bureaucracy on legislation and to end the close ties between business, bureaucracy and LDP through "administrative reform" (*gyousei kaikaku*行政改革). Although, the background to such reforms stemmed initially from a series of political corruption scandals involving almost the complete leadership of the LDP in the late 1980s and early 1990s, the agenda of "administrative reform" evolved over time to implicate an increase in political leadership (Nakano 1998).[35] Decision-

[35] Nakano stresses the importance of the New Sakigake Party as most avid backer of more political accountability. Sakigake's leaders, Naoto Kan, Yukio Edano and Yukio Hatoyama, later won the 2009 general election as DPJ-leaders and made more political control of policy one of the DPJ's main campaign issues. This suggests that attempts to strengthen political control were not overly successful. Early attempts at administrative reform until about 1996 established a new form of advisory councils outside the ministries which were supposed to devise policies without the influence of bureaucrats. Moreover, the shingikai were forced in 1995 to make all proceedings publicly available. Reform efforts cumulated in a major shake-up of the ministries in 2001, among other leading to the establishment of the Ministry of Health, Labour and Welfare (MHLW) replacing the MoL and the Ministry of Health and Welfare. Yet, this has arguably strengthened rather than undermined ministerial oversight. The concept of "administrative reform" has not been a clear cut programme but rather a string of debates and political campaign slogans unifying very different ideas and interests. While in the beginning reform was meant to end political corruption, it later borrowed heavily from "new public management" discourses in the UK even though, as Nakano (2004) observes, administrative efficiency was never a real concern in Japan. Furthermore, administrative reform

making was to be put into to the hands of elected officials away from the bureaucracy. So with regard to reform process of the 1990s one needs to take into account that declining power resources of organised interests plus administrative reform have made the Japanese policy-making more pluralised and at the same time have centralised decision-making. In Germany the implications of the decline of organised interests are in theory similar, yet attempts in the 1980s to limit the voice of organised labour and corporatism under chancellor Kohl have been largely unsuccessful (Zohlnhöfer 2001).

3.2.2 Partisan politics in Germany and Japan

In a comparative study on the influence of the party systems of Germany and Japan for the politics of structural reforms, Kitschelt argues that despite many nominal differences "they are functionally equivalent in that they foster economic policy stability and, at most, incremental adjustment in the realm of political-economic reform." (2003: 349). The major parties in both countries, Kitschelt believes, avoid more controversial proposals for fear of voter retaliation. However, his implicit assumption that parties would otherwise develop bold policy positions also appears to oversimplify the reality of partisan politics. As has been argued earlier, issue salience is another important factor that needs to be considered in order to understand the relevance of partisanship for reform and institutional change. Issues that matter little to voters and/or where established alternative institutions of interest mediation and regulation exist may be treated very differently than issues where electoral stakes are high. Labour market regulation with its large number of alternative sources of regulation is arguably particularly prone to low salience politics. If, however, regulatory issues are salient then parties are likely to respond very differently and it is here that programmatic differences matter most for the outcome of policy.

Programmatic contestation

Since one cannot expect parties to hold carefully formulated positions on all regulatory issues which may or may not become salient, it seems more sensible to assume that programmatic differences between parties are relative and dynamic rather than rigid and stable. Relative preferences means that parties' positions need

initially was associated with *deregulation* (*kisei kanwa* 規制緩和) of product markets and *decentralisation* (*chihou bunken* 地方分権) of political authority. Rhetorically, almost all parties supported "administrative reform". See chapter 6 for more details.

to be applied in an environment which constantly provides different strategic incentives and forces parties to compromise, e.g. to enter a coalition, or to emphasise differences, e.g. to attract voters. However, relative preferences do not point to specific policies but instead suggest a direction of change whose concrete implications also depend on the institutional and electoral incentives in a given situation. This conceptualisation also fits with the literature on modern party organisation (e.g. Otto Kirchheimer's seminal concept of "the catch-all party"), which assumes that parties increasingly depend on their ability to reach out to different socio-economic groups as the influence of organised interests as allies such as labour unions or the church is waning. As a consequence, core constituencies offer little more than a "life-belt" for a minimum of seats but can no longer crucial votes to secure a majority (for an overview of this literature see Heinrich 2007: 39-45).

Such a less rigid concept of partisanship also helps to address the particularities of Japanese party politics which often puzzle European observers who are used to find similar partisan patterns in advanced democracies. Until the mid-1990s commonly portrayed as an one-and-a-half party system consisting of a dominant LDP that holds absolute majorities on both houses of parliament, and a weak socialist movement whose votes were split between two parties, the Democratic Social Party (DSP) and the Japan Socialist Party (JSP), Japan seemed to have never developed a pattern of two competitive major parties competing for a majority as is common in (though not in all) Western European democracies. Moreover, another feature common in European parliamentary democracies, coalition government, played virtually no role until 1993. Even more striking is that socio-economic conflicts, which many see as the most dominant cleavage in European politics, have played a surprisingly peripheral role in the Japanese party system (e.g. Kabashima and Steel 2010). Analyses of partisan competition and manifesto data show that foreign policy and in particular the security treaty with the US have consistently been the most polarised policy area (the so called *anpou*-cleavage) in Japanese politics while socio-economic conflict has been of relatively limited importance since at least the 1970s (Kohno 1997; Proksch, Slapin and Thies 2011). Only since the 2005 election does the Japanese party system clearly resemble a dualist pattern with two parties in the position to win a majority and with relatively clear affiliations with specific vested interests, i.e. the DPJ being supported

by Rengou and the LDP by business.[36] In a general left-right policy space, both parties have been relatively consistently assessed as occupying left-of-centre and right-of-centre positions (see annex A, figure A-9). However, when looking at specific policy areas, a considerably less consistent picture emerges with both parties changing positions with regard to "taxes" (figure A-6), "deregulation" (figure A-7) and "deficit spending" (figure A-8) frequently and quite radically. Also, the LDP policy-platform includes positions that appear to contradict neo-liberalism and small state government whereas the DPJ's includes policies that do not fit a typical social democratic orientation. This implies that unlike in the German party system where the positions of parties appear relatively stable over time and the relative positions of positions are consistent across policy areas (see figures A-11 and A-12), the strategic rationale in programmatic contestation is stronger in Japan. Important to keep in mind for partisan competition is also the fact that the nominal dominance of the LDP has been broken in the 1990s yet at the same time current and former LDP-members continue to dominate the political arena (e.g. the first DPJ Prime Minister in 2009, Yukio Hatoyama, was a former LDP career politician and Ichiro Ozawa, a key figure in several opposition parties of the 1990s and 2000s initially was known as a right-wing heavyweight of the LDP). The Democratic Party, currently the second major Japanese party, enjoys this status only since the early 2000s. It consists of a wing of ex-socialists and conservative ex-LDP politicians. Although Rengo is clearly the DPJ's main electoral ally and several DPJ members have close ties to the labour movement,[37] Rengou is not supporting all DPJ candidates (Weiner 2011).

The programmatic heterogeneity that is visible in both parties (see also the LDP conflict about the postal reform proposed by Koizumi) implies that the major parties since the 1990s do not hold deeply held policy positions as they themselves represent coalitions of very different groups. It is likely that electoral success thus is the main factor that makes and breaks parties which also implies that they should be somewhat more flexible in their policy-positions depending on issue salience and

[36] Research on the DPJ suffers under the party's constant re-formation (as of August 2012, already three new parties have been formed by ex-DPJ members since 2009) and programmatic vagueness. So far there are few studies that have addressed the DPJ's development in more detail. An excellent exception is a study by Weiner (2011) who argues that contrary to conventional wisdom, the DPJ is neither a predominantly urban party nor particularly social-democratic. Its historic win in 2009 rested mostly on its ability to win rural strongholds once firmly in the hands of the LDP. The influence of ex-socialists has also been on constant decline, Scheiner argues, so that the DPJ increasingly resembles the LDP both in composition and programmatic orientation.

[37] In the first DPJ cabinet after the election of 2009, almost half of cabinet ministers were former unions members or union executives..

public sentiment. Such behaviour may be encouraged further by the fact that the Japanese political system makes it easier to maintain a clear line of division between government and opposition during and between elections than in Germany where the division is often blurred by requirements to coalesce and cooperate on many levels of governance in a Federal system. On the other hand, the greater historical and programmatic consistency in the German party system suggests that parties are more likely to legislate along historically formed preferences if they have the chance to do so.

Assuming that the electoral systems in both countries provide similar incentives for large parties to develop a "catch-all" profile and for minor parties emphasising specific positions in order to appeal to small but "sufficient" constituencies, the degree of programmatic contestation should for the most part be very similar. Furthermore, one can expect parties in both countries to hold relatively weak preferences, that is, they should be prepared to consider or re-consider their position depending on the salience of an issue - although for different reasons. In Japan the long-going re-alignment of the party system has re-arranged and mixed groups of various programmatic orientations preventing parties to develop a strong programmatic profile.[38] In Germany parties are informed by a long history of programmatic debates and contestation but constantly encounter situations where they need to moderate their stance in order to get legislation passed. One can thus expect that strategic considerations related to issue salience constitute the most important explanatory factor for partisan competition.

Accountability and electoral risk management

As figure 3-3 demonstrates, government changes in Japan have been frequent, with cabinets lasting on average 17 months in the period of 1970 to 2010. The average period between two LH elections is considerably longer with 37 months or roughly three years. Since elections to both chambers are usually asynchronous (half of the UH's seats are elected every three years while the normal LH tenure is four years), Japanese voters participate in national elections on average every 17 months

[38] Arguably, this applies less to the smaller parties such as the Japan Communist Party (JCP, *nihon kyousantou*) which has been consistently positioned itself as an opposition party rejecting any form of cooperation with other parties or the Koumeitou (公明党 or Clean Government Party, CGP) which is the political arm of the Sokka Gakkai sect and mobilises mainly its followers. For such parties maintaining a specific ideological profile is both easier and more important for continuously receiving support. Nonetheless, even here some noteworthy movements are visible. The Koumeitou has become considerably more conservative in the late 1990s. While it frequently cooperated with the left-wing opposition until the 1990s, it switched sides and has become the most stable partner of the LDP even during times opposition.

and thus more frequently than German voters do (average of 44.7 months for Bundestag elections).[39] This suggests that dissatisfied voters in Japan can provide direct electoral feedback relatively promptly. Moreover, for voters there is no clear difference between the party groups in both chambers as the UH does not represent a different constituency, unlike in Länder elections where regional topics may dominate election campaigns. As a result governments see UH elections as a quasi interim referendum on their performance and it is thus not surprising that negative results in UH-elections usually prompt government to respond, .i.e. cabinet reshuffles or replacement of the PM). In Germany Federal state elections do not necessarily have national implications. They tend to be dominated by national themes only if majorities in the Bundesrat could change as a result of an election or if they are held in swing states where both parties stand a chance reaching a majority. In addition, as the Länder's vote share in the Bundesrat depends on population, elections in city and Eastern states are usually deemed less significant than those in populous Western states. So even though figure 3-2 suggests a very high frequency of elections (1977 has been the last year without any election), few are actually decisive in the sense of having the potential to tip the balance toward the government or the opposition. This is also visible in the fact that cabinets are rarely changed even if a government loses a key vote. Chancellor Schröder's announcement to bring forward the Bundestag election by one year after the SPD's defeat in 2005 in Germany's most populous state, North Rhine-Westphalia, has remained an exception. Nonetheless, in the mass media state elections are routinely evaluated on the basis whether they confirm or challenge the position of the incumbent government and dramatic losses state elections are likely prompt a reaction by the Federal government, such as a cabinet reshuffle. Furthermore, as in Japan voters usually see a clear connection between the Federal and regional party organisations which somewhat strengthens the electoral feedback from the state to the national level. Party organisations are organised hierarchically with the national organisation on the top. However, it is not unheard of that regional party organisations ignore recommendations of the national leadership.

Given the frequent electoral review of government policy by voters and the implicit requirement of cross-party coordination due to coalition government and

[39] If one includes the Länder level the average is 7.6 months. The average time lag between Länder elections is 8.8 months. In Länder elections, however, only a small part of the electorate actually participates and it is thus doubtful that governments and the electorate will interpret every single election as a quasi referendum on national politics. In contrast, the whole electoral participates in Japanese UH elections.

bicameral negotiations, one can expect that in both countries parties will not hold strong preferences and, second, that parties will try to minimise risks stemming from unpopular reforms as "blame" can be expressed swiftly. Both assumptions, however, do not apply (or to a lesser extent) if there are clear majorities in both chambers and elections are relatively distant. In such cases, one can expect that polarisation will be higher and the positions of parties diverge as the electoral risks of contestation are relatively small. Also they apply somewhat less to Japan than in Germany, as a clear government-opposition dichotomy is more likely to emerge and to last at least until the next election.

3.2.3 Comparison of macro regulation in Germany and Japan

In comparison, the governance structures in both countries provide potential explanations for why governments and parties adopt moderate policy positions and why they may prefer not to dominate processes of change. In neither system power is concentrated although for different reasons. While in Germany, governments are constrained by strong independent institutions such as the BVerfG, federalism, corporatism and institutionalised inter-party bargaining due to bicameralism, the role of the cabinet in Japan is mitigated because a considerable part of decision-making is delegated to intra and inter party negotiations, ministries and related shingikai. Despite many similarities to Westminster democracies, in Japan the centralisation of power has been more latent possibility than daily practice. At the same time, personal and institutional ties between parties and specific interests have gradually declined in both countries, which may make it inevitable for parties and governments to gradually increase their regulatory stakes. In Japan this has even been the stated goal of several governments backing administrative reform, and in Germany this may be furthered by falling organisation rates and a more competitive electoral market. As a consequence the systems which in the past helped to keep salience and polarisation of regulation in check may no longer work as effectively as in the past. Furthermore, waning power resources of organised labour and capital may also undermine the chances of labour market insiders to protect themselves from reforms by promoting labour market dualism. Weaker corporatism and growing polarisation could, however, also mean that relative strength (e.g. organisational capabilities) is becoming even more important.

3.3 The politics of micro and meso regulation

The theories and perspectives discussed so far usually treat legislation as more or less independent of developments in industrial relations and collective bargaining. However, in most countries collective bargaining can have a direct impact on the output of legislative reform. A study for the European Commission finds that in Western Europe frequently "the dismantling of statutory employment protection in periods of conservative government was absorbed or cancelled out by collective standards. Case law, which is in many aspects independent, and the practice of corporate co-determination, have led to several (conservative) government initiatives being amended or modified." (2005: 136). Moreover, it is also conceivable that flexibility-enhancement on the meso and micro levels ease pressure on policy-makers to address flexibility-enhancement via legislation. Last but not least, as the first half of this chapter has shown, de-central adjustments may be a deliberate regulatory strategy applied by governments keen on avoiding electoral "blame" caused by unpopular decisions. Hence, industrial relations are not only influenced by policy decisions, they also directly inform macro politics. The following sections explore the political dimensions of industrial relations in Germany and Japan and address two power-related issues in particular: First, the distribution of power resources between labour and capital on the meso and micro levels and, second, the relationship between legislative and non-legislative sources of regulation. This will complement previous observations on policy-making process in both countries and will allow drawing hypotheses which encompass the whole regulatory arrangement and all dimensions of political decision-making.

3.3.1 Non-legislative regulation of working conditions

Conventional wisdom has it that even though the systems of industrial relations in both countries share many similarities (such as a tendency for wage moderation and low strike rates), organised labour in Germany enjoys much greater institutionalised influence thanks to substantial co-determination and bargaining rights which are partially even protected by the constitution (*Grundgesetz*, GG)[40]. An even more

[40] Article 9, par. 3 of the GG states that labour and business have the right to negotiate working conditions without any interference by the state (*Tarifautonomie*). However, the German state is also bound by the "Sozialstaatsprinzip" (art. 20 and 28) which oblige the German state to create a "social state" and a social "Rechtsstaat". Although the principle does not entail any concrete measures it is often understood as the constitutional foundation of the German welfare state and protective regulations and justification for state interference.

crucial difference between both countries, however, concerns the role and scope of collective bargaining. In Germany, as in most other Western European democracies, collective agreements are the dominant LoR for working conditions including wages, working time and job descriptions. This has direct implications for legislation because it is generally assumed that collective agreements enjoy precedence over any other source of regulation including legislation.[41] The *Günstigkeitsklausel* ("favourability clause") as set in the *Tarifvertragsgesetz* (TVG) further stabilises the role of collective bargaining as it grants employees the right to claim more favourable working conditions if an alternative applicable source of exists. Furthermore, it contributes to a centralisation of bargaining as both unions and employers have an interest including other enterprises to delegate potentially contentious negotiations to external bodies. The *Günstigkeitsklausel* also constrains management in that it does not allow firms to unilaterally replace agreements with less favourable regulations (e.g. individual contracts or enterprise agreements).

It is also important to keep in mind that collective agreements fulfil slightly different functions depending on industry. In some of the traditional industries such as steel and automobile framework agreements (*Flächentarifverträge*) set de-facto minimum wage agreements while in others, in particular services, agreements are more likely to determine the actual wage employees will receive. Agreements have to be re-negotiated after an agreement runs out (usually 2 years) and existing ones remain in effect until a new agreement is approved by both sides. In Germany, collective bargaining takes place on the industry-level, regional level and on the company level, yet industry and regional negotiations usually precede all other negotiations. In most industries one region usually sets a standard agreement (*Pilotabkommen*) which others follow, but regional negotiations can deviate, e.g. negotiated wage levels in East Germany after unification have remained considerably below those in the West. Unlike in some other European countries, however, firms are in principle free to stay out of collective bargaining and to negotiate working conditions through alternative means. If employers do not join the respective employee organisation, they are not bound by collective agreement other firms in the sector have agreed upon. The relative high rate of "non-followers" (roughly a third of

[41] "Das kollektive Arbeitsrecht der Bunderepublik beruht grundsätzlich auf dem frei vereinbarten Tarifvertrag" Fitting quoted in Brecht and Höland (2001), p. 501.

all workers are not covered, figure 3-5) in comparison to other European countries indicates that this is quite common.

On the face of it, collective agreements appear less significant in Japan as they tend to overlap with other forms of regulation (this section draws mainly from Wada 2002). In comparison, workers and industry unions seem to be in a weaker position vis-à-vis management as their capabilities to bargain collectively across firms are less extensive. Enterprise unions are the most likely source of collective agreements with some negotiating merely for a specific production site while others negotiate for a firm and all its subsidiaries. Furthermore, although Japanese courts and laws treat collective agreements as a somewhat privileged source of regulation, there is no favourability clause in Japanese law. Workers do not automatically benefit from more favourable working conditions if regulations overlap and this is seen by legal scholars as one of the most contentious points in Japanese labour law. The relationship between collective agreements, individual work contracts and *work rules* (*shuugyou kisoku*就業規則) is complex but all three can be decisive for the working conditions of individual employees.[42] Employers with more than 10 employees are required by the LSL to devise *work rules* that detail the general working conditions, such working time, pay structure, conditions for job rotations but also regulations for corporate welfare programs. Firms are then required to ask enterprise union representatives or majority representatives for their opinion, but there is no legal obligation to take their viewpoint into consideration or to update the work rules after a certain period. Collective agreements can but not necessarily set alternative provisions overlapping with work rules but are generally more focused toward wages, bonus payments and the role of unions at the enterprise. If they do overlap with work rules or individual contracts, however, the hierarchy is not necessarily clear. Courts have both confirmed the superiority of collective agreements but also acknowledged the right of employers to change working

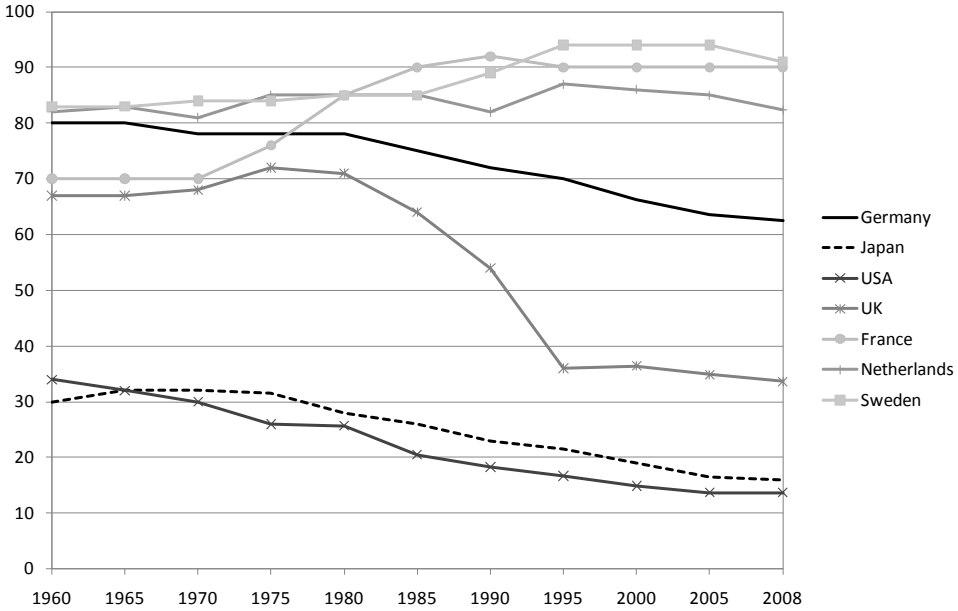
[42] In contrast to collective agreements, employers are not obliged to give employees a voice when devising *work rules*. The Labour Standards Law (*roudou kijun hou*, LSL) only requires employers to submit the rules to the local Labour Inspection Office which can demand adjustments or object. Moreover, firms are required to provide a copy to workers, though only at request. According to Sugeno (2002), it is common that employees are informed only orally about the working conditions. If employees do not explicitly object to the provisions in the work rules or alternative terms are fixated in the contract, *work rules* are considered accepted as soon as the employees commences employment. In smaller establishments it is still common that neither *work rules* nor contracts are fixated in writing. Examples of work rules and their contents in comparison to collective agreements can be found at Marutschke (1999). Work rules usually include detailed provisions on job rotation (a common practice in Japanese firms) and "dispatching" for instance to affiliated firms where employees maintain their original employment contract but are paid according to the *work rules* and wages of the receiving firm.

conditions at the expense of employees if employers can provide "reasonable justification". Although article 2 of the LSL requires that working conditions are negotiated between an employer and an employee on the "basis of equality", court decisions have instead emphasised the right of employers to unilaterally adjust work rules if necessary. Formally therefore, employers thus seem to enjoy somewhat more leeway in setting working conditions than is the case in countries where collective agreements constitute the main vehicle of regulation. The weakness of collective agreements as regulatory instrument in Japan is also confirmed by figure 3-5. Formal coverage of collective agreements in Japan is well below European levels and seems to resemble that of the US, the showcase of a LME in the political economy literature.

Yet, unions and labour are not necessarily always weaker than in Germany. In unionised large firms enterprise unions can often exert considerable influence as they are integrated into several forums of decision-making and consultation (see next section). The relative power of unions in large firms is most visible in the so called *shuntou* ("spring offensive", 春闘) process of coordinated wage bargaining. *Shuntou* deviates from the centralised collective bargaining systems in Western and Northern Europe in that it is entirely based on informal practices and thus is not legally binding. Also, the firms and industries participating in *shuntou* formally still conduct collective bargaining individually with their own enterprise unions. However, it is common practice that both the labour and the business side agree on demands and offers before meeting the opposite side to negotiate a final agreement. In some industries specific bodies have emerged such as the Hasshakon (or "meeting of 8 firms") in which the management of the two leading firms of four metal sectors participate and coordinate their wage offers before seeking consent with unions. Often crucial negotiations have taken place already by the time the official *shuntou* process is commenced as unions and firm maintain close contacts throughout the year. The main function of *shuntou* is to standardise wages and to provide a guideline for SMEs and the general wage development. It directly influences wages in the public sector (which does not conduct collective bargaining of its own) and also impacts the annual review of the Minimum Wage. The main function of *shuntou* is therefore "the orderly diffusion of wage norms from the private sector to the public sector, from leading pattern-setting sectors to follower sectors, from large to small firms, and from corporate headquarters to subsidiaries and affiliates" (Sako 1997: 253). The hierarchy, so Sako, does not so much stem from the financial potency of a

firm or industry but from their public prestige. It is not surprising therefore, that Toyota has become the leading sector for most s*huntou* rounds since the 1980s.

Figure 3-5 **Employees covered by collective bargaining, 1960-2008**



Source: Visser (2011). Coverage is defined as "employees covered by wage bargaining agreements as a proportion of all wage and salary earners in employment with the right to bargaining." See annex B for details.

Unlike in Germany, Japanese wage negotiations concern the "total wage bill" (Sako 1997: 249), that is, negotiated wage hikes represent the total of scheduled increases part of which are linked to seniority while others are genuinely new increases (called "base up", abb. "ベア").[43] According to Sako, this is convenient for employers because they are most concerned about but "the total wage bill" rather than specific increases. Negotiating about the wage structure in this way also encourages unions to consider the wider implications of wage rises. In economically difficult times it is relatively easy to implement wage restraint by suspending negotiations or postponing collective bargaining, whereas in Germany both sides have to formally agree to leave existing provisions in place and are also bound by specific deadlines (*Kündbarkeit*) until which agreements cannot be modified. Viewed from a power perspective it seems that Japanese unions are thus in a somewhat weaker position and employer interests dominate the process more than in Germany. In particular enterprise unions in SMEs enjoy little leeway in setting wages independent of the *shuntou* rates set by large industry leaders. Surveys indicate that

[43] This unusual reporting of wage increases also explains why the shuntou wages reported by the MHLW are not consistent over time.

less than a third of unions believe they would be able to negotiate better wages than those set by core firm even if they had enjoyed considerably better economic performances over several years (cf. Sako 2006: 223-225). So at least for SMEs *shuntou* seems to set an implicit wage ceiling which firms can undercut relatively easily but are unlikely to exceed. This also suggests that the assessment in figure 3-5 understates the real implications of collective bargaining on wages. Although only a minority of firms participate a much higher number of firms are impacted by it.

In comparison, German and Japanese systems appear similar in their high degree of coordination and variations between industries (Germany and Japan) and firms of different sizes and status (Japan). Yet, one can also expect more heterogeneity in the Japanese system as it is comparatively easy for firms to deviate and there are fewer mechanisms to penalize non-compliance. In contrast, in Germany firms have to formally opt-out in order to be able to deviate in working conditions and they may end up being regulated by collective bargaining if unions and employer associations apply for an AVE (see the following section).

The role of the state

Viewed against the background of the relative flexibility that exists in both systems of industrial relations, it is interesting to note that there is no strong tradition of state intervention in collective bargaining and the regulation of working conditions. In Japan mostly the LSL but also laws like the Minimum Wage Act (MWA) provide a relative comprehensive legal framework of minimum standards, within which firms and unions, employers and employees can negotiate detailed regulations.[44] Setting minimum standards through law constitutes the most powerful instrument Japanese governments possess for intervening in employment regulation. Yet, as chapter 5 will show, the legal framework should not necessarily be seen as overly rigid as it often provides considerable flexibility through vague formulations and exceptions. A public oversight of working conditions is conducted mainly by regional Labour Inspection Offices who can visit workplaces, issue recommendations and even fine firms for misconduct. In Germany some standards are set in designated acts, such as maximum weekly working time and minimum length of vacation, but generally law is only of secondary relevance for the regulation of working conditions which is visible in the absence of a general legal minimum wage. Governments

[44] Article 27, paragraph 2 of the Japanese constitution declares that "the state has a political obligation to establish 'by legislation' the standards for 'wages, hours, rest and other working conditions'." Sugeno (2002), p. 18.

possess only two tools which allow interference so some degree: First, the so called *Allgemeinverbindlicherklärung* (AVE, "declaration of universal application") where the *Bundesministerium für Arbeit und Soziales* (BMAS, Federal Ministry of Labour and Social Affairs) declares an existing collective agreement legally binding for all firms in an industry/region regardless of whether they are members in the respective employer associations. Second, the *Gesetz über Mindestarbeitsbedingungen* (MiArbG, *act on minimum standards of working conditions*) which allows the government to set working conditions unilaterally if it finds the social conditions in an industry socially precarious. However, in both cases governments have to overcome relative high hurdles: For AVEs a mutual application by unions and employers associations is required to even initiate the process, and the MiArbG (until a reform in 2009) requires an independent review of the situation by a tripartite body in which the government constitutes a minority and labour and business possess veto power.

The limited role of the state in setting working conditions is also confirmed by Visser (annex B, figure B-20) who rates Germany a country with relative low state interference in collective bargaining in comparison to most other Western European countries. Japan scores even lower and this is even true for the 1970s when tripartite macro-economic steering involving targeted interventions in wage bargaining was fairly common even in LMEs such as the UK and the US. This means that despite the many formal differences between the German and Japanese system of industrial relations, state-centred regulation in both cases is of relative minor importance. Moreover, coordination between labour and employers (figure B-19) is relatively extensive. The decline in coverage of collective bargaining in addition to falling unionisation rates, however, hints at a growing heterogeneity of industrial relations in both countries. This should matter more in the Japanese case as there are fewer legal provisions which stabilise and institutionalise coordination in place of informal arrangements. Also, labour law seems to constitute a more powerful instrument in the Japanese case as German governments have to respect *Tarifautonomie* (the setting of working conditions through collective bargaining autonomous of government interference), while respective regulation in Japanese labour law appear to be weaker (e.g. the relationship between agreements and work rules).

3.3.2 Power, politics and new conflicts at the firm-level

Although micro LoRs appear to be furthest away from political decision-making at the macro level, they constitute an integral part of the German and Japanese labour market arrangements as the can be often instrumental for enhancing employment flexibility. Moreover, in both countries there is an extensive infrastructure which, although not necessarily democratic and comprehensive, allows for some balancing of interests. In the Japanese enterprise-based system, crucial decisions are routinely taken in the context of the individual enterprise and German co-determination gives labour a say on several management levels and on many questions. From a political point of view, micro LoRs are also important because they can offer an alternative route to accomplish objectives which may be blocked at other levels. "Reformers" may find here political opportunities to circumvent opposition encountered in collective bargaining or the national policy stage. For these reasons, it is crucial to also take into consideration the distribution of power resources between capital and labour on the firm level. Also, the long-going debate on a general trend toward decentralisation of industrial relations in advanced democracies suggests that micro LoRs may also have gained relevance vis-à-vis meso and macro regulation. On the micro level Germany has often been portrayed as an exceptional case as it grants workers relative far-reaching influence on the management of a firm and a say in the daily operation of a firm. When the system of co-determination (*Mitbestimmung*) was expanded through a number of reforms in the 1970s (see also table C-10), this attracted attention even in the US and Japan. However, both eventually opted against adopting such a system because in "the United States, shareholders are the owners of the corporation, and thus the employees' participation in the corporate administration is unacceptable. In Japan, by contrast, it is because employees are already the owners of the corporation." (An unnamed University of Tokyo law professor quoted in Araki 2005: 25-26). This assessment suggests that Japan rejected a more formal system not on the grounds that it would interfere with a market-oriented regulatory framework but because it already had a structure in place that required permanent and far-reaching coordination between management and workers. Chapter 4 will elaborate on this aspect further.

German law requires firms with more than 5 permanent employees to allow its employees to establish a works council (*Betriebsrat*).[45] Neither workers nor firms are obliged to do so, however. Works councils are to be consulted on social issues, (for this section see Müller-Jentzsch 2003: 45-48), such as questions of remuneration (e.g. pay structure), vacation time and general working time rules. Moreover, management hast to consult works councils when altering recruitment plans and personnel guidelines. Works councils possess a veto right on job transfers. Last but not least management is obliged to inform works council about the financial situation of the firm. In addition to the *betriebliche Mitbestimmung*, about 700 listed companies in Germany also provide unions with co-determination on the advisory board, that is, they have to offer employee representatives a third of all positions in the supervisory board (*Aufsichtsrat*) or even half if the firm is part of the *Montanindustrie* (coal and steel). Fundamentally, the relationship between collective agreements and corporate co-determination should be straight forward, as regulations set in the agreement cannot be altered unless they offer employees better conditions (e.g. higher pay). In that case, works councils and enterprise unions play an active role in negotiating new provisions. In addition, works councils also play a role in corporate welfare, in particular for pensions (*Betriebsrente*) where they agree on the terms and conditions of corporate pension plans with management. While some industries have provisions that allow firms and workers to join industry-specific schemes, firms and workers usually have also the option to agree on alternative schemes.

Neither the LSL nor the Japanese Trade Union Act (TUA, *roudou kumiai-hou* 労働組合法)[46] grant unions and workers comparable co-determination rights as in the Germany. In fact, Japanese labour law is much less specific as to how consultation processes between labour and unions should be structured. Several laws require management to consult the firms' employees or unions before taking decisions but

[45] There are several laws which regulate co-determination in German firms some of which apply only to specific industries (*Montanmitbestimmung*) or corporate forms (e.g. *Drittelbeteiligung* in public companies). The single most important legal source is the *Betriebsverfassungsgesetz* (BetrVG, "works constitution act") which regulates the election procedures for works councils as well as it functions.

[46] As discussed above, the relationship between collective agreements, individual work contracts and work rules is complex and contested among legal scholars, see e.g. Morito (2006), p. 4. The TUA merely provides normative regulations which require interpretation. Usually individual work contracts do not entail an explicit favourability clause so if firms wish to change working conditions for all or some employees, they usually face little formal constraints. This has been confirmed to some extent by the Supreme Court in a landmark ruling in 1989, which stated that unilateral adjustments against the will of employees are justified if "reasonable".

they neither require the establishment of specific bodies nor do they grant labour specific co-determination rights. The so called labour-management consultation committees (*roushi kyougi-kai* 労使協議会, henceforth joint consultation committees), which are the most common form of labour participation in Japan (see chapter 6 and annex B) have no legal status of their own. They have been originally promoted by the Japan Productivity Centre (JPC, an institute dedicated to "best practice sharing" initiated in the 1950s by the Ministry of Trade and Infrastructure, MITI) as a means to achieve quality production in the Japanese manufacturing sector and of pacifying once fairly contentious industrial relations. Initially intended as forums for management and labour to discuss production-related issues, they gradually evolved into an institutionalised process of labour-management coordination spanning a variety of topics (see chapter 6 and annex B). Surprisingly perhaps joint consultation committees appear to be almost as wide-spread as works councils. While in Germany more than 97% of firms with more than 1000 employees have work councils and roughly 17% of firms with less than 20 employees do (Müller-Jentzsch 2003: 48), in Japan about 70% of large firms and 20% of SMEs with 30 to 49 employees have joint consultation committees (see annex B, figure B-12). Also the topics discussed by committees are similar to those of works councils (figures B-13 and B-14). Like works councils joint consultation committees can act as LoRs for working conditions and collective bargaining and they are embedded in corporate decision-making processes in a similar way. Sako (2006) even argues that Germany and Japan are similar in how they structurally and functionally integrate employees. While in Germany a works council can exist at or even co-exist along works councils at different levels of a firm (e.g. *Betriebsrat* at workplace level, *Gesamtbetriebsrat* at enterprise level and *Konzernbetriebsrat* at corporate level), she finds the organisation and structure of joint consultation bodies in large Japanese firms to be strikingly similar.

Decentralisation

Works councils and joint consultations committees are also important because they are often believed to increasingly gain influence due the gradual decentralisation of collective bargaining in many advanced democracies (for an overview see Katz 1993). Decentralisation means that collective bargaining structures which normally are based on the industry or even national level are gradually undermined or replaced by

firm-level negotiations. Japan's system of enterprise-based unions is often seen as the natural end point of this development, as it supposedly represents a system where firms bargain working conditions individually with in-house unions with relative little inter-unions solidarity and cooperation. The relative weakness of national umbrella organisation in Japan (whose main role is political lobbying) is often seen as an indication of the political impact of enterprise unionism. In contrast, German national union organisations appear to be relatively strong at the firm level. According to Müller-Jentzsch (2003: 49), DGB member unions fill about 70% of all seats in works councils. One can thus expect a relative high degree of exchange between different levels of union organisations on different levels and organisational cohesion. However, in both countries unions and national umbrella organisation tend to be strong in specific industries and in large firms. They also tend to dominate the national level of labour unions as most activists stem from those "core firms". It is less clear what role they play in SMEs, in the service sector or newly emerging technology firms where union presence tends to be considerably weaker.

In political terms, a process of decentralisation suggests that employers will gain a better bargaining position vis-à-vis unions because both enterprise unions will have to directly bear all costs which stem from strikes or industrial conflict and because they are more committed to the goals of the firm. Labour-management negotiations should thus be less politicised. With the relatively well established structure of joint consultation committees in Japan and works councils in Germany, already an extensive corporate infrastructure exists that may facilitate such tendencies of decentralisation. Since German industrial relations are more centralised due to the particular collective bargaining structure which covers whole industries as well as unionised and non-unionised employees, the process should more apparent and faster in Japan, where divisions between the enterprise and national union organisations and non-unionised workers are more pronounced.

Dualisation on the firm-level

In Japan the so called union shop agreement is the most common form of union organisation. Such agreements require exclusive membership, that is (Sugeno 2002: 518-522) workers have to join a union in order to profit from the provisions agreed upon in collective bargaining or other forms of bargaining. According to Sugeno, 70% of all Japanese unions in major firms in 1986 were using union shop agreement and more than half of all unions. This means that unions will try to enforce "compulsory

membership". Yet, as most agreements are not overly strict when it comes to enforcing membership, the division between unionised and non-unionised workers at an enterprise are not overly important not least because compulsory membership clashes with provisions in individual labour law which require equal treatment of workers. Hence, in practice such agreements have mostly "the function (…) to indicate an employer's recognition of a union". (ibid: 519). Normally, this means that as long as employees do not establish or join a competing union, they face no penalty and enjoy similar working conditions. This structure has several implications, such as that in Japan most firms are either unionised with high membership rates or not unionised at all. Even though theoretically several unions can co-exist as the TUA allows all unions even with only minority representation to conduct collective bargaining with management, usually there is only one union. This is similar to Germany where competition between unions organisations is usually limited to specific industries in the service sector (such as temp agency work). Although there have been cases where management has tried to actively build up an alternative to established unions (e.g. a scandal at Siemens in the 1990s revealed the firm had been the sole contributor to an independent employee organisation (AUB) which competed with the IG Metall for works council representation), the large union organisations usually clearly dominate in the traditional industry sectors. So far conflicts between unions at the same firm has been only of marginal relevance even though there is growing differentiation in some sectors, such as railways and airlines.

Nonetheless, union shop agreements may constitute a significant difference between Germany and Japan because some authors argue that the structure of industrial relations is decisive for the nature of insider-outsider conflicts. Crouch, for example, expects that unions in enterprise-centred systems such as the one in Japan are more likely to support dualisation as they may benefit from additional employment security of their members if there is a "flexibility reserve" made up of non-members. By avoiding redundancies of core employees while nurturing a peripheral workforce enterprise unions increase employment security for their members. In countries where the gap between unionised and non-unionised workers is smaller because agreements apply regardless of membership such as Germany, unions are, according to Crouch, better able to address dualisation as the conflict potential between members and non-members should be smaller and unions are forced to adopt a broader perspective in any case (c.f. 2011: 602-603). Hence, if

labour market dualism does indeed matter for workers' preferences and unions' behaviour as Rueda and other argue, then one should find more pronounced dualisation processes in Japanese firms than in German ones.

3.3.3 Conclusions micro and meso regulation

This brief assessment of meso and micro LoRs in the German and Japanese labour market arrangement - which will be expanded in following chapters - demonstrates that there are several important functional equivalents with regard to coordinative practices between labour and capital. Most noticeable from a political point of view is that government policy and regulation is augmented (or even replaced) by extensive alternative systems of regulation which make individual bargaining - arguably the most common form of regulation in LMEs – relatively uncommon. An important difference between both systems is, however, that the extensive legal framework in Germany more clearly furthers and stabilises coordinative labour-management and union-company coordination, whereas in Japan temporary or permanent deviations from institutions should be much easier to realise. So if the assumption is correct that employers since the 1990s have lost interest in maintaining non-liberal institutions, the impact should be more visible and also distinct in Japan while in Germany, in comparison, a process of gradual adjustment of the institutional framework seems more likely.

3.4 Connecting the dots – Hypotheses

Bringing together the theoretical perspectives of the first half of this chapter with the analytic assessment of the various LoRs in the German and Japanese arrangements, it is now possible to formulate concrete expectations with regard to the politics of reform and institutional change. In most cases, expectations for Germany and Japan are slightly different, e.g. their industrial relations systems suggest a different dynamic of dualisation and a different distribution of power resources. In Japan firms are less constrained by rigid legal provisions which require co-determination or consultation or the acceptance of specific agreements which are negotiated outside the firm. The particularistic organisational structure of unions also suggests that insider-outsider conflicts should run deeper and be more politically relevant in Japan. If interests between and within capital and labour indeed increasingly diverge leading to a higher salience of labour market issues, as many observers, policymakers and academics argue, then the political structure of Germany and Japan

suggest different developments. In Japan contestation and conflict should be more visible because there are fewer institutional incentives set in the political and legal structure which encourage moderation and consensus. Moreover, most non-liberal institutions of coordination are informal. In Germany moderation seems to be encouraged by a number of systemic characteristics on the political as well industrial levels.

On the other hand, the influence of partisan competition and the role of state in the regulation of working conditions seem quite similar. In both countries the government is usually not the dominant actor and parties cannot be seen as furthering a specific ideology as preferences for specific policies appear to be weak. While in Germany this is due mainly to the strong corporatist nature of policy-making and the relative high number of institutional veto points, in Japan this can be attributed to the relative low salience of socio-economic issues and the extensive regulatory authority of the ministries. This has allowed the Japanese state to adopt a relative flexible legal framework on minimum working conditions while in Germany the state's role is constrained by law itself. At the same time, the extensive systems of co-determination, consultation and collective bargaining in both countries provide regulatory alternatives for legislation which encourages strategies of adjustment and guidance instead of enforcement through rigid law.

Table 3-1 summarises the expectations for politics of labour market reform based on the theoretical perspectives discussed in the first half of the chapter into the context of the analytic assessment in the second half of the chapter. It also specifies how the differences between the German and Japanese institutional arrangements and political system may lead to differences processes and outcomes.

Table 3-1 Overview of hypotheses

Theory	Main LoR	Path to enhanced labour market flexibility	Hypotheses
Insider-outsider power conflict	- Macro, meso and micro LoRs	- Dualisation of labour market: Protected regular employment is maintained while flexibility-enhancement is achieved by expanding secondary labour sector	a) The bigger the difference between power resources of insiders and outsiders, the larger the gap between "regular" and "non-regular" jobs will be b) Dualisation is more pronounced in Japan due to organisational structure of Japanese enterprise unions
Partisan competition	- Macro LoR	- Flexibility enhancement is achieved through government policy whose contents depend on ideological orientations and strategic considerations of parties	c) Partisan competition and legislative reform will dominate processes of change only when electoral salience of employment regulation is high d) Choice of flexibility-path depends on parties' relative preferences on marketisation and state regulation e) As the Japanese party system leans more toward the interests of business (LDP dominance and weak social democracy), liberal market-oriented reforms are more likely than in Germany
Veto points and power resources	- Depends on distribution of power and number of veto points	- Gradual introduction of controversial new regulation which eventually spills over to other LoRs	f) Actors keen on change (state, business or labour) will initiate change at those LoR where they possess most power resources / face fewest veto points g) Japan is more likely to implement radical changes because power resources are distributed less evenly than in Germany and because there are fewer veto points
Institutional complementarities	- Macro, meso and micro LoRs	- Flexibility-enhancement will be achieved through a variety of changes on different levels which maintain or replicate institutional complementarities	h) As all actors want to preserve the benefits underpinned by various institutional complementarities, flexibility enhancement is necessarily a consensual effort spanning several LoRs, the electoral salience of change processes will be low and the state assume the role of moderator i) Since institutional complementarities fulfil similar functions in both countries, this leads to similar processes of institutional change and reform

Source: Author's own.

4. Flexibilities and rigidities in non-liberal labour markets

> "The type of flexibility a company may seek in a particular country, and the extent to which this can be achieved, is largely influenced by the systems of industrial relations, labour markets regulations, vocational education and training systems (…). The particular configuration of these factors makes it unlikely that companies can achieve a high level of all types of labour flexibility simultaneously."
>
> *Heinz-Josef Tüselmann* (1996: 51-52)

Tüselmann's quote illustrates that in reality it may be not so much be a choice between flexibility or rigidity governments, firms and unions are facing but rather a choice between specific forms (or bundles) of flexibility that also entail certain rigidities. VoC and related literatures stress that rigidities often are a prerequisite for specific flexibilities which may constitute an comparative advantage over other arrangements, e.g. an employment model based on the gradual acquisition of firm-specific skills (functional flexibility) may require "numerical rigidity" (employment protection) to be stable. Combinations of rigidities and flexibilities could also enable deals between labour and capital to enhance particular forms of flexibility which may not be feasible in more market-based arrangements where flexibility is mostly a function of the external labour market. This means that the choices for policymakers in CMEs there may be more alternatives available than conventional discussions of the politics of labour market reform often imply.

Indeed, several authors have questioned the view that liberal arrangements are necessarily more efficient and flexible than non-liberal ones (e.g. Beyer 2003; Ebbinghaus and Kittel 2005; Fuchs and Schettkat 2000; Shire and Imai 2004). However, they vary in the criteria they use when comparing labour market arrangement and in whether they conceptualise labour market "performance" more from an economic or social point of view. To an extent, this plurality mirrors the differences between the concerns and viewpoints of the main stakeholders of non-liberal employment models: employers, employees, unions and the state. Although in economically successful CMEs, the institutional framework may lead effectively to a congruence of the interests, this is not certain as soon as economic fortunes change

or the existing arrangements lead to social inequalities or insencurity. For example, labour markets are of fundamental importance for systems of social protection which is one of the main concerns of any voter. It is thus reasonable to expect that governments cannot pay attention exclusively to questions of economic efficiency but need to consider social implications of changes as well. This means that despite an institutional arrangement which shapes the interests and preferences of all main stakeholders, even in CMEs interests of the main stakeholders cannot be assumed to be identical. Moreover, motives for change as well as the preference for specific measures can vary considerably.

To understand both the regulatory alternatives available and the interests of the three main actor groups, this chapter will first discuss the specific flexibilities and rigidities of traditional employment models in Germany and Japan and the potential regulatory instruments for enhancing flexibility. In the second part it will use this as a basis for discussing the specific interests of the main institutional stakeholders from a political economy perspective, that is, to what extent their interests are shaped by economic and social considerations and whether and how this shapes their preferences with regard to specific instruments and policies. This section will also look briefly at labour market policy and policy-making between the Oil Crisis and 1990 to illustrate how compromises and decisions have been reached in earlier situations where policymakers sought flexibility-enhancement while maintaining a certain level of employment security. The third and last part will then discuss to what extent the interests and preferences may have changed in the course of the 1990s due to meta-changes such as globalisation and ideational changes such as New Public Management or "neo-liberalism".

4.1 The politics and political economy of standard employment

Despite a dramatic rise of non-regular employment, it is still common to describe employment patterns in Germany and Japan with terms such as standard, permanent or life-long. In the case of Japan these terms are typically associated with high participation rates of men, long job-tenures, cooperative labour relations and long-term orientation of both employers and workers (both dismissals and job changes are relatively rare). While all advanced democracies have known similar employment models at some point in their post-war development (e.g. many scholars point out that corporate careers in the US were very similar to those in Japan until the 1970s),

they have not remained dominant in the same way in all countries. At the same time, the reality of employment even in countries such as Germany and Japan has always been more complex. For instance, experts estimate that even in its heyday life-long employment in Japan never covered more than 40% of all employees (Ono 2007a). Moreover, a tendency toward a dual employment pattern has been visible throughout the post-war period. Prior to the 1990s a substantial peripheral workforce existed in Japan which could be adjusted much more flexibly than those in life-time jobs and which consisted mostly of "temporary" female workers who were earning "merely" secondary income. In Germany a similar pattern is visible, although here the peripheral workforce consisted mainly of migrants (often referred to as *Gastarbeiter* and initially hired as temporary labour during the post-war boom). So labour market reforms of the 1990s and 2000s may not actually have caused dualisation nor established a new economic rationale for employers for adopting a dual workforce strategy. Some even argue that a permanent employment model cannot be economically feasible without a more flexible peripheral workforce that compensates for numerical flexibility of regular jobs. So in order to understand the economic and political rationale for reforms in the 1990s and 2000s, the specific flexibilities and rigidities of the dominant employment forms need to be identified first.

4.1.1 The German *Normalarbeitsverhältnis* in comparison

As in Japan and most other advanced democracies, standard employment practices in Germany have traditionally been associated with long-job tenures, yet few authors would go as far and describe it as a model of "life-long" employment. This difference is visible for instance in the fact that skill acquisition is more industry rather than firm-specific. It is also visible in the term *Normalarbeitsverhältnis* ("normal dependent employment") which is most commonly used in the German context. While it shares with the Japanese concept of long-term employment the idea that standard jobs are full-time and based on indefinite employment contracts, it differs in that it has a strong normative and judicial connotation. "Normal" implies that an employee is covered by the standard systems of social protection and regulation, in particular collective bargaining. As chapter three has shown, this is does not apply to well over 20% of workers and around 40% of firms who are not formally participating in collective bargaining. The *Normalarbeitsverhältnis* is also a

commonly used concept by judges who look at collective agreements of firms in teh same sector for orientation when assessing cases of "abusive" working conditions.[47]

The structure of the German welfare state may also explain why the term *Normalarbeitsverhältnis* has a relatively weak economic connotation in comparison to Japan's life-long employment system. In the German arrangement long job-tenures are not as essential because most benefits depend not so much on the firm but on publicly organised schemes. Whereas in Japan several welfare programmes depend on the employer and job changes until a reform in 2001 could result in a substantial loss of pension entitlements, the German system tends to differentiate more between industry and occupation. For example, in industries with *Flächentarifverträgen* and strong unions, working standards are likely to be more precisely formulated, better enforced and more favourable to workers than in industries where enterprise bargaining dominates and/or unions are largely absent. This means that German workers are somewhat less dependent on a particular employer at least as long they stand a reasonable chance of finding a comparable job in the same industry. However, in Germany too there is an important corporate element, as fringe benefits and pay tend to be higher in large firms, in particular if there additional wage agreements in addition or instead of a *Flächentarifvertrag* that include higher pay (*übertarifliche Entlohnung*). The structure of welfare benefits is also somewhat more favourable to job mobility as the German unemployment insurance has always been much more generous both in the replacement rate and temporal coverage than in Japan. On the other hand, in comparison to LMEs such as the US and the UK, long-term employment practices appear to be common in Germany which confirms the view that in Germany long tenures are a common feature of standard employment.[48] In direct comparison it can thus be said that Germany has a larger external labour market but that this market, on the other hand, is strongly segmented due to industry-specific skill acquisition.

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47 The term was initially coined by Ulrich Mückenberger, a scholar and professor of labour law. He, however, defines the term rather broadly: "[damit] meine ich ein sich in der individuellen Lebensgestaltung konkretisierendes gesamtgesellschaftliches Arrangement, das vorsieht, dass die Existenzsicherung der Individuen, ihre private und gesellschaftliche Lebenssituation sich aus ihrer Rolle im Erwerbsarbeitsleben herleitet und speist. Die individuelle Rolle aller am Erwerbsleben Beteiligten soll demzufolge so konturiert und verfasst sein, dass sich dadurch eine sowohl individuelle als auch kollektive Struktur des Lebens und Überlebens, der Produktion und Reproduktion des Einzelnen und der Gattung herstellt und stets neu herstellt." Mückenberger (1985), p. 420.

48 Explaining differences in labour turnover has received a lot of attention by labour economists. An early example of study addressing Japan, Germany and the US and confirming this view is by Tachibanaki (1987). According to Streeck (1995) job tenures in Germany and Japan have been very similar in the early 1990s and considerably longer than both in the US and UK.

Functional flexibility

Skill regimes are also crucial for employment flexibility. A key argument of the VoC literature is that specific skill regimes require long-term employment and thus numerical rigidity but that they at the same time offer economic advantages with regard to functional flexibility (cf. Estévez-Abe, Iversen and Soskice 2001). For VoC scholars, Germany and Japan represent high skill regimes in which firms are directly involved in skill acquisition of employees. This stands in contrast to LMEs where it is mainly the employees who are in charge of acquiring "marketable" skills. However, these skill regimes, Estévez-Abe et al argue, do not only exist due to historical reasons (see Thelen and Kume 1999b) but also reflect the dominance of quality production in the German and Japanese economies and thus a specific economic rationale. In order to be competitive, firms in high quality product markets are particularly dependent on a highly skilled workforce and as many firms operate in niches, they depend on workers acquiring specialist skills which, however, can negatively impact their standing on the external labour market. Firms therefore rely on employees who are willing to acquire skills in line with the interests of the firm rather than those of "the market". In other words, while in LMEs employees have a strong preference in updating their skill along market developments as there is little job security, in CMEs there are strong institutional incentives that encourage employees to specialise: "Because rational workers weigh higher expected income later in their career against the risks of losing their current job, the only way to encourage workers to carry a substantial part of the costs of firm-specific training is to increase job security and/or reduce the insecurity of job loss." (Estévez-Abe, Iversen and Soskice 2001: 151).

The relationship between skill acquisition and functional flexibility is that long-term employees are more productive because of their highly developed and suitable skills and they are allegedly more willing to adapt their skills along with the interest of the firm. As a consequence, in CMEs particular firms pursuing a strategy of specialist production are likely to enjoy a comparative economic advantage over firms in LMEs who depend mostly on the external labour market. Viewed from the perspective of employers the system allows a fairly high level of functional flexibility as employers are involved in deciding the curriculum of vocational training but also because workers have a relative high level of industry-specific skills which can be developed further as the institutional arrangement facilitates long job-tenures. In

particular, the German system seems to fulfil the three conditions which Estévez-Abe et al deem essential for a specialist skill regime to emerge and thrive: Wage protection through collective bargaining, employment protection through rigid labour law and unemployment protection through relatively generous unemployment insurance. All of these elements signal employees that their skill investment will not only be rewarded but protected.

Even though no advanced economy depends entirely on one type of production regime and German and Japanese economies are certainly more diverse than the categorisation as CME suggests, VoC authors argue that the dominance of a specific production regime matters politically beyond its actual share in the total economy because welfare policy and labour market regulation are mostly geared toward the needs of the dominant industries.[49] Under such conditions, even firms which may prefer a stronger external labour market or alternative external skill acquisition have little choice but to adapt to the existing institutional framewokr. One example for this is that apprenticeships (*Ausbildungsberufe*) in Germany cover nearly all industries and a wide range of occupations even in the service sector despite the fact that many of the jobs the apprenticeships prepare for require little training and offer limited career prospects.

What does this mean for flexibility, the regulatory framework and the interests of the main stakeholders? For Germany it can be said that the skill regime is highly corporatist as it relies on the cooperation of unions, employers and the state and semi-official bodies which decide on the contents of industry-specific training. The most important example for this is the German system of vocational training, which requires that a sufficient number of schools exist and unions and employers agree to provide traineeships and follow-on employment. The prominence of this system is visible in the fact that public spending on training has played traditionally a relatively minor role in Germany when compared to other European countries. Only German unification and reforms in 2002 have led to temporary expansions of training schemes and measures. According to Seifert (2003: 284) it was the Hartz commission in 2002 that for the first time seriously considered training as a preventive form of ALMP (which can be interpreted as enhancing functional flexibility) whereas before ALMP was meant to limit the social costs of job loss.

[49] Another interpretation is that the interplay of labour and welfare policy in CMEs is less favourable to production models based on flexible external labour markets and that this further encourages specialisation.

Hence, many authors have interpreted the generosity of the German unemployment insurance (which had no temporal limit on entitlements until 2002) not as a tool for furthering labour market flexibility but as an instrument to cushion the social cost of dismissals.[50] This also applies to the publicly financed early retirement programmes which were used in the 1980s until the mid-1990s (see next section). Both can be seen as instruments of compensation, that is, the state thus narrowed the gap between the interests of employers seeking flexibility and those of employees mainly concerned with job security. However, as pointed out earlier, the German as well as many other governments in advanced democracies have scaled down on compensatory policies as they have proved to be very costly. As for instruments of adjustment, in the Germany case mainly industry coordination and collective bargaining on the industry and firm level matter most for functional flexibility. Traditionally state policy is facilitating rather than steering processes of functional flexibility-enhancement and for the most party can only be effective in concert with the actions of the other stakeholders.[51]

Numerical flexibility

Germany's reputation as a country with a high level of social protection is often illustrated with the example of employment protection legislation. Critics of the German labour market arrangement, on the other hand, often refer to it as a case in point for an overregulated labour market characterised by excessive state intervention. In the case of employment protection labour law clearly constitutes the main source of regulation. The *Kündigungsschutzgesetz* (KSchG, "protection against dismissal act"), originally implemented in 1951, sets specific rules on dismissals which have been interpreted by courts relatively strictly. The KSchG states that firms may dismiss employees only under specific conditions, i.e. if they can document cases of severe misconduct by the employee or actions against the economic interests of the employer. For dismissals on economic grounds (*betriebsbedingte Kündigung*) employers have to prove they have seriously considered alternatives to dismissal

[50] Streeck even argues that without the massive spending on accompanying social policy the whole arrangement may be at stake, as "die Kontinuität des deutschen Systems der industriellen Beziehungen in den letzten Jahren zu einem guten Teil von dessen fortdauernder Subventionierung durch eine flankierende staatliche Sozial- und Arbeitsmarktpolitik abhing. Erforderlich ist diese zur Absorption der sozialen Kosten eines Lohnfindungssystems, das nur eine vergleichsweise geringe Lohndifferenzierung zwischen Unternehmen und Sektoren zulässt (…)", Streeck (2001), p. 306.

[51] The tradition of corporatism in training is also an important reason why service providers associated with employer associations and unions dominate the "market" for external job training. Also, the dramatic job loss in East Germany after unification accelerated the development of new forms of corporatist training schemes. See for instance Knuth (1997).

such as transfer or training. In addition, collective provisions force employers to take into account the social situation of workers (*Sozialauswahl*) which results in higher protection levels for workers with children and/or long tenure. Collective agreements can install additional provisions, e.g. introduce additional criteria for *Sozialauswahl* although they cannot -in this case abandon- overturn the criteria set by law.

Although lower than in some Southern European countries, legal restrictions on dismissals in Germany have been assessed by the OECD as being considerably higher than in Japan, the UK or even some Scandinavian countries (see also figure 1-1 and annex A). This means that at least in this respect, the German state plays the most significant role when it comes to permanently enhancing formal restrictions on numerical flexibility. The latent conflict between stability and flexibility has been settled by law to the benefit of the former. On the other hand, German governments have frequently expanded numerical flexibility through temporary measures, e.g. by encouraging the return of migrant workers in the 1970s through lump-sum payments (e.g. returning social payments workers had made until then), and by financing several expansions of early retirement (the above mentioned strategy of compensation), particularly in the late 1980s and early 1990s. Hence, governments have not been ignorant of firms' calls for more numerical flexibility. However, until the 1990s Germany did not implement any permanent legal relaxations. Instead, state policy has been used to facilitate compromises between flexibility and social protection which do not require permanent changes. In comparison, however, government policy, whether in the form of directly regulating or supportive spending, has been clearly the most important LoR with regard to employment protection. However, it is conceivable meso and micro LoRs could play a bigger role in case the government actually implemented a change. In the more organised industries at least unions have proven in the past that they can effectively counteract permanent reforms by negotiating respective provisions in collective agreements. This has happened in the case of *Lohnfortzahlung* (see previous chapter).

Temporal flexibility

The situation is markedly different when it comes to temporal flexibility. Although there are some legal provisions which regulate the minimum amount of vacation and the maximum of weekly working hours - minimum standards have also

been furthered by a number of European directives[52] - which are unknown in countries such as the US and Japan, the dominant source of regulation of working time is collective bargaining. The *Arbeitszeitgesetz* (ArbZG, working time law) sets specific limits for overtime and maximum weekly working hours; yet it also allows firms and industries to negotiate alternative provisions through collective agreements. In practice therefore, collective bargaining is the dominant LoR for working hours and also the main arena for contestation between labour and capital.

This is visible for instance in the highly contentious conflict on working time reduction that spanned several decades and only ended in the mid-1990s. German unions had been fairly successful in continually reducing working hours until the 1980s when they began to campaign for a 35-hour-work-week. The main strategy was to negotiate "pilot agreements" in core industries with the hope that other industries would follow suit. Although only successful in some industries and partially reversed in the 1990s and 2000s (see chapter six), this process shows that with regard to working time legislative initiatives have played a relatively minor role. At most, legal changes have followed the lead of agreements in the core industries and expanded some of these standards by integrating them into working time legislation.

This dominance of collective bargaining can to an extent be interpreted as a source of regulatory flexibility as there is no law which binds all industries and firms to the same regulations. Sectors, regions and individual firms enjoy some leeway in setting specific provisions, e.g. firms can, with some restrictions, also negotiate for short-term exemptions from collective agreements. As a result collective agreements and bargaining do reflect differences between industries and firms, whether related to different needs or productivity levels or power constellations. Regional diversity is visible in -but not constrained to- public employment where a formal split between collective agreements for East and West Germany exists. Public employees in East Germany work longer and receive slightly lower wages than their West German counterparts. This is justified on the grounds that productivity and living costs in East Germany are lower. In addition, individual firms also have the option of opting-out from collective bargaining altogether or to negotiate alternative agreements, which, at least in principle, allows negotiating more flexible terms and conditions.

[52] Most visible in the introduction of the ArbZG in 1994 which replaced the *Arbeitszeitordnung* originally introduced in 1923. Qualitatively, the new law brought about only minor change, see also chapter six and table C-8.

This means the regulatory framework with regard to working time is fairly flexible as it includes possibilities for short-term as well as long-term flexibility. Moreover, it can be assumed that firms in less organised industries enjoy more flexibility than those where detailed and strictly enforced *Flächentarifverträge* exist (see also annex B and the next section).

Wage flexibility

Collective agreements are also the main source for regulation of wages. *Flächentarifverträge* categorise jobs and define the standard pay scale for a whole industry. The lowest pay category in these agreements can be interpreted as a de facto minimum wage as no firm active in that industry can legally underbid it. As they apply to the whole industry (which is further divided into regions which all formally conclude their own agreements) *Flächentarfiverträge* lead to a very strong standardisation of jobs and pay within an industry. From an economic point of view, this can be interpreted as a rigidity as firms have little room to adjust apart from offering better conditions - but it also means that firms can be relatively confident that comparable domestic employers have a similar cost structure. This not only limits inter-firm competition on the basis of wages but also facilitates cooperative relationships between firms and consensus-formation among employers.

Yet despite the high degree of standardisation, the German system of collective bargaining is not necessarily leading to high and inflexible wages. For one, the wage levels set by *Flächentarifverträge* are often relatively moderate not least because unions at firms also have an interest in maintaining space for negotiating *übertarifliche Entlohnung* (pay above negotiated wages) and additional fringe benefits. For example, until a major pension reform in 2001, "Betriebsräte entwickelten ein Interesse daran, dass die kollektiven Tarifabschlüsse noch genug Raum ließen für betriebliche Zuschläge zum Tariflohn in Form von Betriebsrenten oder anderer Gratifikationen" (Manow 2005: 249). The tendency to settle for relatively low wage scales is also supported by the fact that both unions and employers have to take into account the economic heterogeneity of the area an agreement covers. Agreements can thus be seen as a compromise between the interests of large and small, successful and less successful firms. As negotiators have to make sure to make sure that participation remains high as otherwise the relevance of the collective agreement would be at stake, and large firms do not depend so much

on them as they can often offer better conditions than the *Flächentarifvertrag*, moderation is likely.

This also shows that a considerable part of collective bargaining can take place at the level of the enterprise and that firms enjoy some flexibility in setting alternative provisions. Even though formally they cannot undercut negotiated industry standards, even firms that are members of the respective employer association are able to implement enterprise-specific regulations even on short notice. Apart from short-term adjustments of enterprise-specific wage elements, a *Flächentarifvertrag* can provide firms with formal instruments for deviations in the form of *tarifliche* and *betriebliche Öffnungsklauseln* ("corporate / negotiated escape clauses"). Both essentially allow firms to adjust working conditions downward if they fulfil criteria specified in the collective agreement either by leaving specific areas unspecific (*tariflich*) or by designating specific issues where firms may negotiate temporary alternative provisions (*betrieblich*). A third possibility exists in the so called *Härtefallklauseln* ("clause for cases of severe hardships") which requires that works councils together with management apply at the industry level for a permit to negotiate lower wages. The relative complex procedure, however, has made this a rarely used instrument. In comparison to Japan, it can be said that framework agreements limit the options for short-term adjustments as they typically run for several years and are legally binding until a set expiration date. German employers are thus overall somewhat less flexible when it comes to short-term adjustments.

At the same time the possibilities to deviate for German employers have grown in recent years. Moreover, firms can opt-out from collective bargaining altogether (although there would be a time lag until a valid agreement expires) and they may profit from agreements which set relatively low wage levels so firms may "only" have to re-negotiate enterprise-specific premiums. This shows that the limitations is not the same as standard economic models of wage adaptation processes have it which expect downward rigidity (wages are never adjusted downward) whenever employers are bound by collective agreements. The role of the German state is thereby very limited no least because it is bound by the constitution and the TVG. Even the instruments that exist, such as the MiArbG and the AVG-procedure, are either not used or are effectively not controlled by the state. A reluctance to intervene is also visible in the fact that Germany is one of only few advanced

economies which has no statutory minimum wage but rather relies on a system of collective bargaining which does not cover substantial sections of the workforce.

4.1.2 Standard and life-long employment in Japan

In Japan a range of terms is used to describe standard forms of employment and for distinguishing them from other forms of employment. For instance, in public debates usually the term *seikishain* (正規社員) is used, which translates as regular company employee, while non-regular employees are called *hiseikishain* (非正規社員). However, *seikishain* are not necessarily part of the Japanese life-long employment system as the term only implies that a worker has a permanent work contract and works full time. Life-long employment (*shuushin koyou* 終身雇用, also *shougai koyou* 生涯雇用) implies specific hiring and employment practices as well as a distinct wage structure which may not be true for all *seikishain*. In principle, the life-long employment system incorporates all the elements Estévez-Abe et al describe for high-skill regimes as it is based on the idea that employees will stay with the same firm until retirement. However, this also has consequences for management and HR policies, as it effectively prohibits employers to apply measures of numerical adjustments and to hire new talent on external labour markets, as their workforce is relatively fixed. Life-time employment is characterised by a seniority principle (*nenkou joretsu* 年功序列, literally "seniority hierarchy") which entails that wages and promotions to a large extent depend on age and tenure and not (only) on performance.

Functional flexibility

Under this system Japanese firms typically hire new employees once a year and directly after graduation. What follows is a fairly institutionalised and fixed career and training regime. School leavers as well as university graduates normally start their 'job hunt' well in advance of their graduation and are hired mostly as generalists who will then undergo several years of intensive firm-specific training. Wages in the early years will be relatively low and can often even be lower than what non-lifetime employees earn at this stage. However, they will increase with age and tenure while those of non-life time employees typically remain relatively flat. Typically, individual salaries peak when employees are in their mid-50s after which they start to decline again, often leading to retirement and/or re-employment under a new considerably less generous work contract. Although assessments vary

somewhat as to whether performance has become more important in recent years, formally age is the dominant factor: "On the one hand, performance and competition are built into the system by employees not wanting to fall behind their peers. On the other, it appears almost as an escalator system; once on the escalator – initial positions determined by age, tenure, education and gender – relative positions hardly change" (Inagami and Whittaker 2005: 24).

With regard to functional flexibility, the Japanese system has the advantage, that employees receive training in accordance with the interests of employers and can be rotated fairly easily between departments and affiliated firms as this considered a normal part of the corporate career path. This means that employees will accumulate extensive knowledge about the organisational particularities of a firm but can also be used to acquire new skills as needed. So in contrast to Germany it is fair to say that the Japanese skill regime relies much more strongly on firm-specific skills. The state's role is limited as it is not directly involved in skill acquisition apart from providing a basic and general education. Temporary programmes have as in the case of Germany have been mostly targeted at employees in specific industries to soften the implications of job loss and corporate restructuring.

Wage flexibility

The principle of a wage system based on seniority entails the obvious rigidity that it limits the ability of employers to reward employees based on performance.[53] As the main concern of the seniority system is functional flexibility and skill acquisition "lifetime employment only works if workers start at low wages, and then gradually acquire skills that make them increasingly productive and valuable to the company." (Thelen and Kume 2006: 28). One could thus expect that Japanese wages are rather inflexible and, in particular, cannot be adjusted downwards in economically difficult times. However, the Japanese system of wage bargaining entails several sources of flexibility which allow employers to respond to macroeconomic changes fairly quickly.

As has been pointed out in the previous chapter, one source of flexibility is the relative flexible application of collective agreements. The *shuntou* process is much

[53] The discussion on the alleged rigidities of the Japanese seniority-based wage system seems to be almost as old as the 'imminent demise' of this practice. For instance an article by Sakurabayashi (1975) shows that such issues as performance-based pay were already discussed and partially implemented in the 1970s. This means that all generalisations of wage and employment practices have to be taken with a grain of salt.

less standardised than the collective bargaining regime in Germany. Negotiations differ from industry to industry (which also takes into account different power resources such as organisation rates of unions), and the national federations are often only involved in a formal manner, for example, by announcing results or publicly communicating general demands whose details were determined at the enterprise level. This means that there is a substantial degree of flexibility within the collective bargaining system as firms can flexibly adopt the provisions set in the agreements. It is worth keeping in mind that as the previous chapter has shown, in Japanese collective agreements provide a wage ceiling for firms whereas in Germany agreements provide a wage floor.

Another important source of wage flexibility is the wage structure of Japanese firms. Employees are usually paid two annual bonuses (summer and year-end bonus) whose amount can resemble several monthly salaries (see also figures A-14 and A-15). Bonuses are usually determined on an annual basis and reflect the economic situation of the firms and, according to Tachibanaki (1987), more than the basic wage an employee's performance. Unlike the wage which is largely fixed due to its close link to seniority it is not unusual that bonuses are cut or not raised in times of recession. For instance, during the 2008 crisis bonuses were on average cut by almost 10 percent. In contrast to Germany, collective bargaining is not always the main LoR for determining wages and bonuses in Japan. According to Wada only about 54% of all collective agreements actually entail details on the basic wage while 64% include provisions on bonuses (Wada 2002: 372). This suggests that wage matters are often subject to "consultation" rather than "bargaining" and this implies more flexibility for management as "consultation" includes a variety of decision-making procedures, from consent to information-sharing (see also figures B-12 and B-14). In many instances, therefore, bonus cuts are unilateral decisions which can be implemented on the short-term.

The state role in wage bargaining is similar to Germany although, formally, the Japanese government is not bound by any legal or constitutional constraints. Japanese governments do not intervene in wage bargaining and politicians rarely make public comments on the desired wage development. Nevertheless, the Oil Shocks of the 1970s led to closer consultations between unions, business associations and the government which also included the issue of wage development. In the annual *sanroukon (*see 4.2), an annual meeting between the leaderships of the

national unions federation, business associations and the cabinet, wage development is discussed and all three sides exchange information. Although *sanroukon* does not set wages its discussions have arguably encouraged unions to pursue wage restraint and employers to offer employment security in return. However, in contrast to many European countries, the Japanese social partners have never signed a formal social pact. Another sign of the overall reluctance of the state to intervene concerns the Minimum Wage Act (MWA, *saitei chingin hou* 最低賃金法) which since the 1970s foresees minimum wages for industries, although with regional variations. As will be discussed in chapter six, the MWA relies on tripartite bodies (the Minimum Wage Councils) in which elected officials and macro-political institutions play no role. This means the MWA is rather an example of corporatist self-regulation than of state interference. In summary, it can be said therefore that wage flexibility in Japan is mostly an issue for micro LoRs which includes joint consultation as well as collective bargaining.

Temporal flexibility

Although reliable data on overtime and in particular unpaid overtime is either lacking or not reliable (Mizunoya 2002), the data that is available overwhelmingly suggests that overtime is a key source of temporal flexibility in Japanese firms: "Many larger Japanese companies have tended to adjust production by varying overtime hours rather than by hiring and firing, so employees must often put in late hours in return for job security" (Schwartz 1998: 119). Japanese working hours have been topping most comparative statistics on annual working hours for decades which is another indicator of the exceptional role of working time for employment flexibility.

Yet in formal terms labour law and the state appear to be the most relevant LoRs. Japanese law regulates[54] a wide range of issues related to working time and specifies a number of basic rules in particular for overtime and holidays. On the other hand, most legal provisions include a number of exceptions so the legal framework is effectively much more flexible than the sheer number of laws and provisions imply. Also, unlike most continental European countries, Japanese laws formulate minimum provisions rather than maximum limits. So instead of limiting overtime to a specific amount of hours, Japanese law requires employers to pay

[54] This section draws mainly from Sugeno (2002), pp. 274-318.

overtime premiums. The fact that the majority of Japanese employees are legally entitled to overtime pay is likely to further encourage long working hours as it often constitutes a highly welcome source of extra income. This also explains why overtime regulation has been one of the more controversial issues in the 1990s and 2000s (see chapter six).

At the same time, the Japanese government has since 1978 been actively trying to reduce working hours in line with international standards. One important measure was the introduction of a legal work week of 40 hours in the LSL. The limit, however, does not mean that workers may not work more, rather it sets rather low and thus costly thresholds after which overtime pay is legally required. As for the regulation of overtime work, the LSL distinguishes extra overtime from statutory overtime (in daily practice often called "service overtime", *saabisu zangyou* サービス残業). The latter is already included in work contracts or work rules and does not require overtime premiums as long as the legal limit of maximum overtime is not exceeded. For extra working time that exceeds the legal limit premiums are required which are set by a tripartite council (the Central Council on Labour Standards) and have remained at 25% most of the time whereas in most European countries and the US overtime has to be rewarded with a premium of 50%. However employers can set alternative provisions if they conclude an enterprise agreement with the majority of their workers. So in principle at least regulatory authority can be transferred to the enterprise level. This also applies to the so called discretionary work system, which allows excluding specific occupations (e.g. white collar workers and managers) from the overtime pay obligation. Here, however until the 1990s regulations have limited the system to only fairly small groups of employees.

In summary, working time regulation in Japan constitutes a curious case of comprehensive and encompassing regulation through law combined with, by international standards, high flexibility with regard to adjustments of working time over the short and long-term. In contrast to German firms, one can expect Japanese firms to be less limited by agreements not least because work contracts and work rules both allow integrating a certain amount of overtime in the basic working conditions. Like their German counterparts, however, collective bargaining and/or joint consultation may replace law as the main LoR. It is also interesting to note that

this possibility may have encouraged the formation of joint consultation committees in Japan which are otherwise not mentioned in Japanese labour law.

Numerical flexibility

Even though the Japanese legal system is often portrayed as hesitant to intervene in legislation and politics (see also the previous chapter), several important regulations in labour law have been developed through case law. This applies in particular to the regulation of the succession of fixed-term labour contracts and employment protection. In both cases, it was courts that developed criteria which severely limit the legal leeway of employers in otherwise more or less unregulated fields. This also shows that deregulation of employment protection in the Japanese case would require specific legislation that replaces "rigidities" developed through case law.[55]

The development of four criteria that need to be fulfilled for "justified" dismissals on economic grounds is thereby a direct reflection of the emergence of life-long employment system as the dominant form of employment. According to Araki, labour courts from the 1960s onwards increasingly took into consideration the particular structure of the Japanese labour market when assessing cases of "abusive dismissals": "Dismissal (…) put employees at a serious disadvantage because finding a new equivalent job was extremely difficult in Japan's inactive external labour market. Faced with such situations, Japanese courts accumulated precedents that a dismissal without just cause is (…) an abuse of the right to dismiss and that such a dismissal is null and void" (Araki 1998: 523). When the Oil Crises in the 1970s increased the pressure on Japanese firms to cut costs, many large corporations struck deals with their enterprise unions to avoid dismissals in exchange for wage and temporal flexibility. These agreements were based on the understanding that dismissals should be avoided as far as possible since job loss would have lasting negative implications for workers. Courts developed four criteria for dismissals on economic grounds which they directly derived from the standards of corporate agreements: The four criteria are similar to the KSchG's criteria for dismissals on economic grounds. First, employers must demonstrate the economic necessity for dismissals; second, that employers have considered all alternatives

[55] The same applies to Germany, where labour law in many instances has been considerably changed or expanded by court decisions. Legislation, however, always has the potential to overrule case law if there is political will: "Wo immer (…) Arbeitsrecht aus richterrechtlichen Regeln (meist höchstrichterlich entwickelt und von den Untergerichten befolgt) besteht, ist Deregulierung nur durch Regulierung möglich, d.h. Gesetzgebung, welche die richterrechtliche Regelung verdrängt." Kronke (1990), p. 444.

such as working time reductions transfers or retirement; third, that employers have considered the personal situation of employees when deciding who to dismiss and that, fourth, employers have consulted "in good faith" with unions prior to taking decisions (Araki 1998: 524).

In comparison to Germany, the Japanese state has been conspicuously absent in the regulation of employment protection. Hence, from a legislative viewpoint employment protection has remained basically unregulated until a reform in 2003 (see chapter six). Arguably, the fact that EPL criteria has emerged through an alternative channel and that many Japanese firms until the 1990s could, when faced with excess personnel, avoid dismissals by relying on "internal labour markets" has softened the political pressure on Japanese governments to fill the void. Especially after the Oil crisis, international observers praised the ability of Japanese employers to avoid dismissal by reducing or adjusting working hours and overtime premiums, by reducing the number of new hires and by using *shukko* (temporary transfer of employees to affiliated firms) and *tensenki* transfers (permanent transfer to affiliated firm which allows continuation of corporate welfare). Like in Germany, this relative stability was achieved without any permanent regulatory change to EPL. Another important reason why Japanese form could avoid dismissals is that before the 1990s SMEs usually suffered from a lack of skilled personnel and thus were more than willing to absorb excess workers from large firms (Fujiki, Nakada and Tachibanaki 2001: 180). These alternative channels for employment adjustment has allowed Japanese governments to avoid permanent regulatory interventions. So in summary it appears that joint consultation on the enterprise levels has been the main LoR when it comes to numerical flexibility in Japan. As for the role of state policy and legislation, there are some noteworthy similarities between Germany and Japan. Japanese governments utilise similar instruments for ensuring employment stability such as the Employment Adjustment Subsidy (EAS, *koyou-chousei josei-kin*雇用調整助成金), where the state covers part of the salary of workers at risk of redundancy, in order to maintain employment. Estévez-Abe et al. (2001) interpret the relative prominence of the EAS and of the German *Kurzarbeitergeld* and the high demand by firms for these programmes as clear evidence that firms in both arrangements have a strong preference for long-term employment. In terms of spending, however, ALMP has played a much smaller role in Japan than in Germany (see annex A and figure A-

3), so it appears the Japanese arrangement relies less on supportive state policy than the German one.[56]

4.1.3 Comparison of German and Japanese arrangements and instruments

The discussion of the German and Japanese arrangements has shown that the regulatory framework determining working conditions is a complex structure made up of legislation, case and statuary law, collective bargaining, corporate decision-making and practice. Various sources contribute fragments of varying size and importance to the regulatory arrangement, which in some cases add up to a consistent frame, while in other cases they may overlap, collide or produce unregulated 'grey zones'. In comparison, this section has shown that the German and Japanese arrangements, despite their mutual reliance on institutions of non-market coordination and long-term employment practices, differ considerably in many instances. Overall, the Japanese arrangement appears more flexible as many "rigidities" are less formalised and thus they are easier to "by-pass". This assessment is confirmed by Araki (1998) who finds that the Japanese arrangement offers more "qualitative flexibility" than the German one while both stand in stark contrast to the US which he refers to as a model based on "quantitative flexibility". For him the German arrangement is mostly geared toward the protection of employees as both numerical as well as functional changes are constrained by labour law. In Japan, numerical adjustment is also limited but Araki argues that since most limitations stem from court decisions, the actual level of rigidity is lower as universal application of these standards is not necessarily ensured.

If one goes beyond the issues of numerical flexibility and takes into consideration, for instance the skill-acquisition regimes, one finds in both countries several sources of flexibility and rigidity which are not primarily connected to law. Due to the relative high skill level and the loyalty of workers, German as well as Japanese firms enjoy relative high functional flexibility in the sense that they can give employees new tasks, train them or send them to new departments according to needs. On the other hand, the tendency to provide long-term employment and specific training limits the functionality of external labour markets as mid-career

[56] This excludes related policies such as spending on public works, product market regulation which shields domestic producers from international competition or administrative guidance in case of bankruptcies where competitors have often been "encouraged" to absorb parts of the ailing firm. All of these policies can be said to contribute positively to numerical flexibility by making employment maintenance easier, however, they have to remain outside the scope of this study. See e.g. Kasza (2006) for an analysis of the politics of implicit social policy in Japan.

hires are rare. Internal functional flexibility in Japan is often already secured in work contracts and/or work rules while in Germany almost any change will require a formal acknowledgement of the change in the work contract and/or the approval of the works councils. With regard to temporal flexibility, the German arrangement may initially appear more flexible because law leaves collective agreements a relative wide scope of regulatory authority and collective agreements are less rigid than universally binding legal provisions would be. In Japan, in contrast, labour law on working time appears to be stricter yet, as will be shown in chapter six, this rigidity is partially "balanced" by lax application of rules and a high number of exemptions. Wage flexibility is arguably higher in Japan as employers enjoy considerable leeway in swiftly adjusting bonus payments. Wage flexibility is also provided to some extent by the relative flexible adaptation of national and industry agreements. In Germany flexibility is secured by the fact that collective agreements are matching the different situations in regions, industries and firms. In industries where *Flächentarifverträge* exist, the usually define basic working conditions which leave individual firm a relative wide scope for enterprise bargaining. In addition, the relative constrained role of the state in extending collective agreements and the relative high rate of non-followers in collective bargaining also provide additional flexibility for the system as such.

In more abstract terms, one could say that the German system balances the rigidity of long-term employment by allowing a limited degree of flexibility in all four dimensions, either through permitting exceptions or through supportive (temporary) state policy, while the Japanese system relies mostly on a high level of temporal and functional flexibility and to a more limited degree on wage flexibility, which together compensate for numerical rigidity. Figure 4-1 summarises the main instruments of adjustment and the LoRs as described in the previous sections.

Figure 4-1 **Permanent employment and instruments for enhancing flexibility**

Flexibility dimension	Germany		Japan	
	Instruments	Main loci of regulation	Instruments	Main loci of regulation
Functional Flexibility	(1) Collective bargaining **(2) ALMP**	(1) Meso and Micro (2) Macro	(1) Joint consultation (2) ALMP	(1) Micro (2) Macro
Temporal Flexibility	(1) Collective agreements **(2) Labour law**	(1) Meso (2) Macro	(1) Collective bargaining **(2) Labour law**	(1) Micro (2) Macro
Numerical Flexibility	**(1) Labour law** (2) Collective bargaining	(1) Macro (2) Meso	(1) Joint consultation **(2) Labour law**	(1) Micro (2) Macro
Wage Flexibility	(1) Collective agreements (2) Enterprise bargaining	(1) Meso (2) Micro	(1) Collective bargaining (2) Joint consultation	(1) Meso (2) Micro

Source: Based on Regini (2000b), amended by author.

4.2 Flexibility and protection: The stakes of business, unions and governments

After the German and Japanese employment models have been assessed with regard to the particular flexibilities and rigidities they entail, it is now possible to widen the analytic scope to interests and motives the main stakeholders: employers, employees and the state On the face of it, it may seem a fairly straight-forward affair to describe the fundamental differences in the interests of stakeholders when it comes to balancing employment flexibility with security. For example, workers in long-term jobs should be most concerned about employment security because holding on to a job is crucial for maintaining their attained level of social protection. Although workers may not easily accept more flexible working time, wage cuts or transfers, a hierarchy with regard to the importance of different flexibility measures is likely exists, that is, they may accept several forms of flexibility-enhancement to maintain jobs. Firms on the other hand should welcome any form of flexibility-enhancement as this allows improving productivity and adjusting costs along with market demand. However, firms active in quality production may value, as has been argued earlier, stability more than firms in LMEs for example. The prime concern for governments is to what extent changes might have electoral implications. For example, it is likely to support specific measures of flexibility-enhancement if there is wide support for it.

For example, governments depend on a positive economic development as this constitutes an important factor for their electoral prospects. Hence, they will be that receptive to demands for more flexibility if this promises better economic performance. On the other hand, however, both Germany and Japan are conservative welfare states where the level of social protection of an individual (and often of his/her family) is closely linked to the occupational status of a person. As a consequence, employment security constitutes a highly sensitive issue for employees who can express their discontent or concerns as voters. The significance of job security is particularly visible when the situation of German and Japanese employees is compared to liberal and social democratic welfare states. Whereas job changes are less problematic in liberal welfare states because individuals are responsible for large parts of their social protection in any case, in social democratic welfare states differences between occupations and jobs are less crucial employees due to the universalism of entitlements and the state-centred provision of welfare.

Hence, governments in Germany and Japan must be acutely aware of job status risks. Authors such as Pierson have long argued that conservative welfare states face the biggest challenges when it comes to making arrangements more flexible and mobile, because delinking welfare and work is a very complex undertaking that is likely to cause considerable political backlash. The likely result, Pierson argues, is a deepening rift between those with a fairly high job status who are well protected by the system and those who are not (cf. Pierson 2001a).

4.2.1 The state's role in balancing flexibility and stability

For this reason, one cannot expect that governments will focus exclusively on economic benefits of flexibility-enhancement. They clearly have to take into account the social and electoral implications of changes in the labour market. This asks for delicate balancing between economic and social demands. Against this background the ability of non-liberal capitalisms in Germany and Japan to provide for both economic efficiency and social well-being, can be interpreted as a major political benefit for policy-makers who can thus avoid or resolve delicate balancing issues: "in both Germany and Japan, employment regulations were shown to achieve (…) desirable economic goals, namely flexible labour deployment and the capacity to adapt quickly to technological change, as well as broader social goals such as relatively low inequality and social integration." (Shire and Imai 2004: 237). To this

one can add that the delegation of regulatory responsibility also allows governments to mitigate electoral risks which may arise from controversial policy proposal or contentious policy-making processes.

The characterisation of the German and Japanese welfare models as conservative does not mean, however, that no significant differences exist. In general, welfare programmes in Germany are more generous and entitlements more universal; hence, the German welfare state offers in many ways a better protection against job loss and particularly long-term unemployment. Put differently, the German welfare arrangement contributes to numerical flexibility - at least with regard to workers who are eligible to receive benefits - by reducing the costs of job loss, while in Japan almost the opposite is the case. For example, 77% of unemployed workers in Japan do not even receive unemployment benefits while this applies only to 6% of unemployed Germans (Hommerich 2012; International Labour Organisation 2009). In fact, the relative meagreness of Japanese welfare is the most important reason why social protection and employment status are strongly linked in Japan: the "huge fabric of company-provided social benefits (…) has its roots in the residualism of public provision" (Esping-Andersen 1997: 184). Any attempt by the Japanese state to mitigate social risks through welfare as in Europe would in effect require a massive expansion of public welfare. So, unlike in Germany and many other European countries, in Japan unemployment insurance cannot be used as instrument for softening temporary and permanently redundancies. For that reason alone, it seems highly unlikely that with regard to flexibility-enhancement "the Japanese response (...) will look anything like the American" (ibid.: 185). Nonetheless, in both countries it is likely that regular workers will have a strong preference for stabilising their work arrangement because job status is an important factor for determining the level of social protection.

Put in the context of labour market reforms, these insights allow for a more detailed distinction of possible reform pathways. In chapter one (table 1-1) two pathways were distinguished: the first one described a path where flexibility-enhancement takes place through deregulation and marketisation resulting in a more heterogeneous regulatory environment. Here systems of standardisation such as industrial relations lose their privileged and dominant position and give way to more individualised bargaining. The second one has been termed "coordinated flexibility effort", as here state interventions remain limited and efforts to enhance flexibility

take place mostly via institutions below the level of national politics. Also, all main stakeholders will be contributing to the effort whereas in the market-based one, political contention is much more likely. Taking into account the just discussed aspects of social protection and welfare, the role of the state in these processes can now be specified further (table 4-1). If the state leads the efforts to implement more liberal arrangements, it has, at the same time, to make sure that markets are efficient by encouraging mobility by making welfare independent of job status. It needs not to be as active in non-liberal arrangements as social protection is partially organised and provided through non-public institutions and having a (stable) job remains the key for enjoying a certain level of protection. Here encouraging stable and securing existing employment should be the main concerns for state policy. This does not mean, however, that in liberal arrangement the state plays the role of a distant market regulator. On the contrary, common characterisations of a liberal regulatory model (e.g. Levi-Faur 2005) emphasise that in liberal arrangements the state has to adopt a more active regulatory role because it is the only effective source of regulation for minimum working conditions. This clearly indicates in the case of Germany and Japan a move toward the liberal model would require also a more active and visible state role.

Table 4-1 **The state's role in enhancing employment flexibility while ensuring protection**

	Enhancing flexibility	Ensuring social protection
Liberal approach	▪ Flexibility through efficient external labour market ▪ State as neutral "market regulator	▪ State sets minimum standards through legislation ▪ State provides/organises welfare independent of job status (mobility as main concern)
Coordinated approach	▪ Internal flexibility as the main source of employment flexibility ▪ State encourages and supports de-central adjustments	▪ State encourages expansion of non-state regulation or concertation ▪ Welfare linked to job (job security as main concern)

Author's own.

4.2.2 Welfare and flexibility: What does business want?

As previous chapters have demonstrated, it is increasingly questionable that employers can be treated as a homogeneous group in CMEs because not all firms will profit from the arrangements to a similar extent. Moreover, firm size likely reflects different preferences as large firms are overall better integrated into the various

LoRs of German and Japan labour markets (e.g. their role in concluding pilot agreements in German industrial relations and in the *shuntou* process in Japan) and thus more likely to influence institutional development to their benefit than "peripheral" industries (e.g. services) or SMEs. Smaller firms in particular also lack the organisational capacities of large firms with regard to flexible employment strategies: "Small firms are more severely affected by restrictions on their ability to hire and fire because they do not have the same organizational capacity to adapt to the business cycle as do large firms. (…) Depending on their particular product market strategy, and hence skill needs, large firms are therefore more likely to favour high employment protection than small firms, who tend to view such protection as an unnecessary financial burden and excessive restriction on their manpower flexibility." (Estévez-Abe, Iversen and Soskice 2001: 160). Such differences are likely to emerge in other questions as well with SMEs preferring more flexible legal provisions and flexible regulations set by collective bargaining since their ability to absorb additional cost pressure or rigidities is much more limited. Moreover, many SMEs are more likely to support measures which ease the organisational burden on firms to provide corporate welfare since their financial resources are often limited. They may thus much more strongly support measures which increase external flexibility, e.g. by relaxing the link between work and welfare. However, given the orientation of national politics toward key industries and large firms it is not clear how much such differences matter for national politics.

At least until the 1980s many large firms in Japan have further institutionalised long-term employment. For instance, "Japanese major firms made in collaboration with labour unions plans of lifetime comprehensive welfare (LCW), one after another from the late 1970s to the early 1980s." (Shinkawa 2005: 172). Shinkawa also notes that the rapid expansion of non-state welfare commitment came to a halt only after 1993. Then SMEs quickly abandoned pension schemes by cancelling the so called Tax Qualified Pension Plans for their employees as they struggled to cut costs while maintaining their workforce. Large Japanese firms, in contrast, maintained their generous occupational pensions for longer, although the Asian Financial Crisis in 1997 changed that. In Germany too there is a clear difference between large and small firms with regard to corporate fringe benefits. Many smaller firms never implemented an additional occupational scheme due to the high costs involved while many larger firms in the core industry maintained such schemes to further

institutionalise long-term employment (Leiber 2005). Although firms started to scale back such schemes after 1980s until a reform in 2001(cf. Ebbinghaus and Wiß 2011), the example shows that large firms did have an active interest in nurturing long-term employment relationships on a fairly broad scale.

This brief discussion shows that business' interests do not necessarily collide with the interests of the state and those of employees, e.g. they may share a preference for specific employment forms and for internal flexibility. Also, they indicate that potentially several fault lines exist which may become more relevant if decision-making on labour policy-making becomes more competitive and contentious.

4.3 Globalisation, unemployment and competitiveness: The case for more flexibility

The 1990s and early 2000s have been exceptional with regard to the number and the scope of economic and welfare reforms. However, unlike in the 1970s, when two Oil price shocks led to a comparable phase of policy innovation, it is not possible to single out a specific macroeconomic shock which can be said to have caused a sudden and encompassing re-think among stakeholders. Rather, it seems there has been a gradual rise in the understanding that advanced democracies after 1990 have to address painful structural reforms and retort to austerity. This new thinking spread partially parallel to but also was partially fuelled by specific developments such as the end of the bubble economy in Japan which marked a sudden end to the 'Heisei boom' of high economic growth rates of the late 1980s. Almost at the same time as Japan Germany entered a long phase of economic stagnation after the so called 'unification boom" ended in 1992. These developments certainly added to the urgency with which plans and proposals for labour market reforms were discussed. They may also have accelerated a change in the interests of employers since they now had to deal with prolonged stagnation rather than with steady economic growth.

More important, in the long term at least, are however three more general developments which have led to changing practices and ignited a phase of intensive reform. First, many scholars argue that surging public debt, which had been rising until the 1970s due to welfare expansion and rising unemployment, and the resulting need for austerity have dramatically altered and limited the options for how governments can intervene in markets through social policy (Pierson 2001a). This matters for labour market policy too because programmes such as publicly financed

early retirement programmes in Germany had become too costly by the early 1990s to be maintained further. This not only forced the German government at the time to scale back the volume of the programme but also took away a convenient instrument to deal with unemployment and temporary demands for more numerical flexibility. The second argument emphasises globalisation understood as a dramatic increase in international competition between firms. Defined in this way, globalisation is believed to put individual firms under growing pressure to cut costs to stay competitive. Access to overseas markets is seen increasingly as prerequisite for firms to prosper. Yet more international interdependence also entails additional risks, such as more extreme fluctuations of demand, currency risks and institutional differences between markets. This makes it arguably more difficult for firms to maintain a long-term growth strategy than if they were active mostly in less diverse and dynamic CMEs. This process is amplified further by increasingly globalised capital markets and investors which add additional cost-pressure on firms (many of these arguments are addressed by Wade 1996 and others in the same edited volume) but also demand similar institutional forms of corporate governance in order to be able to compare and assess investments.[57] Together these factors force firms to expand their capacities to respond to fluctuations faster, for instance by hiring temporary staff that can be dismissed readily in case market conditions deteriorate (see e.g. Kalleberg 2009).

Third, many authors argue that there has been an ideational change some refer to as "neo-liberalism". According to this argument, governments have increasingly accepted that in order to maintain economic growth and high employment levels the performance of financial and labour markets need to be improved by reducing regulations, limit state intervention and by re-arranging how public goods are provided. One example for this shift is the privatisation of job placement services in the 1990s and 2000s which in most countries has traditionally been a public service. Levi-Faur describes this change the rise of "regulatory capitalism" in which the state increasingly delegates tasks to private actors and bodies and assumes a role of market regulator and market creator rather. This idea stands in stark contrast to the traditional active state which seeks to achieve desirable economic or social outcomes

[57] An example of how globalisation of finance has been perceived to impact labour market arrangements is described by Streeck and Yamamura: "Many believe that the pattern of innovation that corresponded to the German bargained economy can no longer compete internationally (…) The same may hold true for industrial relations and corporate governance, which face the potential defection of formerly patient capital to the larger and less regulated circuits of the global economy" Streeck and Yamamura (2003), p. 4.

through market intervention and regulation through legislation or law. Majone (1997) makes a similar argument. To him states traditionally intervene in markets in three ways: through income redistribution, economic stabilisation and market regulation. Since the 1980s, however, advanced democracies have begun to re-define the role of the state and its preferred instruments of intervention. The result is a new "regulatory state" that limits direct state interventions by drawing up rules for freer (privatised) markets and thus limits its political responsibility for outcomes. However, Majone and Levi-Faur emphasise that the practical implication of this change are not necessarily unidirectional "While at the ideological level neo-liberalism promotes deregulation, at the practical level it promotes, or at least is accompanied by, regulation." (Levi-Faur 2005: 14). This could be the case when for instance alternative sources of regulation such as industrial relations are weakened. Hence, neo-liberalism would lead to a major change in the role of the state for labour market regulation but it does not necessarily imply a weaker state role.

4.3.1 Europeanisation and cross-national benchmarking

Since policy-making processes Japan and Germany are set in very different regional environments, the question arises to what extent German labour politics can still be considered nationally autonomous. Europeanisation, that is, the gradual shift of regulatory authority toward the European level, has without doubt been an issue in the field of labour market regulation. The European Commission (EC) has clearly become more active in the regulation of labour markets which is visible in the growing number of directives, e.g. on posted work and temp agency employment. Moreover, the EC has developed instruments to encourage national governments to adopt specific policies (best practices) such as the Open Method of Coordination (OMC). This approach matches to a large extent the benchmarking activities of large international organisations such as the OECD, the IMF or World Bank.[58] All of these organisations publish country as well as comparative reports on the employment performance of countries, assessing the "employment performance" of member countries and promoting "policy learning" and "best practices". Although non-

[58] The open method of coordination (OMC) is an process through which the European Commission monitors policy developments in certain policy areas. Aim is to encourage member countries to adopt specific policies or regulatory frameworks (best practice sharing). Main instrument is the issuance of regular reports that identify failings of national regulations. However, none of these measures are legally binding and the member states are free to reject the advice of the European Commission. Arguably, the OMC's influence is largest influence in policy debates and also agenda-setting but for decisions national considerations seem to dominate.

binding, the results of reports and the measures advocated through OMC do resonate with national policy-makers and observers.

The influence of decisions made at the European level may be most visible in the freedom of movement within the EU. This has facilitated, for example, the migration of East European workers to Western European countries. However, it even extends to issue of reform as the current Eurozone crisis shows. Labour market reforms have been named one of the prerequisites for financial help in several Southern European Euro member states. Nonetheless, it is difficult to characterise the influence of decisions on the European level on national arrangements because it tends not to be unilateral or steady. One reason is that large member states have more political clout and thus are better able to block provisions they dislike. Moreover, large countries are arguably in a better position to ignore recommendations that prove unpopular with the national electorate than smaller states. Empirical analyses of the impact of the EU on national labour market regulation indicate that since the 1980s (see annex C) EU-legislation has led to a number of formal changes (such as the introduction of the German ArbZG). However, there has been very little substantial change with the only exception of anti-discrimination law. A study for the EC concludes that "There is no doubt that anti-discrimination law represents the area in which the impact of EU law has been most remarkable, in terms of quality of the legislation and for its dissemination in all countries". (Sciarra 2005 53). The same study, however, finds little evidence for EU influence with regard to other legislation and labour-related policies. This is partially due to the fact that it is often difficult to link national measures to European influences if they are not specifically addressed in the law but have been eminent 'only' in the law-formation phase. Moreover, most labour-related initiatives from the European level are soft law, that is, they reach national governments in the form of recommendations, reports or statements but do not obligate them to implement specific provisions. One example for this the "flexicurity" concept which was formulated for the first time in a report for the EC compiled by former Dutch PM Wim Kok (drawing on a Danish concept). The concept recommends lower employment protection and generous welfare and labour policy to increase and secure labour mobility. The EC has been promoting "flexicurity" as a 'best practice' yet without much concrete impact on national employment strategies.

Sciarra's study argues that the most important European influence has been case law with national courts increasingly citing EU directives in their rulings. However, there are very few cases of direct European influence on legislative reforms at least in the context of Germany. Even where a direct influence is visible, it cannot be said to mirror a specific ideology or direction (e.g. the introduction of a 48h work-week maximum in the UK raised the level of regulation). So the influence of Europeanization can be said to have been mostly implicit and not a major factor in German policy processes. This is confirmed by two studies in the early 1990s (Schmid 1994) and 2000s (Fleckenstein 2006).

International benchmarking

Benchmarking or the comparison of policies and legislation in order to learn from the experience of others is not limited to the EU, however. National debates have been increasingly influenced by studies and publications in particular by the OECD which frequently publishes comparative assessments of labour markets (country reports as well as the annual OECD Employment Outlook) and the ILO (the UN's International Labour Organisation) which negotiates international standards on a range of work related issues which member countries are supposed to ratify and adopt into national law. ILO conventions have played a prominent role in particular in Japan because Ministries often take new conventions as a hook to launch or justify new initiatives such as the Equal Employment Opportunity Law which was first passed in 1986. As has been mentioned there have been similar cases in Germany although Europeanization and EU-law constitute more important non-national sources. Also, the International Monetary Fund[59] advises countries on labour market regulation although its activities are usually limited to countries facing immediate macroeconomic difficulties, such as South Korea during the Asian Crisis or Greece in the current Eurozone crisis. Although none of the recommendations have been binding – this is true even for ILO conventions - the input from international organisations has nonetheless been influential in the public and political debates (see also next chapter).

This is perhaps most visible with regard to the issue of temp agency work. While it is was banned or severely restricted in most countries until the late 1980s, many countries followed a course of gradual deregulation. This has been encouraged by reports on the experience of the Netherlands, where the expansion of temp agency

[59] For an overview see http://www.imf.org/external/np/exr/facts/labor.htm (accessed in October 2012).

work had allegedly contributed to reducing unemployment in the 1980s. The OECD and the ILO have contributed to disseminating this experience by making respective recommendations, for instance in the 1994 OECD Jobs Study (1994b). International benchmarking on temp agency work has, however, also been promoted by private agencies and firms, in particular the large temp agencies which emerged in early temp agency markets in the US, Switzerland and the Netherlands (Coe, Johns and Ward 2011; Shire and Van Jaarsveld 2008). So benchmarking processes have not only been about "policy-learning" and the dissemination of "best practices" but also mirror to an extent political and economic interests of specific actors and the struggle to dominate agenda-setting. However, in more general terms this means that it is the national discourse that matters most for policy processes and policy output.

4.4 Conclusions: Flexibility as an analytic concept

This chapter has described the specific constellations of employment flexibility and rigidity in the case of Germany and Japan and their political implications in some detail. Against this background it is now possible to reflect briefly on the merits and potential drawbacks of the flexibility concept used in this study. Sceptics may argue that flexibility may in some instances be too vague a concept because it can only catch parts of often highly complex reform decisions. For instance, labour markets are closely related to welfare arrangement and many welfare schemes are directly linked to concepts of standard employment or *Normalarbeitsverhältnis.* Reforms that affect the latter may thus not necessarily be prompted by concerns for flexibility but other motives such as cost containment. In the case of the so called *Hartz IV* reform in Germany, marginal employment expansion and unemployment insurance reform go hand in hand with the main aim to increase employment levels while limiting public spending.

In Japan surveys show that a majority of married female part-timers –at least initially- value the fact that they need not worry about social contributions as they are already covered by the corporate welfare schemes of their husbands. Hence, tax codes and the family insurance model underlying pensions and health insurance are also important factors to consider. In Germany in particular the problem of persistent structural unemployment has arguably been the main motor (at least rhetorically) for virtually all labour-related legislative initiatives since the 1980s. So by not taking into account the immediate context of decisions, aspects and factors

will inevitably be missed or portrayed. Yet, there is good reason to expect that even in those cases where labour market flexibility has not been the primary concern for policy-makers; it has been part of their considerations. It seems reasonable to expect that all decisions of the 1990s and 2000s have been considered on the ground of whether or how they affect labour market flexibility. Decisions with potentially negative effects on flexibility would either have been avoided or moderated in their impact and such constraints should become clearly visible in a analysis that spans over more than two decades. One could interpret this as an implicit "flexibility constraint" of labour market politics since the 1980s. More importantly, the next chapters will show that all major labour market reforms have been discussed in the context of flexibility and employment security. Although linkages to welfare and tax policies play a role in some instances, in general the flexibility concept captures the reform dynamic rather well. It is therefore a sensible alternative to conventional approaches which focus mostly on linkages abut pay little attention to the particular reform dynamic of each policy field.

Another crucial advantage of the flexibility concept used here is that it allows detailed assessments of the content of reforms as well as processes while avoiding the vagueness and deterministic connotation that plagues concepts such as deregulation or marketisation. Moreover, the analysis can avoid the limits of quantitative measurements of key labour market characteristics such as corporatism, labour strength[60] or coverage of collective bargaining which may not give an adequate indication of the actual differences between countries.

There are of course flexibility-related decision-making processes that have to remain outside the scope of this study because they concern mostly the micro level and industries where data is less comprehensive. Yet, the wide parameters of the concept of labour market flexibility at least allow including changes on the three main levels of labour market regulation in which labour market regulation is set and it thus includes the main political dynamics and arenas of decision-making and legislative reform. Major shifts on the micro level will also over time affect actors on the meso and macro-level, especially if these developments are at odds with the

[60] This is not to imply that quantitative studies do add to the understanding of reform processes in the realm of labour market policy. Yet, the issue that many central indicators for capitalism and political aspects of labour market policy commonly used are problematic and not reliable is a problem which affects labour market research in particular. Despite a wealth of data and surveys, the complexity and heterogeneity of arrangements are difficult to capture quantitatively. Corporatism scales demonstrate this particularly well. Depending on the indicator, Japan is judged anything from highly corporatist to decidedly pluralist. See Kenworthy (2003).

existing institutional arrangements. This means that even though not directly observed, the aggregated impact of micro-level changes is part of the analysis.

Some readers may also object that flexibility enhancement measures taken at different points of time and different LoRs may not be intentionally related or directed at each other. For instance, flexibility-enhancing agreements in some industries may simply be due to technological changes which require, for example, less rigid working time schemes. These changes, however, may then later be used for promoting a specific policy agenda pursued by a government pursuing a liberalisation strategy. However, this study does not rest or depend on the assumption that all decisions at the various levels of non-liberal labour market arrangements are always consciously connected and used strategically. Rather, it assumes that all decisions necessarily mirror the institutional framework in which they are taken. Moreover, the interplay provides important clues for assessing the scope and depth of institutional change and continuity. For example, if several LoRs offer competing regulatory answers, then this would mean that the framework is not stable and in a process of fundamental institutional change.

In summary, it can be said that the concept of labour market flexibility is both theoretically plausible and stringent as well as empirically useful for analysing the incidence and scope of labour market reform. It takes account of the fact that in complex institutional environments, decisions rarely boil down to clear-cut choices between two concise formulated alternatives. And it allows to capture cases of intentional, strategic as well unintentional institutional interaction which provide alternatives to legislative reforms. This is crucial because although political science research routinely treats only legislative acts as political, in reality non-regulation and soft and implicit forms of regulation are equally part of the politics of labour market reform.

5. Legislative reform and the politics of external flexibility

> "We all know what to do but we don't know how to get re-elected once we have done it."
>
> *Jean-Claude Juncker* (2007)[61]

> "Successful economic adjustment, including greater flexibility in labour markets and the organization of welfare states, may require [...] a flexible form of 'market' or 'competitive' corporatism rather than attempted moves in a neo-liberal direction."
>
> *Martin Rhodes* (1997: 179)

Advocates of liberal market reform sometimes describe reform as a necessary evil: necessary because only comprehensive reform – e.g. deregulating rigid labour markets – can ensure higher employment and more jobs; evil because such reforms almost always entail painful adjustment processes and social costs such as devaluating the attained status of workers and thus the level of social security they enjoy. Even though Jean-Claude Juncker's quote is not directly related to the issue of labour market reform, it captures well a widely shared sentiment among policymakers that those politically responsible for such reforms must fear electoral retaliation by those affected. It is for ths reason that political scientists and economists studying processes of reform usually begin analyses of policy decisions by looking at the electoral stakes of governments.

In contrast, some researchers -here represented by a quote from Martin Rhodes- have questioned the argument that labour market reforms have inevitably to be of the liberal and 'necessary evil' sort. They argue that specific institutional arrangements of continental European countries and Japan offer opportunities for forging a "third way" which tackles structural issues through joint efforts by labour, capital and governments and at the same time largely avoids the pain and polarisation of "necessary evil" reforms. Arguably the most prominent contribution representing this view is the book entitled "Ein holländisches Wunder?" by Jelle

[61] Juncker has been Prime Minister of Luxembourg since 1995. Quote taken from an article of The Economist (2010) reporting on discussions of European leaders about the future of the European Union.

Visser and Anton Hemerijck (1998), which describes how the social partners in the Netherlands not only negotiated a number of structural reform of welfare and employment as well as wage restraint but also successfully implemented many of the proposals and concepts. The Dutch example was studied by policy-makers, academics and observers around the world not least because it seemed to contradict the conventional wisdom that structural reforms inevitably increase polarisation and thus the risk of electoral blame. The book was written by two well-known Dutch scholars on industrial relations on the request of Wolfgang Streeck, the director of the renowned Max-Planck Institute for the Studies of Societies in Cologne. Streeck himself had been involved in several projects in the late 1990s investigating ways to modernise the German political economy and the labour market in particular while maintaining its social character.[62] Although not entirely positive about the way Dutch social partners negotiated and implemented changes, the book by Visser and Hemerijck popularised the Dutch example of reform and as a result the Waasenaar Accord and related measures came to be known as a potential alternative to "neo-liberalism". This has had an impact on domestic discussions even in Japan and all experts interviewed for this study have been aware of it.[63]

This difference in perspective matters for analyses of legislative reform because it demonstrates that reforms are not necessarily as clear-cut and concise as many policy studies assume. For example, studies which rely on quantitative indicators of reform (see the discussion of the EPL indicator in annex A) compare formal elements of laws. Such approaches face however the problem that they do not assess the actual regulatory options policy-makers have available to them. In some cases regulatory stability may not be a sign of institutional continuity or rigidity but merely attest to changes on other LoRs which have led to similar results. It is for this reason that this study expands its scope beyond legislative reforms and also considers the

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[62] One of these was an outgrowth of the „Bündnis für Arbeit, Ausbildung und Wettbewerbsfähigkeit" (the second so-called alliance for jobs) and came to be known as "Benchmarking Deutschland" project which assessed German labour market regulation and collective bargaining in comparison to other European countries with better employment performance. The project was financed and supported by the Bertelsmann foundation, a policy think tank funded by the Bertelsmann media conglomerate (the foundation owns the firm). See also Pautz (2008).

[63] The efforts of the first Schröder cabinet to establish a tripartite alliance based on the Dutch experience initially received positive reactions in Japan. During a state visit in Japan in 1999, the Japanese government expressed its interest in the German experience as Japan was facing similar discussions. Both sides agreed to establish an annual bilateral dialogue between employers, unions and governments, which would allow leaders from both countries to consult each other and share experiences. However, apart from a joint publication by the DGB and JTUC on employment and industrial relations, the dialogue was never institutionalised. Nonetheless, the anecdote shows policy-makers do follow closely developments in other countries even with regard to labour policy.

relationship between different loci of regulation and how they influence decisions on different levels of the regulatory arrangements.

In chapters three and four some of the larger changes in the policy-making structure in Germany and Japan have been mentioned. In both countries these changes have been interpreted by some as an important departure from established policy-making processes which should lead to changes to how policies are decided but also impact the direction of policies. The following section will address the question to what extent policies and policy-making have indeed changed by analysing both the role of the state both in terms of decision-making processes as well as with regard to the contents of regulation. This then provides the basis for three process tracings of legislation on fixed-term employment, temp agency work and employment protection. All of these policies can be seen as measures of enhancing external flexibility, that is, they facilitate the opportunities for employers to realise temporary, wage, functional and numerical flexibility requirements through the external labour market.

5.1 Coordination and the politics of flexible labour markets before 1990

Looking back at how firms, unions and government have enhanced flexibility in the past provides important clues to what extent labour politics have actually been changed through reforms and to what extent decision-making processes mirror changes in the power of balance between labour and capital as well or reflect ideational or partisan changes. This section will briefly outline the historic development of the main institutions in labour market regulation since the Oil Shock. The 1970s are of particular interest to this study as they constitute a comparable case where coordinated capitalism faced the challenge of enhancing flexibility due to changing macroeconomic conditions.

5.1.1 The politics of flexible labour markets in Germany until the mid-1990s

Despite a growing sense of economic crisis with low economic growth and high unemployment in the 1990s and 2000s many observers remained quite optimistic that these troubles could be solved within the existing institutions of labour market arrangements. One often made argument was that the 1970s provided helpful precedents of how social partner could successfully manage a situation of severe macroeconomic distress and resolve conflict between employment adjustments and employment stability. In the early 1970s Germany and Japan were often praised for

their ability to absorb the shock of soaring oil prices both economically and socially better than most other advanced economies. Some have credited this to their ability to implement measures through (partial) coordination and administrative guidance, and the distinct advantages of their capitalisms in general (see the debate of the merits of 'Rhenish' and Japanese capitalism in the 1980s and beyond). Undisputable is that in both cases the Oil crises led to the establishment of several institutions of macro coordination between the social partners and the government.

In the German case the most well known example for policy coordination on the national level is the so called *Konzertierte Aktion* ("concerted effort") which was inaugurated in 1966 and lasted until 1977. It was later was often compared to the two alliances for jobs in the mid-1990s. Its original purpose had been to coordinate measure taken by the social partners and the government in order to battle the first post-war recession in the mid-1960s but was also used after the first Oil Shock to coordinate decisions on the national, industrial and corporate levels. Apart from unions, employers and government, the central bank[64] participated in order to - at least in the beginning - support the tripartite coordination by providing details on monetary and macroeconomic development. Intended as a forum that would facilitate coordinated measures to maintain employment and to stimulate demand, it quickly expanded its scope to legislative initiatives such as Co-Determination Act and other major reforms of the system of industrial relations. However, it did not act as an alternative source for formulation of policy. Rather its main purpose was to facilitate consultation and aid information sharing between the different sides. The *Konzertierte Aktion* in the eyes of the public quickly became a success not least because core sectors such as metal agreed to moderate wage demands while the economy rebounded faster than expected. When the first Oil shock hit the German economy it became a major vehicle to negotiate wage restraint in exchange for employment security. Again the forum succeeded in orchestrating a moderate wage policy in the private sector (only the public sector continued for some time to follow

[64] The Bundesbank played a decisive role in the negotiations and its refusal in the 1970s to support macroeconomic policy-making through an expansive monetary policy is widely seen as a major factor contributing to the "moderation" of unions: "the autonomy of the Bundesbank protected (…) from Keynesian illusions and located responsibility for employment within the system of free collective bargaining. The strict refusal of the Bundesbank after 1974 to accommodate inflationary wage increases required tight discipline, which could only be delivered by wage bargaining institutions succinctly centralized to contain wage pressures from sheltered sectors" Streeck and Hassel (2003), p. 104. This means it was not so much the state the "ordered" specific measures and required the social partners to follow a specific path, but it more or less resulted from factors beyond the government's control as the Bundesbank was keen to defend its autonomy from politics.

a high wage strategy) and wage growth declined considerably after 1975 (Schroeder 2001). The governments in this period encouraged rather than controlled these processes. For instance in reaction to calls for more numerical flexibility, the government temporarily introduced job creation programmes, expanded subsidies for early retirement schemes. This made labour exit more acceptable for workers and downsizing relatively inexpensive for employers. One result of this was that the participation rates of workers above 55 years of age dropped considerably between 1970 and 1980 (Ebbinghaus 2006).

The *Konzertierte Aktion* came to an end in 1977 when the unions ended their participation due to a conflict about co-determination (Schmid 1985: 108-113). Nonetheless, the pattern of tripartite consultation and coordination established by it continued well into the 1980s. Hassel argues that the moderation in the relationship between unions and employers established through the Konzertierte Aktion proved a major factor not only for the development of industrial relations bu also for economic and labour policies: "Es ist weitgehend unbestritten, dass dieses Modell des kooperativen und produktivitätsorientierten Interessenausgleichs bis weit in die 1980er Jahre und darüber hinaus zur erfolgreichen Krisenbewältigung der deutschen Volkswirtschaft beigetragen hat“ (2006: 323). From a regulatory point of view, however, it is important to note that the 1970s did not establish a pattern of comprehensive labour market corporatism in which legislation is devised cordially. Rather, the *Konzertierte Aktion* more or less institutionalised and intensified a dialogue between the main stakeholders of the German labour market arrangements. The role of government interventions was limited to temporary measures and it avoided permanent regulatory decisions such as a change in employment protection legislation. This implies that the state encouraged and supported de-central decision-making and regulation. This picture of limited state intervention is also underlined by the fact that during the 1970s the two most prominent acts implemented, institutionalised and expanded co-determination rights of unions and works councils and thus further stabilised the pattern of labour-capital coordination with limited participation of the government.[65]

[65] The *Betriebsverfassungsgesetz* (BetrVG) or “works constitution act” in 1972 and the *Mitbestimmungsgesetz* (MitBestG) or ‘”co-determination act” in 1976. Both acts were implemented under coalitions led by the SPD and were intended to institutionalise and stabilise the influence of labour unions on all corporate levels and to make co-determination mandatory for all industries. Both acts were highly controversial at the time and in the case of co-determination prompted the business associations to appeal to the constitutional court.

The environment for labour market policy changed however in the 1980s. As Streeck and Hassel put it, "Developments in the 1980s changed the balance of power between business and labour and pulled the state into the management of the labour market. [...] Companies lost interest in fighting wage increases [...] given that they could respond to high wage settlements by reorganising production and shifting redundant workers into rapidly expanding early retirement schemes." (2003: 105). The limited interventions governments had started in the 1970s to support a smooth recovery from the Oil shock and to mitigate tensions between capital and labour had over time developed into costly and quasi-permanent spending. The growing political pressure to reduce public debts which had built up during the 1970s meant however, that such policies were becoming ever less sustainable. Moreover, the arrangements seemed to contribute to a relative high level of structural unemployment which persisted even in periods of stable economic growth. This increased the political pressure on governments to consider structural changes to the overall labour market arrangement.[66]

In Germany the policy shift towards more government involvement was accompanied by a change in government in 1983, from a labour-friendly social-liberal coalition to a more business-oriented conservative-liberal administration. The new government headed by Helmut Kohl borrowed heavily from the pro-market rhetoric of the British Prime Minister Margaret Thatcher. Kohl pledged to make economic recovery the main policy objective of his administration and this included labour market reforms and "deregulations". The main legislative accomplishment of this period was the 1985 *Beschäftigungsförderungsgesetz* (BeschFG, "employment promotion act") which massively expanded the use of fixed-term contracts although under conditions (see section 5.4 and table C-6). According to most observers at the time the reforms represented a significant break with the past because for the first time some flexibility enhancement was achieved through legislative change. However, despite its solid majorities in both Bundestag and Bundesrat, the coalition did not, in contrast to its initial announcements, reduce employment protection. Instead, „wagte sich die Regierung (...) eher an Randbereiche (...) wo man auf grundlegende

This step provided a much welcomed opportunity for labour unions to officially declare the end of the tripartite "Concerted Action" in 1977.

66 This is among other confirmed e.g. by a policy proposal (*Trennungspapier*) formulated by the FDP, which eventually led to the break-up of the SPD-FDP coalition in 1982. In the paper, which for strategic reasons was formulated particularly boldly and probably was never intended to be implemented in earnest, the FDP advocated a radical reform of labour market regulation, including the abolishment of employment protection and of the *Günstigkeitsklausel*.

Änderungen des Kündigungsschutzgesetzes zugunsten der Einführung befristeter Arbeitsverträge verzichtete“ (Zohlnhöfer 2001: 667).

Another important development was the inauguration of an expert-committee, the so-called *Deregulierungskommission* (official title: *Unabhängige Expertenkommission zum Abbau marktwidriger Regulierungen*) in 1988, which was entrusted with the task of identifying obstacles to the “proper functioning of the markets“. The committee constituted an important case of innovation in policy-making because it was entirely made up of “experts” who had no formal association with vested interests (although some worked for research institutions which are primarily financed by business organisations). Many of the commission’s proposals concerned the labour market and in many ways they resembled the recommendation the Hartz commission put forward more than 10 years later under a SPD-led government. This applies in particular to an expansion of temp agency work, further deregulation of fixed-term contracts and the possibility for enterprises to deviate from framework agreements through *enterprise pacts* (for a critical assessment and a list of the employment-related proposals see Hickel 1991). The commission issued its final report in 1991, however, with the exception of a minor reform of temp agency work – the AÜG in 1993 was changed to extend the maximum duration of placements from 6 to 9 months (table C-4)- none of it proposals were implemented.

To some extent the moderate impact of the commission can be explained with changing majorities in the second chamber. The ruling coalition had lost its majority in 1991 and thus relied on some consultation with *Länder* which were not governed by the same coalition of parties. However, according to Zohlhöfer the cautious approach can be explained with internal disagreement within the CDU/CSU. Its labour wing vehemently opposed almost all proposals for further deregulation for fear of electoral retaliation. This forced the government to compromise on reforms even before bills could be introduced to parliamentary deliberations. Seen against this background, the initiative to use a commission for devising labour market reform rather than relying on the parties’ experts, seems to be less motivated by a need for expert advice but rather by a need to cope with the high salience and the political risks connected to regulatory reform. It is thus not surprising that the only other noticeable labour market reforms, a reform of the KschG (see section 5.5 and table C-2) and a second expansion of fixed-term contracts, both in 1996, entailed

only minor changes and were motivated mainly by the worsening unemployment crisis (in 1996 unemployment rates reached the highest level in the post-war period).

The gap between the decidedly reformist rhetoric of the conservative-liberal coalition and its actual policy decisions, has prompted many scholars to conclude that the German political system is effectively preventing radical reform: "In this system, major changes could effectively only be undertaken in the context of a grand coalition." (Czada 2005: 175).[67] Yet with regard to labour market policy-making in the 1990s and 2010s, the late 1980s did lead to an important transformation of labour policy-making: First, regulatory changes became for the first time an actual possibility in policy-making and secondly, issues of electoral salience began to increasingly influence political decision-making.

5.1.2 Labour politics in Japan from the 1970s to 1990

In contrast to Germany, policy-making processes in Japan have not been dominated by continental European-style consensual politics nor by decidedly corporatist practices. Moreover, as chapters three and four have argued, the LDP has been much closer the interests of business and has traditionally entertained much fewer contacts to organised labour than the German CDU. Yet, if one looks for functional equivalents one does find similar patterns of coordination since the 1970s. For instance, in 1970 the so called *sanroukon* (Conference on Labour and Industry)[68] was established which, although without any formal legal status, was intended to act as a forum of discussion and information sharing between government, labour and employers and whose activities were not only constrained to topic related to industrial relations. However, over time it also gained a central role in the so called *shuntou* wage negotiation process.[69] The *sanroukon*-members, comprising the

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[67] A good example of German corporatism concerns the administration of the state-run work or job placement agency (then called 'Bundesanstalt für Arbeit') which until the end of the 1990s had the monopoly on placements: "Representatives of employees (trade unions), employer and public bodies acting as honorary members of the self-administrative organs, exercise a direct influence in shaping the policy of the FEI [Bundesanstalt für Arbeit] at all levels: central, regional and local." Schmid (1985). The Federal Agency is in many ways comparable to the Japanese 'Haroo waaku' agency which lost its monopoly on placements in 1999. However, it has never been organised in a similar corporatist fashion but was administered by the MoL.

[68] This is an abbreviation of *sangyou roudou konwakai* (産業労働懇話会). The term *konwakai* indicates the informal nature of the institution as it can be translated as 'informal get-together'. For a more detailed description on the function of *sanroukon* see Sako (1997).

[69] *Shuntou* stands for the so-called 'spring offensive' of labour unions where several unions coordinate their wage demands and present them jointly to the employer organisations. On both sides there is considerable coordination taking place prior to the s*huntou*-negotiations. The result is that despite the largely decentralised collective bargaining there is a great degree of standardisation of employment conditions and wages. However, this is largely true for employees of large companies with powerful unions, small and

leading figures of organized labour and capital and of government bureaucracy (esp. of the Ministry of Labour) meet regularly (usually monthly) until the mid-1990s and less often thereafter, discussing a wide set of issues, not all of them directly linked to industrial relations. Especially during the 1970s several proposals were formulated and presented to the government which had been unanimously agreed upon in this forum, e.g. concerning tax cuts in order to make up for moderate wage increases. Indeed, *sanroukon* arguably paved the way for negotiating and implementing wage restraint after the first Oil Shock which was implemented through the 1975 *shuntou*. According to observers at the time, Japan was particularly quick and consequential in implementing wage restraint after the Oil shock. However, this was achieved without any sort of formal agreement between the social partners.

The relative minor role of government policy is also visible in the fact that Japanese companies in the 1970s managed to avoid mass lay-offs without financial compensation through publicly financed early retirement schemes. The large *keiretsu* in particular could rely on internal labour markets, transferring employees to affiliated SMEs which typically suffered from labour shortage due to their lower wage structure (Chuma 1994). Although the Japanese government actively supported firms and industries particularly hit by the crises, it did so mainly through industrial rather than social policy and targeted spending such as temporary job creation programmes. Redundancies were limited to the "peripheral labour force" (i.e. female labour market participation dropped considerably after 1973 until about 1975) which was considered a relative low price as most women were expected to leave the labour market after few years anyway.

Another important development of the 1970s was that the participation of labour unions in policy-making processes. This stood in contrast to the popular picture of Japan being a country of "corporatism without labour" (see also table B-2). "Labour became active in policy formation concerning employment security, as exemplified by its role in legislating new policies such as the Revision of the Employment Insurance Law (1974), the Special Measures for Laid-off Workers in the Targeted Depressed Industries (1977), and the Employment Stabilization Funds (1977). Each of these laws, designed to deal with employment problems, favoured labour" (Kume 1998: 137). The increased possibilities for political participation had

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medium companies do not necessarily follow s*huntou*-agreements (although they too use them as a point of reference). See for example Ibid..

been one of the union's conditions for coordinating with business and government on the national level. Another example for the growing participatory opportunities for labour is welfare. The 1970s mark the time when many major welfare expansions were implemented. Many of these measures were widely supported by unions and, partially, even the left-wing opposition.[70]

However, most of the participation took place below the level of national politics. From the 1970s onwards labour market regulation was dominated by a peculiar form of corporatist decision-making dominated by the ministerial bureaucracy. Similar to other policy areas where so called "administrative guidance"[71] (*gyousei shidou* 行政指導) has been the main pattern of regulatory change (in lieu of legislative politics), the MoL and its *shingikai* became the main LoR for working conditions and flexibility-related issues (for a description of an idealtypical *shingikai*-based policy-making process see Watanabe 2012: 33). Most proposals and bills as well as a considerable part of the agenda-setting would take place within the MoL and without direct participation of the government or the LDP (cabinet members usually did not attend *shingikai* meetings). Also the council members were selected by the Ministry on the understanding that all sides concerned (business, labour) would be represented and had a say. In addition, members representing the 'public interest' were invited who were mainly recruited from academia (law, economics and other social sciences) representing different scholarly opinions. As a general rule, decisions were taken unanimously thus effectively granting labour (as well as business) the right to veto bills discussed (cf. Miura 2001b).[72]

Labour market policy in the 1980s

Rhetorically, the political process in Japan experienced a similar neo-liberal revolution as Germany in the 1980s. For example the governments of Prime

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70 For instance in 1973 a major pension reform was passed with the unprecedented joint and explicit support of labour unions and employer associations.

71 Industrial policy has also been mainly subject to *administrative guidance*. The term describes a regulatory process which largely avoids legislation or formal rules when considering the implementation of economic or political goals. Usually it means that firms are encouraged to adopt a certain practice, e.g. by providing financial or tax incentives or by announcing legislation if changes are not implemented within a certain time frame. Administrative guidance in the form of industrial policy usually often involves bureaucrats coordinating domestic solutions to help struggling firms (and thus to preserve their employment), such as banks after the collapse of the bubble economy in the early 1990s.

72 See Schwartz (1998) for details on the working of the *shingikai* system. Shinigkai are forums of advice either for Ministries or the cabinet. Usually they take a half institutionalised form, which means that in theory they can be easily initiated and dissolved although most major Shingikai actually exist for several decades and/or compromise members of preceding or other Shingikai.

Ministers Suzuki and Nakasone developed and vigorously promoted the concept of "administrative reform" which essentially aimed at balancing the national budget without raising taxes and by focusing on supply side economics. Although many proposals appeared to mirror the policies of market-oriented administrations in the UK (Thatcher) and US (Reagan) at the time, only few truly neoliberal policies were actually implemented. Despite the economic troubles caused by the Plaza Accord in 1985 which dramatically increased the costs of Japanese exports within a short period of time, several laws were passed to shorten working time with the strong support of the labour unions. Kume thus concludes that if "the 1980s principle of neo-liberalism had been taken seriously, the [traditional, the author] employment policy could have been the target of the administrative reform. However, this type of employment policy not only survived administrative reform, but was further developed." (Kume 1997: 229-230). In particular the degree of coordination and cooperation between labour, employers and the MoL intensified in some areas of labour policymaking, for example concerning working time regulation and corporate consultation practices (see next chapter).

This continuation despite favourable political conditions for legislating "neo-liberal" agenda (the LDP enjoyed stable majorities in both chambers) implies that Japanese governments had little interest in facing electoral risks associated with unpopular reforms. As a consequence previous patterns of de-central regulations and encouragement were further institutionalised and all major legislative initiatives until about the mid-1990s either enhanced protection for workers or promoted joint consultation on the firm levels as an alternative source of regulation (see also table C-11).

5.1.3 Conclusion

This brief overview of the period between the 1970s until the mid-1990s highlights two important aspects of the German and Japanese labour market arrangements that are highly relevant for the periods reform that followed. First, facing macroeconomic troubles governments, employers and unions have overall favoured comprehensive collaboration and coordination of measures. They have used formal but mostly informal channels for this purpose. Secondly, in periods of economic crisis the main actors were prepared to moderate, at least of some time, to moderate their demands in order to facilitate cooperation and to increase the effectiveness of changes. And

although the means through which labour market flexibility was achieved differed (with the welfare state playing a much more prominent role in the case of Germany) and despite the different organisational set-up of unions and very partisan majorities, the policy output as well as the supportive but otherwise reluctant role of the government are comparable.

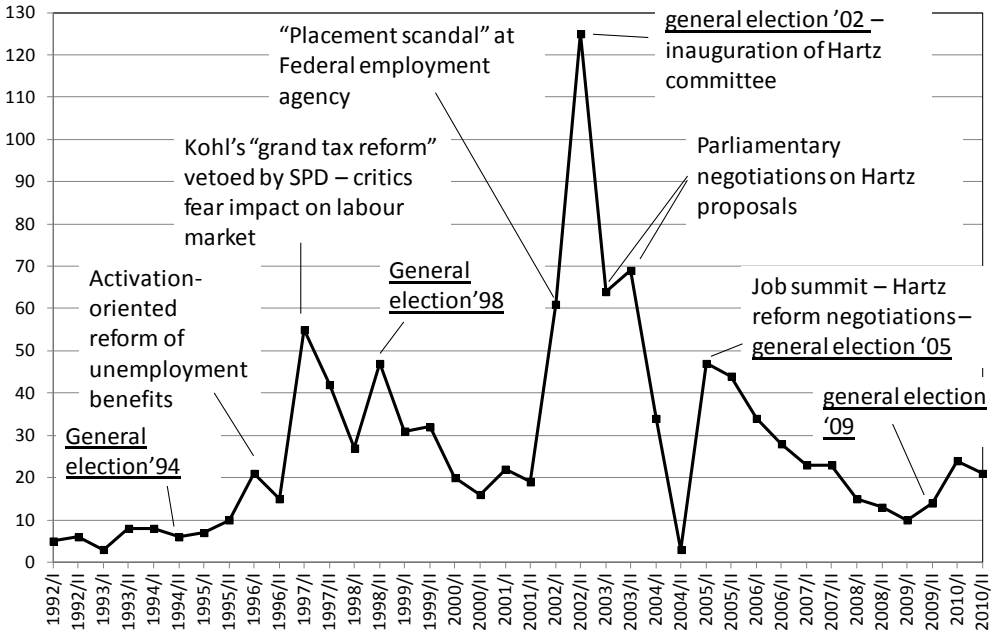
5.2 Policy-making processes after 1990

As has been shown so far, in Japan macro politics has traditionally played a peripheral role in labour policy-making due to strong bureaucratic management while in Germany institutional development has been limited to a large extent by *Tarifautonomie*. However, both countries did not only experience an unprecedented phase of regulatory reform between 1990 and 2010 but also dramatic changes with regard to policy-making processes and the salience of labour market policy. This section will address all three aspects before discussing details of the reforms in the remainder of the chapter.

5.2.1 Partisan politics and electoral salience in the 1990s and beyond

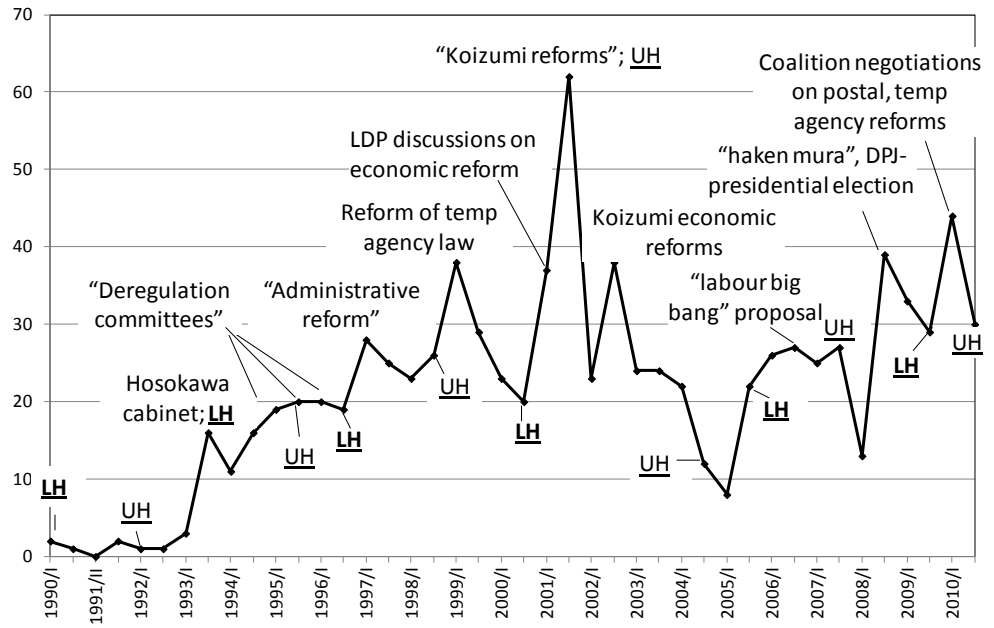
Figures 5-1 and 5-2 indicate that the public interest for labour market issues increased considerably since the early 1990s, peaking in both cases around 2001-2002. As a result the higher salience should lead to a more important role of partisan politics for policy and labour market regulation. Moreover, it suggests that macro LoRs will gain in relative importance vis-á-vis meso and micro LoRs. However, it is interesting that the peaks in reporting about labour market reforms in the majority do not coincide with elections. However, this may also be at least partially due to the fact that in both countries parliamentary majorities have become decidedly more heterogeneous after 1990 which could mean that the incentives for public contestation have increased in comparison to the 1970s and 1980s (see also figures 3-2 and 3-3).

Figure 5-1 **Reports on labour market reform in a German newspaper, 1992-2010**



Source: Compilation based on data from Süddeutsche Zeitung's digital archive. The SZ is generally considered a moderate left-of-centre newspaper and one of the two leading quality papers in Germany. The digital archive does not include articles published before 1992. Note 1: The figure reports articles that feature the issue of labour market reform („Arbeitsmarkt Reform") and have a clear connection to German political decision-making. Articles which focus on discussions in other countries were excluded as well as articles about regional issues connected to labour market reform. All articles are from the main sections on politics, economics and editorials. Note 2: Any quantitative assessment of media reporting is necessarily only a rough indicator of the salience of issues.

Figure 5-2 **Reports on labour market reforms in a Japanese newspaper, 1990-2010**



Source: Asahi Shimbun digital archive (accessed via CrossAsia). Like the SZ, the Asahi shinbun is generally considered a moderate left-of-centre paper. It has been among the three most popular quality papers in Japan for several decades. LH = election to the Lower House, UH = election to the Upper House. Note: The figure reports articles that feature the issue of „labour market reform" (「労働　改革」and 「改正案」) and have a clear connection to Japanese political decision-making. Articles which focus on discussions in other countries were excluded as were articles in regional editions. Articles are either from the politics section (政治面) or editorials (オピニオン).

Partisan competition and electoral strategy in contemporary Japan

Whether higher salience has indeed led to more partisan competition, however, is not clear. For instance, Ido claims that the changes in the partisan make-up of government had virtually no impact on the contents and the direction of reform. Instead the Ministry of Labour remained the key *veto player*, e.g. to maintain a "protectionist regime" for insider workers. "The puzzle in the Japanese case is, that the end of the long-time rule of the LDP in 1993 did not have an impact on the policy-making process in Japan. (...) Rather, the bureaucracy designed, planned and legislated the labour relations law and remained in charge of further revisions, so it maintained its decisive role in legislating." (Ido 2007: 216).[73] Moreover, in terms of partisan politics, the early 1990s until the early 2010s has been a period of almost constant turmoil. After the LDP's historic defeat in the 1989 UH election, the LDP's dominance has never been fully recovered. The DPJ which after 2000 emerged as the second main party, began as a party organising former social democrats (mostly former SDP and DSP members) and other moderates. However, its membership became distinctively more conservative when a large number of former LDP politicians, many of which have been on the right wing, joined the DPJ, such as Ichirou Ozawa. According to Miura et al the conservative newcomers after 2000 in many instances replaced the "old guard". This led to the curious development that the left-of-centre DPJ became "an attractive launching pad for ambitious conservative newcomers" (Miura, Yun Lee and Weiner 2005: 56).

Hence, it seems safe to conclude that strategic rather than programmatic motives explain these changes within the Japanese party system. Yet, in terms of policy positions Miura et al do not find evidence of a shift of the DPJ to the right. Instead, the DPJ has mostly taken positions to the left of the LDP, mostly for reasons of "product differentiation". Based on an evaluation of manifestoes and parliamentary debates, Miura et al find the largest differences between the LDP and DPJ on national security and civil liberties. This seems to once again confirm that foreign policy remains a major policy area for the profile of parties and that, in contrast, socio-economic issues have played only a minor role for partisan competition. The fact "that the DPJ opposed government bills in order to publicise

[73] Translated by author. "日本のケースにおける謎は 1993 年における自民党の長期支配の終駕が、日本の政策決定過程にほとんどインパクトを与えなかった点である。(...) むしろ、日本の官僚は，労働関係諸法を構想、作成、立法し、さらに改定を行うに際し，依然として決定的な役割を発揮した。"

the government's inability to manage the economy" but "did not necessarily proclaim neo-liberal policies, nor did it always take a pro-labour position" (ibid. 2005: 68) implies that not ideological differences but strategic-electoral motives have dominated the macro contestation on policy even for most of the 1990s and 2000s. Moroever, the DPJ appears to pursue a "clientelistic" strategy, partially adopting traditional LDP positions on the protection of small farmers, shop owners and family-run firms. Moreover, to appeal to urban salaried voters, the DPJ chose policy positions the right of the LDP on several occasions, tax hikes that would have hit mostly low-wage workers.

So despite the higher salience of labour market issues, partisan competition in Japan has not necessarily developed in the way of a clear dichotomy between two major parties representing two different programmatic viewpoints. Partially this curious pattern can be explained with the instability of the Japanese party system and the long phase of re-alignment (which may still not have come to an end). But also it also reflect the fact that the electoral market has become more competitive since the early 1990s making coalition-formation and cross-party talks important new features of partisan politics in Japan. However, the result has not been an intensification of programmatic competition but rather it has strengthened electoral-strategic considerations of parties and powerful politicians. Noteworthy is also that in contrast to Germany the salience of labour market seems to have remained at a relatively high level even after 2002. This could be an indicator that labour market issues have been increasingly used to strategically position parties in the political arena.

Partisan politics after 1990 in Germany

In Germany the case is somewhat more complex because on the one hand, the relative positions of parties have remained stable over time (see annex A and chapter three) yet on the other hand, especially the SPD has gone through a dramatic shift in its positions between 1998 and 2005 which defies not only conventional models of partisanship but also the popular assessment that German party politics is structurally averse to policy innovation. The contrast in the SPD's policy before and after 1998 is particularly striking if policy statements in the early 1990s are compared with statements in the 2010s. In its basic policy platform adopted in 1989, the party envisioned working time reductions to a six-hour working day, an expansion of co-determination rights, a legal ban on excessive extra hours, and the

universal ban of temp agency work. Most critically, it stated the need for a „Arbeitsgesetzbuch, um alle Beschäftigungsverhältnisse unter den Schutz eines einheitlichen Arbeitsrechts zu stellen. Alle Formen der Erwerbsarbeit müssen als Normalarbeitsverhältnis abgesichert sein“ (the 'Berliner Programm' as quoted in Buschmann 2005: 299).[74] By 2007 it had dropped almost all references to working time reductions and was much more cautious in its critique of non-regular forms of employment, such as temp agency work. Instead, the party now advocated to strategically link social policy, education and employment policy to improve opportunities for “good work” by increasing the number of jobs.

The SPD’s policy platform in the 1980s and early 1990s differed sharply with the policy of the coalition government. However, the conservative-liberal coalitions governments headed by Kohl depended on the cooperation with unions and employer association in order to manage the transition of East Germany to a market economy, even though, publicly, it was committed to a politics of state-centred regulatory reform that did not require a consensus with the social partners. This explains why the government under Kohl remained hostile toward the union’s proposal to establish a national pact similar (*Bündnis für Arbeit*, BfA) to the Dutch example in 1995. Although the idea proved highly popular with the electorate, the government felt strong enough to ignore calls for a tripartite pact after winning a critical state election in 1996: “Das vergleichsweise gute Abschneiden der Regierungsparteien wurde von ihnen einerseits als Plebiszit gegen ein Bündnis und andererseits als politische Basis für eine weitere Deregulierung des Arbeitsmarktes (…) interpretiert.“ (Schroeder and Esser 1999: 7). In the same year the government implemented reforms of the employment protection act (KSchG), the sickness pay act (limiting the period for which sick pay would be provided) as well as another relaxation of fixed-term employment (*befristete Beschäftigung*) all against the ardent opposition of the parliamentary opposition and unions.

However, the historic loss in the 1998 national election (for the first time in Germany post-war history a Federal government was voted out rather than toppled

[74] The “Berliner Programm” is a *Grundsatzprogramm* (basic policy statement) which sketches policy ideas rather than concrete measures. Nonetheless, they can be indicative of larger changes such as the “Godesberger Programm” of 1959 which rejected previous calls for comprehensive state ownership of capital. Unlike election manifestoes, basic statements are changed less frequently. The most recent programme was adopted in 2007 (“Hamburger Programm. All programmes are available at the party’s website http://www.spd.de/partei/grundsatzprogramm/;jsessionid=03907175341390485F08329282BB0D4F (last accessed in October 2012).

through coalitional re-alignment) meant that the state-centred approach of unilateral regulatory reform soon fell out of favour. The victorious SPD had campaigned on a platform that promised a second attempt for establishing a national BfA. This seemed to signal an end to the short phase of cabinet-centred labour policy-making in Germany and rejuvenation of traditional tripartite macro coordination. Although the electoral salience of employment regulation (figure 5-1) increased even further after 1998, the ensuing phase of high salience politics differed considerably from the political process between 1983 and 1998. Instead of further deepening the rift between the main parties as in the 1980s and 1990s, the growing salience after 1998 seems to have led to a gradual convergence of policy positions on. Moreover, the trend toward a more active and autonomous regulatory role of the state was only interrupted, but not replaced by a more consensual process as some expected.

Salience and partisanship: Germany and Japan compared

With regard to the question whether partisan politics has to be seen as an important factor for the formulation of policies and reforms since 1990s, it can be said that it has gained relevance due to the growing salience of labour market issues in both countries. However, its impact cannot be readily described based on programmatic differences as these appear to be less stable than spatial assessments of positions by experts indicate. Rather it the rise in high salience politics has forced parties to address employment policy more actively than in the past.

5.2.2 Corporatism and expertism in Germany, 1990-2010

The 1990s saw a number of institutional innovations with regard to policy-making, many of which, however, proved to be only temporary in nature. As just mentioned, beginning in the late 1980s, the Federal government backtracked from the consensual policy-making style of the 1970s and instead opted for a more government-centred and autonomous policy-making approach which repeatedly led to clashes with organised labour. The newly-gained autonomy of the government was did not remain unchallenged, however, and the unions in 1995 proposed a national pact which would facilitate agreements and in particular trade-offs between more flexibility and employment security. The first BfA was not an entirely new innovation developed on the national level but had several precedents on the corporate level, in particular the *Beschäftigungssicherungspakt* which had been concluded at Volkswagen in 1993 (Klein 2000: 453). Volkswagen's works councils had ccepted to

considerable flexibility-enhancement measures with regard to working time and pay in return for management's pledge to refrain from lay-offs for several years. The unions proposed to negotiate a similar pacts on the national level in the context of a BfA which would allow addressing the problem of rising unemployment and issues of labour costs without lowering the level of employment protection for employees. However, as as the Federal government felt fairly confident until 1998 that the electoral risks of devising regulatory reform on its own was limited, it rejected the proposal and its support for a national BfA remained half-hearted.

The second Alliance for Jobs

At the same time however, BfAs were rapidly expanding on the corporate level with more and more firms concluding deals that echoed the original Volkswagen agreement. Moreover, several Länder started to negotiate regional BfAs and this was true even for Länder governed by the Christian Democrats. Indeed the first BfA which that successfully concluded was not implemented in Bavaria where the national coalition partner CSU commanded over a solid single majority. This suggests that national policy-making processes were to some extent undermined by intensified policy coordination on the regional, meso and especially micro levels.

In contrast to the CDU, the SPD sensed that the polarisation created by the coalition's labour market reforms had made the coalition electorally vulnerable and, as a consequence, made the establishment of a 'genuine' BfA a key pledge in its 1998 election campaign. Moreover, it promised to restore the political influence of unions on the national stage and to repeal all deregulations implemented under Kohl. After the conservative-liberal coalition was replaced by a SPD-Greens coalition, it quickly repealed the particularly unpopular reform of the KSchG but did not touch the reform of fixed-term employment and of temp agency work. This can be explained with the fact that the new government was under severe pressure to improve its relationship with business, whose support it needed to establish a new BfA. Business, however, insisted that labour market regulation needed to become more flexible. Hence, the new government quickly found itself in the midst of conflicting interests of labour and capital and also growing electoral salience. The solution was to invite both sides to negotiate deals in the context of a new BfA (official title: *Bündnis für Arbeit, Ausbildung und Wettbewerbsfähigkeit*), without changing the legislative framework independently. This effectively shifted regulatory authority to the social partners away from macro politics. With regard to contents, the BfA was meant to

discuss a wide range of issues and policies, including training, working time, tax policy and social contributions (which had been identified as a source of steadily growing labour costs making German industry "uncompetitive"). The BfA granted organised business and labour equal representation and it was thus understood as a revival of the *Konzertierte Aktion* of the 1960s and 1970s. However, in contrast to the 1970s, the BfA was also professionalised in that it was given considerable manpower and funds to study other examples of "successful" tripartite reforms. For example contributing to the BfA was the "Benchmarking Deutschland" Gruppe hosted by the Max-Plack Institute in Cologne and financed by the Bertelsmann Foundation. It provided recommendations in the form of reports (some of which have remained unpublished) in particular on temp agency work and thus influenced the agenda of discussions

According to most observers, however, the BfA was instrumental for legislative reform only in very few cases. Schmid explains this with the fact that neither the government nor the social partners had clear concepts of what they wanted to achieve. The main driver for all changes was, so Schmid, the continuing increase in unemployment which increased pressure on the governments to address the issue of labour market reform, in whatever form, boldly.

The Hartz commission

In a sense the second BfA was itself a testimonial to the limits of corporatist policy-making and this increased the political pressure on the government to find alternative means of devising policies which would be both effective as well as acceptable in electoral terms. When a major scandal at the Federal Employment Agency (then called *Bundesanstalt für Arbeit*) surfaced in early 2002 -employees of the agency had forged statistics on the number of job-seekers successfully placed (actual placements were 70% lower), it caused an outrage in the German public and intensified calls for "action". The government eventually responded by establishing the so called Hartz-commission which was widely criticised as the collapse of social partnership on the macro level. Although the Schröder government was neither the first to use commission for policy-formulation and may have used the instrument of possibly even less often than in the 1970s (Siefken 2007: 24), the public attention for these commissions was extensive. The Hartz-commission is also highly relevant because Schröder pledged that the federal government would implement all measures the commission proposed without any further modification. This meant

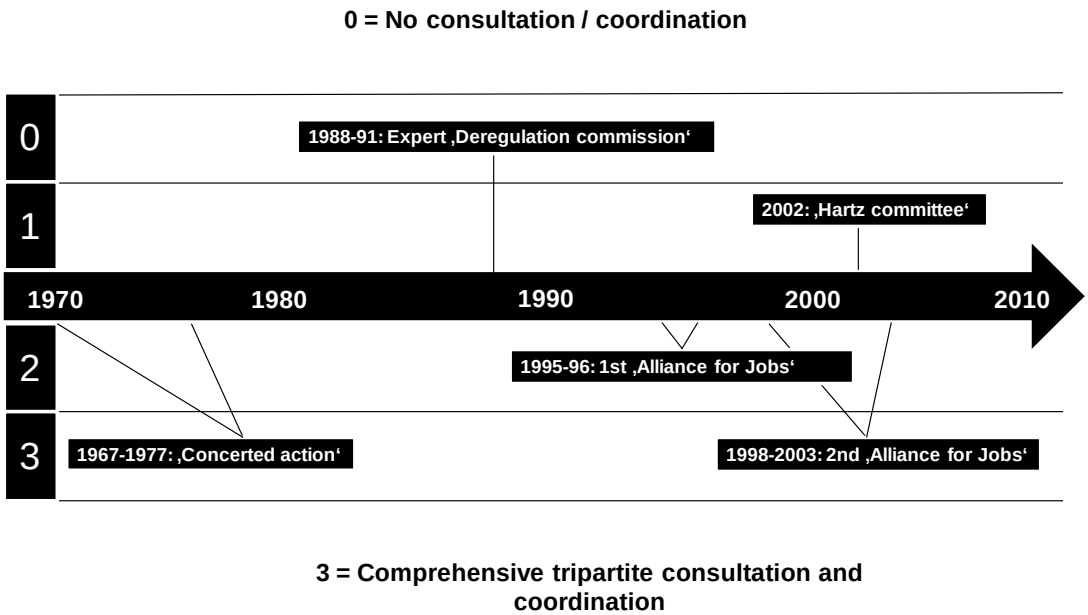
that the responsibility for policy formulation was effectively shifted to an external body.

The commission signalled a break with previous practices of policy-making also in that it did not grant all stakeholders the same representation. Instead the commission consisted mostly of management consultants, scholars and members of large union federations and business associations who, however, did not represent the top leadership of each organisation. Management consultancies played a key role in providing information, data and background material to the commission. Also the Bertelsmann foundation offered expertise and proposals to the commission. However, the distribution of information was even, in particular labour representatives had limited personal access to materials and no means of their own to counter proposals. Moreover, the Hartz commission was not designed as a permanent body but would only devise proposals for limited period of time.

Like the deregulation committees in Japan, which will be discussed in the next section, the Hartz committe should not be seen as a sign of a stronger state-role in decision-making. On the contrary, the fact that governments both in Japan and Germany more or less followed what recommendations confirms the tendency of the state to avoid direct involvement if electoral stakes are high. "Expert advice" was more difficult to challenge since experts could be portrayed as standing above the strategic impetus of partisan politics. Moreover, the Hartz Commission consciously avoided any kind of particularly controversial legislation in particular with regard to employment protection (interviews #29 and #30). Still, after the proposals were introduced into the legislative process the Schröder cabinet tried to get public endorsement of unions and business for the reforms in order to contain polarisation caused by the changes (see Siefken 2007: 220-221).

In sum, the Hartz Commission does not confirm the thesis of a growing autonomy of the government in formulating labour market regulation and reform. Also the commission and the BfA before it drew largely on instruments and proposals that had been already in place on the corporate level. So it does not confirm the argument that the Hartz committe was mainly a case of international policy-learning. This is also visible in the fact that the commission was set up in rather hurried circumstances, and put under considerable pressure to produce results prior to the looming general elections.

Figure 5-3 **Changes in the policy-making process in Germany, 1970-2010**



Author's own. Note: Figure describes the policy-making processes until about 2011. The different "stages of coordination" are meant as a rough indication of the tripartite nature of negotiations. Those above the arrow (0, 1) are either bilateral (1) or unilateral (0) bodies dominated by the cabinet or reporting directly to the cabinet while those below are tripartite with 3 representing negotiations where all three sides have been involved to a similar degree and 2 with at least one side participating only to a limited extent.

Moreover, in the commission Hartz many of experts, advisors and think tanks were involved who had already played an important role in the BFA under Schröder. This applies in particular to the Bertelsmann Foundation had been active in devising the so called "Benchmarking Deutschland" report with the aim of collecting information that could be used for devising reforms "suitable" for Germany. Pautz (2008) even argues that the foundation should not be seen as a programmatically-motivated player of its own that happened to suit the reform-minded wing of the SPD rather well. Due to this programmatic overlap, and due to time constraints resulting from the small window of opportunity (the *Kanzleramt* was effectively responsible although the BMAS was the official host), the foundation's role became arguably more prominent than it may have been in less rushed circumstances.[75] Furthermore due to its vast resources, it was able to organise parallel working group of experts something organised unions, for example, could not match. This underlines the relative absence of genuine political debate and government involvement in the process despite the fact that the measures discussed were highly political and

[75] The sheer size and financial potency of the foundation certainly also helped to elevate its role in the process. Pautz describes its unique features as follows: "The Bertelsmann Foundation, unlike most other German private foundations, is an operative foundation and thus exclusively finances projects initiated and controlled by the foundation itself rather than giving grants to externally conceived and conducted projects. Since the early 1990s, the foundation has been expanding its think-tank functions and has become Germany's largest private think-tank." Pautz (2008), p. 442.

potentially polarising. At the same time it represented a clear departure from the second BfA (figure 5-3) in that it did not grant all stakeholder privileged access participation rights.

5.2.3 Expertism and cabinet dominance in Japan

Several authors assume that organised labour has lost influence because labour market reforms have often been at odds with the interests of labour and because the *shingikai* have lost some of their influence due to administrative reform (e.g. Imai 2011). Others see this is a general development which principally affects all interest groups because the role of the cabinet for policy-making has been strengthened, not least since the rise of Koizumi to the top of government and the LDP (Koizumi publicly denounced interest group politics). This and the rise of the DPJ as an alternative to the DPJ has been interpreted by many as an indication, that the Japanese political system is, at last, becoming a Westminster democracy with a strong cabinet at its centre. If true this would mean that the policy processes of the 1990s and 2000s would look very different to those of previous periods.

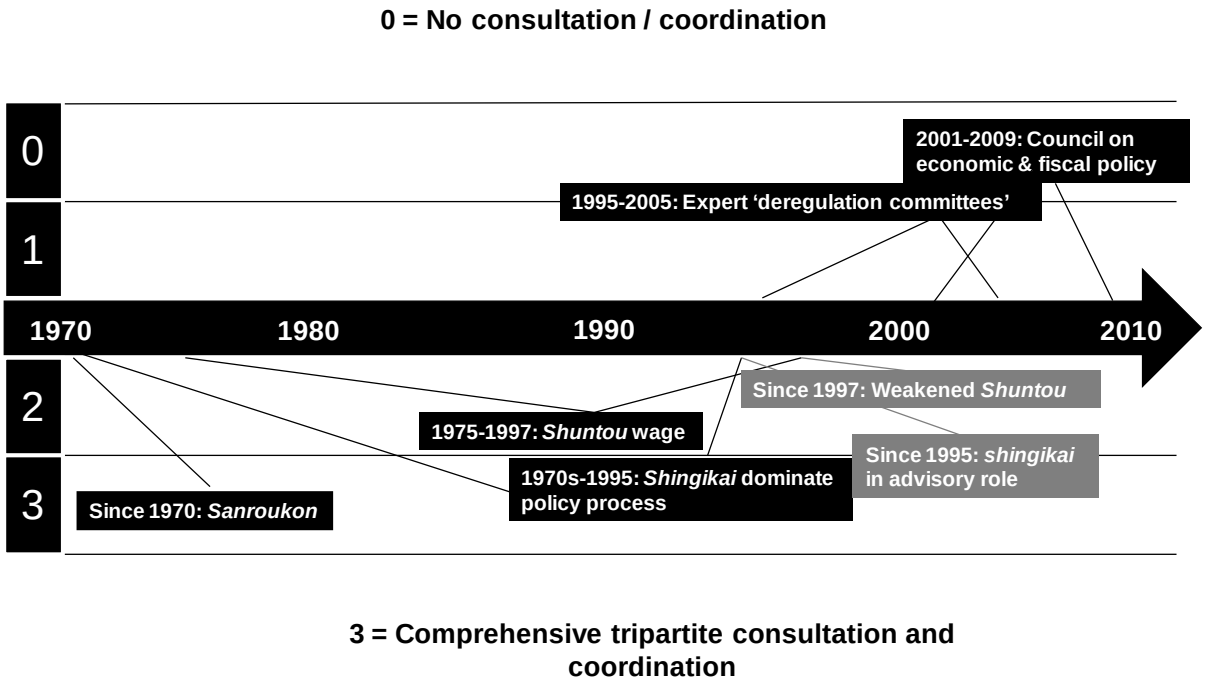
Administrate reform and 'cabinet-lead'

In particular the gradual decline of the LDP as the single governing party in the early 1990s opened the way for a stronger role for politics (for this section see Kabashima and Steel 2010: 105-127). The electoral reform of 1994 also strengthened incentives for parties to develop policy-based profiles that would increase their appeal in an increasingly volatile electoral market. Noble has interpreted this shift as a rise in political leadership in Japan that coincided with a "decline of particularism" (Noble 2010). This means that parties unlike in the past had to address issues which matter to the median voter and could no longer rely as much on low salience politics practices. Noble thus explains why in relative share spending on agriculture and infrastructure (particularism) declined since 1990 while spending for social security and education increased. The decline of particularism could also explain why the salience of labour market regulation increased.

Figure 5-4 demonstrates the policy-making structure slowly moved into the direction of less coordinated policy processes where organised interests played a much less prominent role. A first important change occurred in 1993 when the Administrative Procedural Law was enacted which required all processes of ministerial guidance to be made public. In the following years a number of similar

acts were implemented which increased the degree of political oversight and the role of the cabinet. In many areas administrative reform led to a gradual politicisation of the *shingikai* because politicians started to participate in meetings and decisions. However in the case of labour policy it was mainly a gradual disempowerment of the *shingikai* through alternative advisory councils. A coalition government in 1995 established the first deregulation committee which was entrusted with the task of identifying obstacles to the proper functioning of markets (similar to the German deregulation committee in the late 1980s) and to make proposals how economic inefficiencies could be abolished. The intention was to strengthen the political oversight and to weaken administrative guidance in central policy areas.

Figure 5-4 **Major changes in the policy-making process in Japan, 1970-2010**



Author's own. Note: Figure describes the policy-making processes until 2011.

Instead of seeking equal representation of unions and business, the deregulation committees were organised so that internal conflict could be avoided and the committees could proposals which could be quickly introduced into the legislative process. In the early stages the tendency to coordinate between the different interests is still visible, for instance, in the 1999 reform of the WDL unions still participated to some extent. However, over time organised labour gradually lost its formal influence as the committees became increasingly dominated by labour economists and business executives. In order to maintain its political influence, Rengou increasingly relied on partisan politics, in particular the DPJ to influence

legislation. The cooperation between Rengou and the DPJ led to modifications of several proposals. This was helped by the fact that the Diet had become more competitive and instances of "twisted majorities" had increased since 1989.[76] The gradual process of politics-centred labour market politics peaked in 2003 when Prime Minister Koizumi began to to directly address even rather controversial reforms such as the privatisation of Postal Savings Bank. In the field of labour market policy this led to the implementation of a major deregulation of temp agency work in 2003.

Labour big bang and white collar exemption bill: Centralisation of power?

For strengthening the role of politics for policy and reform Koizumi established in 2001 the council on economic and fiscal policy (*keizai zaisei shimon kaigi* 経済財政諮問会議) at cabinet level. The council was established in the wake of the administrative reforms implemented in 2001[77], which among other reduced the number of ministries and strengthened centralised decision-making within the ministries. The council signalled a major break with old practices of delegated policy-making as the Prime Minister and the ministers for economic affairs, finance, the interior and two cabinet ministers themselves participated in the meetings. In addition, meetings were attended by the president of the central bank and two outside experts (one economist and one experienced business executive). The council devised proposals and bills which were then introduced directly into the Diet ignoring the established consultation processes inside the party as well as in the Ministries concerned. Koizumi was the first to demonstrate that reformed administrative system could indeed be used to centralise decision-making which led some to expect that this would transform Japanese politics for good and lead Japan toward a more Westminster-type democracy (cf. Estévez-Abe 2005). However, this era proved surprisingly short-lived even though Koizumi's successor as Prime Minister, Shinzo Abe, in 2006 declared to continue Koizumi's approach. At a council

[76] As already a large number of authors have studied the details of these changes in labour policy-making, the description here will be kept short. For details on the relationship between the shingikai and the deregulation committees see e.g. Miura (2001b), Imai (2004), Imai (2011), Yun (2010), Watanabe (2012)

[77] The reform was based on the recommendation of the administrative reform council originally established under PM Hashimoto, which published its final report in 1997. It recommended the establishment of a strong and better equipped cabinet office to consolidate "political leaderhip" on policy vis-à-vis the bureaucracy. It also commended establishing "councils on important policies" to " efficiently accomplish the planning and drafting, and comprehensive coordination needed for the integration of the policies of administrative branches." This too was intended to weaken the dependency of national politics on the bureaucracy. See http://www.kantei.go.jp/foreign/central_government/frame.html. The councils are obliged to publish all proceedings and these can be found at the CO's website http://www.cao.go.jp/conference/conference.html

meeting in October of 2006 (only briefly after he had taken office), Abe announced that economic growth would be restored by implementing a whole range of measures, including a new tax system devised "from a globalisation point of view" which entailed a reduction of the corporate tax rate and financial support for technological innovation (Asahi, October 14, 2006). The package also foresaw measures to improve the efficiency of the labour market and for this coined the term "labour big bang" (*roudou biggu ban* 労働ビッグバン).[78] In a meeting in November, Naohiro Yashiro, the academic member of the council and a labour economist by profession[79] as well as a major figure in the council under Koizumi, provided more details. Yashiro stressed that the "labour big bang" would not unilaterally profit business but would improve the situation of non-regular workers by giving them better career prospects and regular workers more flexible working arrangements that could improve their work-life balance. This would be achieved, he declared, by narrowing the gap between regular full-time and non-regular jobs by reforms of the LSL and WDL. However, it would have entailed lower employment protection for regular workers.

So at least initially even the Abe administration followed Koizumi's approach by preparing several important legislative measures on the cabinet level would. Yet the labour big bang remained largely a slogan, without a single proposal aiming at more labour market efficiency through "deregulation" reaching the stage of parliamentary deliberations. The only concrete proposal was the White Collar Exemption Bill (see also the next chapter). Yashiro argued the bill would benefit workers as much as companies as it would allow a more flexible allocation of working time and thus a better work-life balance while liberating firms of the costly obligation to pay for overtime work. However, in public discussions the bill was quickly referred to as the "no overtime pay bill" and even the financial press criticised the idea vehemently. The Abe administration and the council on economic and fiscal policy was caught off-guard by the highly critical public reception. In response "the LDP took the initiative in preventing further liberalization of labour market regulation." (Miura 2008: 173). The bill was eventually abandoned against the background of the upcoming UH election and the fear that popular protest would impact the LDP's electoral prospects

[78] For an official justification of a "labour big bang" see the minutes of the council on economic and fiscal policy in November 2006 at http://www5.cao.go.jp/keizai-shimon/minutes/2006/1130/minutes_s.pdf, p. 9-11.

[79] See the minutes of council's meeting in January 2007, accessible at http://www5.cao.go.jp/keizai-shimon/minutes/2007/0118/minutes_s.pdf, p. 14-15.

(Shinoda 2008: 154-155). When the LDP lost the election and its coalition majority in the UH, Abe resigned after merely 12 months in office. Under his successor, Fukuda, the MHLW-centred legislative process again became the dominant policy-making pattern which is visible in two legislative projects of his administration, the Labour Contract Act (LCA, 労働契約法) and the reform of the Minimum Wage Act (MWA, *saitei chingin hou* 最低賃金法). Both laws were passed in 2007 and represented a middle way between concerns for better social protection of non-regular workers and the concern for maintaining the current level of labour market flexibility. Neither law foresaw drastic changes but rather fixated existing practices in law or avoided rigidity through vague formulations (see following sections for details). Moreover, in both cases unions were invited to discuss the proposals with the government and business.

This suggests that despite several attempts at centralisation of decision-making, the actual permanent change in the policy-making process was limited. This can be credited to the fact that the electoral risks for government proposing reforms had increased which, in turn, motivated a politics of delegation in order to avoid electoral blame. This is clearly visible in the case of the White Collar Exemption Bill but applies to all LDP-led administrations after Koizumi (Abe, Fukuda and Aso) (each barely lasting a year) who all quickly resorted to "low salience policy-making" under the guidance of the MHLW. When the DPJ won the 2009 election it started another attempt at centralising political decision-making and strengthening political leadership. As has been pointed out earlier, leading figures in the new administration, in particular Edano, Kan and Hatoyama, had been fierce opponents of bureaucratic rule already in a short-lived 8-party coalition in the early 1990s (when they were members of the New Sakigake Party). The new DPJ administration swiftly changed the administrative set-up of cabinet, e.g. by abolishing vice-ministers appointed by the Ministries and declared that all legislative initiatives would need to be reviewed by the DPJ's secretary. Also, bureaucrats were initially excluded from cabinet meetings. Whether this led to a stronger role for politics will be discussed in a separate analysis as the government regime coincided with the global financial crisis.

Conclusion: Changes in labour policy-making processes since 1990

Studies of labour market reforms in Japan usually apply a power resources perspective, that is, they seek to demonstrate how much influence labour and

business have had on specific decisions (e.g. Imai 2011; Kume 1998; Miura 2007; Suzuki 2004). The vast majority of scholars agree that the ability of organised labour to influence decisions deteriorated over the course of the 1990s and 2000s. This is most visible in the fact that in place of institutions of tripartite consultation such as the *shingikai*, governments after 1995 mainly relied on expert advisory committees (henceforth subsumed under 'deregulation committee') as the main source of legislation. Most of the committees were established on the cabinet level and thus could directly present proposals to the government, bypassing *shingikai* and thus representatives from organised business and labour. The committees were usually headed by reform-minded economists and cabinet members were directly involved. The fact that they were positioned on the cabinet level (whose overall importance in policy-making had been strengthened in a 2001 administrative reform) also implies a strengthening of macro regulation. However, the history of these committees suggests that they were not, at least not initially, intended, to replace coordinated practices: The first deregulation committee (*kisei kanwa shou iinkai*) was inaugurated in 1995 by Prime Minister Murayama, a Socialist. Consecutive governments, however, used deregulation committees (composition and name changed several times) as the major source for policy and legislation The development gained additional momentum after 2001 when the composition of the deregulation committees and its successors became distinctly more pro-business and the de-facto veto power of labour unions was circumvented by changing the protocol, that is, *shingikai* were informed but no given the possibility to veto legislation (Miura 2007).

According to Miura the reliance on experts and non-parliamentary advisory bodies "does not encourage the active participation and engagement of the general public, not to mention unions, which means that the policymaking process is actually more elitist than unless, (…) public interest is aroused." (2008: 174). Her assessment, as the previous sections have shown, applies to both countries and it confirms the argument that salience is a crucial factor for the politics of labour market reforms. Even in Germany where the political process is arguably much more politicised due to the longer history of competitive partisanship, the "outsourcing" of decision-making has been strategically used to address both salience and polarisation of labour market reforms. The hope clearly was that the potentially polarising effect of reforms could effectively be mitigated (at least temporarily) because governments

could claim the measures had been drafted by experts. This section has thus demonstrated that the political process has become more heterogeneous with different patterns of decision-making replacing each other. As a consequence the regulatory role of the state deserves particular attention when analysing individual regulatory fields because it now appears to be more versatile than categories such as corporatism or pluralism suggest.

5.3 The de-regulation of temp agency work

Temporary agency work (*Zeitarbeit* in German, *haken roudou* in Japanese) has been on the rise in many countries and this particularly true for Germany and Japan since the early 1990s (see figures A-18 and A-19). Often this form of employment is seen as an instrument to enhance external flexibility in rigidly regulated labour markets which is supported by surveys of employers, who cite the numerical flexibility of temp agency workers and the opportunity to cut labour costs as main advantages. In contrast to the Netherlands, where temp agency work has been expanded with the consent and active participation of unions and is now considered an acceptable form of employment (Shire and Van Jaarsveld 2008), temp agency work has always been more controversial in Germany and Japan. In both countries temp agency work has been publicly discussed as inhibiting a regulatory trade-off between flexibility and protection, with unions in particular being wary of "crowding out" of regular jobs and pressure on wage levels. Employers and many scholars, on the other hand, have emphasised the benefits with regard to temporal and numerical flexibility and the possibility of unemployed workers to gain work experience through placements. The following section briefly reviews the process of de-regulation of temp agency work and recent attempts at re-regulation after the global financial crisis. It will look in particular at how German and Japanese governments have tried to resolve situations of regulatory trade-offs.

<u>The accidental de-regulation of temporary agency work in Germany</u>

In Germany the earliest regulation of temp agency work stems from court decisions, the BVerfG and the highest labour court. The decisions established several principles of regulation, e.g. the *Synchronisationsverbot* (meaning employees' contract with temp agencies must be independent of assignment) as well as temporal limitations on assignments of workers (*Wiedereinstellungsverbot*). The latter was intended to mitigate the risk of crowding-out of standard employees (for the early

regulatory framework see Bode, Brose and Voswinkel 1994: 76-91; Vitols 2008: 133-154). Successive reforms of temporary agency work were usually attached to larger legislative reform "packages" but never addressed in separate acts and did not meet much public interest. In retrospect, it appears that the quiet politics of expansion of temp agency work was at least partially a deliberate decision to keep the salience of the issue low.

This is visible in the first major deregulation in 1997 which has to be seen in the context of rising unemployment in that year. The reform was implemented more or less parallel to a minor reform of employment protection and of fixed-term employment (see section 5.2.) and reflected the intention of the government to deregulate the labour market independently of vested interests. It implemented only minor changes, however, e.g. by relaxing the provisions of the *Synchronisationsverbot* for initial contracts and extending the maximum duration of assignments to 12 months. The reform was clearly not aiming at a major flexibilisation of the labour market but was seen as facilitating employment for experts and smaller groups of employees seeking to gain work experience. The second major reform, the Job-AQTIV act, was also implemented without the explicit endorsement of the social partners, even though it was connected to a legislative package which stemmed from the corporatist institution BfA. The main part of the act concerned targeted spending on training and placement programmes and thus policies to improve employment prospects on the short-term. Temp agency work constituted only a minor part of the act and was inserted into legislation at the very last minute. This part concerncing the AÜG, however, did not reflect a consensus reached at the BfA but rather was the intiative of the cabinet which hoped to improve unemployment numbers by facilitating this form of employment. proposal (for this section see Vitols 2008: 178-183).

As the social partners effectively blocked any decision on temp agency work inside the BfA while the SPD was increasingly desperate in implementing reforms that could boost employment by increasing flexibility, the government eventually added the AÜG reform to the JOB-AQTIV act on its own. That salience management shaped the decision-making process is visible in the fact that change was implemented in an unusual ad-hoc manner without consulting the respective bodies

inside the governing parties.[80] It is also confirmed by the bill's contents which represented a clear compromise between the position of the unions and employers. On the one hand, it expanded the maximum period of assignments from 12 to 24 months on the other it required that temp agency workers would enjoy the same working conditions and the same pay as a regular worker at the host firm with a similar job, after 12 months (see table C-4 for details). After the successful implementation of the bill neither unions nor employers objected to the act.

The pattern to mediate the demands for flexibility and protection is also evident in the so called Hartz reform process which started roughly 7 months after the reform of the Job-AQTIV act was implemented. Although the Hartz commission itself was heavily influenced by the Benchmarking Deutschland Gruppe and its recommendations on liberalising temp agency work in the Netherlands[81] temp agency work again played only a secondary role in the negotiations. The initial focus of the commission was on reforming the system of public job placement but internally the members formulated their goal as looking at everything that could help to reduce unemployment. The resulting far-reaching reform of the AÜG can thus be seen more as a by-product of the commissions' efforts rather than a central concern. With regard to temp agency employment the main contribution of the commission was to facilitate deals: "Dabei kam es zu Kompromisslösungen, die nachträglich auch als implizite Tauschgeschäfte interpretiert werden können. Ver.di (…) musste die (…) die Deregulierung des Zeitarbeitsektors akzeptieren, behielt dafür aber (…) den Tarifvorbehalt." (Schmid 2003: 78). This was then implemented in 2002 ("Hartz I"). As a result, all temporal limitations on assignments were lifted as well as on industries. Also the *Synchronisationsverbot* was dropped which meant that contractual limitations were now only subject to the provisions in the TzBfG. Most importantly, it contained an equal treatment clause, which however was "balanced"

[80] "Dieses Gesetzgebungsverfahren war ein sehr mühsamer Prozess. Bekanntlich gab es keinen Regierungsentwurf, weil die Widerstände innerhalb des Regierungsapparates offensichtlich so groß waren, dass der Entwurf über die Fraktionen eingebracht wurde - und nicht als Regierungsentwurf. Dieses Verfahren hätte womöglich vermieden werden können, wenn die Regierungszentrale oder andere Mechanismen eine stärker steuernde Rolle übernommen hätten, um sie dann allerdings sieben Wochen nach Inkrafttreten des Job-AQTIV-Gesetzes umso intensiver zu übernehmen und den 'Hartz-Prozess' in Gang zu setzen." See the comment by Schimanke, a former secretary of state in the article by Schmid about the Hartz reform process, Schmid (2003), p. 89.

[81] For example Fleckenstein finds that all experts involved in the process stressed the learning aspect of reform trajectories of other countries: "hierbei wurde explizit das Volumen der Zeitarbeit eben in Großbritannien und den Niederlanden als Benchmark genannt, an der man sich orientieren müsse." Fleckenstein (2004), p. 661.

by the possibility to deviate from the clause through collective agreements which had to be negotiated within the temp agency sector.

This latter regulation can be interpreted as a compromise between efforts to increase employment flexibility on the one side and the protection of workers on the other. Delegating the actual regulatory responsibility to the level of industrial relations enabled the government to avoid taking sides in the form of universal legal provisions. Also, the reform promised to limit the political risks of further regulation of temp agency workers as it was now a responsibility of the social partners. Last but not least, the AÜG can be seen as an encouragement of meso and micro regulation which stands in contrast to the concept that in free markets, it is the duty of the state as regulator of the market environment to ensure minimum standards are ensured.

The deregulation of temporary agency work in Japan

In Japan before the first act was introduced to regulate temp agency work, "labour dispatching" (this English term is commonly used by Japanese scholars to describe temp agency work) was operating in a legal grey zone and was considered either as illegal or at least legally dubious since no regulation existed that effectively regulated the of working conditions of "dispatched" workers. Despite this unstable legal background, however, temporary agency work had been on the increase for several years before the first Worker Dispatching Law (WDL)[82] was adopted in 1985 (see table C-5). Firms valued in particular to possibility to cut personnel costs by relying on temporary external labour (for de facto temporary work prior to 1985 see in particular Imai 2004). According to Araki (1994) temporary agency work was mainly used by female employees and elderly workers, both of which tended to be disadvantaged due to the small size of the Japanese external labour market. For them temp agency work increased the supply of jobs. Trade unions, however, were nonetheless worried about the fact that no legal mechanism existed which could ensure the "adequate" treatment of such workers and that would ensure regular jobs would not be affected negatively.

[82] The full name of the law reads: "Act for Securing the Proper Operation of Worker Dispatching Undertakings and Improved Working Conditions for Dispatched Workers" See annex C for details and full Japanese name. Japanese scholars writing in English generally refer to temporary agency work as worker dispatching, with dispatch being a direct translation of *haken* (派遣). The term *haken* has traditionally been used to describe various kinds of labour dispatching, including secondments to subsidiaries and sometimes even *teinen* and *shukkou*. In recent years, however, *haken* has become more or less a synonym for temporary agency work. To ensure consistency with regard to terminology in both cases, temp agency work will be used instead of "worker dispatching".

Imai (2004) demonstrates that the MoL had initially high hopes that the 1985 regulation through the WDL and the reliance on traditional employment practices would be sufficient to allocate excess labour and to avoid unemployment. Many of the reforms and regulatory changes that followed were implemented without using regular laws but rather through Ministerial ordinances (abbreviated *shourei* 省令) which did not even require the direct involvement of the cabinet.

To understand the role of non-legislative regulation and blame avoidance for the process, however, one has to look at the way the reforms where devised and implemented. In Japan until the mid-1990s the direct influence of the government was limited to setting a specific goal (such as the reduction of working hours in the late 1980s) or to communicate the outline of desired changed to the Ministry. Actual bills would often be discussed and formulated on the level of the *shingikai* which granted all participating stakeholders a veto right (Miura 2001b). Reforms implemented in this era therefore are usually compromises between conflicting interests. However, administrative reforms in 2001 and growing pressure to further enhance labour market flexibility led to a major disruption of the system by strengthening central decision-making bodies, in particular the cabinet. However, this change did not mean that politicians directly devised policies, but rather they relied on independent commissions which consisted mostly of "public interest" experts (*koueki* 公益). The commission's proposals were usually adopted by the cabinet with only minor modifications and then directly introduced into the legislative process. This provided the background of the two larger reforms in 1999 and 2003 which constitute cases of major deregulation.

The 1999 reform deregulated temp agency work by adding new occupations for which temp agency work was allowed by replacing the positive list which explicitly allow temp agency work only specified occupations by a negative list, which explicitly stated the occupations for which temp agency remained illegal. Although unions were no longer directly involved in the process, their opinions were nonetheless still expressed in the *shingikai*. This was changed by Koizumi's cabinet-controlled policy-making process for the 2003 reform. This time the government relied entirely on members in the council on economic and fiscal policy . With regard to changes, the 2003 reform abolished almost all restrictions that had remained in the 1999 reform in terms of occupational limitations and temporal restrictions. In

terms of policy-making the reform marked the most drastic departure from traditional policy-making practices in Japanese post-war history.

Deregulating temp agency work - comparison

In comparison it becomes clear, that the deregulation of temp agency work required a considerable amount of institutional innovation in decision-making processes in both countries. Reforms in most other flexibility-related areas were not impacted in a similar fashion (see next sections). The fact that commissions were instrumental for initiating major reforms supports the interpretation that blame avoidance remained a crucial motive for government action. Also, in both countries governments have been under pressure from two sides, with unions demanding more rigid regulation and business more leeway in the usage of temp agency work. In fact, policy-makers hoped to achieve a fair balance between conflicting objectives by delegating regulatory authority to industrial relations and corporate consultation.

5.3.1 The regulation of temp agency work in comparative perspective

Few other policy areas have been as contentious as the deregulation and re-regulation of temp agency work. With the possible exception of employment protection, the regulation of temp agency work most clearly embodies the regulatory dilemma for governments between flexibility enhancement and employment security and social protection.[83] However, the reliance on expert committees and non-political bodies suggests that even here governments have tried to manage salience by delegating substantial parts of policy formulation. In retrospect, the example of temp agency work suggests that political authority over labour market regulation has actually not increased in the course of the 1990s and 2000s. Rather, the externalisation of responsibility for reform has been the prerequisite for making them politically feasible.

In terms of political salience, it can be said that temp agency work has always been controversial among the social partners and political parties in the national policy-making process in both countries. At the same time it did not receive much attention from the wider electorate until about 2008 (chapter seven).

[83] Evidence in economic research is mixed with regard to actual effects of employment protection, see for example Bertola, Boeri and Cazes (1999).

5.4 The expansion of fixed-term work contracts

Fixed-term employment is closely linked to the issue of employment protection as it can be an instrument for employers to enhance numerical flexibility. Many authors thus do not distinguish between EPL and the possibility to temporarily restrict employment. This makes sense because when it comes to terminating contracts employers usually do not face comparable legal repercussions as when they try to terminate a permanent contract. Relaxing restrictions on fixed-term jobs, therefore, is often interpreted as an alternative to often highly polarised EPL reforms. Usually the termination of contracts does not entail any obligation on the side of the employer to offer contract renewals, however, in most countries there are limitations to how many times a work contract can be renewed. As with most other forms of non-regular employment fixed-term contracts are often justified on the basis that they are either facilitating the transition into permanent jobs, e.g. graduates without work experience, or allow new forms of employment where highly skilled experts work for firms on temporary assignments. At the same time they are often criticised as they do not offer the same level of security as open-ended jobs.

Superficially the legal situation in Germany until the 1980s (see table C-6) confirms the characterisation of German policy-makers preferring "good jobs" and relatively high unemployment over high employment with many precarious jobs (Eichhorst and Marx 2011). Until 1985 fixed-term employment was permissible only under certain conditions specified in the law and was limited to a maximum of 6 months. Also, fixed-term contracts could not be renewed in order to avoid employers re-hiring fixed-term employees and to not discourage them from offering permanent work contracts.

The first major reform in 1985 demonstrates that even though the government at the time was firmly committed to deregulation, it did not simply deregulate but included several protective measures as well. For example, the expansions included in the law were to be granted only for 10 years and thus required a new legislative act if was to be extended. Moreover, it limited complete deregulation of fixed-term employment to firms with less than 20 employees and it expanded the period for fixed-term contracts only for new employees. Noteworthy is also the inclusion of a provision which allowed employers to grant part-time workers and fixed-term workers different working conditions under the condition this was backed by the

respective collective agreement. Although this part of the law was soon overturned by labour courts (Waas 2007), it confirms that collective bargaining has often been used in the German context to infuse flexibility while avoiding bold deregulation (another example is the reform of temp agency work in 2002). The list of reasons (*Sachgründe*) for fixed-term employment was not expanded which meant that the employment form remained highly regulated and limited mainly to specialists. The next rounds of deregulations in 1994 and 1998 merely extended the provisions implemented in 1985 until the year 2000 (1994) and deregulated fixed-term employment further but only for specific groups (new employees and workers 60 years and older). After the change in government, this policy of cautious and incremental expansions was basically continued: Reforms in 2000, 2002 and 2003 facilitated fixed-term employment mostly for specific groups such as employees in start-ups or elderly workers (lowering the age threshold from 60 to 58) but fell short of a major expansion. This means that German governments, independent of partisan composition, followed a similar cautious politics of slowly expanding flexibility while maintaining a high level of protective measures at the same time. It implies that the regulatory challenge of regulatory flexibility-enhancement has been the main motive for this specific form of incremental change.

This pattern is also visible in the Japanese example (see table C-7) even though, in contrast to Germany fixed-term employment has been virtually unregulated until a reform in 1993. For example there have been no provisions in the Japanese law which regulate the succession of fixed-term labour contracts. Limitations have been set only on the length of contracts but there is no legal limitation on the number of successive contracts with the same employer. So in Japan employers face virtually no limit on offering fixed-term employment. The MoL was unconcerned with the situation until the early 1990s because long-term employment practices until then appeared rather stable. Moreover, even before Japanese governments began to re-regulate fixed-term labour through law several landmark court decisions had already established effective limitations on the use of fixed-term contracts as early as 1974 (for the role of case law for fixed-term employment see Takeuchi-Okuno 2010: 78-80). For instance the Supreme Court ruled in 1986 that fixed-term contracts could not be used for quasi-permanent employment and thus de fact permanent workers with temporary contrast had a right to permanent contracts (although the court did not set specific and universal criteria to identify such cases). This means that unlike

the OECD's EPL indicator suggests, fixed-term employment was in fact already regulated to some extent.

However, in the early 1990s the MoL felt that further regulation was required due to the worsening economic situation and the threat of mass lay-offs. A reform in 1993 therefore established the first specific provisions for part-time workers (which includes those on fixed-term contracts) although it entailed only very weak regulatory changes and mostly aimed at encouraging firms to adopt fair labour practices, e.g. by establishing a part-time centre informing employers about appropriate practices. A LSL reform in 1998 reduced limitations on the maximum duration of fixed-term contracts (now 3 years) and facilitated fixed-term employment for elderly workers. However, given the already quite flexible regulatory arrangement it is questionable that the reform led to a considerable expansion in qualitative terms. The case may be different with the 2003 reform of the LSA which was considerably more radical in abolishing formal limits to fixed-term contracts and thus seemed to mirror the deregulation policy of Koizumi at the time. However, it prompted Koizumi's successor, Abe, to backtrack as early as 2007 because public concerns about exploitation of non-regular workers had increased in the meantime. A reform of the part-time act (which concerns basically all workers with non-standard working conditions) was meant to mitigate these concerns although its actual provisions were again rather weak, "encouraging" rather than committing employers to offer equal or comparable working conditions. The fact that a specific act for non-regular workers was used rather than universal provisions applying to all types of work contracts can be seen as a further institutionalisation of regulatory dualisation.

Although in 2007 a Labour Contract Act (LCA, *roudou keiyaku hou* 労働契約法) was introduced which transferred the LSL provisions on labour contracts into a separate act, the overall arrangement remained more or less unchanged. Again the act entailed some re-regulation of fixed-term employment but it encouraged rather than obliged employers to offer equal working conditions. The act basically recommended institutionalised communication between employees and employers on desired changes and requires that changes are only valid if they are "reasonable" in the light of the general situation of the firm. Instead of mandatory procedures, however, the act mainly extends existing regulations and added only minor details on the relationship between the employment contract and work rules. The main aim, as

presented by the minister in the Diet, was to increase stability of labour relations and thus to decrease the substantial number of individual labour disputes which had put the government under pressure to respond. Even though the relationship between work rules and individual contracts has been described as problematic by legal experts for many years (Sugeno 2002: 84), the limited scope of the reforms seems to confirm the overall trend in Japanese labour law to avoid universal and binding provisions.

The Japanese example suggests that governments in comparable labour market arrangements prefer to distinguish between different forms of employment rather than to implement universal provisions that apply to all workers to the same extent. Even the 2007 contract act, although designed for universal application, has not changed this pattern. In a way this is also visible in Germany although here collective bargaining rather than law is the main mechanism for institutionalising regulatory differences between employment forms. This suggests dualisation is not only furthered through the expansion or deregulation of non-regular employment forms but also, at least to some extent, the particular forms of regulation German and Japanese policy-makers have applied.

5.5 Employment protection: A case of non-reform?

Despite its prominence in discussions of labour market reforms and in particular of labour market rigidities, changes of employment protection legislation are rare. Germany and Japan largely confirm this picture as figures 5-5 and 5-6 and tables C-2 and C-3 reveal. Typically, the resistance or inability to address rigid employment protection is interpreted as the result of complex political decision-making and powerful vested interests which block all attempts at change. However, it could also reflect, as VoC has it, the mutual interest of workers, employers and governments to secure economically beneficial long-term employment practices. A closer inspection of the debates surrounding EPL reform also shows that it has not been a major concern for all firms and throughout the period.

On the face of it, the critique that EPL is excessive and impacts economic as well as labour market performance seems to apply mostly to Germany as unemployment rates have always been much higher than those in Japan. Nonetheless, in both countries EPL reform became an issue and was often put in the context of wider liberal reforms. For example Vogel observes that due to the long recession in the

early 1990s "many Japanese opinion leaders concluded […] Japan would have to abandon its outmoded institutions - including the main bank system, lifetime employment, inter-firm networks (keiretsu), and close government-industry ties – and embrace the liberal market model." (2005: 145). In Germany fundamental doubts about the effectiveness of its institutional arrangement had appeared even earlier and one reason was that firms had allegedly lost their economic autonomy with regard to their workforce: "One of the lessons large German companies learned during the crisis of the mid-seventies was how difficult it had become for them to reduce their labour forces. The classical instrument for employment reduction – the unilateral termination of contracts of employment for economic reasons – had become so subject, in the preceding decade, to extensive legal regulations that it had lost most of its usefulness" (Streeck 1984: 83-84). In Japan mass lay-off and thus numerical flexibility did not become a major issue not until about the Asian crisis in 1997. Before, so Ahmadjian and Robinson (2001), Japanese firms had been very reluctant to dismiss employees on a large scale not so much due to legal limitations but because they feared to lose their reputation as a reliable and attractive employer. Although, as chapter four has shown, the actual regulatory situation in both countries may have been similar in practice, because in Japan courts had over the years developed relatively high hurdles for dismissals on economic ground, Ahmadjian and Robinson's study implies, however, that the main obstacle seems to have been the reputational risks of employers in an arrangement characterised by "welfare residualism" or strong corporate welfare (Esping-Andersen 1997). However, once this obstacle was overcome as more and more large firms in an industry began to implement mass lay-offs the importance of legal hurdles rose.[84]

So in both cases it can be said that the issue of numerical flexibility in particular rose in prominence between 1970 and 1990 and initiated a range of responses, such as corporate deal making in Germany and a shift in personnel policies in Japan. However, overall it seems that it did not reach the same salience as other topics, especially non-wage social contributions (*Sozialabgaben*). For instance a survey

[84] However, there is consensus in the literature that even mass lay-offs did not signal the death of life-time employment. Rather dismissals continued to be used only in exceptional circumstances and employers went to great lengths to avoid them. This is also confirmed by how employer associations envisioned personnel changed in the 1990s. Particularly interesting is a policy report by Nikkeiren, the main employer association, published in 1995 in which it proposed the idea of an "employment portfolio strategy" Nitta (2007), p. 37-38. In the report Nikkeiren encouraged firms to abandon seniority pay in lieu of a performance-based wage structure and to systematically augment (but not to replace) life-time employment with a more flexible group of workers. The concept mirrors the VoC argument that firms in CMEs value long-term employment.

conducted by the financial daily *Handelsblatt* shows that most firms supported the continuation of the "Bündnis für Arbeit" (63%) in 2003 and that of these 66% wanted social contributions to be discussed. Only SMEs also voiced an interest in lowering employment protection while large firms did not seem concerned at all (Riedel 2003). A similar survey of Japanese firms comes to similar conclusions: SMEs were by far the most likely to name "labour regulation" (28% of those surveyed) as the official regulation that had the most negative impact on "the running of the company".[85] Large firms, however, were hardly concerned with labour market regulation.

In Germany this difference in interest is reflected in the three reforms of the KSchG implemented in 1996, 1998 and 2003 (see table C-1). It relaxed (and reinstated) the provisions of the law only for small firms (10 and 5 employees) but left it intact for all other employers. This suggests that EPL reform was never seriously considered as an issue for large-scale reform and this is also confirmed by the discussions in the BfAs and Hartz commission which all avoided the issue altogether.

The proposal to radically reform EPL in Japan that was developed in the deregulation committee under Koizumi in 2003 therefore goes back not so much to an initiative of employers, but rather reflects strategic considerations of Koizumi's cabinet keen to demonstrate its commitment to structural reform. As with the WDL reform in 2003 the original intention was to facilitate dismissals by establishing the right to dismiss in labour law which was meant to reduce the number of labour disputes on the issue. Since "the LDP had secured a majority in both houses (…) it could have passed the bills without amendments. It did not take such an uncompromising position, however, mainly because salaried workers had gained importance as a voting bloc" (Miura 2011: 196). The reform was eventually passed together with the opposition and in agreement with union which meant that the level of employment protection was basically maintained. Although it was supposed to establish a "right of employers to dismiss" workers, the proposed text was revised to such an extent that it no longer mentioned the right to dismiss and confirmed rather than abolished the four criteria set by courts since the 1970s.

[85] Quoted in the "1997 white paper of small and medium enterprises", available at http://www.chusho.meti.go.jp/sme_english/whitepaper/1997/bchu701e.html#riki (last accessed in May 2012).

Conclusion: Employment protection

This brief overview of the short history of EPL reform suggest that EPL did not play the central role in labour politics in the 1990s and early 2000s as is often assumed. One reason for this may be that policy-makers have been particularly sensible to the issue due to the experience in other countries where proposals for deregulation had led to massive protests and polarisation (e.g. Italy). However, it seems most likely that governments deliberately avoided the issue due to the underlying regulatory dilemma. Instead of a massive de- or re-regulation governments in both countries seem to have followed the institutional pathways set prior to the 1990s and have pragmatically integrated measures from both sides if economically sensible or politically opportune. This has helped them to maintain the complementary function of EPL for large firms while adding some flexibility for SMEs. Furthermore, one also needs take into consideration the fact that governments always possess the capability to overturn case law by passing respective laws. The relative inactivity of governments in both countries to use this instrument is insofar illustrative of the overall regulatory approach which tends to avoid expanding the scope of labour law and state-centred regulation. However, this reluctance has also contribute to a deepening rift between insider and outsider jobs.

5.6 Conclusions: Enhancing external flexibility in non-liberal labour markets

A popular joke states that doctors can find an ailment even in healthy patients if only they look long and hard enough. Policy studies could be criticised on that if they look for the impact of specific factors such as partisanship they never fail to find that these factors have been relevant in some way. Yet at the same time, current scholarship on reforms fails at contributing to theory-building because the findings and explanations it produces are often highly contradictory. This applies in paricular to formal models of partisanship. Hence, in current circumstances partisanship hardly ever looks like a convincing contender in the "competition for the best explanation" of reforms.

The process tracings of three different policy fields in this chapter, however, allow to augment these perspectives in order to restore some of their explanatory potency. Taking into consideration the role of legislation for the whole regulatory arrangement, variations in electoral salience and the strategic-electoral need for blame avoidance, it becomes possible to specify the role of political factors for

reforms. For instance, for the most part partisan politics has been only of marginal importance because policymakers were able to delegate regulatory questions and authority to non-legislative sources of regulation. Japan's system of administrative guidance demonstrates this particularly well. Until the mid-1990s the direct influence of the government has been limited to setting a general framework or to communicate the outline of desired changed to the Ministry. Actual bills, however, would most often be discussed and formulated on the level of the *shingikai* which resemble Culpepper's concept of quiet politics. Reforms implemented in this era therefore are usually compromises between the social partners and the MoL/MHLW and less the product of political contestation.

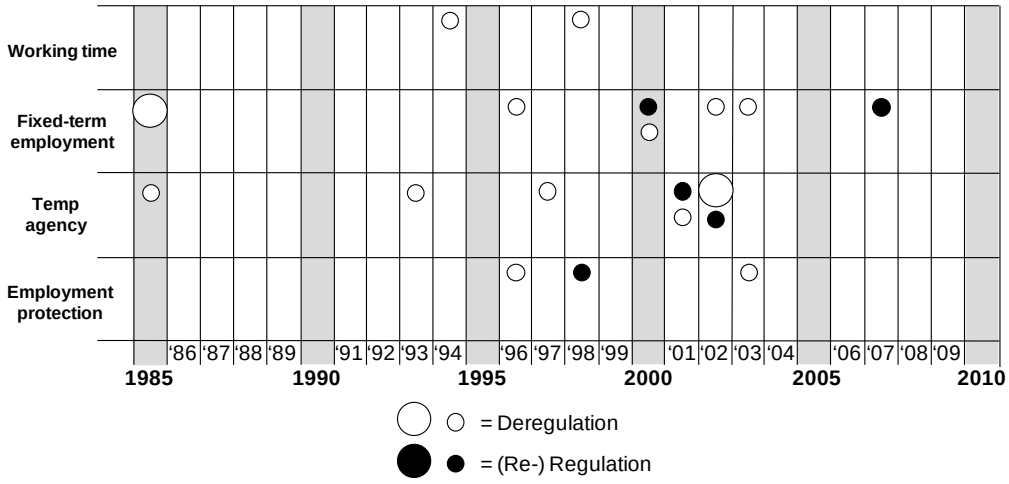
A long of series of administrative reforms since the early 1990s and growing pressure to further enhance labour market flexibility however have led to a major disruption of the system and a growing prominence of macro politics. Yet, even this shift does not mean that governments and macro political contestation have come to permanently dominate processes of reform and institutional change. Instead the tendency to delegate responsibility in order to manage salience and polarisation is still rather strong. Instead of elected politicians devising and promoting policies, in the 1990s and 2000s it has been mainly experts who have devised policies often in relative autonomy from governments. For instance, Schröder's pledge to implement the proposals of the Hartz commission unaltered suggests that his government actually welcomed the chance to delegate responsibility in order to minimise political resistance and political risks associated with reform. The Hartz commission as well as the deregulation commission in the 1980s can in this sense be interpreted as measures of active salience management.

The growing heterogeneity of policy-making processes in both countries demonstrates that high salience politics is much more difficult to handle for policy-makers than quiet politics where regulatory work can be shared and electoral risks effectively kept at bay. Also, it demonstrates that high salience can lead to very different policy outcomes. For example while in the 1980s electoral discontent eventually led to a consensual reorientation of the policy-making process in Germany, it had the contrary effect of encouraging a more radical approach by the arguably most unlikely actor in the early 2000s (see also chapter seven). In Japan rising electoral salience has had similarly contradictory results, at times intensifying partisan contestation (e.g. White Colar Exemption, see next chapter) and at others

revitalising policy coordination (e.g. 2003 reform of employment protection and the 2008 reforms of the LSL banning excessive overtime).

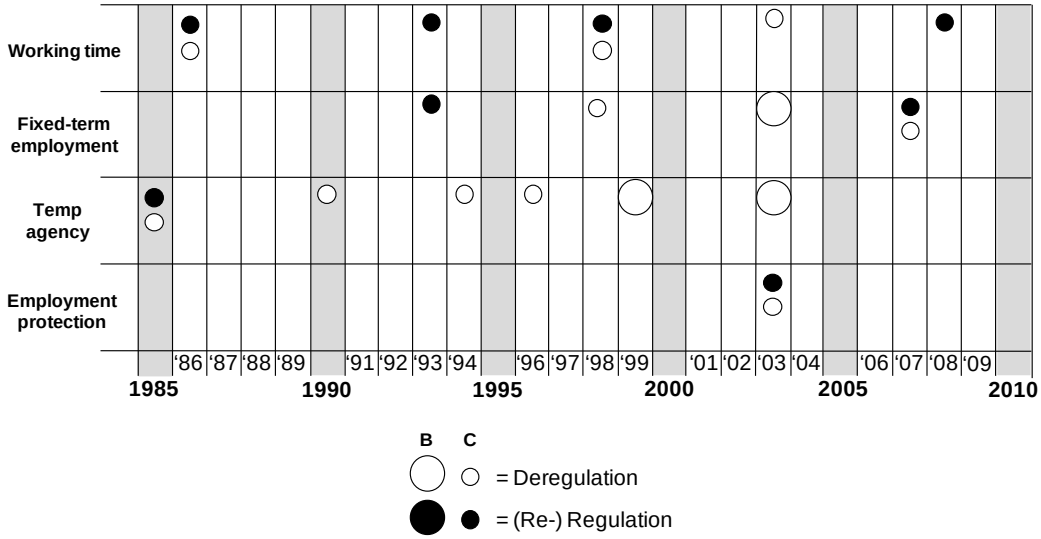
Despite many institutional differences, it can thus be said that the process of enhancing external flexibility through legislative reforms has been strikingly similar in Germany and Japan. Moreover, German and Japanese reforms display a similar tendency of flexibility in implementation by relying strongly on non-legal and often non-universal sources of regulation (mostly collective agreements in Germany and administrative guidance in Japan). Figures 5-5 and 5-6 also illustrate that deregulation has often coincided with re-regulation. This contradicts the view that legislative decisions mirror mostly programmatic differences and underlines the need for government regardless of ideology to balance different objectives. The main concern for governments has been to balance flexibility-enhancement with social protection while minimising electoral risks. This explains the relative incremental nature of most reforms as well as the relative high number of re-regulations. Moreover, it explains why governments in Germany and Japan have tended to shift regulatory authority not to the "market" but rather to meso and micro LoRs or soft forms of encouragement (see next chapter).

Figure 5-5 **Major German labour market reforms, 1985-2010**



Main sources: ILO's NATLEX database, Juris Gesetze database, DIP database of the Bundestag.

Figure 5-6 **Major Japanese labour market reforms, 1985-2010**



Main sources: ILO's NATLEX database, electronic databases of the National Diet Library on parliamentary proceedings and legislation, The Japan Labour Bulletin (1992-2003), Araki (2005), Sugeno (2002), Imai (2011).

6. The politics of internal flexibility-enhancement

> "Labour and employment laws were (…) designed for 'indefinite, full-time, collective, dependent workers' who were positioned at the centre of the industrialized society in the period from the 19th to 20th century, and it provided the state with facilities to establish blanket codes."
>
> *Yuichiro Mizumachi and Shunichi Uemura* (2007: 114)

As in most other advanced democracies, labour market regulation in Japan and Germany has traditionally been geared to a specific employment form, the male full-time employee who is covered by several layers of regulation and who participates in the process regulation through several channels such as collective bargaining and consultation on the firm-level. With "blanket codes" Mizumachi and Uemura mean that labour law neither has to be overly strict nor detailed. Moreover, until the 1990s non-standard jobs were not seen as alternatives or threats to standard patterns of employment but as complementary and temporary (facilitating the transition into regular jobs). Against the background of painful restructuring processes since the 1990s and the growth of non-collective employment forms, however, not only researchers in Japan have begun to ask whether labour law needs to be changed drastically to reflect the pluralisation of employment forms and to close loopholes which emerge due to differences in the regulatory integration of jobs.

The focus on dominant employment patterns of a possibly by-gone era, however, constitutes not only a problem for policy-makers. In political science and economic research labour market reform is overwhelmingly understood as reforms targeting legal rigidities, even when, as chapter five has demonstrated, this is not always an accurate depiction of the regulation of working conditions. The fact that labour law reflects the privileged role of industrial relations and enterprise-level negotiations can be on the contrary interpreted as an important source for the flexibility of the whole arrangement. Yet, even though many political scientists acknowledge the role of industrial relations in setting working conditions very few studies have addressed its political role and its significance for legislative reform systematically when studying labour market policies and legislation. This hesitance

is understandable given the complexity of labour market regulation and the growing heterogeneity of national systems of industrial systems. Also, it can be difficult to prove empirically that decisions in collective bargaining are a reaction to policy decisions or vice versa. Some scholars even argue that aggregating across firms of different sizes and industries with very different collective bargaining regimes is increasingly inadequate because it ignores a reality of quite versatile and heterogeneous corporate and industrial arrangements across industries (e.g. Bechter, Brandl and Meardi 2012). Bechter et al thus conclude that the sensible comparisons are only possible if scholars compare the same sectors in different countries rather than national arrangements as a whole. However, this chapter will show that for the politics of labour market regulation comparisons based on nation states still make sense because governments continue to reflect about the role of the state in setting working conditions based on developments in the "core sectors" of the economy, such as manufacturing. It will also illustrate the strong link between legislation and industrial relations, i.e. the reluctance of the state to take over regulatory responsibility by analysing the dimensions of internal employment flexibility, i.e. wages, working time and training. Hereby two relationships in particular need to be studied: First, changes initiated at the corporate level (by management, unions or collectively) which either reflect legislative changes or which forego such reforms. Secondly, policy which affects the regulatory role of industrial relations and thus the relationship between macro, meso and micro LoRs.

6.1 Negotiating internal flexibility: Voice or exit?

With regard to macro trends in industrial relations in Germany, Thelen (2001) sees essentially two main changes in the dynamics but also the contents of labour-related policies and industrial accords: first, the "structural pressures" exerted by employers keen on increasing labour market flexibility through established channels of collective bargaining. Secondly, a change in bargaining process itself with a general move away from coordinated employment policies towards production-related bargaining processes. This can be interpreted, so Thelen, as evidence that industrial relations have experienced fundamental changes even in seemingly stable CMEs such as Germany. A similar argument could be made for Japan and other countries where industrial relations have experienced formal as well as less visible changes with regard to the structure of bargaining as well as to their contents. The following

section will look at these patterns of change in detail by analysing two areas crucial for internal flexibility, the coverage and structure of industrial relations and the relevance of corporate consultations. The former concerns how management and firms and the social partners at the industry level negotiate flexibility-related measures and whether the movement toward more flexibility has coincided with decentralisation, i.e. rising prominence of micro LoRs and declining coverage of collective bargaining. The latter will be analysed by looking at wage-setting patterns since the early 1990s. As previous analyses have shown, the Japanese arrangement can be considered more flexible because it is less formally institutionalised and does not rely on direct participation by a large number of firms and workers. Nonetheless, even in the German arrangement despite its tendency toward standardisation, several lines of separation have been visible which mean that the capabilities of firms for short-term and long-term adjustments have also differed somewhat. Focus of the analysis will be whether these differences have been reinforced or replaced by new practices and institutions.

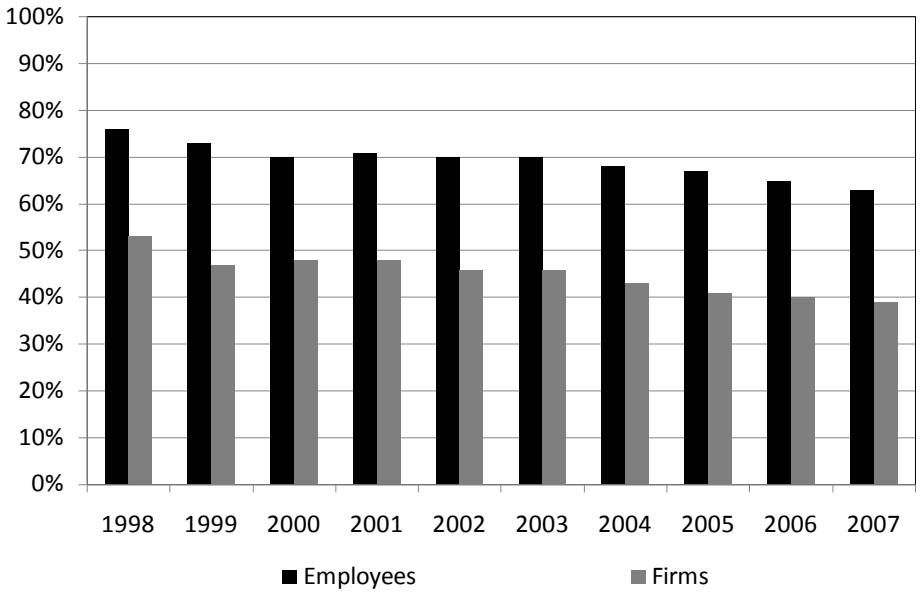
A third analytic section will look at the dualisation of the workforce on the enterprise level. Although strictly speaking a form of external flexibility, here the interaction with standard employment and corporate institutions of regulation and internal flexibility will be discussed. Together with wage-setting and the structure of collective bargaining this allows identifying to what extent flexibility-enhancement has been achieved through non-legislative means and without direct state involvement and to what extent it has been influenced by legislative reform. This then makes it possible to assess the interaction between micro, meso and macro LoRs and their combined impact on the politics of reform, e.g. by making reforms obsolete or amplifying the impact of reforms.

6.1.1 Negotiating flexibility through collective bargaining in Germany

Decentralisation of industrial relations has been a major trend and a concern for policy-makers in most advanced democracies since the late 1970s. Although some governments have welcomed a decline in union power and in the coverage of collective bargaining (e.g. UK), others have responded by stepping up instruments of state intervention, in particular AVEs. Figure 3-5 in chapter three illustrates the versatility of state responses to these trends. Countries such as France, Sweden and the Netherlands have achieved higher coverage rates in the 2000s than in the 1970s.

On the other hand, countries such as Germany and Japan have experienced a steady decline in coverage since the 1970s which implies that the state in these countries has been much less active in stabilising collective bargaining. Figure 6-1 confirms the decline for workers as well as for firms in the case of Germany. As of 2007 less than 50 percent of firms in West Germany were legally bound by collective agreements and slightly more than 60% of workers. However, a closer look reveals that coverage does not necessarily mean that firms are no longer following collective agreements or have abandoned the system completely. Rather, there has been a noticeable pluralisation of collective bargaining patterns: Figure B-5 illustrates that bargaining patterns not only correlate with firm size but that the percentage of firms without any kind of bargaining is much smaller if one takes into account who follow agreements informally. Although only 62% of West German employees are covered by *Flächentarifverträge* (sectoral agreements), only 14% of workers are not covered at all.

Figure 6-1 **Coverage of collective agreements (*Tarifverträge*), 1998-2007**



Source: Bispinck and Schulten (2009) and Ellguth and Kohaut (2011), p. 245. Data for West Germany only. Coverage for firms in East Germany has been considerably lower throughout the period.

At the same time, the decline of sectoral agreements in itself shows that collective bargaining has become more versatile since the 1970s and that a growing number of firms prefer enterprise-level over sectoral agreements. The gradual decline of industry-wide bargaining is amplified further by the stark decline in AVEs (*Allgemeinverbindlicherklärungen*) issued by the BMAS in the period between 1990 and 2010 (see figure B-3). Instead of balancing the decline of collective bargaining by

declaring more agreements binding for a sector, the total number of effective AVEs as well as of newly negotiated AVEs per year has declined since the 1970s. The main reason for the decline has been that employer associations have increasingly withdrawn their support for AVE applications (Bispinck and Schulten 2009). One reason for this shift has been that employer association have been battling with falling membership rates which implies a growing diversity of interests among firm in the same sector. Figure B-4 illustrates this trend for the metal sector where the main association, *Gesamtmetall*, has consistently lost members since the mid-1980s. This decline can be interpreted as an exit strategy by discontent firms because non-members are not obligated to adopt the agreements negotiated by the employer associations. In order to improve their appeal to such firms *Gesamtmetall* as some associations in other sectors have changed their position on AVEs but also introduced a new form of membership called *OT-Mitgliedschaft* (OT = *ohne Tarfibindung*, "membership without obligation to adopt framework agreement"). OT members can use the associations' services and political lobbying activities, but at the same time are exempt from the obligation to adopt framework agreements negotiated by the association. In combination with the decline of AVEs[86] this means that the opportunities of German employers to deviate from framework agreements or to negotiate collective agreements on their own have considerably increased in the period between 1990 and 2010.

With regard to the role of the state it is noteworthy, that no German government attempted to reform the AVE process in order to lower the legal hurdles for it or to strengthen the oversight of the BMAS or even the governments. The AVE system did not experience a reform until the 2008 crisis (see next chapter). This conspicuous inactivity can be interpreted as an implicit form of flexibility-enhancement. One effect of the gradual decentralisation or pluralisation of collective bargaining is argualby wage restraint. Scholars of industrial relations have long argued that Japanese enterprises have been more successful in implementing wage constraint than unions in many European economies because enterprise unions are more likely to accept moderate wage development than powerful industry unions that bargain for a whole sector. In fact the development of negotiated wages in Germany (see figure A-16) since the early 1990s suggests that real wages have

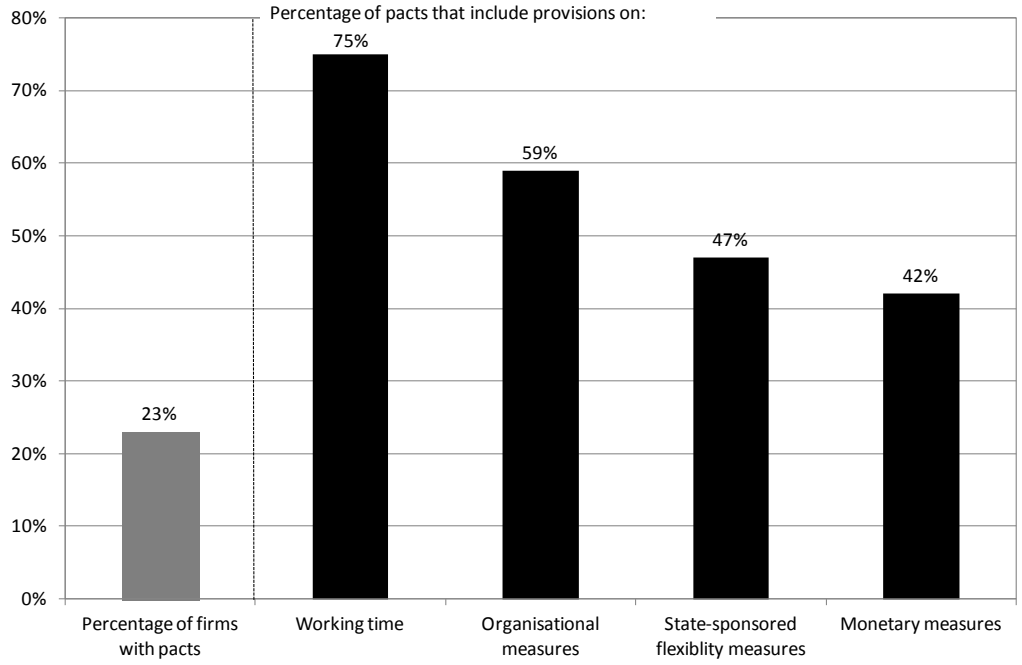
[86] The BMAS publishes every three months a list of collective agreements that have been declared "allgemeinverbindlich". It is accessible at http://www.bmas.de/SharedDocs/Downloads/DE/arbeitsrecht-verzeichnis-allgemeinverbindlicher-tarifvertraege.pdf?__blob=publicationFile.

increased only moderately or not all during the whole period. At the same time a general trend toward lower nominal wage hikes is visible. Although wage constraint or moderate wage increases is not the same as flexible wages, it can be seen as an indicator for the growing ability of German firms to limit wage costs and to convince unions to agree to wage setting which mirrors the economic condition of the firm or strategic interests (e.g. higher stock prices). It is not surprising therefore, that most works councils argue that the growing relevance of enterprise-based bargaining in Germany has improved the bargaining position of employers (Bispinck and Schulten 2009).

Another important development concerns the relationship between corporate and industry-level regulation. On the one hand, the German system of *Tarifautonomie* not only limits the state's influence but also holds that firms are not allowed to deviate from framework agreements (cf. Rehder 2003: 50-54). Enterprise pacts (*Betriebsvereinbarungen*) can only regulate issues which are not directly addressed in framework agreements or which are subject to so called *Öffnungsklauseln* ("exemption clauses") which specifically define the areas where firms may negotiate alternative regulations. However, in the course of the 1990s and 2000s the scope and the number of *Betriebsvereinbarungen* has increased considerably often replacing what has been once regulated exclusively by *Flächentarifverträge* even though there were no official *Öffnungsklauseln* to legitimise these moves. However, in many cases illegal deviations ("wilde Dezentralisierung") were tolerated to limit the number of permanent defections from the system of sectoral bargaining (Bispinck and Schulten 2009: 204). To stabilise sectoral bargaining the social partners increasingly began to integrate formal *Öffnungsklauseln* in collective agreements thus both strengthening the role of sectoral agreements and expanding the role of enterprise-based bargaining.

Figure 6-2 shows that by 2003 more than 20% of all firms had enterprise pacts and among firms with more than 1000 employees more than 40% had concluded firm pacts. Moreover, these pacts increasingly covered issues which traditionally were exclusively the domain of sectoral bargaining, such as working time and pay (in particular bonuses and overtime pay, see figures B-7, B-8 and B-9). This means a considerable degree of flexibility was achieved on the micro-level while the main meso LoR, sectoral bargaining became more responsive to developments on the micro level.

Figure 6-2 **Incidence and contents of enterprise pacts (*Betriebsvereinbarungen*)**



Source: 2003 investigation of the WSI works council survey, as quoted in Seifert and Massa-Wirth (2005) (Seifert and Massa-Wirth 2005: 220). Pacts can include multiple provisions. Overall, the number of firms with 'work councils' that usually negotiate such pacts on the labour side, stands only at about 11% for all German establishments

The growing importance of enterprise bargaining has in a way led to a gradual 'Japanisation' of German industrial relations. Although there is some disagreement in the literature whether this has actually led to a growing wage differential between firms (see Schmidt 2007: 35, note four), most experts (e.g. Bispinck 2003) agree that the development has led to a considerable enhancement of wage and temporal flexibility. As for the question whether firms would have preferred a more radical transformation, the evidence seems mixed. On the one hand employer and business associations as well as the FDP repeatedly called for reforms to make collective bargaining even flexible formally.[87] On the other hand, several scholars of industrial relations argue that most employers did not really aim at a radical overhaul. For example, Silvia and Schroeder (2007) think that employer associations and the system of *Flächentarifverträge* suffered not because of the wage demands by unions. On the contrary, unions contributed to the flexibility of employers by moderating their wage demands so that the labour share in total costs declined markedly. Instead cost cutting measures implemented by many large firms in the German

87 Whether this reflected genuine policy differences has been questioned by many. For example according to Buschmann the neo-liberal rhetoric of CDU/CSU and FDP should not lead to the conclusion that their proposals would amount to a true marketisation of labour market regulation: "trotz ihrer antigewerkschaftlichen vorgeblich individualistischen Rhetorik in Wirklich nicht auf den Einzelarbeitsvertrag als Gestaltungselement, sondern setzen auf die Durchbrechung der kollektiven Ebenen mittels einer anderen Ebene (Betriebsvereinbarungen)", Buschmann (2005), p. 307.

economy put SMEs under severe pressure to re-structure. As suppliers often lacked the opportunity to pass on cuts to their suppliers, many resorted to a defection from collective bargaining in order to achieve a more competitive wage structure. Yet it would not be accurate to infer from this that German employers and businesses were aiming at the slow but fundamental erosion of the German system of industrial relations: "Their preference is to transform the workings of the institutions towards providing more flexibility for firms but without dismantling them" (Hassel 2007: 255).

In sum it can be said that the move towards more flexibility and decentralisation in industrial bargaining did not lead to a collapse of the system, as many had feared, nor did it initiate major changes of the legal framework of industrial relations. Rather, from the view of workers, works councils and their negotiations with management became more important vis-á-vis industry bodies and organisations. Even though the number of workers and firms covered by collective bargaining has been consistently on the decline since the 1980s which means that a growing section of firms and workers remain outside the coordinated regulatory framework completely, this has not prompted more government intervention. And even though "Die vielen Öffnungsklauseln, Korridore und Optionen suggerieren (…) einen top down-Ansatz – erst die Branchenvereinbarung, dann die betriebliche Konkretisierung", they are in effect the result of bottom-up processes, „da diese Lockerungen im Flächentarifvertrag ja Reaktionen auf betriebliche Realität sind" (Schneider 2002: 221). The pattern of reforms also suggests that this is not entirely due to the peculiar institution of *Tarifautonomie* but also the result of deliberate government non-interference. The only law which was passed in the period between 1990 and 2010 which was related to the new dynamic of industrial relations was the "Gesetz zur sozialrechtlichen Absicherung flexibler Arbeitszeitregelungen" in 1998 under a conservative government (see table C-10). This means governments in this period followed the development in industrial relations rather than trying to encourage it to develop in a certain direction.

6.1.2 Flexible rigidities revisited: Japanese industrial relations since 1990

Chapters three and four have shown that in comparison Japanese firms have always enjoyed more leeway to deviate from national collective bargaining than their German counterparts, so in a sense firms had less to gain from further

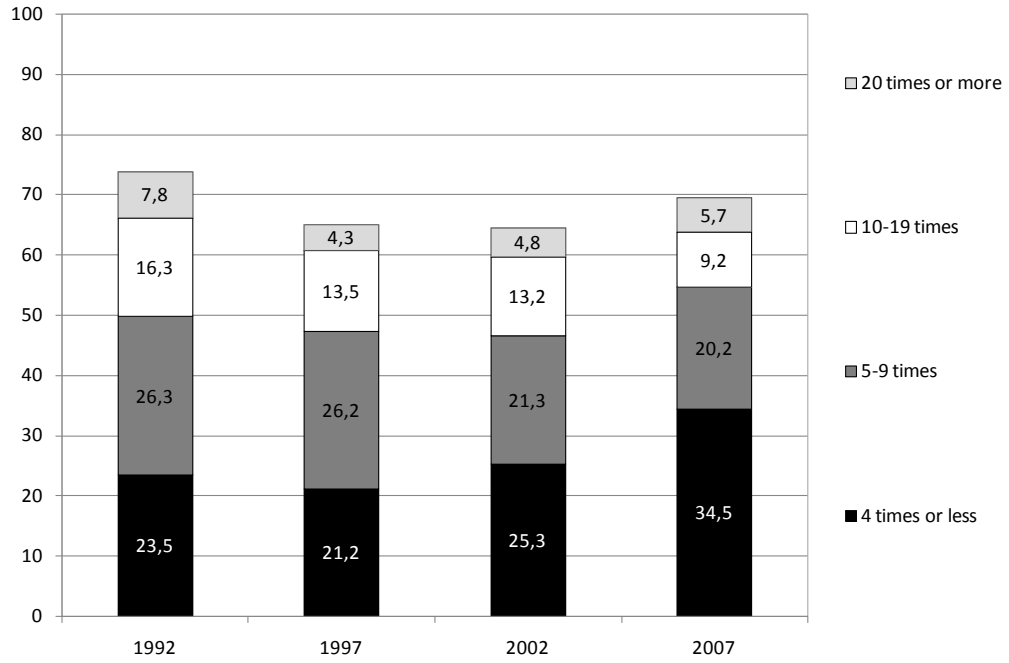
decentralisation. Although the Japanese state does not intervene in wage bargaining, the Japanese government has been committed to industrial relations and national wage setting practices since the Oil crises (see previous chapter and Suzuki 2004: 126-127). The pattern of coordination changed however in the mid-1990s when firms realised that the post-bubble recession and Asian crisis of 1997 would impact demand for the foreseeable future and that they needed to cut costs to get cope with a prolonged period of stagnation. Many companies concluded that this required changes to their personnel policy and implemented hiring freezes and restructuring (*risutora*). Nikkeiren, the main employer association until 2002, increasingly made unemployment an issue in wage negotiations after 1994 (Crump 2003: 144-147) thus putting, as in Germany, deals involving employment security in exchange for wage restraint on the national agenda. A survey conducted by Inagami (2001) also suggests that many firms were seeking a more individual approach to regulation of working conditions, preferring contract negotiations over collective bargaining. Since industrial relations is less institutionalised than in Germany and has always been characterised by a relative low rate of coverage (see figure 3-5), one could expect that growing discontent with industrial relations would thus translate into a more drastic transformation.

There is some evidence for such a claim. Figure 3-5 shows that the coverage rate has developed, apart from a brief consolidation phase in the 1970s, along US-American levels in the course of three decades and now stands at mere 18% (2008). Also, figure 6-3 indicates that even among firms which are most likely to bargain (as they are target of the MHLW surveys on industrial relations), the rate has not only declined since the late 1980s but also negotiations seem to be less frequent than in the past. The majority of collective bargaining processes are concluded within four meetings, while the number of more extensive collective bargaining rounds has decreased. The decline in collective bargaining applies to large firms as well as SMEs (figure B-10) as well as all industries (figure B-11). Hence, it appears that a growing section of Japanese employers no longer rely on collective bargaining processes for setting working conditions and wages but instead use work contracts and work rules or other forms of bargaining.

As collective bargaining is less formalised, however, many issues which are only bargaining matters in Germany can be subject to joint consultation committees in Japan (see figure B-12) or even both. Although the overall dispersion of joint

consultation has also declined (figure 6-4), taking into consideration firm size, one again finds noticeable differences. The decline mostly applies mostly to SMEs while large corporations instead have increased the number of meetings (figure B-13). With regard to the contents of joint-consultations it is striking that they seem to fulfil a similar function as enterprise pacts in Germany. Especially those topics which are related to employment flexibility (see figures 6-5 and B-12) have become increasingly subject to joint consultation.

Figure 6-3 **Incidence of collective bargaining and frequency of meetings (Japan)**

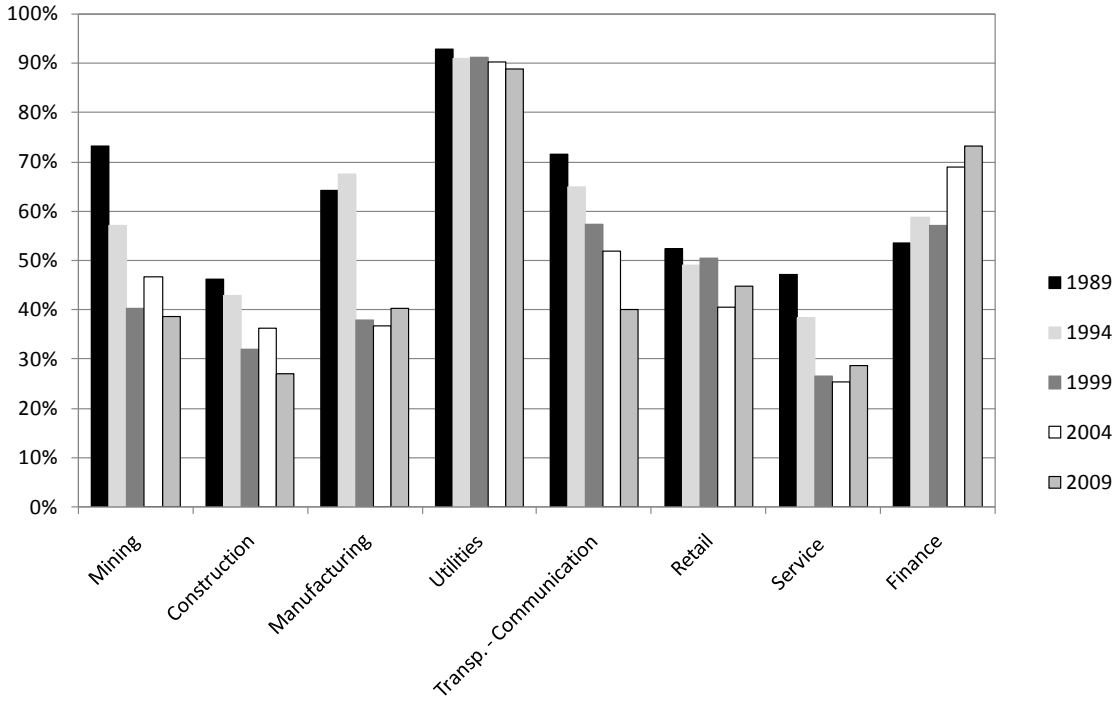


Source: The 1992, 1997, 2002 and 2007 MHLW surveys on 'the current state of collective bargaining and labour dispute resolution'. See annex B for details.
Note: In the survey enterprise union representatives were asked whether their union had participated in collective bargaining in the previous three years, and if so, how many times on average the organisation had attended meetings within one year. Although the number of unions active in collective bargaining has declined until 2007, this may not necessarily be a proof of a lower coverage of collective bargaining: as there could be more than one union active in a firm and also collective bargaining could be done by other unions/union organisations. Only the surveys in 2002 and 2007 included a category for reasons why no collective bargaining was conducted. If the categories are included for other unions within a firm participating in collective bargaining coverage increases to more than 90% for most industries. No such data is available for earlier surveys.

This suggests that like in Germany collective micro LoRs are increasingly used for enhancintg flexibility. In addition, there seems to be a partial consolidation of enterprise-specific consultation processes with a slight increase in joint consultation in unionised firms (figure B-18) and relatively stable rates of positive evaluations of joint consultation by firms and workers (figure B-16). However, it appears that firms are following a dual trajectory in terms of labour regulation: while one group of firms have consolidated their coordination processes (also the mode of consultation has remained relatively stable over time, which means unions have not necessarily lost

influence in joint consultation committees, see figure B-14), a second group of firms has abandoned them completely and/or follows a different trajectory.

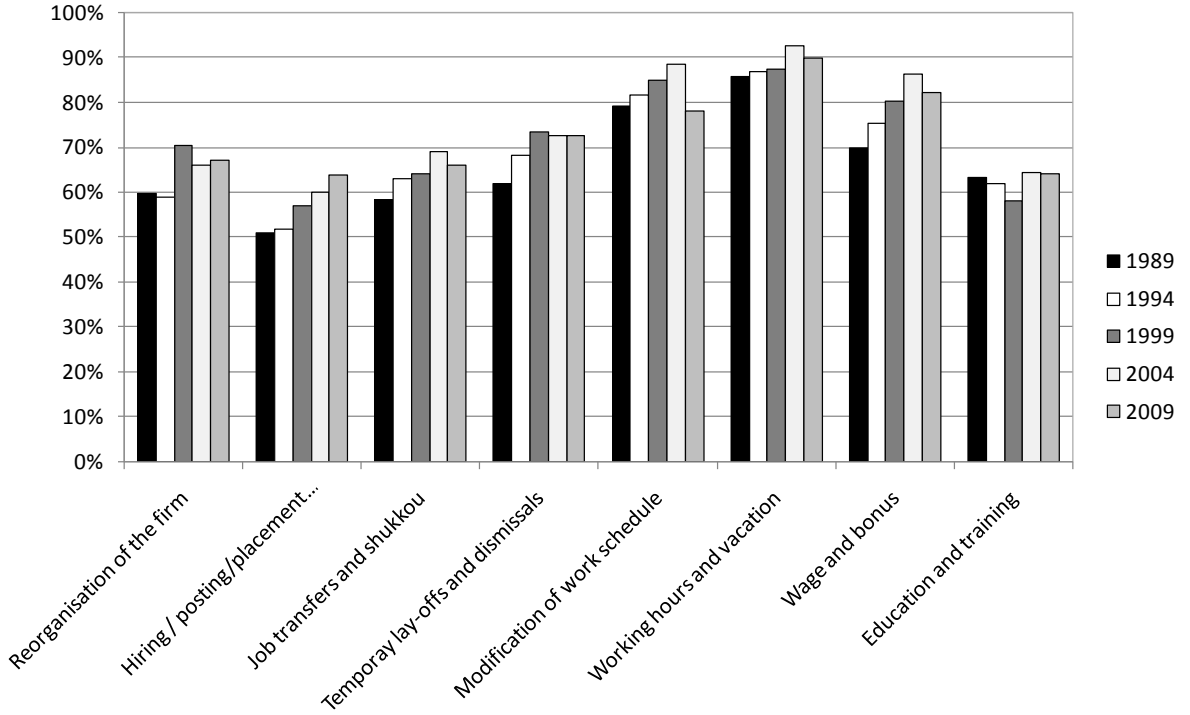
Figure 6-4 **Incidence of labour-management consultation in Japan by industry**



Source: MHLW surveys on 'labour-management communication [労使コミュニケーション調査]' (1989, 1994, 1999, 2004, 2009). Figure reports percentage of all enterprises surveyed. See annex for details.

In conclusion it can be said, that the Japanese development in many ways resembles the German case. Especially large firms in the core sectors with high union presence are able to use corporate institutions of consultation and decision-making to push issues of job flexibility. For them the system seems to still offer economic advantages. The story is different, however, for SMEs as is visible in the growing number of firms who have abandoned collective bargaining and/or joint consultations. Although the gap between large firms and SME as such may not be a surprising finding, the partial consolidation of industrial relations among core firms may explain why German and Japanese governments have not been overly concerned about the divergence between SMEs and large firms and a possible break-down of meso and micro consultation practices. The reluctance of Germany and Japanese governments to expand practices of consultation to non-core firms can be said to thus lead to an additional pattern of dualisation – that of industrial relations.

Figure 6-5 **Negotiating internal flexibility in Japanese firms: Topics of joint consultations**



Source: See note to figure 6-4. Figure reports percentage of all enterprises that reported to conduct joint labour-management consultation. See annex for all discussion items included in the survey.

6.1.3 Wage flexibility: Trading employment security for wage restraint

The failure of the two national alliances for jobs meant that there would be no alternative to such deals struck on the corporate level. *Betriebliche Bündnisse für Arbeit* had started to emerge as early as the 1980s in some industries but became increasingly common since the early 1990s. The expansion on the micro level can also be seen as a response to the failure of macro regulation to implement universal and comprehensive deals but also of politics to make collective bargaining more flexible through reform. As noted in chapter four, criticism of the rigidity of collective bargaining had emerged in the 1980s but all early attempts at reform were frustrated by opposition within the then ruling conservative-liberal coalition. The discussion quieted down due to unification but re-appeared in the mid-1990s (this overview is based on the annual reporting of legislation in the AuR). Shortly before the 1998 general election, the CDU/CSU proposed to limit the *Günstigkeitsklausel* in those cases where employers would agree to protect jobs at risk of dismissal.[88] As the opposition already controlled the Bundesrat, however, the proposal stood no chance of being implemented and was widely seen as a political manoeuvre. Reforms

[88] One indicator that this proposal was mainly due to electoral considerations is that employers in the chemical industry publicly rejected it on the grounds it would endanger the stability of the whole arrangement.

of industrial relations received little attention until 2000 when the discussions in the second BfA became increasingly contentious because the union representatives refused to negotiate about wages on the national level. While the opposition introduced several reforms bills between 2000 and 2003 to reform the TVG to facilitate enterprise pacts, the red-green coalition tried to achieve an agreement without reforming the collective bargaining system. After the BfA collapsed in 2003, however, the government urged unions to actively support the expansion of pacts on the micro level. Chancellor Schröder declared in parliament:" Ich erwarte, dass sich die Tarifparteien auf betriebliche Bündnisse einigen, wie das in vielen Branchen bereits der Fall ist. Geschieht das nicht, wird der Gesetzgeber handeln" (quoted in Bispinck 2003: 396).

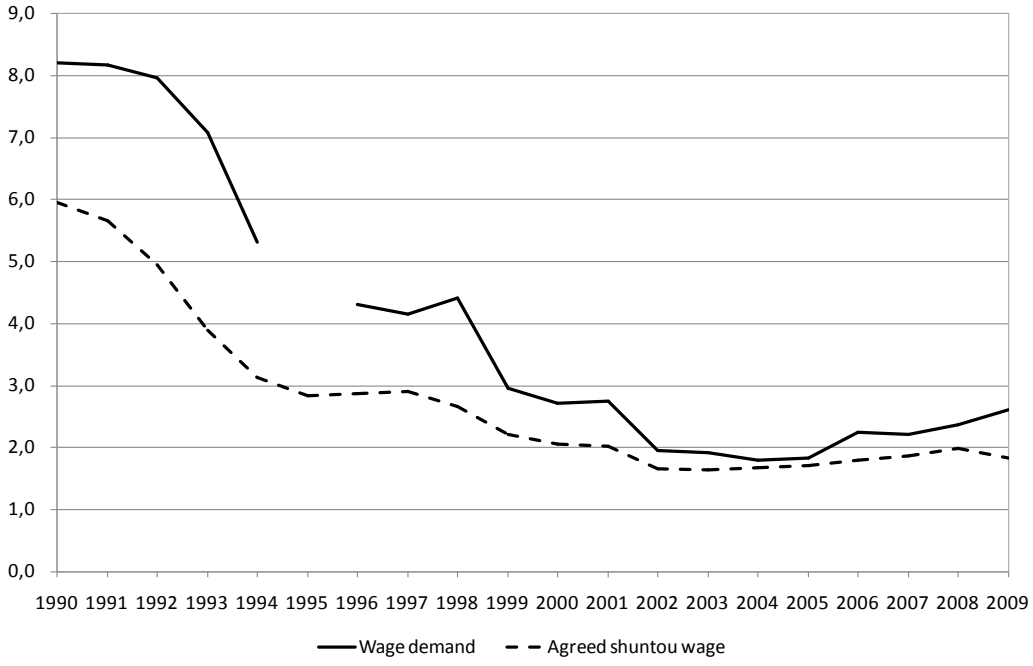
Enterprise pacts have, as the previous section has shown, disseminated considerably since the early 1990s and many have entailed settlements committing employers to refrain from dismissals in return for more flexible working time and/or wage restraint. Given the high number of proposals of how collective bargaining could become more flexible, and growing contestation between the main parties on co-determination it seems that at least part of the development owes to the rising salience of flexibility on the national level. On the other hand, in the period between 1990 and 2010 not a single legislative reform was passed which impacted the position of collective bargaining for the whole labour market arrangement. What is even more striking is that in contrast to the 1970s none of the governments offered any compensation in form of tax breaks or social policy. Wage constraint in the 1990s and 2000s has been solely the product of meso and micro LoRs with only indirect "encouragement" from the macro level. Even the conservative-liberal coalition which came into office in fall of 2009 did not re-introduce any of the proposals it had made between while both parties were in opposition. This confirms the view that contestation was largely strategic and not so much driven by programmatic differences. Moreover, once the salience of the issue declined, even the CDU/CSU-FDP coalition showed a preference for non-interference over intervention through reform.

Shuntou, wage constraint and flexibility in Japan

In Japan a similar pattern of deal-making between employer and unions can be observed in the period between 1990 and 2010, however in contrast to Germany important impulses came from the macro levels. The national employer association

Nikkeiren began to publicly argue for combination of the issues of wage constraint and employment security as early as 1994. It announced that employers were very concerned about the problem of maintaining employment in an increasingly difficult macroeconomic environment and that this required close coordination between capital and labour. "However, it also made clear that the price to be exacted for this offer of solidarity over maintaining jobs was, in the first place, checking the rise in personnel costs'. (…) this was a price that the Rengou leadership was prepared to pay" (Crump 2003: 146). As a consequence wage proposals dropped significantly after 1994 and the gap between the wage hikes demanded by unions and the actual wage settlement began to narrow (see figure 6-6). However, at the same time a growing number of business representatives began to question the value of national wage coordination in the first place. Among other, Miura (2008) interprets this as a part of an aggressive employer strategy to abolish the Japanese system of wage standardisation through *shuntou* and to replace it with a more productivity-related wage setting structure.

***Figure 6-6 Shuntou* wage rise for large firms, 1990-2009**



Source: Based on MHLW (1999-2009): The current state of national spring wage hike negotiation (*minkan shuyou kigyou shunki chinage youkyuu-dagetsu jouyou ni tsuite*), and the annual *shuntou* reports in the Shuukan Roudou Nyuusu (SRN, weekly Labour news), (1990-1998). Missing data for 1995 *shuntou* demand.

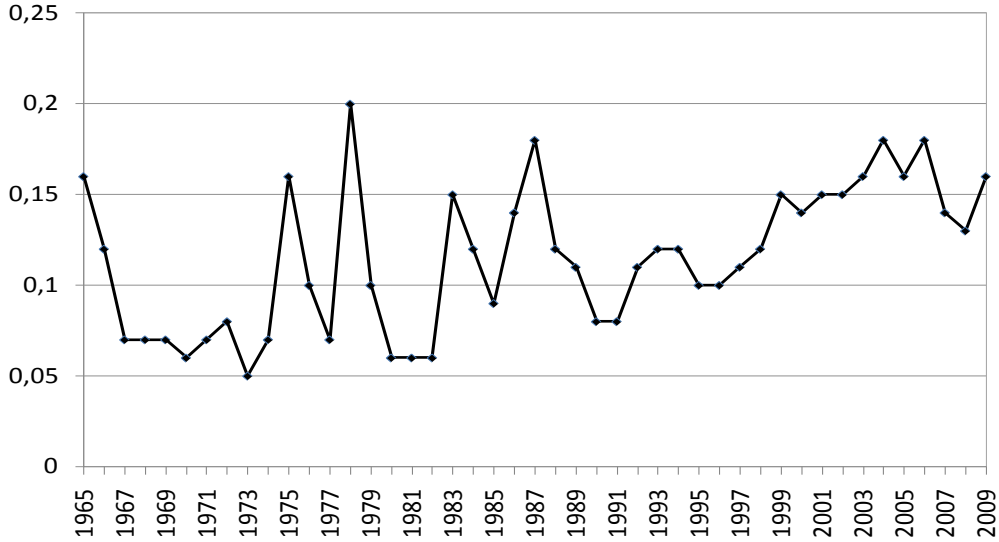
Yet, not only employers were increasingly discontent with *shuntou* also unions felt under pressure to respond to growing discontent among their memberships who increasingly questioned that the very low wage hikes resulting from *shuntou* justified

the extensive administrative costs of maintaining the annual process (Suzuki 2004). Already the 1992 *shuntou* was called by union representatives "extremely unsatisfactory" (this section draws from the JLB and JLF reporting on industrial relations). After 2002, the main unions active in *shuntou* even more or less refrained from demanding a wage hike in addition to scheduled hikes, rendering the process meaningless for wage development (Weathers 2008).

One result of the ongoing *shuntou*, however, has been that wages across the Japanese economy have remained more or less flat since the mid-1990s. Moreover, Weathers (2008) argues that the "trickle-down" effect from large firms to SMEs in terms of wages has disappeared. This is due to the fact that a growing number of SMEs are no longer following the lead of the large firms or have abolished traditional wage setting mechanisms. Large firms on the other hand have increasingly deviated from the *shuntou* wages (figure 6-7), which means that wage flexibility, as in the German arrangement, has been achieved both through wage restraint and a more flexible system of wage-setting that leaves employers more leeway than in the past. In addition, as figure A-15 shows, bonuses have been increasingly adjusted in line with macro-economic conditions, often leading to significant cuts.

With regard to the role of state policy, Weathers (2008) argues that governments have effectively weakened *shuntou* by furthering privations of utilities and telecommunications companies (whose unions used to be among the most active and aggressive *shuntou* participants). Yet it is doubtful that this was done with view on wage bargaining. Overall, Japanese governments and the MoL/MHLW have largely stayed out of the process of organising wage restraint and corporate deal-making Even though some governments established tripartite bodies for consultation (Suzuki 2004) to coordinate measures on work sharing and job creation with business and labour the system of industrial relations and wage bargaining as such was never questioned. As is the case with many other issues, politicians, such as Prime Minister Abe in 2007, have at times tried to encourage the social partners to adopt higher wages (then the Japanese economy was enjoying relatively high growth rates and a labour shortage in some industries) but this has never led to formal deal-making. The Japanese wage restraint of the 1990s therefore is even more clearly than the German one product of de-central processes without direct state involvment.

***Figure 6-7* Variation of *shuntou* wages adopted by firms in the same industry**



Source: Based on MHLW surveys (1999-2009) "The current state of national spring wage hike negotiations" and the annual *shuntou* reporting in the SRN (1990-1998) as well as Shimada (1983), p. 185. The survey only includes firms with more than 1.000 employees. Number reported are coefficients of dispersion for which wage rises of firms are first differentiated into four groups, the lowest quartile is subtracted from the second highest quartile and then divided by twice the median wage rate. See also Nakamura (2007), p. 9.

Conclusion: Negotiating internal flexibility in Japan

In comparison, the Japanese system of industrial relations may appear to have experienced a less dramatic transformation due to its less formalised structure. However, beneath the surface of relative stability, one finds three patterns of change that apply to both cases. This concerns in particular the issues of wage restraint in exchange for job security but also the growing disparity between SMEs and large firms, core and peripheral industries when it comes to wage-setting. As in the German case a total break-down of the system seems has been avoided but at the price that the structure does not serve the interests of all stakeholders equally well. Another noteworthy parallel to the German arrangement is the conspicuous absence of the state in 'steering' developments (see also section 6.2.5). Instead Japanese governments seem to have welcomed the implicit flexibility which stems from the growing heterogeneity of industrial relations. Wada, a legal scholar, arrives at a similar conclusion. He argues that the 1990s and early 2000s basically continued the Japanese approach of structural flexibility:"In Japan wird die Flexibilisierung des Arbeitsrechts auch heute noch fortgeführt, wobei auf umfassende gesetzliche Regelungen verzichtet und die nähere Bestimmung der betrieblichen Vereinbarung dem Beschluss der Betriebskommission oder den jeweiligen Arbeitsverträgen überlassen wird" (2002: 374).

6.1.4 Flexibility through workforce dualisation

In terms of insider-outsider divisions or dualisation, the evidence so far can be described with two patterns of dualisation. First, deregulation of restrictions on non-regular work has created and expanded secondary forms of employment. In both countries the number of fixed-term contracts, temp agency workers and part-time workers has increased dramatically since the 1980s to levels of about 30% of total dependent employment (see also figures A-17, A-18, and A-19). Second, industrial relations have in general retained their relevance for regulation while at the same time a growing group of firms and employees are either regulating working conditions through alternative means or by following standard agreements more loosely. However, a third pattern of dualisation might be observable at the level of the enterprise. As Crouch suggests (see also chapter three) the more regulatory processes are delegated to the level of the enterprise, the deeper the gap between insider and outsider workers is likely to be because enterprise unions and works councils directly profit from the additional employment security for their members and at the same time have a strong incentive to limit their support to insiders. A survey conducted by Promberger (2007) for example finds that German works councils show little interest in representing temp agency workers or to bring up issues connected to temp agency work in their consultation with management except when the relationship with regular workers is concerned. Paradoxically the work councils with the most critical stance on temp agency work are according to Promberger's study most likely to accept temp agency workers in the enterprise. A quotes from one works council representative interviewed suggest that especially these works councils value the additional stability for regular workers that stems from a use of non-regular workers. Hence, works councils may well distinguish between core constituency and other employees as Crouch predicts. The German system of separating collective bargaining for temp agency workers from those for workers also makes it more difficult for temp agency workers to be integrated into consultation processes at the client firm. The case is somewhat different for part-time workers (Teilzeit) as this form of work is much more regulated and usually, status-wise, comparable to full-time jobs. With regard to fixed-term employment the situation is likely to be similar to temp agency employment and will also differ according to the structure and organisational structure of a firm. This suggests that

the heterogeneity between sectors and firms will lead to different levels of integration of non-regular workers into institutions of corporate decision-making.

In Japan the situation appears to be similar. Surveys suggest that like in Germany non-regular workers and their concerns are seldom represented in labour-management consultations. In the 2009 wave of the labour-management communication survey conducted by the MHLW for example (see annex B), only 25% of firms reported that part-time workers were actively participating in internal communication processes even though the vast majority of Japanese firms is using non-regular forms of employment. This suggests that this third pattern of dualization is also true for the Japanese case.

This should also have implications for state policy because it would suggests that regulatory gaps have emerged which can only be filled through direct intervention, i.e. more specific and universal labour law. Also there is the issue whether non-regular employment may lead to a crowding out of permanent employment and traditional employment forms. If one takes into consideration factors such as working time, wages, labour market participation and gender, this argument, however, can only partially confirmed. With regard to working time one in Germany one finds both an expansion (figure A-25) of jobs with long working hours (> 40h/week) as well as jobs with very short hours (< 19h/week). In Japan, the percentage of jobs with 40h and more has been relatively stable at about 80% for male employees. Also with regard to job status it seems that most male employees have not experienced a major change as in both countries about 80% of all male dependent employees hold standard employment contracts (figure A-17). On the other hand, participation rates of men have increased only moderately in Germany (which raises questions about the effectiveness of activation policies and the facilitation of labour market entry due to temporary jobs), in Japan the percentage of non-working men stands now at an exceptionally low 1,2% (figure A-27). This suggests that the moderate growth of non-regular jobs for men has mostly activated male workers rather replaced regular jobs at least as far as Japan is concerned. The case is, however, noticeably different with regard to female workers. Female participation rates have risen considerably over the last two decades, from 59% in 1989 in Japan to 69% in 2009, and from 55,5% in 1989 in Germany to 71% in 2009. On the other hand, the absolute number of female employees working full-time (35h/week or more) has stayed almost the same since 1989 in Germany while in

Japan its number has declined. Hence, if there has been a crowding out effect due to the expansion and deregulation of non-regular work, it seems to have affected mainly female employees and new entrants into the labour market. Furthermore, women dominate almost all forms of non-regular work with the exception of temp-agency work in Germany (figure A-19) and fixed-term employment where jobs are more or less evenly distributed between the genders in both countries (figures A-18 and A-19).

With regard to pay, it is clear that non-regular work is mainly an issue in the low-pay sector of the labour market. Figures A-20 and A-21 suggest there is a clear correlation between job status and low pay, with for instance 67% of all German temp agency workers earning less than 2/3 of the median income, while in Japan more than 50% of part-timers, temp-agency workers and more than 45% of fixed-term employee earn less than 2 million Yen a year (between 17.000-20.000 EUR). In summary it can be said, that replacement of regular employment seems to be not the main driver of the expansion of non-regular employment with the exception of female employment. At least as far as traditional mal-centred employment models are concerned, firms seem to have further institutionalised already established patterns of dual workforces with non-regular workers complementing rather than replacing regular full-time employment. This strategy can be said to contribute-to external flexibility, but through its role of complementing existing employment practices non-regular employment constitutes also an important element for internal flexibility enhancement. The non-regular workforce in German and Japanese firms thus contributes both to the stability of regular jobs (by formin a 'flexibility reserve') while making the workforce on the whole more flexible in a numerical sense.

6.1.5 Conclusion: Flexible industrial relations and flexible wages?

According to the ILO's global wage report 2012 Israel, Germany and Japan are the only advanced democracies that have experienced a fall in real wages in the period between 1990 and 2009. Although this can partially be explained with specific factors, such as deflation in Japan, it does illustrate just how transformative the period between 1990 and 2010 has been for the development of industrial relations. Noteworthy in this context is also that whereas wage moderation in Germany and Japan had been facilitated through compensatory measures by the state such as a tax

reductions or increased spending on welfare, in the period between 1990 and 2010 they have been largely absent (see also section 6.2.3).

Flexibility has been enhanced mainly through allowing enterprises more leeway in Germany to deviate from collective agreements and by making the adoption of national *shuntou*-wages more flexible in Japan. Yet in both cases it does not signal breakdown of systems of industrial relations. Rather it suggests that the wage setting system have become more flexible for those firms who want to remain within the traditional system, while the opportunities for firms who prefer to opt-out completely have also increased. This confirms that the underlying institutional dynamic is similar and both countries and the dynamic is still driven by long-term employment models and "diversified quality production" just as VoC suggests. At the same time the room for institutional diversity has grown.

The heterogeneous picture with regard to industrial relations and jobs, however, stands somewhat in contrast to common assessments that claim "there is no niche within the German economy that can be classified as entirely non-coordinated or completely market-based" (Hassel 2007: 254). The fact that some areas of employment are neither adequately covered by state or non-state regulation rather implies that in many cases jobs are market-based but without a liberal market regulation approach by the state. This, once again, confirms the pattern of reluctant state-centred regulation and intervention which has been observed in the previous chapter.

6.2 The state's role in enhancing internal flexibility

Chapter five has shown that legislation at times follows distinct decision-making processes depending crucially on the salience and electoral impact of proposed measures. Not in all cases is it attractive for governments to assume a dominant role and to address regulatory issues directly as there may be considerable electoral risks. The two examples which will be analysed in this section concern the interaction between the political dynamics on the macro level and on the meso level of industrial relations and thus touch on the question to what extent governments are prepared to intervene to accomplish policy goals and, in particular, how they resolve the regulatory dilemma between flexibility-enhancement and employment stability. The first example, working time flexibility, illustrates to what extent the German and Japanese state have been prepared to get involved in furthering temporal flexibility

through changes in working time legislation. The second example concerns ALMPs and the politics of compensation. Here, the focus is on whether ALMP and related measures have been used to encourage internal forms of flexibility-enhancement.

6.2.1 Carrot and (no) stick: Enhancing temporal flexibility in Japan

In Japan working time regulation has arguably always been much more subject to policy and legislation than most other issues related to the regulation of working conditions because neither enterprise bargaining nor *shuntou* (which until the 2000s has been almost exclusively been concerned with wages) have acted as alternative forms of standardisation and regulation. At the same time, however, the Japanese employment system traditionally relies on long working hours and temporal flexibility. This means that with regard to working time Japanese regulators face the challenge of preserving temporal flexibility as it constitutes an integral element of the Japanese employment system while, on the other side, it needs to ensure workers are protected from excessive working hours.

Japanese governments did not begin to address the issue of working time until the 1970s and only after comparative studies confirmed that working hours and overtime were by far the longest among advanced democracies. Beginning in 1978 the MoL started to formulate measures for gradually reducing Japanese working hours to the international average. "As a part thereof, various policies were carried out to 'reduce excessive non-prescribed working hours' (e.g. to legitimate worker representative elections on overtime work agreements, the establishment of standard hours that would serve as criteria for limiting overtime work)" (Sugeno 2002: 280). Yet formally the goal to reduce working hours to the OECD average of 1.800 annual working hours was only adopted in 1989. It is telling that the MoL then promoted justified the measure as a contribution to stimulate domestic demand by giving Japanese workers more time for travel and leisure activities. This implies that any potentially controversial connotations were avoided. Noticeable is also that the despite the wide attention the measures received they can be characterised as low salience politics as for the most part governments, parties and parliaments were absent. Working time reduction was mainly a topic for administrative guidance through the MoL.

Typical for the implementation of legislation implementing reduced working hours has been the example described in the Japan Labour Bulletin (JLB): "The gist of

the Law includes the following. First, the Minister of Labour formulates a project for promoting shorter hours and has it decided upon as a government plan at a cabinet meeting. Second, the government encourages the employer to establish a joint committee for promoting shorter hours consisting of both labour and management. Third, local business organizations can draft a shorter working hour plan by type of business and have it approved by the Ministry of Labour and other ministries concerned" (JLB, 1992, 31 (8)). Many details are left to be decided by the Central Labour Standards Shingikai (中央労働基準審議会). For instance, the Commission is charged with regularly reviewing and, if needed, rewriting guidelines on overtime premiums. This means that a considerable part of regulation that in other countries would be subject to legislative politics, is taking place below the level of macro politics in Japan. In addition, most laws and legal initiatives are already drafted and discussed by the MoL and it *shingikais* when the Minister formally begins the legislative process. Actual implementation of working time reduction was mainly supervised by regional Labour Inspections Offices who, however, had little legal power to enforce compliance and instead "advised" firms. All bills passed reflected a compromise between the concerns of business over too excessive limitations of temporal flexibility and the unions' interest in improving the working conditions for workers, that was based on the introduction of flexible rules. Tighter regulations were either avoided or implemented over a long time period to give firms time to adjust. Hence, working time reduction was achieved gradually "phased in" by setting generous and also flexible deadlines (e.g. the introduction of the 40h week limit for SMEs was postponed several times because a large percentage of firms could not comply). Moreover, new limitations were mitigated, e.g. by gradually expanding the discretionary work system (*sairyou roudou-sei* 裁量労働制)[89].

Typical in this sense are the LSL reforms of 1986 and 1998 (see table C-9) which combined tighter regulations of standard work and overtime work with an expansion of the discretionary work system. However, the 1998 reform bill at the same time marks the end of low salience meso and micro regulation practices. The original bill proposed by the cabinet of PM Hashimoto did not include any limits on

[89] The LSL stipulates that all workers have to be paid according to their actual working hours. Exceptions are made for 'routine overtime' which can be fixated in work contracts or work rules and, to some extent, even unilaterally ordered by the employer. Discretionary work systems exempt employers from paying overtime but allows them to pay employees according a fixed salary based on tasks rather than time. See also Araki (1996).

the discretionary work system and, in addition, was formulated and adopted without consulting the shingikai and labour. Unions vehemently opposed the bill and tired to stop the passage of the bill by cooperating with the opposition in the Diet. In the end Hashimoto's government agreed to invite labour back to the negotiation table and made several changes to the bill. The law adopted still entailed the possibility to adopt discretionary hours for almost the whole workforce but it also entailed a new hurdle which required that labour-management committees had to be established (elected by a majority of workers) which had to unanimously agree to adopt discretionary work. This, so Miura (2001b) rendered the reform effectively meaningless.

Another example of high salience politics in workin time legislation is the proposal for a White Collar Exemption in 2006/2007. The bill can be seen as a reaction to the unsuccessful attempt in 1998 to reduce overtime costs for employers. However, although Koizumi was no longer in office, the proposal also was very much in line with Koizumi's labour market reforms which mostly favoured flexibility-enhancement through deregulation of labour law. Koizumi's successor, Shinzo Abe, saw the bill also as an opportunity to underline his stance as a bold reformer. However, the bill soon met considerable public resistance. Originally Nikkeiren had proposed a similar bill in 2002 and this proposal foresaw an exemption for all employees with an annual salary above 4 million Yen (app. 31.000 EURO). The bill eventually became known as 'the no overtime payment law' and was widely discussed in the media. The fact that the "mass media covered the deliberation process of the white-collar exemption system to an unprecedented degree, despite the fact that they usually pay scant attention to labour law formulation" (Miura 2008: 173), is another clear indication that issues of working time regulation had become more politically salient. Unionists, such as Nobuhiro Fujiyoshi (Asahi, December 16) publicly criticised the proposal of furthering overtime even though Japanese workers were already working more than workers in most other advanced economies. Moreover, employers already possessed several instruments that allowed for considerable temporal flexibility such as unpaid overtime called "service overtime" (*saabisu zangyou* サービス残業) which is included in contracts, work rules or communicated orally. Hence, granting en exemption for nearly all levels of white collar employees would, critics claimed, multiply the social problems related to working time in Japan. The public outcry became so intense, that PM Abe eventually

abandoned the bill in January. Interestingly, his successor, Taro Aso, who succeeded Abe after one year in office, responded to the development by changing the policy-making process. Instead of devising laws outside established consultation processes such as the *shingikai*, his government invited business and labour to negotiate about measures against "extreme overtime" of more than 60 hours a week. A respective bill, representing the compromise reached between business and labour, was implemented in 2008.

This suggests that because working time regulation has increasingly become controversial, contested and electorally salient, Japanese governments have been forced to become more visible in the legislative process. However, in cases where proposals have been controversial governments have tried to calm resistance by resorting to former practices of consultation and consensus-building. This implies that cases of high salience can lead to a politics of blame avoidance, encouraging governments to delegate decision-making back to the social partners or bodies outside the political arena.

Conclusion temporal flexibility in Japan

The process of working time regulation in Japan illustrates lucidly the dilemma governments and policy-makers face when dealing with the regulation of working conditions. On the one hand, the overall employment arrangements rests on the ability of firms to adjust working hours very flexibly, on the other hand, working time has become so excessive that unions and governments are under pressure to limit working time through regulation. This brief overview has shown that decision-makers try to balance both objectives by avoiding permanent and all too rigid regulations especially in phases of low salience politics. For example, all measure aimed at effectively reducing working hours such as the introduction of the 40h week were "balanced" by a gradual expansion of the discretionary work system and introduced and managed by the ministerial bureaucracy. The involvement of elected politicians in the process has been minimal. This approach of cautious and moderate change has basically left the system of temporal flexibility intact. A study by Ogura (2009) suggests that neither the underlying rationale for temporal flexibility has been changed nor the tendency for excessive overtime.

Yet, since the 2000s working time has increasingly become high salience politics and this has changed both the process and outcomes. Measures have for the first time become subject to political bargaining in the Diet as in the case of the White

Collar Exemption Bill or the expansion of the discretionary work system. However, here too a tendency to avoid electoral blame is visible as governments have quickly sought to delegate and share the responsibility with the social partners or other partners. So in the case of working time, growing salience has not led to enhanced role of top-down reform strategies but reinforced patterns of cooperation and consultation.

6.2.2 Heterogeneity as a source of flexibility: Regulating working time in Germany

Although discussions and scholarly interest in the development of working time are dominated by the trend toward "flexibilisation", it would be short-sighted to interpret all changes in the working time framework as related to efforts to increase temporal flexibility. For example Seifert argues, "Der Modellwechsel, den die Arbeitszeit seit einigen Jahren vollzieht (…) lässt sich nur unzureichend mit dem Begriff der Flexibilisierung beschreiben. Denn die Arbeitszeit ist in den letzten beiden Jahrzehnten für einen großen Teil der Beschäftigten sowohl kürzer als auch variabler und damit heterogener geworden" (2005: 41-42). Parts of the heterogeneity can be attributed to changes in production routines (e.g. many firms operate their machines longer with fewer breaks), the ongoing shift from manufacturing to services where fixed working times are less feasible and changing preferences of employees who wish to spend more time on, for example, care for family members. It has to be taken into consideration, therefore, that a significant part of the changes affecting temporal flexibility, stem from reasons that are outside the scope of the analytic framework of this study. Nonetheless, working time flexibility has been a dominant theme on the national political stage as well as in corporate negotiations in German throughout the 1990s and 2000s. In particular, it has been increasingly used, as in the Japanese case, to ease the burden of numerical flexibility by making the deployment of regular workers more flexible.

However, in contrast to many other regulatory issues discussed so far, working time has also been one of the more politically salient issues in labour politics. This is mainly due to the fact that German unions had named working time reduction a key policy objective in the post-war period and many advancements in that direction had been achieved in very contentious bargaining processes. The final iniative for a significant reduction was in the the 1980s when the unions began campaigning for the introduction of the 35h week. This was vehemently opposed by

employers and the first agreement in 1984 which entailed a gradual reduction to 38,5h/week was only achieved after one of the most controversial and polarised strikes in the history of the metal sector. It took another 6 years until the first agreement factually implementing the 35 hour week was concluded (Bispinck 2002). For many contemporary observers this signalled a turning point in German industrial relations and a decisive victory of the IG Metall and many expected that similar agreements would be soon be concluded in other industries. However, the 1984 and 1990 agreements are also significant because "central negotiations over working time reductions (…) produced no universally binding regulation, but instead defined the parameters for a second round of negotiations at the plant level" (Thelen 1992: 156). This set precedence for further regulatory dynamics not only with regard to working time but also for wages (see previous section). Also, employers demanded in exchange for shorter working hours "Flexibilisierung,, Differenzierung und Individualisierung und Verbetrieblichung" of working time arrangements (for this section see Altun 2005: 94-134). This means that sector unions had to agree that the actual regulatory authority for such arrangements would be transferred from the meso to the micro level where the distribution of power resources benefit employers.

Although unions officially continued to campaign for the 35h work week well into the 1990s, the agenda and tone in collective bargaining changed markedly by the mid 1990s. This was partially due to unification and the ensuing recession which put unions once again under pressure to resist employer demands for wage restraint and more flexible working conditions, but it mainly due to the fact in a situation of falling demand the priority for unions had to shift toward employment security. Several agreements which explicitly integrated employment security in exchange for wage restraint and more flexible working time were concluded in 1993 and similar agreements were increasingly adopted in enterprise pacts. The growing concern for employment stability however meant that labour now more or less lost the momentum with regard to working time regulation. "Lange Zeit waren die Gewerkschaften tonangebend, wenn es um die Veränderungen der Arbeitszeit geht. Diese Rolle als gestaltende Kraft übernehmen neuerdings immer mehr die Arbeitgeber und ihre Verbände" (Seifert 2005). Over the course of the late 1990s and early 2000s, collective agreements did not only institutionalise a number of new

instruments for flexible working time such as working time accounts[90], they also managed to withdraw many of the working time reductions that had been implemented in the 1980s until the late 1990s. Figure A-25 suggests that the 35h hour workweek has been gradually phased out for standard (male) employees, falling from about 54% in 1990 to 22% in 2010.

Conclusion working time Germany

In conclusion it can be said that German governments have been noticeably absent in the process of enhancing temporal flexibility. With regard to the mode of change it is interesting to note that despite a gradual decline in coverage and falling membership rates of employer and unions, negotiations over working time became less contentious after the 1990s. It seems not only that working time arrangements became more flexible during this period but also that coordination replaced contestation as the dominant mode of change. The growing regulatory relevance of micro LoRs implies that the German arrangement moved considerably closer to the enterprise-oriented structure of large Japanese firms. This can also be understood as a process of lowering salience of working time regulation which has facilitated the management of the issue by employers and unions without the direct participation of the legislative. This is clearly visible if one considers the content and scope of reforms until 2010: none can said to have had an impact of temporal flexibility nor were they intended to alter the relationship the different LoRs (see table C8).

6.2.3 Public spending to support flexibility enhancement

Although formally not labour market regulation, spending on active labour market policy has been pillars for German and Japanese labour policy. Tax policy, job subsidies and job creation programmes have been used to support institutional changes and to facilitate adjustments. Especially in Japan public works projects, trade restrictions and regulation of the retail industries and other regulatory interventions formally outside the realm of employment policy can be seen as *functional equivalents* (Estévez-Abe 2008; Kasza 2006) and complementary to job creation and

[90] There are many ways how working time accounts can be implemented and organised. Some allow temporal adjustment only within a few weeks while others concern the complete tenure and theoretically allow workers to retire early if they have accumulated respective working hours over the years. This instrument has had a huge impact on temporal flexibility in Germany as chapter 7 will argue. Seifert summarises the signifance of this change as follows: "Lange Zeit galt das Prinzip, die vereinbarte Regelarbeitszeit in gleichförmigen Portionen auf die Wochentage und über das Jahr zu verteilen. Abweichungen von diesem Muster waren nur als begründungspflichtige Ausnahmen nach oben im Rahmen von Überstunden und nach unten im Rahmen von Kurzarbeit möglich. Arbeitszeitkonten brechen mit diesem Verteilungsprinzip. Sie erlauben, die Regelarbeitszeit variabel zu verteilen, das heißt mal länger und mal kürzer zu arbeiten. Etwa zwei Drittel aller Betriebe organisieren die Arbeitszeit mit Hilfe von Zeitkonten." Seifert (2007), p. 19.

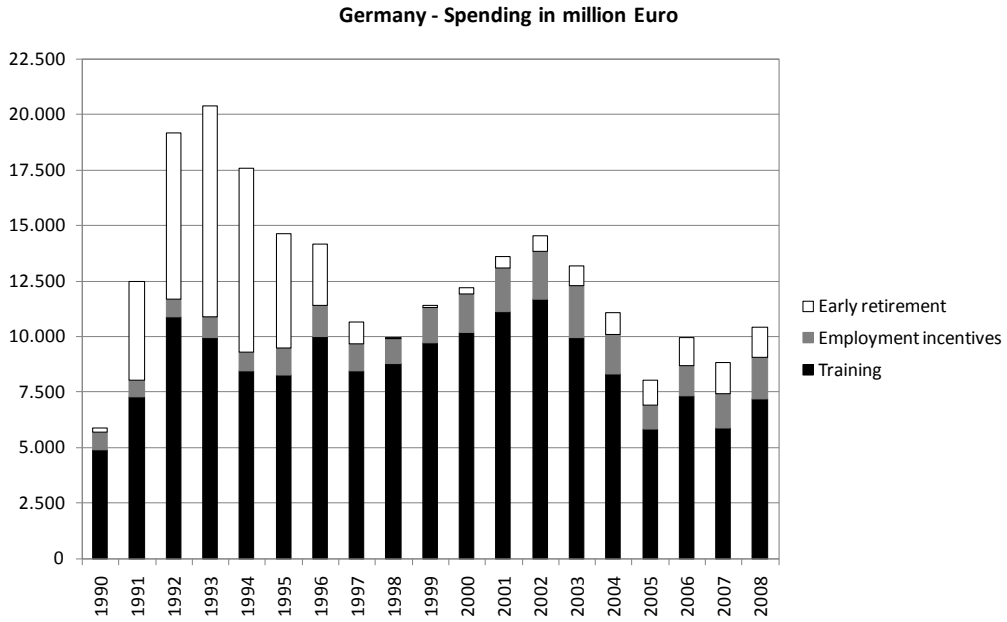
employment protection policies. There are political and economic reasons why it may beneficial in the eyes of governments to support desired outcomes through spending: Politically, governments can target directly those who are likely to be affected by adjustments. This way, the impact of even unpopular measures can be mitigated or deal-making between stakeholders facilitated. A typical example for this has been early retirement policy in Germany which has helped to meet both the increased flexibility demands of employers as well as the demand of employees for secure income. Economically, governments may be able to save costs and ensuing spending if more costly damages can thus be avoided. For instance, wage subsidies for employees in industries facing a phase of restructuring may be less of a financial burden than financing unemployment and training measures for dismissed workers.

This leads to two questions with regard to the enhancement of labour market flexibility: First is there evidence that ALMP is used to encourage specific forms of flexibility enhancement, e.g. by offering compensation? Second, are there observable changes over time in ALMP policies that signal a fundamental change in how governments deal with issues of flexibility and regulation? Due to space constraints, complementary effects from related policies such as market regulation must remain outside this analysis. However, looking at spending levels, both in absolute and relative terms (as a percentage of GDP, see figure A-3) can indicate whether there have been major policy changes and to what extent the role of ALMPs in flexibility-enhancement has changed. Comparing spending as a percentage of GDP and also the nominal spending for labour market policies, it becomes apparent that Germany relies to a greater exent on such policies than Japan. Differences are also visible when one considers the type of spending. While in the early 1990s, spending on early retirement was relatively high due to the sudden and dramatic downsizing of East German industry, Japanese governments have never taken over the task to facilitate early retirement directly (figure 6-8). Such differences have been studied in some detail by Ebbinghaus (2001, 2006) who argues that Sweden and Japan have been the only countries to avoid both rigorous corporate restructuring as in the UK or the UK and massive state-financed early exit as in Germany and other continental European countries. He suggests that in the case of Japan this was possible because already a system was in place which allowed firms to re-hire older workers at lower salaries. The fact that a substantial groups of female peripheral workers constituted an effective buffer against cyclical changes may also have played a significant role

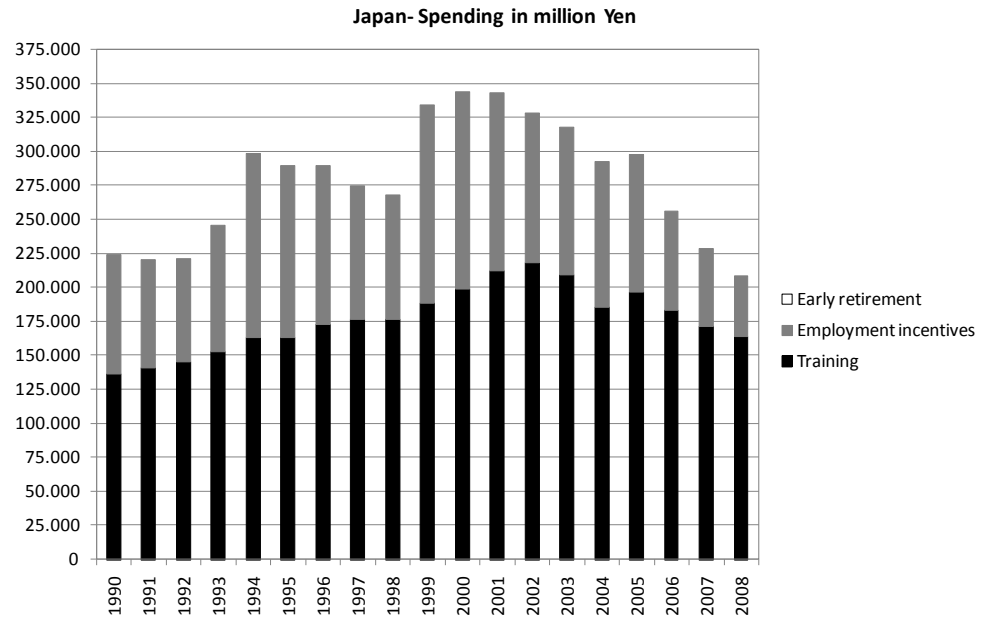
(Osawa 2002). So in contrast to Germany, Japanese governments in the 1970s and thereafter could rely on corporate institutions to pursue a policy of socially acceptable numerical flexibility-enhancement.

If only those programmes are considered (figure A-4) which have direct relevance for labour market policy[91], spending patterns over the long term seem to have been relatively stable. Both countries spend more on job incentives in 2009 than in 1990 but spending on training seems to have hardly changed in the same period. However, there are qualitative differences and figure 6-8 also demonstrates that there have been considerable fluctuations over time which also reflect the varying demand for training.

Figure 6-8 **Spending on flexibility-related labour market policies**



[91] OECD data covers 9 categories of labour market policies: public placement services, job training, early retirement, Explanations of the categories used by the OECD can be found at http://www.oecd.org/dataoecd/38/41/42116566.pdf (last accessed in January 2012).



Source: OECD.Stat database (accessed in May 2011).

Japan has been for a long time treated as an anomaly in comparative studies on ALMP because it seemed to combine low unemployment rates with very low spending on labour market policies. Figure 6-8 suggests that public spending has remained extremely low in international comparison and even, despite a noticeable hike, remained relatively moderate even during the 2008 crisis. According to Kume (1995), Japan's high economic growth made it possible that the Japanese state gradually reduced its role in job creation and employment security until the 1960s. After that, the MoL rather established specific agencies with the task of supporting specific groups of workers at risk of unemployment, such as elderly workers. As unemployment has remained at very low levels even during the 1970s, the Japanese government could increasingly adopt "market-oriented" labour policies, that is, instead of spending on job creation and training it began to establish bodies related to the ministries which would advice firms to issues of productivity and technology-adoption. One example for how Japanese governments have tried to address the gap between working conditions in SMEs and large enterprises through advice and practice sharing is the Japanese policies on SMEs. The Basic law on SMEs established in 1963[92] foresaw various forms of support for SMEs such as technological assistance and subsidies. Together with the laws on depressed industries, which allow for direct

[92] A historical overview of major legislative reforms with regard to SMEs can be found at http://www.sme.ne.jp/policies/index.html (website maintained by METI). A list of all laws specifically designed for SMEs can be found at http://www.chusho.meti.go.jp/koukai/hourei/index.html (last accessed in May 2012).

job subsidies, the goal of these policies has been mainly to stabilise employment and to encourage an improvement in the working conditions of workers (see Calder 1988: 312-348). It can thus be said that ALMPs have played an important role in Japan, too although this has entailed much less public spending than in the German case. Moreover, in Japan the approach to encourage certain developments through other means such as consultation and advice has been very important.

Comparison of ALMPs in Germany and Japan

Overall, spending on ALMP confirms that the both the German and Japanese states have stayed true to their roles as facilitator of flexibility-enhancement. Instead of large-scale state intervention one finds mostly targeted spending, supporting either specific groups of workers or industries. Spending patterns also reflect the politics of austerity as the more costly programmes, such as early retirement in Germany have been scaled down and most additional spending on training or job incentives appears to have been temporary. Japan is remarkable in that there are no visible hikes in spending (except for 2009) and in that it spends very little in comparison to its GDP. Even if one leaves the largest component of labour market policies, unemployment compensation, out of the picture, Japan spends less on LMPs than all other advanced democracies except the US. Although some caution is at order since data may be incomplete, this shows clearly that the Japanese state does not intervene directly in labour market affairs on a scale that is common in many Western European countries. On the other hand, Japanese governments seem to be prepared to support specific developments through subsidies more so than some LMEs. In contrast, in Germany ALMP has always played a more prominent role in terms of volume and number of measures. However, if one focuses solely on those measures which have a direct impact on flexibility, then a comparable pattern of reluctant state intervention is visible. With the exception of early retirement, all major reforms have instead been concerned with the issue of unemployment: this applies to the introduction of the employment promotion Act in 1969 (*Arbeitsförderungsgesetz*, *AFG*) that led to a gradual expansion of LMPs and to a shift from skill upgrading towards a reduction of "open unemployment" (Bonoli 2010: 18) as well as to the Hartz reforms which strengthened "activation" through training and work incentives in lieu of "protection" through unemployment insurance.

The differences between Germany and Japan can thus be explained mostly with the fact that unemployment has been a major concern for Germany since the late

1970s and that traditionally different instruments have been used to encourage changes. This conclusion is supported by Bonoli who argues that the variety between national policies stems mostly from the versatility of LMPs: "This results in a fundamental ambiguity which may actually be partly responsible for the success of this policy idea (…) However, lack of clarity makes it difficult to use the notion of ALMP as an analytic tool" (Bonoli 2010: 22). However, with regard to its place in the overall arrangements, it can be said that ALMPs and LMPs have not been major factors for achieving flexibility-enhancement. This seems also to be true for other countries. In fact, where LMPs have been important at least temporarily, such as early retirement schemes in France, Italy or Germany, the size of such policies has decreased sharply since the early 1990s (figure A-4) and this likely reflects the growing costs of such programmes which especially under conditions of austerity are difficult to maintain. In all, neither the German nor the Japanese government have pursued a policy of compensation but rather have followed a strategy of limited interventions and targeted spending.

6.2.4 Conclusion: The state's role in facilitating internal flexibility

The examples of working time regulation and spending on flexibility-related policies, demonstrate both important differences as well commonalities between the German and Japanese systems. On the one hand, the state can play a very different role in the same policy area as is visible with regard to working time: while in Japan it has been mainly state-set targets which have driven the process of institutional change, in Germany the process of working time reduction and later expansion has been relatively autonomous from government interventions. The opposite seems to be true for ALMPs where the German state in terms of volume appears to be much more committed to actively facilitating flexibility-enhancement than its Japanese counterpart. On the other hand, in both countries one finds that the state role appears relatively tamed vis-à-vis industrial relations and corporate forms of regulation. This, once again, confirms the picture of German and Japanese states as facilitators rather than genuine regulatory and policy-makers.

6.3 Regulating low pay in Germany and Japan

Although few scholars would treat minimum wage regulation as a policy that is mainly geared toward internal wage flexibility, it nonetheless constitutes a highly interesting case for studying the implications of a non-liberal labour market

arrangement for state policy and intervention in corporate processes. On the one hand, minimum wage regulation impacts internal flexibility as it limits the scope according to which wages of can be adjusted or set. On the other hand, it can be seen as an extension of welfare and social policy as minimum wages are often set in consideration of social concerns and/or specific considerations such as encouraging workers to seek employment. Most often, however legally binding minimum wages are portrayed as inhibiting a fundamental conflict between wage flexibility (distorting the function of wages as market price for labour) and the social well-being of workers (i.e. protection against poverty). In economics the debate about the economic effects of minimum wages has been intense yet with ambiguous results (for an overview of the discussion see Immervoll 2007): While some argue that wages should be set at the lower end of a socially acceptable spectrum to maximise the number of jobs offered, others find that under certain conditions relative high minimum wages could actually lead to more jobs as higher pay may "activate" inactive workers. Some economists even question that national minimum wages could be an effective instrument for poverty reduction because minimum wages ignore the different motives of workers employed in low-wage jobs. For some such these jobs may constitute a secondary household or individual income which is attractive precisely because it remains below a certain income threshold. Low-pay jobs may also be used strategically to gain work experience after a long absence from the labour market and thus could be, as experts particularly in Germany repeatedly have argued, valuable for finding a better paid job in the future.[93]

Controversial is also the question of how minimum wages should be set (a comparative overview can be found at OECD 1998: 31-79). In many countries government-appointed but otherwise independent minimum wage commissions publish either recommendations or directly impose minimum wages (the UK since 1998). Appointees usually represent organised labour, employers as well as labour market experts. Another common system is to set minimum wages by encouraging

[93] Apart from formal minimum wages, wage ceilings can emerge due to minimum payments from public assistance or other welfare benefits. Especially proponents of "activation policies" argue that welfare negatively impacts the incentive to work if the difference between low pay and benefit level is small. In Germany, many experts thus welcome the active expansion of a low-pay job sector through direct wage subsidies rather than discouraged through regulation, as this promotes labour market participation and reduces dependency on benefits. Such proposals have been highly controversial in Germany as critics fear crowding out of regular jobs due to low-cost competition. Another important factor for effective minimum wages is taxation. Reduced tax rates and social contributions for low income work, for example, can also be instruments to encourage employment through low wages while maintaining a minimum level of social protection.

the conclusion of a country-wide collective agreement or by making the provisions negotiated in existing collective agreements binding for all firms in a particular industry and/or region. In the latter case, systems differ on whether governments can do so autonomously or whether they require the prior consent of unions and employers. Also common is that governments directly impose wage ceilings through statutory minimum wages as in the US. Here, both houses of Congress have to approve any change and there is no automatic price indexation of wages. While the economic effects of minimum wages may be difficult to assess, the political implications of the three approaches are more straight forward. In particular, independent minimum wage councils allow governments to delegate the political responsibility for wage-setting to independent actors and thus to minimise electoral risks associated with any balancing between flexibility and social security. The same applies to minimum standards set through encouraging or extending collective agreements. Here too, governments shoulder only a small part of responsibility since they need to act in unison with labour and capital. In the case of systems that depend on legislation, however, political accountability for minimum wages is immediate and direct and decisions thus tend to reflect political majorities.[94] In terms of electoral risks and political accountability, this kind of mechanism is the most risky.

However, there is little question that minimum wages have become increasingly salient in many advanced democracies as the public has grown more concerned about growing disparities in labour markets. Yet surprisingly, the political motives and consequences of minimum wage regulation have received little attention by political scientists even though they provide valuable insights into how labour markets are regulated and how strong the role of government policy actually is for the whole arrangement.

6.3.1 Setting minimum wages in Germany

Due to its reputation for maintaining a highly regulated economy and worker-oriented system of social protection, it comes as a surprise to many that Germany has had no formal minimum wage mechanism for most of the post-war period. Although recent developments suggest that even the CDU/CSU could support the introduction of a national legally binding minimum wage, the long road to this re-orientation is illustrative of the peculiar political institutional dynamic underlying issues of labour

[94] For example, minimum wages remained unchanged for almost a decade during the presidency of George W. Bush, see Ohashi (2011), p. 11-12.

market regulation in Germany. Formally, the case is different in Japan where minimum wages have been set since 1949 in regional commissions. Yet here too, the tendency to keep state influence to a minimum is visible and political calls for higher minimum wages have emerged only rather recently.

In most Western European countries instruments such as the extension of collective agreements exist which allow governments to declare the conditions set in those agreements binding for all firms in that sector (AVE in Germany). However, models differ on whether government can take the initiative to do so autonomously or whether they rely on employers, unions or both formally applying for such a step. While in some countries, such as Denmark, a strong tradition exists for the state to implement minimum wages through AVEs, in Germany such decisions require a tripartite consensus.

Like in many other European countries, an important part of the regulation of working conditions in Germany depends on industry-wide and regional collective bargaining. For most of the post-war period, the system has been considered fairly efficient with alternative instruments of regulation playing only a peripheral role. This success rested essentially on two pillars: a high rate of coverage of collective agreements and the cooperation between the state, labour and employers in those cases where collective bargaining proved to be insufficient. In many industries collective agreements have deliberately set at moderate wage levels so that "they effectively set a minimum wage" (Schnabel 2005: 191). This allowed firms to negotiate higher wages (*übertarifiliche Entlohnung*) without impacting the provisions of the universal collective agreement. In industries where this was not possible or a number of alternative agreements overlapped resulting in very low wages, unions and employers could together apply for an AVE at the Federal Ministry of Labour. In order for the mechanism to work, however, the applicants had to represent at least 50% of the total workforce in an industry. While in some countries, such as Denmark, a strong tradition exists for the state to implement minimum wages through an AVE mechanism, in Germany the importance of AVEs has declined sharply since the 1990s, often because employer associations no longer support AVE applications. An alternative instrument for setting working conditions and implicit minimum wages is entailed in the MiArbG which gives the Ministry the right to assess the situation in an industry through a designated council and, if deemed necessary, to choose an existing collective agreement as the standard for all firms and workers in an

industry/region. The consent of the social partners is not required, however, the law is limited to cases where organisation rates are not sufficient for a conventional AVE-process and social "irregularities" are apparent enough they would withstand a judicial review. In practice these conditions have rarely been fulfilled so the MiArbG played effectively no role until a reform in 2009.

The effectiveness of this arrangement, however, was increasingly questioned after German unification. It soon became clear that the institutions of West German industrial relations could not be transferred to East Germany as organisation rates on both the labour as well as business side remained well below West German levels. Moreover, a rise in low pay work which was partially promoted by reforms of social assistance (in line with activation policy) and the deregulation of non-standard employment forms in the early 2000s led to an increase in jobs that did not fall under any minimum wage regulation. As a consequence, calls for a change in the regulation of wages and calls for a minimum wage gradually increased. Statutory minimum wages became a major topic in national politics in 2004 when the SPD offered unions them as a token for the unions' support of the labour market reforms (SZ, August 17, 2004). The main unions, however, were divided: while VERDI preferred a comprehensive statutory minimum wage set by the state, the IG Metall feared negative implications on the freedom of collective bargaining and thus preferred a reform of the AVE. Even within the SPD a reform remained controversial with particular the Minister of Economic and Labour Affairs, Wolfgang Clement, expressing his opposition.

When a grand coalition of CDU/CSU and SPD took over in the fall of 2005, the debate about minimum wages intensified. The SPD, battling with dramatically falling support rates due to the unpopular "Hartz reforms", tried to counter the criticism by supporting the introduction of statutory minimum wages. The CDU/CSU opposed most of the SPD's proposal on the grounds that they would impact negatively on employment flexibility and reduce the number of jobs. Both parties compromised by using a provision that was initially used to prevent social dumping in the construction industry through the employment of foreign subcontractors. The *Arbeitnehmerentsendegesetz* (AEntG) of 1996 allowed the Federal Minister of Labour to set legally binding minimum wages on the basis of a collective agreement which includes specific minimum wage provisions. The process itself is identical to AVEs. Gradually the Ministry started to inquire whether other industries would be

interested in being included and until 2009 the act was extended to include a total of 10 industries (e.g. private security firms and building maintenance services) which means it more or less relied on the initiative of the industries themselves.

The "Lehman shock" in the fall of 2008 added to the momentum in favour of statutory minimum wages (see next chapter). Eventually the coalition agreed to strengthen the MiArbG by changing the composition of council entrusted with analysing the working conditions of industries: The Ministry would form now on send an equal number of representatives to the council as labour and employers. This has arguably boosted the political influence on the process although the MiArbG still plays only a marginal role. Also, when the minimum wage was realised for temp agency workers in 2011, it followed the established AVE process with the only exception that it was included in the act regulating temp agency work (*Arbeitnehmerüberlassungsgesetz,* AÜG) rather than the AEntG. Also, it was not the concern for the social well-being of temp agency workers as such that motivated the change of the new CDU/CSU-FDP coalition but the prospects of the ban on freedom of movement in three Easter European EU-countries in May 2011. Like in the construction industry before 1996, minimum wages were meant to prevent "social dumping". This means that despite a growing importance of minimum wages and an gradual expansion of the role of the state, the German minimum wage regime has largely stayed true to the pattern of only marginal state intervention. AVE and related processes still rely on the consent of the social partners and the ability of state bodies to become active are still limited. The regulation of minimum working conditions in Germany also demonstrates just how significant the change, also in institutional terms, would be if statutory minimum wages were introduced in Germany.

6.3.2 Minimum wage legislation in Japan

In formal terms the Japanese minimum wage regime is more comprehensive and more rigid than the German system of standards set by collective agreements which does not cover all industries and workers. Yet when one takes into account its evolution in the post-war period and the details of its application, several similarities are visible. The first act to devise minimum wages was implemented in 1958 (the Minimum Wage Act (MWA) replacing provisions in the LSL that had remained unused (for this section see Sugeno 2002: 242-248). The MWA established minimum

wage councils on the national (the Central Minimum Wage Council, *chuuou saitei chingin shingikai* 中央最低賃金審議会) and on prefectural levels. The central council has no direct legal power to set minimum wages in individual prefectures but for the advises prefectural commissions by issuing annual general guidelines for the development of minimum wages. It is the regional councils, however, that have to establish exact provisions which are then monitored by the regional labour bureau (administrative part of the MoL/MHLW). Before the act, officials tried to encourage certain industries to establish minimum wages through alternative means such as collective agreements which allowed for considerable flexibility.

According to Sugeno even the 1958 act was only possible because of the rapidly improving economic conditions, which coincided with a labour shortage. Both factors made employers less hostile towards the idea of minimum wages. According to Ohashi, international pressure accusing Japanese exporters of unfair "wage dumping" played even a more decisive role than domestic discussions as this threatened to impact Japan's inclusion in the GATT (Ohashi 2011: 17). Nonetheless, the act entailed a clear preference for non-legal and more flexible means: "The principal method adopted for establishing a minimum wage (…) was the so-called 'trade-agreement method' (i.e. based on mutual agreements among business entities of a particular industry and region), which was unheard of in other countries" (Nakakubo 2009: 23). Agreements were set between employers on their own initiative and then declared legally binding by the MoL without any formal participation of unions. This resulted in a patchwork of many limited agreements about minimum wages and created differences even within the same industries and regions. In 1968 the employer-centred minimum wage mechanism was abolished and collective agreement as well as council-recommendations were declared the only legal pathways for setting minimum wages. Yet again, Ohashi argues that it was not domestic pressure that that led to this decision but Japan's obligation to implement an ILO convention on minimum wages. Since labour representatives played no role in "trade-agreements", Japan did not fulfil the formal requirements set out in the convention for active labour participation. Even after the change was enacted, negotiations on minimum wages started only three years later, after Japan ratified the ILO convention. It took until 1976 to effectively establish minimum wages in all prefectures. During this period the central council also took on a more active role to ensure that minimum wages would be established in all regions, by formulating so called industrial

minimum wages which would hold regardless of the regional situation. Once regional councils were in place, the industrial minimum wages took on a new role by ensuring minimum standards only in industries undergoing restructuring. This meant that the central council no longer needed to publish guidelines on all industries.

Since 1971 minimum wages have been typically set by the regional Minimum Wages Councils and collective agreements have played a marginal role due to the specific structure of Japanese enterprise-centred labour unions.[95] More meaningful changes in the minimum wage framework were initiated by the MoL without direct participation of parties or the cabinet. After 1971 regional Minimum Wage Councils were set up and regional minimum wages gradually introduced. Unions, however, repeatedly campaigned for a national minimum wage framework which would reduce differences within industries and across regions, in particular in newly emerging industries with low unionisation rates. To this the central Minimum Wage Council responded in 1978 by grouping all prefectures into four groups representing different levels of socio-economic development and recommending specific "minimum wage targets" for regions that would minimise disparities between prefectures. For instance, in prosperous regions such as Kansai (Osaka and surrounding prefectures) and Kanto (Tokyo and surrounding prefectures) minimum wage targets were higher than in the in the fourth group that included Tohoku (prefectures in the North-East of Honshu) and Okinawa. Regional labour offices and wage councils nonetheless remained in charge of setting the actual wage so some degree of variation between regional wages remained. The new system was initially welcomed by employers and unions and thus unanimously approved guidelines were published. Yet after few years this consensus fell apart and the process on the national level became increasingly polarised. Competition between the demands by employers and unions became so intense that the Central Minimum Wage Council can since only publish "opinions" by its public interest members (usually academics) rather than guidelines that were backed by a majority of all members (Nakakubo 2009: 24). The experts usually base their recommendation on data on the average wage development prepared by the MHLW. In 1981 the Central Minimum Wage Council started to introduce industry-specific minimum wages where deemed necessary to avoid unfair intra-regional competition and to facilitate the

[95] As of 2008, there were only about 500 workers covered by minimum wages set in collective agreements and declared binding by the labour bureau, see Nakakubo (2009), p. 25.

coordination between national and regional minimum wage mechanisms. Industry-specific minimum wages, however, have never been comprehensive in their coverage (in 2000 about 4,5 million workers were subject to industrial minimum wages while 52 million workers were covered by regional minimum wages, see Kawaguchi and Mori 2009: 7). Moreover, industrial minimum wages are not set on a regular basis and it depends to a large extent on the regional labour bureau whether they are enforced. The relationship between central and regional councils is also interesting because only regional councils are required to reach unanimity in their decisions while the central council can choose to publish "opinions" since it provides mostly non-binding recommendations. This certainly has contributed to the fact that employers and unions means have used the national council mostly a platform to demonstrate their commitment to their constituencies. This is not the case on the level of prefectures.

Until 2007 when a reform was eventually adopted, the legislative framework remained stable and public interest in the minimum wage system remained low. Before 2007, regulation was also characterised by lax enforcement of rules which, arguably, constitutes an additional source of employment flexibility. For example, violations of minimum wages were fined only with 10.000 Yen (95 EUR). Moreover, the process of setting wages had largely evolved under guidance from the MoL. This means that the process of setting minimum wages is until 2007 representative of the overall regulatory framework in that it does not formalise provisions, does not rely on the commitment of the social partners or require a active role of the state.[96]

Yet the developments since the late 1990s indicate, on the other hand, that this may be now changing. The fact that Prime Minister Shinzo Abe publicly approved of substantial increases in the minimum wage in 2007 demonstrates that politics can play a decisive role. Even though Abe had initially proposed more flexible labour market regulations, the long period of low economic growth since the early 1990s, the 1997 Asian crisis and the debate within the LDP about the social costs of the "Koizumi reforms" made it difficult to pursue such a strategy. Contrary to Abe's intentions, minimum wages were now discussed as a means to counter the emerging poverty problem of the so called "waakingu pua" (from the English expression Working Poor). The growing salience of minimum wages in Japan is also visible in

[96] As a percentage of gross average earnings (numbers from 2005/2006), Japanese minimum wages are by the lowest among advanced democracies barely reaching 28%, while they are well above 30% in all other countries, c.f. Hurley (2007), p. 3. See also annex b, section 10.2.

that the DPJ in 2009 promised a rise to about 1.000 Yen per hour (app. 8,70 EUR), to be implemented within a "reasonable time frame". This indicates that macro politics has become more important for minimum wages – just as in Germany- and that this issue will increasingly fall under the a process of high salience politics. Nonetheless, formally the minimum wage councils were not told to adopt specific minimum wage targets but chose to follow the political calls for a rise. This means that the reforms have not yet brought about permanent changes to the regulatory structure.

Conclusion minimum wages

In both countries minimum wages have become major topics in national policy debates since the 1990s. This clearly indicates a phase of high salience politics although more far-reaching formal changes have not been implemented yet. Changes since 2000 have been mostly in line with previous regulations and, most importantly, have not altered the role of governments in the process. So despite the growing attention the regulation of low pay has been receiving in both countries, the regulation of minimum wages still resemble a pattern of peripheral state involvment and flexible adaption and application of rules. In addition, the systems in place either lead to very low minimum wages as in Japan or to a patchwork of agreements like in Germany which are temporary, industry-specific and cover relatively small groups of workers. Also, in both cases it is unclear to what extent employers face restrictions if they do not comply with those rules. Even more importantly, the development of both systems appears to confirm the tendency of the state in Germany and Japan to maintain a low profile in regulation. Although the political pressure to intervene has clearly increased in both countries and the need for universal regulation has arguably increased due to decentralisation and growing institutional heterogeneity, this has not yet led to a major rupture of the system but rather to a moderate institutional evolution.

6.4 Conclusion: Dualisation and growing regulatory heterogeneity

The evidence discussed in this chapter implies a process of multiple dualisation which concerns not only jobs but also industrial relations and regulation. On the one hand the demands of employers for more flexibility seem to have been served better since they have profited from wage moderation (and thus lower costs) and the facilitation of non-permanent jobs which has increased employment flexibility in all dimensions. At the same many firms continue to profit from the economic advantages

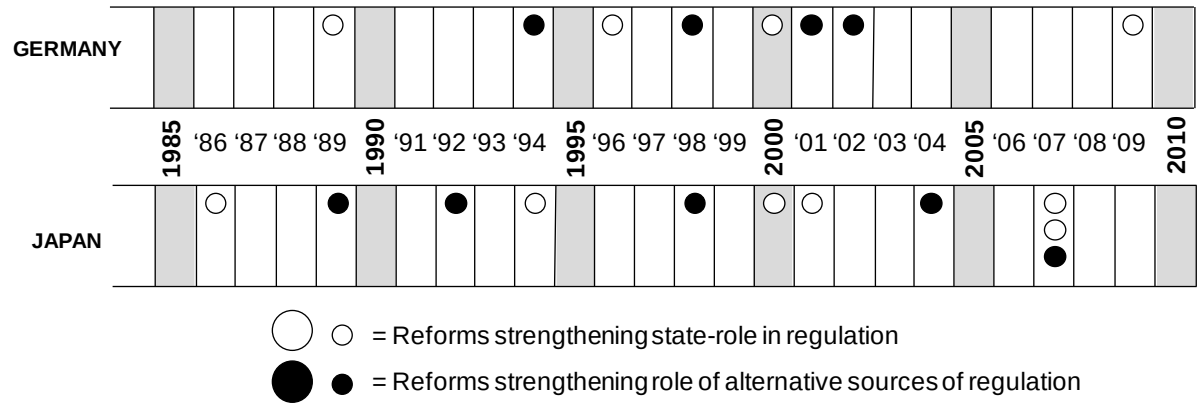
of long-term employment and traditional non-liberal skill-acquisition regimes. However, within business it appears that not all firms have been served equally well. The growing number of defections from the traditional systems of industrial relations is one indicator for this discontent. Yet, firms which support the traditional framework seem to have at the same time consolidated the institutional foundations for labour-business coordination even further. Regular workers in these firms tend to be fairly content with these arrangements as well. At the same time, workers who are not integrated to the same extent as traditional core workers, appear not only disadvantaged with regard to pay, training and social welfare. They are face disadvantages with regard to their integration in regulatory processes. At enterprise-level they remain outside most bodies of management-labour consultation and on the industry level, unions are mostly concerned with wage setting for regular employees.

As for the implications for legislative politics it can be said that the substantial flexibility gains of firms on the corporate level and on the level of collective bargaining has clearly impacted calls for more comprehensive legislative reform. The pressure on governments to enhance flexibility through further legislative reforms has subsided due to the substantial institutional change below the legal provisions and outside legislation and macro policy-making. If one also considers the timing of reforms and of changes at the micro and meso levels it becomes evident that legislative reform has rarely been the main driver of institutional change. With the exception of non-regular employment where deregulation has clearly led to a drastic expansion of non-regular jobs (although a substantial part of the existing regulation was due to case law and not macro politics), the main relationship has from the micro and meso to the macro level. In other words micro and meso LoRs have clearly influenced legislative activity as well as inactivity in both countries. This is visible in the attempts of German and Japanese governments to stabilise non-legislative forms of regulation but also in their great tolerance for regulatory heterogeneity and non-compliance (e.g. fragmentary coverage and enforcement of collective agreements). Figure 6-9 indicates that reforms which strengthen meso and micro regulation outnumber reforms which have strengthened labour law and legislation (see also tables C-10 and C-11). In Germany the introduction of the AEntG in 1996, the 2000 reform of the part-time act (TzBfG) and the reform of the MiArbG are all cautious steps toward an enhanced role of the state and legislation in balancing flexibility and

protection. In all, however, they do not represent a major re-orientation of German labour politics toward a stronger role of state-induced regulation. In Japan the willingness to stabilise corporate forms of consultation, coordination and regulation is largely constrained to working time and the resolution of individual labour disputes. Yet even in these two cases the state does not occupy a dominant role but rather seeks to support the settlement of disputes and goal attainment through alternative channels. Moreover, even those changes that signal a stronger state role, such as the MWA reform in 2007, have in the majority been so ambiguous in their practical implications that they confirm rather than challenge the pattern of reluctant state intervention identified earlier.

In more abstract terms, the findings confirm the argument made in chapter one that regulatory decisions on one level of LoRs "communicate" with those on others and that this linkage is also used strategically. Surprising is however that interaction effects do not require formal and central steering, consultation or concertation unlike studies on social pacts often assume. This de-central process of adaptation and dissemination is challenged only when key interest of actors are concerned. The strongest evidence for this is that policy debates, legislative reforms and developments in collective bargaining and leading industry sectors always acknowledge the developments on other regulatory levels. Yet, in most cases legislation seems to follow the lead of lower LoRs and only rarely is a path for change set through reform. Even when the latter is the case, it is more likely that changes will be implemented through encouragement than enforcement. This suggests that labour market reforms are not only difficult to implement due to electoral risks they entail but also because a change would require a major change in the relevance of state regulation. In particular, it would require more autonomy of politics and the state from alternative regulatory sources but this has not been the case at least until 2008.

Figure 6-9 **Legislative changes affecting the Locus of Regulation (LoR), 1985-2010**



Source: Author's own. See Annex C, tables C-10 and C-11 for details.

7. Dualisation and the financial crisis of 2008: A case study

> "The weak response of unemployment to the decline in aggregate demand reflects the high degree to which Japanese firms have held on to their workers during the downturn. To an important extent this can be explained by the relative flexibility of hours and wages in Japan."
>
> "With 1.5 million workers participating in this scheme at its peak (…), *Kurzarbeit* indeed played a significant role in cushioning the extent to which [a] 5% fall in GDP translated into higher unemployment. (…) average hours reductions in Germany also results from other institutional arrangements that encourage 'internal adjustment' (…)."
>
> OECD (2010: 44; 74)

This third analytic chapter analyses the response of German and Japanese governments, parties, firms and unions to the global financial crisis that began in late 2008. It is often argued that underlying dynamics governing social entities are especially visible in times of crisis, yet crises can also be a turning point like the Second World War or the Oil crises of the 1970s have been for the development of welfare in Germany and Japan. Another interesting aspect about the 2008 crisis is that it seems to confirm the argument of economic efficiency of non-liberal institutions in Germany and Japan which allow for a considerable degree of flexibility. However, the crisis is also remarkable in that it led to a polarisation of labour market policy which had a major impact on the general elections in 2009. Although by international standards Germany and Japan did not experience an employment crisis, labour market issues, re-regulation and labour market dualism became highly salient issues in policy discussions and the media. This raises the question whether the reformed institutional arrangements may have lost their political functionality and whether this in turn may lead to more institutional change, which this time, however, is motivated mainly by political concerns.

For these reasons, the crisis can be seen as a case in point to study the impact of institutional change established in previous analyses for current and future developments. As in both countries general elections were held in 2009, the campaigns offer valuable clues on how parties have responded to rising salience of dualisation and regulation. This chapter will begin by analysing the political dimension of the crisis by comparing the electoral manifestos of the main parties in both countries. Aim is to determine whether the political salience of labour market issues has reinforced a pattern of partisan difference and polarisation or whether the crisis has led to a narrowing of positions which would allow for a politics of partial re-regulation. In the former case, this would imply that current arrangements are not as politically *functional* as in the past. In the latter case, chances for a coordinated approach may be higher since different actor may be able to find common ground on formulating policies and coordinating measures with the other main stakeholders. The second section evaluates the initial policy response, that is, measures taken by German and Japanese governments in response to the impact of the crisis on employment and assesses them on the basis of whether they indicate institutional change in the regulatory framework (i.e. a stronger state role in regulation), reflect established policies seen in the past and address the two-fold dualism of the previous two decades (e.g. re-regulation at the expense of labour market flexibility).

To illustrate the extent of (potential) institutional change and the relevance of political-strategic considerations, it will then trace the process of two pieces of legislation in some detail, that is, the introduction of a statutory minimum wage in Germany and the abolishment of temp agency work in the manufacturing sector in Japan. In the final section it will also look at how large firms and the industrial partners have responded to dualism in the aftermath of the crisis to assess to what extent a non-legislative re-orientation is observable. Although not directly related to the issue of flexibility enhancement, the crisis and the political, industrial and corporate responses to it offer the opportunity to understand how the more flexible labour market arrangements work in practice and to what degree firms, unions and governments are prepared to compromise on flexibility when the social costs of the new arrangements become visible and politically salient.

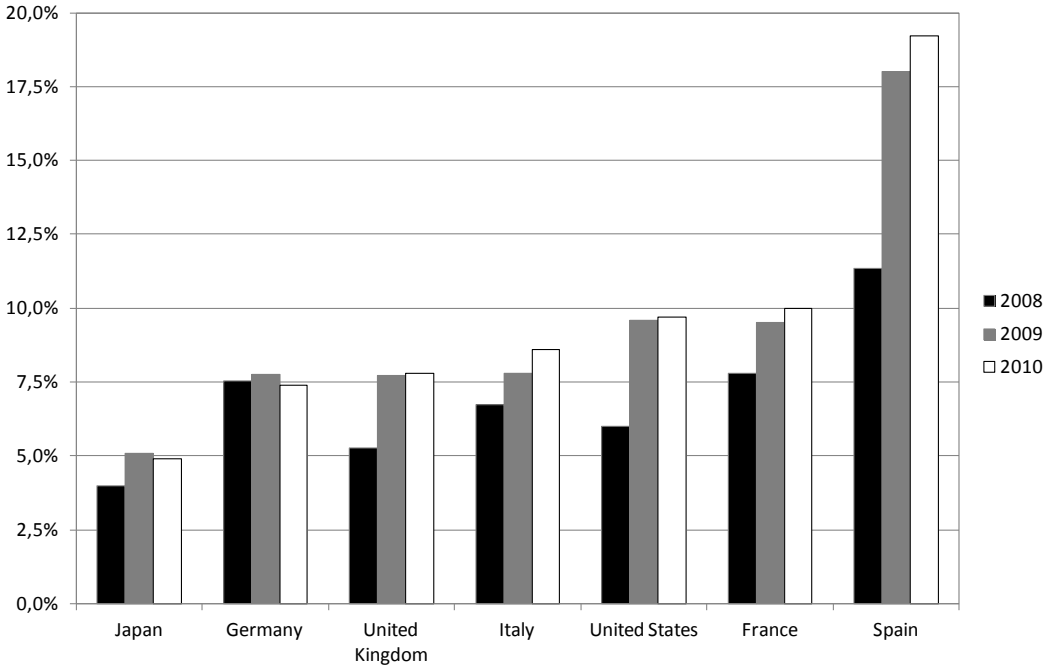
7.1 The analytic opportunity of economically challenging times

Despite the drastic fall in GDP at the end of 2008, Germany and Japan avoided a major rise in unemployment and even experienced a relative rapid upswing in employment (figure 7-1). It may be that expectations were low given the dramatic GDP contraction in late 2008 (see figure A-29) that many were taken by surprise but it probably is also connected to the conventional wisdom that the economic development in Germany and Japan had been rather negative for most of the 1990s and 2000s. Yet the focus of comparative research now changed toward the positive aspects of the German and Japanese political economies with several studies exploring the causes for this relative success. Some scholars argue that Germany and Japan, unlike the UK, the US or Italy, simply were fortunate to host a large export-dependent industrial sector which rebounded quickly thanks to steadily growing demand from mainland China (which hardly budged). The economist Paul Krugman[97] for instance argues that the dominance of specific industries mostly explains why countries such as Germany and US-states like Michigan proved to be rather resilient.

For labour economist Joachim Möller (2010) the relative stability of employment in Germany can be best explained with the fact that large firms had in cooperation with works councils and trade unions build up a temporal flexibility reserve consisting mostly of *Zeitwertkonten* (working time accounts). Such accounts enable workers and firms to build up a temporal and wage reserve in times of high economic demand and use it for instance for early retirement or for working time reductions in periods of low demand. One crucial advantage of this instrument is that firms enjoy additional temporal and wage flexibility (though this depends on the specifics of enterprise agreements) in economically difficult times without having to resort to dismissals. All studies have in common, however, that they credit the relative success to a highly effective interaction between corporate and public measures and institutions in both countries. This confirms the argument developed in previous chapters that non-liberal flexibility strategies can offer economic benefits and thus are valued by all main stakeholders.

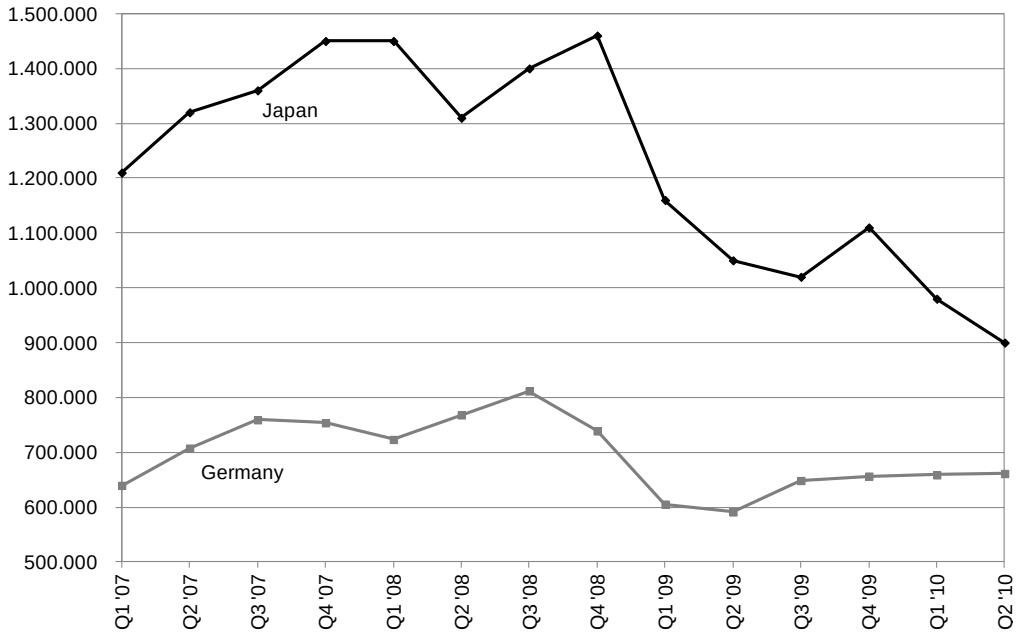
[97] Source: http://krugman.blogs.nytimes.com/2010/06/27/a-brief-note-on-german-unemployment/ (accessed in November 2011).

Figure 7-1 **Unemployment during and after the global financial crisis of 2008**



Source: OECD (2010): Labour force survey. Data for 2010 is average of first quarter.

Figure 7-2 **Number of temp agency workers in Germany and Japan, 2007-2010**



Source: MHLW (2010): Labour Force Survey (*Roudou ryoku chousa)*, Bundesagentur für Arbeit (2010): Leiharbeiterstatistik. Germany 2010 estimates only. Excludes Japanese registered-type temp agency workers.

Although the relative success of Germany and Japan with regard to unemployment was widely acknowledged internationally, the domestic discourses instead turned to the social costs of labour market dualization. In the general election campaigns of 2009 (Japanese LH-elections took place in August and German BT-elections in September) employment policy and re-regulation became prominent

topics - despite the fact that viewed from the outside, Germany and Japan did not experience a major employment crisis.

This suggests that the crisis may become an exogenous shock to the German and Japanese labour market arrangements as it suddenly increased the salience of labour issues and thus put pressure on parties and governments to deal with labour policy directly. The 2008 crisis therefore is particularly instructive to see to what extent the dynamics identified in the two preceding chapters change in periods of high salience politics.

7.2 Partisan politics and the impact of the global financial crisis 2008

The response of the German and Japanese states included to a large extent measures that matched corporate efforts such as an expansion of short-work, job subsidies and even programmes to spur private demand such as car scrapping schemes. Unions in both countries had contributed to wage flexibility by accepting the postponement of wage rises and/or a cut in bonuses. Yet the 2008 crisis also revealed to a wider public several social problems connected to non-regular jobs that many had not been aware of. In particular, national media reported widely on the dramatic decline in non-regular jobs, especially for temp agency workers. Moreover, problems with inadequate regulation of working conditions of temp agency workers and conflicts between core and non-core workers became increasingly subject to public debates. The drastic impact of the crisis on temp-agency workers is visible in figure 7-2: in Japan the number of workers fell from 4.5 million in mid-2008 to about 2.5 million in mid-2009, if one includes so called registered-type or *touroku haken* 登録派遣, and from 1.5 million to 900.000 if one considers only regularly employed temp agency workers. In Germany almost a third of temp agency jobs disappeared by the end of 2008 (figure 7-2) despite the fact that most held open-ended work contracts. The difference between non-regular and regular jobs is particularly striking when one considers that German and Japanese employment models are normally as numerically rigid.

Against this background it is not surprising that public attention for the fate of non-regular workers increased in 2008 markedly and that political parties responded to the growing salience of labour market dualization in the general election campaigns 2009. This is also visible in the fact that in the Japanese electorate there was a major shift in preferences: polls conducted for Nikkei (July 23,

2011: 2) showed that in 2009 employment was among the top three concerns for voters, and the second most important concern of voters in their 20s (the other two topics being social security/pensions and economic development).[98] In Germany employment issues have always been a major concern for voters due to the prominence of the "unemployment problem" since the 1980s. However, even here a noticeable increase in salience is visible with roughly half of voters calling it the top priority for a new government in 2009. However, qualitatively a change is visible because the number of respondent calling employment a major issue dropped significantly when compared to 2005. However, this can be best explained by a marked decrease of unemployment.[99] The next sections will show that in Germany too public attention shifted clearly to the question of non-regular work and labour market dualization.

In Japan the DPJ made employment one of its central campaign issues. In its electoral manifesto entitled "regime change" (*seiken koutai* 政権交代), the party promised to „to re-balance the excesses of deregulation in order to improve the stability of the daily lives of workers."[100] Among the specific policies the manifesto envisioned were a general ban of temp agency work in manufacturing, a ban on temp agency work with contracts of less than 2 months and "day temp agency work" (*hiyatoi haken* 日雇い派遣), the implementation of a general principle that ensures equal treatment of temp agency workers with "comparable" workers (派遣先労働者), and a provision which would allow temp agency workers who have been employed beyond the legal limit for such work, to declare themselves directly employed by the firm where they work. In addition the DPJ promised to improve unemployment insurance (*koyou houken* 雇用保険)[101], so that unemployed workers would be able to continue paying their premiums for health insurance. The DPJ also promised to raise

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98 In 2009 more than 40% of all survey respondents cited these three issues. A comparison with the same Nikkei poll shortly before the 2005 election (Nikkei, August 28, 2005: 2) shows that employment was not even among the top 5 concerns of voters then. A note of caution is at order here, however: Nikkei did not report the number of people surveyed although it claimed the survey to be representative.

99 Compared to the 2005 election, however, the number was down by almost 39%. Nevertheless it still stood at about 50%, see Infratest Dimap (2009), p. 36. The same survey shows that the economic crisis was the second biggest concern, mentioned by 41% of respondents.

100 "雇用にかかわる行き過ぎた規制緩和を適正化し、労働者の生活の安定を図る." Source: http://www.dpj.or.jp/ (accessed in May 2011). The sudden salience of dualism is also visible in the fact that the DPJ did not refer to it in previous elections. The 2005 manifesto describes the gap between regular and non-regular employment mainly from a gender perspective which requires more child-care facilities. Source: http://www.dpj-kochi.jp/2005seisaku.pdf (accessed in November 2011).

101 "The financial basis of the unemployment insurance is to be strengthened in line with employment diversification." "雇用保険の財政基盤を強化するとともに、雇用形態の多様化に対応する。"

the statutory minimum wage to a national average of 1.000 Yen per hour. The unusual action of three opposition parties meeting prior to the election and working out the details on concrete labour market reforms to be implemented once elected, indicates the unprecedented prominence of labour and employment for the election. The DPJ, the SDP and the People's New Party (PNP) agreed in the first half of 2009 that a coalition government would ban temp agency work in manufacturing and take steps to expand the safety net for workers (Nikkei August 18, 2009; Asahi May 13, 2009). According to media reports not only the fact that these meetings took place was almost unprecedented in recent Japanese political history but that opposition parties made concrete legislative promises. When considering other left-of-centre parties one finds that the SDP and JCP manifestoes were particularly explicit on labour market dualism. Moreover, they reflected all major issues that had been discussed since the late 1990s such as the rise of the disparity society (*kakusa shakai* 格差社会), the emergence of the working poor and mistreatment of temp agency workers. Both parties envisioned changes to regulations governing fixed-term, temp agency and part-time employment in order to restore "worker dignity", to facilitate the transition into regular jobs and to "stop the deterioration of employment".[102]

Even the LDP addressed dualisation in its manifesto although a more thorough reading reveals subtle differences. The LDP's manifesto (entitled "Improving. Expanding.", 改めます。伸ばします。) called for a ban to "day temp agency work"[103], and a "revision of the temp agency law", yet it did not provide specifics on planned legislative action. In contrast to the DPJ, however, it emphasised a sound economic development and improvement of job placement services as the most important steps for improving the labour market and working conditions. However, news reports indicate that within the LDP voices critical of comprehensive re-regulation became stronger even before the election so that re-regulation cannot be considered a major concern for the party. The CGP very much followed the example of the LDP

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[102] Quote from the SDP „manifesto": "パート・契約社員・非常勤・嘱託・派遣など有期雇用を正規雇用に転換し、雇用の劣化を防止します。" Sources: http://www.sdp.or.jp/ and http://www.jcp.or.jp/ (last accessed in May 2011). The JCP's manifesto also strongly mirrored issues connected to dualisation and entailed very similar proposals.

[103] "In particular, we plan for non-regular workers in unstable employment environments a ban on „daily temp agency work, to promote a change toward permanent employment, and a 'revision of the temp agency law' to create a better work environment. In addition we prepare an 'employment safety net' which concerns, among other, vocational training as well as placement." "特に不安定な雇用環境にある非正社員の方のために、日雇派遣の原則禁止、雇用の常用化促進など、働きやすい環境を作るための「労働者派遣法の改正」を行います。職業訓練や職業紹介など「雇用セーフティネット」も準備します。". Source: http://www.ldp.or.jp/ (last accessed in May 2011).

by emphasising vocational training and placement as main elements of a "safety net" for workers while not proposing any specific measures or any sort of re-regulation of non-regular work. Only on the question of temp agency work in manufacturing, the CGP promised to review the issue within the first year of government, "considering the opinions of stakeholders".[104]

In Germany, the SPD faced a strategic dilemma since it was widely seen as responsible for creating/aggravating some of the social problems of labour market dualism that it now criticised. Within the party differences between supporters and opponents of reforms under the second Schröder cabinet were very visible and let even to prominent departures from the party such as Wolfgang Clement, the former "super-minister" of economics and one of the most outspoken supporters of Schröder's labour market reforms. The 2009 manifesto, entitled "Sozial und Demokratisch. Anpacken. Für Deutschland. ",[105]mirrors this latent conflict to some extent. On the one hand it mentions the success of several reforms implemented under the former red-green coalition, especially related to placement but it also acknowledged the need for re-regulation of non-regular work. Particularly noticeable is also the vision of a more extended state role with regard to working conditions. Among other, it demanded that temp agency workers should be treated according to the "equal pay" principle sooner than in the current setting and the re-introduction of a temporal limit of 15h per week for marginal jobs (*Mini-Jobs*). Its main proposal, however, concerned the issue of minimum wages and working conditions: "Wir werden in möglichst vielen Branchen allgemeinverbindliche tarifliche Mindestlöhne ermöglichen. Und wir werden überall dort Mindestarbeitsbedingungen vorantreiben, wo die Sozialpartner dazu aus eigener Kraft nicht mehr in der Lage sind. Unser Ziel ist ein allgemeiner gesetzlicher Mindestlohn (…) Eine Mindestlohn-Kommission soll ihn festsetzen." For the SPD the manifesto hints a re-orientation in labour politics, because it had not addressed the issues in this way before. There is also a clear difference to the CDU/CSU manifesto which emphasised that existing instruments were sufficient (such as the MiArbG) to address social hardships suffered by workers and that a statutory minimum wage was not needed. Instead, the manifesto states

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[104] Instead of "day temp agency work" the manifesto singles out registered-type temp agency work: "製造業における派遣登録型派遣労働の在り方については、関係者の意見を踏まえ 1 年程度をめどに検討を進めま官。" With regard to the equal treatment of regular and non-regular workers, the manifesto promised better protection for non-regular workers through better access to "social security", mentioning pensions, health insurance and unemployment insurance. Source: http://www.komei.or.jp/ (accessed in May 2011).

[105] Source: http://www.spd.de/ (accessed in May 2011)

that autonomous industrial relations should always be the primary regulator and its role for regulation of working conditions should be strengthened by government policy as much as possible.[106]

As in Japan the smaller parties for the most part took more pronounced positions to the left and right of the two main parties. The FDP's manifesto emphasises that for the FDP the state was already intervening too much in labour affairs, e.g. by enforcing minimum wages in some industries and through overly rigid unemployment protection which should be applied only to firms with more than 20 employees. Furthermore, workers should get the option of opting for severance payment instead of a notice period.[107] Noticeable about the FDP manifesto is also that it is the only one that does not mention labour market dualism or non-regular work. The manifesto of the Greens includes demands for genuine "equal treatment" of temp agency workers with regular employees and a reform of social security so that "precarious forms of work" reach a similar level of protection as those of regular employees.[108] Similar to the JCP in Japan, the manifesto of the left party *Die Linke* entails the most far-reaching vision of labour market re-regulation. This includes the demand to abolish low-pay jobs (*Niedrigeinkommen*), re-regulating all forms of non-regular employment and the introduction of a universal statutory minimum wage of 10 EURO/h (about 1.100 Yen).

Although electoral manifestoes should not be confused with binding and concrete policy plans as they resemble mostly a catalogue of maximum policy goals, they are indicative of the importance parties attach to specific topics and of the salience of the issues overall. The 2009 campaigns stand out because for the first time almost all major parties feel the need to address issues of labour market dualism. Moreover, the comparison of party positions indicate a relatively clear divide between right-of-centre and left-of-centre parties. The contrast is even starker when one considers the manifestos in earlier elections. For instance neither the SPD

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106 Instead it advocates subsidies for low-pay jobs. "CDU und CSU gewährleisten Mindesteinkommen für alle in Deutschland. Das für ein menschenwürdiges Leben notwendige Einkommen sichert nicht ein einheitlicher, gesetzlicher Mindestlohn, sondern, wo dies erforderlich ist, eine Kombination aus fairen Löhnen und ergänzenden staatlichen Leistungen." Quote from manifasto entitled „Wir haben die Kraft. Gemeinsam für unser Land." Source: http://www.cdu.de/ (accessed in May 2011)

107 „Die Tarifautonomie muss vor staatlichen Lohndiktaten geschützt werden. Statt Mindestlöhnen brauchen gerade Mittelständler flexiblere Regelungen. (...)Wenn die Belegschaften und Arbeitgeber vom Tarifvertrag abweichende Regelungen wollen, muss Ihnen eine entsprechende Vereinbarung auf betrieblicher Ebene ermöglicht werden, und zwar ohne dass eine Zustimmung der Gewerkschaften und der Arbeitgeberverbände erforderlich ist." Quote from manifesto entitled „Die Mitte stärken. Deutschlandprogramm 2009." Source: http://www.fdp.de/ (last accessed in May 2011).

108 Manifesto entitled "Der neue grüne Gesellschaftsvertrag". Source: http://www.gruene.de/ (accessed in May 2011). The manifesto of *Die Linke* was retrieved from http://www.die-linke.de/

in Germany nor the DPJ mention labour market dualism in 2003 or 2005, although in case of the SPD a gradual acceptance of the need for statutory minimum wages is visible even though they are not specified as much as in the 2009 manifesto. This shows that the global financial crisis has increased the salience of labour market considerably in both countries and that this has forced the whole political spectrum to formulate positions.

To understand to what extent this growing salience of labour market dualism has led to different policy and a greater role of macro politics the next section will first take stock of the employment policies German and Japanese government adopted in response to the crisis and it will then trace the decision-making process for two initiatives that received particular attention in the campaigns of 2009, the ban of temp agency work in manufacturing in Japan, and the introduction of a nation-wide minimum wage in Germany.

7.3 Saving the male breadwinner: The initial response

Without doubt the prime concern of governments around the world in the immediate aftermath of the Lehman-shock has been employment stability. Many countries introduced or expanded short work schemes (which allow firms to reduce hours and wages of employees, while employees receive a partial compensation from the state) yet only in few cases did the policy succeed in stabilising employment on such a great scale as in Germany and Japan. One reason for this may be that short work schemes were already in place in both countires when the crisis struck and only had to be expanded once demand for it grew. One can thus expect that the state, employers and unions all had some experience with the instrument. Short work subsidies (*Kurzarbeit*) are available in Germany since 1956 and since 1975 in Japan (Employment Adjustment Subsidy, EAS, *koyou-chousei josei-kin* 雇用調整助成金). In 2008 both schemes were expanded by lowering eligibility criteria so more firms and employees could benefit from the subsidy. However, they success of the measure also depended on matching measures and institutions on the corporate level and in industrial bargaining. According to analyses conducted by the OECD around one third of this reduction was achieved through short work schemes financed by the government (table 7-1) – the importance of the subsidy is alss visible in the fact that the number of workers receiving wage compensation rose from 180.000 to 1.4 million by early 2009 in Germany and from about 3.000 in the first half of 2008 to

more than 2.5 million in mid-2009 in Japan (see annex A, section 9.10). However, another third of working time reduction was achieved through enterprise-level negotiations and another 30% by overtime reduction - which usually also requires an enterprise agreement between management and labour representatives. In addition, short work also provided employers with some leeway to cut wages (wage flexibility), plus the level of bi-annual bonuses in Japan were adjusted swiftly (Steinberg and Nakane 2011).

Table 7-1 **Adjustments faced by insider workers during the global financial crisis**

	Germany	Japan
Short work	▪ 25% of working time reduction due to government-aided short work program (*Kurzarbeit*)	▪ between 16 to 30% of overall working time reduction due to short work scheme (*EAS*)
Corporate working time reduction	▪ 40% due to negotiated working time reductions	▪ between 16 to 30% due to negotiated working time reductions
Overtime reduction	▪ 20% due to cut in overtime	▪ about 30% due to cut in overtime
Labour costs	▪ wage reduction due to short work (partial compensation for workers)	▪ wage reduction due to short work (partial compensation for workers) ▪ minor decrease in bonuses

Source: OECD (2010: 44-46, 74-75)

Table 7-2 **Measures in support of outsider workers during the 2008 crisis**

	Germany	Japan
Employment stabilisation	▪ Subsidies and training opportunities for low-wage earners are temporarily expanded ▪ Short-work expanded to temp agencies	▪ Employment Adjustment Subsidy Act (EAS) is expanded twice ▪ Similar program for SMEs (Employment Stability Subsidy) is introduced
Labour law	▪ Legal framework for working conditions of temp agency workers changed ▪ Re-calibration of fixed-term employment	▪ Minor changes regarding the use of temp agency workers
Social protection	▪ No major change	▪ Unemployment insurance eligibility criteria for non-regular workers relaxed

Sources: Heinrich (2010), MHLW (2009), OECD (2009a).

In Germany postponements of scheduled wage hikes agreed in collective agreements played a similar role in temporarily increasing wage flexibility. As in Japan the complementarity of measures on different levels proved highly effective. Spending on short work, however, remained the largest direct state intervention and this is true for the grand coalition as well as of the new Christian-democratic –liberal coalition. This means that the bulk of measures targeted regular full-time

employment which in both countries still resembles to a large extent the traditional male breadwinner model (see chapter six and annex A, section 9.6). Interestingly, however, none of the measures required the conclusion of formal tripartite pacts on the national level. Even though in both countries representatives of business, unions and the government met regularly and discussed the situation this contributed mostly to information sharing and the for implicitly coordinating efforts. However, these conversations were clearly much less institutionalised and important that the institutions of tripartite cooperation that emerged after the Oil crises in the 1970s. This confirms the finding of previous chapters that the institutional arrangements in Germany and Japan do not require a national consensus or macro-political coordination of measures. Instead the existing institutional frameworks can be employed for specific measures fairly easily.

With regard to measures targeting non-regular workers (table 7-2), it is interesting to note that all four governments in the period under investigation more or less resorted to policies already in place or which had been used in earlier crises. In Japan for instance the MHLW continued its strategy of supporting job stability through targeted spending programmes or subsidies. One example is the introduction of a subsidy specifically aimed at temp agency workers. Under the programme firms were encouraged to offer jobs to temp agency workers who were close to the end of their work contract.[109] In 2010 the government even considered to expand the programme by offering (temporary) tax exemptions to firms employing their temp agency workers directly. The German government implemented specific measures targeted at non-regular workers relatively late. Only once the grand coalition decided to expand the short work scheme a second time did it entail a provision that made temp agencies eligible for the scheme. Also, the measure also made it easier for workers in "unstable jobs" to benefit from publicly funded and ramped up training programmes. In contrast, the new CDU/CSU-FDP coalition showed notably less enthusiasm for policy intervention and re-regulation. For instance it rejected legislation supported by the opposition to ban temp agency

[109] In Japanese called *haken roudou-sha koyou-anteika tokubetsu shourei-kin* (派遣労働者雇用安定化特別奨励金). See MHLW webpage for more information http://www.mhlw.go.jp/bunya/koyou/other34/dl/03.pdf (last accessed in November 2011). The program was put into effect in February 2009 and is limited until 2015.

work in manufacturing and to introduce an effective equal pay clause for temp agency workers.[110]

Apart from job subsidies and tax reductions for companies hiring disabled and elderly workers, Japanese policies were very similar to those in Germany and other advanced democracies. It could thus be argued that the Japanese governments did not do much more than to support and encourage decentralised adjustment processes. Both Japanese governments reacted to obvious shortcomings of the existing system but did not implement a major re-orientation. A clear indication for this is that the new DPJ government did go beyond those measures that had already been prepared under the previous government. All of the measures mentioned in tables 8 and 9 were either devised or implementd by LDP-led governments in this period. Moreover, the two DPJ cabinets after the election failed in implementing one of the DPJ's central election campaign promises, namely the ban on temp agency work in manufacturing. Hence, as in Germany, there were very few permanent legislative changes nor was there a major change to hierarchy of LoRs. In contrast to the manifestos which indicated a clear difference between the main parties, the partisan difference between the outgoing LDP-led and incoming DPJ-led cabinets look much smaller when one considers their policy outputs.

7.4 The medium-term response: Tamed re-regulation in Germany and Japan

Considering that the 2009 election in Japan led to a historic defeat of the DPJ and wide support for the DPJ, the result is surprising. In Germany the election led to a partial change in government with SPD being replaced by the FDP as the junior partner to the CDU/CSU. Most scholars would evaluate the new German conservative-liberal coalition as being considerably closer to the interests of employers whereas the new Japanese government was widely considered to be much closer to organised labour than any previous government since 1955. According to Shinoda (2009), this historic shift would not have been possible had the public awareness for social inequalities and employment dualism not grown since the 1990s. This interest, which stood in stark contrast to the once popular notion of Japan being a predominantly middle-class society, had been fuelled by intense media

[110] The SPD was under pressure from the DGB which had also started a public campaign (including ads in newspapers and posters on public places) calling for the restriction of temp-agency work. Temp agency work is particularly prevalent in the German automobile sector, one of the core sectors of the German political economy. Hence, the campaign for a ban caused considerable media attention.

reporting on social inequalities and also political activism outside the formal political arena.[111] Shinoda argues that "labour questions pertaining not only to the working poor but also to companies' illegal employment practices and government labour policies have often occupied the front pages of major newspapers and magazines and top news of national TV news programs." This created a momentum for social activists to gain public recognition for the plight of non regular workers founding a so called *haken mura* (temp agency village) in the Hibiya Park in central Tokyo for homeless and newly unemployed temp agency workers. The activists' goal was not so much to provide temporary housing but to alert the Japanese public to the social hardships faced by many non-regular employees and to force the government to respond. The 2009 election campaign especially of the DPJ clearly mirrored many of the issues that were discussed in the context of the *haken mura*.

The cabinet of the first DPJ Prime Minister Hatoyama seemed to fulfil the epextation that labour market re-regulation was one of the key concerns of the new government. One of the organisers of the *haken mura*, Makoto Yuasa, was invited to act as an official government advisor. When Yuasa quit the post half a year later he stated the government was on a good track to effectively address the social implications of temp agency work. Another sign of the DPJ's determination was that it quickly introduced a bill to abolish temp agency work in manufacturing (except for "professional occupations" with a higher skill level) (Nikkei June 14, 2009). After taking power, the new coalition government forwarded a reform bill to the Diet in early 2010. The bill also included a ban on registered-type temp agency work in all industries. However, the Upper House election in June 2010 (roughly a year after the LH election) changed the political situation completely as the opposition parties LDP and CGP gained a majority in the Upper House. The legislative process came effectively to a standstill as the relationship between the DPJ and the opposition was increasingly strained (even during the triple disaster in March 2011) and the DPJ-led coalition government was thus unable to negotiate a compromise. Moreover, the SDP left the coalition after only a few months while the PNP had no presence in the Upper

[111] Shinoda credits this to a documentary on the working poor aired by the public broadcaster NHK in 2006. In Germany media reports on the social hardships of non-regular workers also increased around that time. An example comparable to the NHK's film is a documentary by Markus Breitscheidel (entitled „Leiharbeit undercover - Mein heimliches Leben in deutschen Fabriken") produced for the public broadcaster WDR and aired for the first time in 2008. In it Breitscheidel presents footage about his personal year-long experience as a temp agency worker in several German factories including a well known car manufacturing and prestigious pharmaceutical firm. In all cases he finds highly unequal working conditions, low pay and mistreatment by permanent workers as well as disinterest of works councils and management in the issue.

House. This means the DPJ could not organsie a majority of its own without the LDP and CGP. Both parties demanded further revisions and concessions from the DPJ in order to let the bill pass the Upper House. Eventually, in November of 2011, the DPJ agreed to drop all controversial provisions. This meant that the reform no longer entailed a ban on registered-type temp agency work or temp agency work in manufacturing nor would it outlaw day temp agency work (Asahi, November 16, 2011). Instead the bill foresaw only minor revisions, e.g. temp agencies will have to disclose how much they earn on an individual worker and short-term temp agency work (<30 days) will be banned. This means the most prominent attempt at re-regulation in Japan almost completely collapsed due to political bargaining processes. The fact that the LDP and CGP were able to challenge the DPJ was that the issue carried little relevance for their voters while it constituted a major legislative defeat for the DPJ and a disappointment for many of its voters.

In Germany reregulation was mainly discussed in the context of minimum wages. The proposal for national minimum wages did not enter the political arena until about 2002 when the red-green coalition considered the introduction of a minimum wage for winning the support of unions for the Hartz labour market reforms. Only by 2005, however, did it become an official political goal of the SPD although the party still expressed reservations that would have to be done through legislative changes.[112] Between 2005 and 2009, however, the SPD gradually promoted a stronger state role for the regulation of working conditions. It successfully pushed for changes in the legal framework which made the application of the MiArbG easier by scrapping the condition that the social partners had to support it. The CDU/CSU agreed on these changes under the condition that they would be restricted to certain industries and would not expand the state involvement in collective bargaining in general. As a result several peripheral industries were added to the *Entsendegesetz* (AEntG, e.g. for employees of private security firms) to establish an effective minimum wage which, however, would still be set through collective bargaining.[113] Calls by the opposition of SPD, Greens and Left Party for

[112] In the 2002 manifesto, minimum wages were not even mentioned as a possibility. Instead the programme emphasised the inevitability of more flexible forms of employment: "Das klassische Regel-Arbeitsverhältnis wird auch künftig dominieren. Jedoch wird es zunehmend ergänzt durch andere Beschäftigungsformen wie z.B. befristete Arbeitsverhältnisse, Teilzeitarbeit, Werkverträge, Zeitarbeit, Telearbeit oder Jobrotation." All manifestos of the post-war SPD are available at the Friedrich-Ebert-Foundation: http://library.fes.de/library/html/voll-prog-spec01.html (accessed in November 2011).

[113] The *Entsendegesetz* was originally designed to force foreign subcontractors, especially in the construction industry, to follow stipulations of German collective agreements. The grand coalition expanded its use by

including the temp agency sector in the AEntG were initially rejected by the CDU/CSU-FDP coalition. Yet, it changed its position once popular pressure grew to protect wage levels of German workers who might be impacted by "Polish temp agency workers" who since May 2011 could work in Germany without any restrictions. Another motive for this change was that the ruling coalition needed to make a concession to the opposition for getting a revision of the social assistance programme ("Hartz IV Sätze") through the Bundesrat where it no longer held a majority (FAZ, February 2, 2011). The compromise reached established a minimum wage for temp agency workers by entering a clause in the AÜG with a similar mechanism as for the industries included in the AEntG. In conclusion it can be said, that even though the new German coalition was programmatically less likely than the new Japanese government to embrace re-regulation, policy-wise the German government implemented more reforms. Nonetheless, in both countries changes have been for the most part incremental if not temporary or without much practical relevance. This suggests that high salience politics does not necessarily lead to an increase in state responsibility for labour market regulation. Rather, high salience politics is likely to trigger processes of political bargaining that have been well described by veto player or power resource theory, to name but a few.

7.5 Industrial relations and insider-outsider divisions after 2008

Collective bargaining and industrial relations have, as has been pointed out earlier, facilitated swift adjustment by firms and unions and thus have underlined the economic functionality of coordinated institutions. Yet, there is also some evidence that unions and firms have been gradually becoming more attentive to the concerns of labour market outsiders. Heinrich (2010) and Heinrich and Kohlbacher (2008) provide some evidence about pre-crisis initiatives at the firm level that seek to narrow the gap between regular and non-regular workers. Some works councils in Germany have successfully negotiated equal pay clauses in enterprise agreements for their temp agency workers and some retail and insurance firms in Japan abolished the distinction between different career tracks and employment status (i.e. between part-time and full-time workers and between *ippanshoku* and *sougoushoku* jobs). Although there is no comprehensive survey of such corporate changes, these

adding specific industries that had to adhere to minimum wage regulations in the industry. Hence, formally it is not the state but collective agreements that set the provisions for these industries. The difference to AVEs is that the BMAS can declare collective agreements legally binding on its own.

examples at least suggest that firm-level negotiations do possess a considerable potential for addressing labour market dualism and that in some cases this is effectively used. If Given the pattern of partial delegation of German and Japanese states, they could constitute an important source for "re-regulation".

As was the case for macro politics, the 2008 crisis also increased the pressure on firms and unions to acknowledge labour market dualism. In Germany firms in the automotive sector in particular implemented supporting measures for their non-regular workforce. In February of 2008, for example, BMW announced it would lay off more than 5000 temp agency workers which included almost its entire non-regular workforce. This was an unprecedented announcement because BMW had until enjoyed a nearly spotless reputation as an employer committed to job security. Moreover, the firm was still highly profitable at the time, reporting one of its best results ever. Pressure from the IG Metall and BMW's central works council however, forced BMW's management to counter the negative reporting the announcement had received. As a consequence,, BMW declared that it would from now on voluntarily pay its temp agency workers the same standard wage as its regular employees - with the exception of bonuses (SZ, March 4, 2008). Likewise Daimler, also a well-known car manufacturer with a similar reputation as BMW announced in 2011 that it would extend an enterprise pact (called *Zusi* or *Zukunftssicherungsvertrag*) originally signed in 2004. In the pact, the works councils and management had agreed that all workers would be protected against dismissals and that the number of temp agency workers and workers on fixed-term contracts may not exceed 8% of the total workforce (Deckstein 2011). The pact also obligated the firm to treat all workers equally with regard to pay and training opportunities.[114]

The two examples of unions and works councils successfully implementing equal treatment clauses on the corporate level demonstrate the political relevance of meso and micro LoRs. The development at the two well-known firms had implications beyond the corporate level because the IG Metall made the issue of equal treatment of temp agency workers a key demand in the 2012 bargaining round in the metal sector. Although the agreement reached in April of 2012 fell short of IG Metall's demand for a universally and binding equal treatment clause, it was

[114] Deckstein, a financial reporter with Süddeutsche Zeitung, however cautions that the pact does not necessarily amount to a permanent change of Daimler's personnel policy: "Zumal so ein Pakt ja im Ernstfall keine unüberwindliche Hürde darstellt. Siehe 2006, als trotz „Zusi" mal eben 8.500 Werker vor die Tür gesetzt wurden – wenn auch ‚freiwillig' und gegen gute Abfindungen."

nonetheless perceived a major step towards implementing effective equal treatment.[115] However, it should also be acknowledged that the conditions laid out in the pacts and the new bargaining rounds are not permanent. They have to be extended formally after a pre-defined period. This suggests that so far even firms with high organisation rates and strong power resources of organised labour have so far successfully avoided permanent changes.

Since there have been no comprehensive assessments of how German firms have dealt with workforce dualism after the global financial crisis, it is difficult to evaluate whether the development of BMW and Daimler can be seen as representative of a general trends towards equal treatment. However, on the basis of the findings presented in chapter six it can be said that differences between individual firms and industries are substantial and politically highly relevant. Examples from less well organised sectors such as retail indicate that it is mostly a question of power distribution at the corporate and sectoral level whether workforce dualism will be addressed. For instance the retailer Schlecker started in 2009 to "re-hire" its staff through an in-house temp agency on contracts with lower pay and considerably worse working conditions (SZ, May 27, 2010). This practice was only stopped once public outcry began to impact earnings of the firm and all political parties criticised the firm for its policy. The case was also cited in the debates of a tightening of regulations of temp agency work. The versatility of developments in the case of Germany suggests, that apart from workforce dualization there may be a second regulatory dualization which disadvantages workers in sectors with low organisation rates and a limited presence of unions and employer associations. Such differences are likely to grow in importance if there is no universally binding legislation.

[115] The 2012 bargaining round is significant because it marks the first time that one of the leading sectors negotiated about the working conditions of non-regular workers (i.e. temp agency workers) and agreed on general changes. The IG Metall initially demanded that the works council would get a veto right on the working conditions of temp agency workers, including length of assignment and pay. The pilot agreement reached in May 2012 obliges managers to offer permanent contracts to all temp agency workers who have been with a firm for 2 years. It bans "indecent" wages for temp agency workers. Moreover, works councils have to formally approve of the hiring of temp-agency workers although they get no general veto right. Commentators have pointed out that the resistance of employers to these changes could only be overcome through the unions offering more temporal flexibility on permanent workers (the occupations of jobs who could work for more than 40 hours/week was expanded) and a range of loopholes which allow firms to circumvent all of the new rules on temp agency work. Also, the exceptionally positive economic situation of the sector certainly helped the position of unions. This is also visible in the agreed pay rise of 4.3%, the largest for more than a decade. Nonetheless, it is noticeable, that all changes are temporary and quite flexible when it comes to implementation. See e.g. Hägler (2012).

In Japan unions in major firms have also become more concerned about the issue of workforce dualization and have raised the issue of non-regular work in the shuntou process since the early 2000s. Moreover, there a few cases comparable to those of BMW and Daimler where personnel policies were adjusted to narrow the gap between regular and non-permanent staff. For example, the car maker Nissan announced a change in the summer of 2010 that it would terminate all relationships with temp agencies and offere its current temp agency workers direct working contracts. This would also improve their access to corporate benefits the firm stated (Japan Times, August 19, 2010). However, temp agency workers were not given open-ended contracts but instead fixed-term contracts which expire after 2 years and 11 months in order to avoid the critical 3 year period after which contracts have to be made permanent. In contrast to BMW and Daimler, however, the initiative for the change did not come from enterprise unions or from workers but from the Tokyo Labour Office which can inspect firms to check compliance with labour regulation. The office had "asked" several manufacturers to improve the working conditions of its temp agency workers and hoped to set a precedent other firms would follow.

This cautious approach to re-regulation is also visible in the discussions of the *Council on the implementation of a new growth strategy* (*shin-seichousen ryaku jitsugen kaigi* 新成長戦略会議) which was established under Prime Minister Kan (the second Prime Minister from the DPJ) in 2010. One of the first proposals discussed was a tax incentive to encourage firms to follow the example of Nissan. The proposal is noticeable because it confirms the traditional preference for temporary targeted spending programmes over permanent intervention through legislation. Another prominent case concerned the Japan Post (JP), the publicly owned mail service. It offered 64.000 of its non-regular employees the possibility of becoming regular workers who on average earn three times as much and also enjoy considerably more generous corporate welfare benefits. However, this initiative was in response to the demands of the minister overseeing the state-owned Japan Post, Shizuka Kamei, president of the PNP party and a fierce opponent of a privatisation of the postal services (Japan Times, July 23, 2010). Most observers interpreted this as a an attempt by Kamei to create a "personal legacy" before leaving the political stage for good (he announced his retirement in 2010) motivate not so much out of concern for post workers but for private reasons.

These examples demonstrate that non-legislative means of re-regulation can play an important role for improving the situation of non-regular workers and that they may still constitute the main and preferred form of regulatory change even under conditions of high political salience. It is interesting to note therefore, that in all cases cited here the initiative for change was more or less top-down, either the result of management decisions or of negotiations between management, enterprise unions and/or works councils or "encouraged" by state institutions. Mostly absent in the process have been non-regular workers themselves and macro LoRs. This has led to a situation where improvements for non-regular workers are granted rather than guaranteed or enforced and where changes are predominantly temporary, that is, they can be flexibly adjusted in the future. In that respect, the fundamental institutional dynamic of the German and Japanese labour market arrangements appear surprisingly stable. Moreover, changes at the corporate level are likely to increase the relative differences of working conditions between worker groups at different firms and in different sectors.

7.6 Conclusion: Rising salience leading to new politics?

The increasing political salience of labour market regulation in national politics may be a signal that the political functionality of the German and Japanese labour market arrangements in its current form is not certain. If electoral pressure for re-regulation continues beyond the 2008 crisis, legislative reforms will become more likely and they it is also more likely that they lead to permanent shift in the regulatory toward to macro level. This may eventually cement a stronger role for state-induced regulation and macro politics for institutional change. Already, German and Japanese governments have expanded their means for intervention although so far they remain reluctant to use them. The analysis in this chapter has shown that the mostly moderate and often only temporary expansion of the regulatory scope of the state has been sufficient to mitigate the impact of increasingly polarised labour market regulation at least in the immediate context of the crisis. This has allowed governments to avoid more comprehensive institutional change with regard to the importance of individual LoRs. On the micro level, the 2008 crisis demonstrates that dualisation is a major development which is visible in the very different experience of regular and non-regular workers. Moreover, the chapter shows that the existing non-liberal institutional framework still works for core sectors and core employees.

Institutions on different levels have concurred successfully to stabilise employment and job status during a period of great economic uncertainty. This underlines the economic and political relevance of institutional complementarities in the German and Japanese labour market arrangements. On the other hand, it has shown that the same arrangement does not stabilise non-core workers to the same extent and thus require government intervention.

Among the most surprising findings is that both the Japanese and German states have largely stayed true to the institutional tradition of delegation and diffusion of regulatory authority and responsibility – even thought labour market politics has now highly salient. Yet part of the answer lays in the fact that high salience politics does not necessarily lead to results or bold reforms. The factors described by conventional policy studies (as discussed in chapter three) certainly can explain to some extent why legislative change has been moderate. For example, even though the 2009 election produced a Japanese government that had been much keener on re-regulation than the government that emerged out the German *Bundestag* election, the different political constellations have led to almost opposite results. While in Germany a gradual re-orientation with regard to the regulatory authority of the state seems imminent for example with regard to minimum wages, in Japan steps in the direction of tougher provision for non-regular work are now less probable than ever since the election. In the Japanese case high salience has led to a situation of partisan contestation and, eventually, veto politics with the LDP blocking most DPJ initiatives. In contrast, higher salience has narrowed the policy options available to parties in Germany which is visible in the gradual acceptance of statutory minimum wages by the CDU/CSU since 2008.

Electoral pressures certainly play a central role but also the requirements of political institutions are of relevance. The quasi-permanent need to compromise due to the bicameral majorities in Germany makes her party system less tolerant of wide policy differences between the main parties. Negotiations and deal-making are not possible if negotiating partner permanently take positions on the opposite ends of each other. Also the fact that prior to the CDU's major re-orientation several new instruments were gradually introduced expanding statutory minimum wage reflects the well documented pattern of incremental and cautious policy change. In contrast, the need for constant deal-making is less institutionalised in Japan despite the rise in coalition governments since the 1990s. Here, the divide between government and

opposition is arguably deeper and thus the strategic incentives for parties to exploit programmatic differences for parties weigh stronger than in Germany.

Overall, however, it can be said that labour politics has stayed true to the pattern described in previous chapters. The state remains in both countries a reluctant moderator which makes comprehensive and far-reaching labour market reforms unlikely. That labour market dualization has the potency to shift labour politics permanently to macro politics, as Rueda and others argue, due to rising conflicts within labour, can, so far at least, not be confirmed.

8. Patterns of dualisation – Conclusions

This study has investigated the question to what extent non-liberal institutions and employment practices have shaped the process of labour market reform in Germany and Japan since the early 1990s. It has been shown that the politics of labour market reform is as much about legislation as it is about alternative sources of regulation, deliberate and unforeseen institutional interaction or, in other words, institutional complementarites which shape the dynamics of change not only in an economic sense but also politically.All regulatory areas analysed in the context this study display a similar pattern, that is, legislative reform is a relatively rare event and usually preceded by other non-legislative forms of regulation. However, non-legislative reform does not require a consensus-seeking politics as many scholars attribute to corporatist countries. Negotiations at the meso and micro levels can be contentious as well. Although very different, the institutional arrangements in the German and Japanese labour market offer alternatives to reform because regulatory authority is shared among several institutions and actor groups. Apart from the model of LoRs an important conceptual innovation of this study concerns the analytic category labour market flexibility. Instead of focusing solely on the decision-making processes preceding legislative reforms, the study has described change more accurately by including four different dimensions and legislative reform as well as developments on other LoRs. This made it possible to identify crucial economic as well as political interdependencies and interactions between legislative reform, industrial relations and mixed-forms of regulation which in conventional policy studies remain invisible.

The results of this study are relevant for current theoretical as well as empirical debates in the literature on the political determinants of labour market reform in advanced industrialised countries. In particular, the study underlines the need for current research to recognise and address systematically the non-legislative context of legislative reform. The findings of this study clearly suggest that neither absence nor the implementation of reform can be considered reliable indicators for institutional change or continuity. Also, they suggest that there are economic as well as political motives for maintaining non-liberal institutions which go beyond resistance to change by vested interests. Last but not least, they cast doubt on the implicit assumption of most political science studies of reform that the state's

regulatory authority is unabated and mostly subject to power-based contestation and shifts and in the distribution of power resources. In reality, such perspectives must be complemented with theories of blame avoidance and credit claiming and the salience of labour market issues. Governments in Japan and Germany generally avoid delicate policy choices and are reluctant to dominate regulatory processes unless there are rewards for acting (e.g. economic voting). Hence, reforms make up only a small part of the overall process of institutional change. Changes below national policy-making processes clearly are a major factor in the politics of reform. For example a considerable part of flexibility enhancement in Germany and Japan has been achieved without the direct involvement of governments or the state. This has arguably relieved pressure from governments to initiate such processes on their own through legislation. Governments in both countries and independent of ideological orientation have preferred striking deals and negotiating compromises over pushing through legislative reform. The institutional complementarities described here and the specific economic as well as political incentives they provide facilitate the formulation of alternatives to legislative reform.

8.1 Coordinated capitalism and the politics of labour market reform

This confirms that the VoC literature can indeed provide important insights into current reform processes because it emphasises that institutional change is happening in a interrelated institutional framework and may not be primarily motivated by issues of ideology or power. Differentiating between different types of capitalisms and the specific economic advantages they offer, has proven to be helpful to conceptualise the advantages and limitations of the German and Japanese labour market arrangements and to understand why certain reforms were chosen. Yet, VoC needs to pay more attention to the fact that the benefits of coordinated capitalism are not distributed equally among firms and workers, but work mostly in favour of large firms in core industries. This explains why CMEs do not require consensus-oriented policy corporatism on the macro level for implementing changes. Rather the coordinated way of regulatory change consists of informal “trickle-down” and “trickle-up” processes, favouring gradual adaptation over broad participation.

Politically this system of implicit coordination and delegation contributes to a low electoral salience of labour market and employment regulation. This helps governments to resolve (or sometimes to ignore) regulatory dilemmas between

flexibility and security (stability) that could otherwise increase the risk of electoral retaliation. However, the salience of labour market issues is influenced by many factors such as economic development and public discourse so in some cases, delegation and dispersion are the response to increased salience.

Put in more general terms, the German and Japanese labour market arrangements appear sufficiently flexible to accommodate for the interests of the main stakeholders without requiring complex negotiations processes or rigid enforcement of rules. This flexibility stems from the fact that regulatory authority is spread over several LoRs which "communicate" rather formally negotiate. As a consequence, governments rarely dominate processes of change but rather accompany them through matching and often temporary policies. This applies to both countries despite the differences in how regulatory authority is divided and exercised. Hence, hypothesis (i), which argues that institutional complementarities lead to a similar process of institutional change and reform, can be confirmed.

Particularly noteworthy are thereby two commonalities of the German and Japanese arrangements: first, the lack of a clear hierarchical power structure with regard to regulation of working conditions and, second, a lack in coverage. With regard to the former, the analyses in chapter 5, 6 and 7 have shown that policy and law are not necessarily the main vehicles of institutional change. For example, decisive institutional changes leading to more flexibility can be entirely concentrated on micro LoRs. While German governments usually try to encourage the system of industrial relations to expand and develop in a certain way, Japanese governments and ministries seek to encourage the adoption of exemplary practices which they hope will spill over to SMEs and less coordinated industries. Both, however, rarely choose to enforce specific rules themselves. Moreover, in both countries the state appears rather tolerant of deviations. This explains why the coverage of collective bargaining in Germany is relatively low in European comparison and why AVEs play only a minor role in comparison to Scandinavian countries for example. It also explains why one finds greater variety with regard to corporate decision-making and standardisation of working conditions in Japan than in most other CMEs. Generally speaking, state-induced regulations are often limited or elastic in their practical implications and governments in both countries prefer non-legislative means.

Clearly both elements, the hesitance of the state to intervene and the flexible implementation of rules, are crucial for the continuing relevance of the arrangement

as a whole. This is arguably the main reason why they are acceptable even to firms and industries which are not based on quality production and highly skilled labour. Economically this approach allows for a considerable leeway of firms to adjust to changing market conditions based on their different preferences; politically it allows governments to resolve regulatory dilemmas without having to make bold and risky choices. This also explains why the drastic organisational decline of unions, employer associations and of collective bargaining has so far had surprisingly little impact on the politics of institutional change. Clearly, in Germany collective agreements have lost both in coverage and depth, as the opportunities for firms to negotiate alternative standards have increased while and in Japan the few formal institutions of macro and meso regulation, in particular *shuntou*, have been partially replaced by intensified enterprise-based negotiations. Yet it is telling that in both cases there has been no a complete breakdown of the arrangement. This is most visible in the fact that the regulatory role of governments has hardly changed. In most cases governments have chosen to intervene temporarily or by facilitating solutions which do not require a direct commitment by the state. This could be called a two-folded strategy to stabilise the arrangement that involves on the one hand the strengthening of regulatory authority of its micro and meso components (e.g. discretionary work system in Japan or the equal treatment clause in the AÜG) and, on the other hand, the expansion of opportunities for deviation.

With regard to the question whether changes and reforms have to be necessarily coordinated and concerted in a CME (hypothesis (h)), the findings overwhelmingly reject this claim. Chapter 5 has shown that in both countries nearly all attempts at formal concertation and cooperation have failed or have been of only peripheral significance for larger processes of change and reforms. This implies that spill-over effects from the institutional arrangement to the political-strategic level of decision-making in the sense of interest congruence are more limited than the literature on social pacts (see chapter 3) have argued. In other words, coordinated capitalism does not make for consensus-seeking actors on the national policy stage. In part this may be more a conceptual problem rather than a surprising empirical finding. As Crouch has pointed out in the early 1990s, the term consensus may simply misstate the actual nature of policy consultation and should be replaced, for which he proposes the term ”generalised policy exchange”. “Consensus means an absence of disagreements, a unity of views; GPE [generalised policy exchange]

accepts and takes for granted a mass of conflicts, but processes them in such a way that, unless and until something goes drastically wrong with the balance, the likelihood of recourse to open conflict is reduced, and actors enabled to trade gains in one arena for losses in another" (Crouch 1993: 53-54). In that sense, CMEs and the non-liberal labour market arrangements do not lead to a congruence of interests but rather provide a framework within which deals can be struck and the damage of conflict and disagreement is contained. The institutionalised sharing of information is possibly the main reason why "quiet politics" (Culpepper 2010) with regard to employment policy is often possible despite inherent flexibility-protection dilemmas and the potentially high electoral salience of changes.

Institutional complementarities should therefore not only be understood with respect to the economic advantages they provide but also in terms of their implications for the strategies of policy-makers. However, in the realm of labour markets reforms this does not concern primarily issues of power and ideology but mostly of electoral risk (blame avoidance) and issue salience.

8.2 Electoral salience and partisanship

An important finding of the study concerns the importance of electoral salience. In all policy areas analysed for this study, it has been demonstrated that governments respond to questions of regulation differently depending on the level of electoral salience of an issue. Issues that do not resonate much with voters are usually left to decentralised decision-making and non-state regulation (quiet politics). In such cases labour law tends to be unspecific and flexible and governments which means governments support processes of change and do not direct them. The reduction of working time in Japan is a particularly vivid example for this pattern of delegatory politics.

In cases of high electoral salience, however, the outcome is much more difficult to predict. Basically two scenarios can be distinguished. In both governments will be in the centre of regulatory debates at least initially, yet in the first scenario governments will eventually decide to shift the bulk of issue resolution to meso and micro LoRs. For example, in the aftermath of the Oil Crisis when firms were under pressure to cut costs while workers feared the risk of dismissal, governments neither made EPL stricter to protect workers at risk nor lifted restrictions to make numerical adjustments easier. Instead governments brokered compromises such as wage

restraint in exchange for employment security and further relieved tension by temporarily enhancing numerical flexibility in a socially acceptable way for example through early retirement schemes or job subsidies. Even though in the 1990s and 2000s the ability of governments to pay for compensatory measures has arguably decreased, the approach has not fundamentally changed. This is apparent for instance in the fact that Japanese cabinets quickly backed down on proposals when confronted with signs of electoral discontent, e.g. the 2003 EPL reform or in the considerable efforts of the second Schröder cabinet to get the endorsement of business *and* unions for its reform agenda and to appease critics. This tendency is particularly visible where regulatory dilemmas between employment flexibility and social protection are obvious and difficult to avoid, such as minimum wages, reduction of working time or the re-regulation of temp agency work after the 2008 crisis. In short, governments in Germany and Japan prefer to mitigate contention and limit polarisation through delegation and by strengthening alternative sources of regulation.

Arguably, such strategies are not unique to CMEs, as the example of minimum wage reform in the UK suggests. Statutory minimum wages were abolished in 1993 (set by a combination of state-endorsed collective agreements and government imposed wage levels) under conservative rule in line with its market-oriented policy orientation. In 1998 under a newly elected Labour government a new minimum wage system was introduced which however neither requires government-imposed wages (e.g. as in the US) nor relies on corporatist decision-making (as in Japan and large parts of continental Europe). Instead, a so called Low Pay Commission which consists of members of unions, business and "taxpayers" sets wage levels autonomously. The commission is conceived as a group of individuals with specific expertise (cf. Kanki 2011: 61-64) rather than a group that represent the main stakeholders in a corporatist fashion. This way, it is argued, minimum wages are set in consideration of the interests of all sides without being dominated by vested interests. At the same time, political contestation is effectively contained as the government does not participate in the process. This underlines that at least in the field of labour market policy - and unlike policy studies typically suggest - governments prefer the back seat over the centre stage.

However, there is a second scenario of high salience politics which can lead to substantial legislative reform. Chapter 5 provides evidence that in some cases

processes of institutional change are indeed dominated by macro politics, such as partisan contestation, pluralist competition for influence and a government-centred policy agenda. This second scenario of high salience politics includes examples such as the White Collar Exemption Bill or the planned ban of temp agency work in manufacturing in Japan both of which have been eventually blocked by the opposition. In Germany, among other, the "Job-AQTIV" and the "Hartz II" reforms fit this category as they can be seen a reaction to electoral pressure to address unemployment. This underlines the fact that parliamentary majorities can, in principle, always implement drastic changes and the potential scope of legislation is, despite constitutional constraints and case law, much wider than the often incremental reforms suggest. Hence, there is a latent possibility that government seize regulatory authority and dominate processes of change through legislative reform. However, most often such processes are not an outgrowth of ideological convictions but rather a reaction to exogenous shocks (e.g. the 2008 crisis) or scandals (e.g. 2002 placement scandal).

This then leads to the question whether ideological differences have played any role for reforms in Germany and Japan. In comparison, it can be said that strategic considerations have been more important than programmatic convictions. Strategies are primarily formed by the salience of issues as well as by the dual responsibility of governments for economic development and social protection. None of the larger parties can afford to give the impression of furthering one goal at the expense of the other, which explains why many bold proposals are either revised or mitigated through accompanying measures that compensate for the implications of reform. That strategy generally trumps ideology is also confirmed by the curious phenomenon that the most avid reformers since the early 1990s have been incumbent governments (Koizumi and Schröder) rather than new elected ones. Hence, hypothesis (d), which states that ideological orientations determine government policy in times of high electoral salience, and hypothesis (e) which expects visible differences between Germany and Japan due to differences in their party systems, is rejected.

Hypothesis (c), however, which states that partisanship will dominate only in cases of high electoral salience, can be confirmed. Yet this does not mean that high salience necessarily leads to political conflict. On the contrary, the 2008 crisis and the gradual acceptance of minimum wages by the CDU/CSU which it had vehemently

opposed such a move before, suggest that it could also limit the policy options available as some policies may no longer be endorsed or tolerated by the majority of the electorate. Under such circumstance parties may find themselves under electoral pressure to accept positions they originally opposed, facilitating the formation of a new consensus. Hence, high salience politics can be more difficult to predict that cases of quiet politics.

Partisanship and dualisation

With regard to the relevance of partisanship and the institutionalisation of dualisation, there are two additional points that need to be considered in future analyses. Several authors have made the argument that dualisation is mainly a product of underlying power resources. This suggests that the expansion of fixed-term employment and temp agency work indeed reflect genuine partisan differences (or the interests they represent) rather than strategic behaviour. Indeed, only in the case of non-regular employment (fixed-term and temp agency work) legislative reform has changed the regulatory momentum and implemented significant institutional changes which led to a massive and accelerated expansion of non-regular employment since the early 1990s. Yet, the details of how these reforms have been devised and implemented, confirms rather than contradicts the observation of a reluctant regulatory role by governments and the preference of parties for low salience politics. In both countries, governments delegated the actual policy-making process to new and temporary bodies thus effectively outsourced agenda-setting and policy formulation. Moreover, most reforms were introduced into the legislative process in a rush as to avoid the type of partisan competition which is typical for Western parliamentary democracies. This unusual policy-making process implies this dualisation is less a case of specific interests legislating its own agenda but rather a case of politics driven by electoral risk management.

There is also only limited evidence that partisan competition has been affected by dualisation in the way Rueda expects for social democratic parties. The more crucial political impact of dualisation may thus not be that parties are faced by unsolvable dilemmas of diverging interests of voters but that different groups possess varying capabilities for influencing the salience of labour market issues. The 2008 crisis has shown that insiders can indeed be convinced of the need to support outsiders and that government thus can actively seek to narrow the insider-outsider gap. Less clear is, however, how long the issue will remain a priority for insiders who

may have other primary concerns. Hence, instead of a structural conflict between insiders and outsiders which leads to contrary interests, it may be more sensible to describe the gap as one of power resources. Outsiders clearly lack comparable channels of political influence as insider workers so they possess fewer means to influence the salience of regulatory issues that matter specifically to them. In that sense they appear similar to SMEs and the service industry who have always been at the periphery of decision-making processes at the macro level.

8.3 Dualisation, power resources and veto points

In contrast to legislative politics, there is evidence on the micro level that dualisation is mostly a question of power and power resources. Chapter 6 has shown that works councils and enterprise unions widely ignore the plight of non-regular workers. This is in line with Crouch' (2011) expectation that the more enterprise-oriented unions are, the bigger the contrast will be between insiders and outsiders. On the firm-level the chances of non-regular workers to influence regulatory processes are particularly slim. Yet, they are somewhat more favourable on the meso level. For instance, in some of the more coordinated industries in Germany such as automobile where there is a solid union presence and a high degree of inter-firm coordination, there have been noticeable movements toward equal treatment between regular workers and temp agency workers. Some Japanese manufacturers such as Nissan have voluntarily adopted more balanced HR policies which increase the prospects of workers to get a permanent position and which provide more equal access of employees to corporate welfare. The IG Metall even succeeded in establishing an equal treatment clause for temp agency workers in the 2010 collective agreement with the goal of setting a precedence for others to follow. This supports hypothesis (a) which states that the distribution of power resources largely determines the severity of the insider-outsider gap although mainly for the micro rather than macro level. However, it should be modified in the sense that chance to influence regulatins depend to a large extent on the industry and firm size rather than job status. In this sense the term dualisation may actually be increasingly misleading as it does not pay justice to the growing heterogeneity. Nonetheless, it is important to acknowledge that apart from a dualisation of jobs there is dualisation of regulation with industry and firm size as additional determinants.

Whether the gap between different worker groups is more severe in Japan due to the enterprise-orientation than in Germany as hypothesis (b) suggests, is difficult to say with certainty. On the one hand the growing role of works councils in many ways now matches Japan's system of enterprise unions. On the other hand, the more formalised process of collective bargaining and its broader coverage arguably gives German unions a stronger voice in overall regulatory processes. Nonetheless, so far re-regulation is largely driven by the large firms and related union organisation and it is unclear whether they will be a "trickle down" process that will influence practices in other firms and sectors in a similar fashion.

Veto politics and power resources

In section 8.1 it has been argued that the logic of coordinated capitalism explains rather well the form and content of institutional change the labour market arrangements in Germany and Japan have experienced since the early 1990s. At the same time, it has been acknowledged that non-liberal capitalism does not necessarily lead to consensual policy-making and can, at times, be characterised by contestation. This then leads to the question how important power resources of vested interests have been for the processes change analysis in this study. Hypothesis (f) suggested that in case of controversy, the distribution of power resources determines the LoR where change is promoted. For instance, if national politics is reluctant to address desired changes, then firms are likely to negotiate for more flexibility on the firm-level. Empirically it is difficult to prove that a direct linkage between developments on the firm level and industry bargaining and national policy-making actually exists. Not only is there often a significant time-lag but developments could even run parallel instead of following each other. Furthermore, the remainders of policy concertation that had originally emerged after the Oil Crises of the 1970s have nearly disappeared in the period between 1990 and 2010 which implies a more pluralistic, ergo competitive, policy-making process. In Japan administrative guidance is no longer as dominant as it used to be and in Germany tripartite policy corporatism is generally considered a failure after the experience of the two alliances for jobs. Yet the comparison of Germany and Japan with their very different power structures and veto points rather suggests that of all the political factors discussed in this study, the distribution of power resources and the number of veto points have the least relevance for the politics of reform and institutional change. Hence, hypothesis (g) is falsified.

Perhaps the strongest confirmation for this argument is the relative resilience of traditional long-term employment practices in Japan. As there are fewer institutions that enforce compliance Japanese firms theoretically enjoy considerably more leeway in negotiating for bold changes than their German counterparts. Yet this plus in flexibility has not been used to push through more radical change. Traditional long-term employment practices still appear to be very much intact even though welfare reforms have made job changes and mid-career hires much easier. Crowding out of regular jobs has so far mostly affected female employees, who in the eyes of many employees are still not legitimate contenders for life-time career jobs (among advanced democracies Japan scores lowest on almost all indicators for gender equality). Instead of radical changes, many Japanese employers have preferred to intensify the traditional dual workforce strategy, concentrating adjustments on the "margins" while maintaining traditional employment practices for the core. The relative resilience of permanent employment casts doubt on the popular notion that firms would have implemented considerably more radical changes if they only had the chance to do so. In Germany, the development appears to be very similar, although power resources are distributed more evenly between capital and labour.

8.4 Outlook: The political legacy of current dualisation processes

The 2008 crisis has clearly increased the salience of non-regular employment and the general elections of 2009 have shown that this matters for partisan competition. Yet, expectations that the financial crisis would become a major turning point in labour politics have only partially been fulfilled as chapter 7 has shown. Although social activists and union organisation are now much more actively and publicly addressing the social impact of dualisation, there is little evidence that the politics of labour market regulation has really become a decisive factor for labour market politics as Rueda and others expect. This may be simply due to the fact that labour market dualisation of the current scale is still a rather recent phenomenon and that the impact of the 2008 crisis on employment levels was surprisingly short-lived.

Another explanation is the particular nature of employment regulation in Germany and Japan. Since even experts often cannot agree on the effects of a reform or decision (e.g. introduction of or rise in minimum wages) it should be even harder for the average voter to develop strong preferences on potential policies (and the actors that should implement them) which then translate into political action or

electoral choices. Even though Rueda may have a point in arguing that electoral mobilisation has become more difficult as the interests of different worker groups have become more heterogeneous, this neglects whether party systems actually mirror these changes by offering respective choices. As it stands, the regulatory framework in both countries is not geared toward macro and high salience politics but on the contrary toward delegating decisions so that many issues never see the light of partisan conflict.

The analyses here have shown that despite the tendency of governments to avoid harsh choices and to delegate responsibility, labour markets are characterised by delicate balancing acts which produce winners and losers. Yet, it is a different question whether those affected actually are given a voice. If the regulatory arrangements were more transparent, it would be easier for voters to form preferences on how the social costs and economic benefits should be balanced. In such a system political actors could compete with each other by offering clearly formulated alternatives. This would tremendously increase regulatory accountability which in the current arrangement, as this study has demonstrated, is anything but easy to disentangle.

9. Annex A: Additional political and economic data

Annex A serves three aims. First, it addresses potential limits of the analysis which may stem from the quality of the data or indicators. Second, it provides additional information and indicators to illustrate arguments made in the study. Third, it compares the developments in Germany and Japan and, where possible, puts them in comparative perspective to other advanced democracies.

9.1 A critical assessment of the OECD employment protection indicator (EPL)

The OECD's EPL indicator is by far the most widely used and arguably the most comprehensive indicator for comparing the level of labour market regulation across OECD member countries and for quantifying changes in regulation on regular and non-regular employment. The information at the base of the EPL is provided by national bodies such as ministries of labour. The EPL has been updated and the methodology reviewed several times in order to reflect the actual regulatory level more accurately. With some limitations it can be used to get a better idea of cross-national differences across time. Yet, the EPL also has faces some important methodological and content-related limitations that illustrate the need for more detailed qualitative country studies. The following four sections will discuss all major components of the indicator and suggest additions where necessary.

So far the EPL is commonly used to study the relationship between regulation and labour market performance, in particular the question whether high employment protection impacts negatively on labour market performance. Some experts attribute the fact that findings have been mixed to limitations of the EPL indicators. Several authors have thus tried to develop alternative measurements.[116] Another difficulty arises from the fact that in some countries legislation tends to be exact and comprehensive while in others case law and collective bargaining may constitute equally important or even more important sources of regulation. Although such differences can be assessed to some extent, assessments are nonetheless difficult if such rules apply only to specific industries or worker groups or only those who actively seek them by going to court. Furthermore, some countries are less stringent about enforcing rules than others (see e.g. Bertola, Boeri and Cazes 2000: 65-71) or may not cover all workers equally (e.g. depending on union presence).

[116] A good discussion of different conceptions of EPL-indicators can be found at Allard (2005).

Moreover, tenure and social attributes (e.g. age, number of children) can considerably alter an individual's level of formal job security.

The OECD itself cautions that the indicator is only an approximation of a considerably more complex reality. It also argues that the indicator does not illustrate discrepancies between legal provisions and practice which may depend more on case law and opportunities for litigation. For instance, abolishing formal restrictions on non-regular work may not necessarily lead to an increase in non-regular jobs (cf. OECD 2004: 65-70) as there could be other obstacles which can make the utilisation of non-regular labour difficult such as veto rights of corporate co-determination bodies. The Japanese discretionary working system is a case in point: while formally it appears like a major reform, the provision for labour consent has made the change almost impossible to use.

Some legal scholars have also argued that legislative reform and regulation are shaped by the dominant legal theory prevalent in a country or regulatory field. A study by Venn (2009: 9) shows that when countries are divided into groups with different legal traditions (German, English or common law, French and Scandinavian) some commonalities can indeed be identified. For instance, countries with common law traditions tend to have very low levels of regulation while countries with a French tradition are more likely to have lowered the level of employment protection. In contrast, Scandinavian and German-type countries are more likely to have raised the level of protection. The most striking commonality is however that "countries with the strictest employment protection in 1985 typically made the biggest changes to reduce the regulatory burden in subsequent years, regardless of their legal origin." Venn concludes that legislators have not been limited by the particular legal tradition of their countries which means that legal tradition may actually be of lesser importance. Moreover, countries with similar legal origins tend to score very differently on the EPL indicator suggesting that the impact of legal systems is not large.

EPL scores have been published by the OECD for the first time in 1994 and the components have been gradually expanded to include a wider scope of regulations. The original data for the OECD ELP indicator was developed by Grubb and Wells in 1993 and published by the OECD in its first Jobs Study (OECD 1994a). Initially it included indicators for the protection of individuals against dismissals and an indicator for the regulation of non-standard work, i.e. fixed-term employment and

temp agency work. In subsequent publications, additional indicators were added though not all of which have been integrated in the overall EPL scores. A component for collective dismissals is available since 1998 (Bertola, Boeri and Cazes 1999; OECD 1999), scores for further rules stemming from collective bargaining and provisions depending on firm size are available since 2008 (Venn 2009).

9.1.1 The indicator for individual employment protection

This indicator is based on three components: (1) Regular procedural inconveniences which include individual scores on notification procedure, delay involved in delivering notice of dismissal (higher value if written notice is required) and length of the notice period; (2) Notice and severance pay for no-fault individuals dismissals: this includes individual scores on severance pay (the higher the stricter) for three job tenures (9 months, 4 years, 20 years); (3) Difficulty of dismissal which includes individual scores on definition of justified/unfair dismissal (the simpler the lower the score), length of trial period of job starters (the longer the lower the score), compensation following unfair dismissal and the possibility of being reinstated after being dismissed unfairly. The three sub-scores are then aggregated to a single indicator representing "overall difficulty of dismissal". Temporal comparisons are possible but error-prone as the OECD has frequently adjusted scores for several countries (see Venn 2009 and the information posted at www.oecd.org/employment/protection), however not all changes are reported in detail. As for Japan, the OECD has revised some of its assessments prior to 2008, in particular it has assigned noticeably lower scores with regard to severance pay. Possibly, in earlier assessment the OECD was referring to corporate practice rather than to actual legal stipulations as many instances of changed assessments can be traced to a changes in whether and how collective agreements were considered.

It is also worth noting that the legal system and its "accessibility" for workers is an important factor for the actual level of regulation. A comparison of formal features (OECD 2004: 68-69) suggests that the way labour issues are treated and the involvement of certain actor groups can also vary considerably. For instance, while in Germany labour courts have gradually increased their influence since 1949 as the number of cases and "landmark" decisions increased, a separate jurisdiction for labour matters has been established only comparatively recently in Japan (for details see 1.14 in this section). The opportunities for individuals to sue over labour

disputes therefore determine to a large extent the effectiveness of EPL and other rules but this is not visible in the EPL indicator.

***Table A-1* Scores for individual components of individual employment protection (EPL)**

	Procedure		Delay to start of notice		Definition of unfair dismissal		Trial period before employment protection holds	
	DE	JA	DE	JA	DE	JA	DE	JA
1985	2,5	1,5	2,5	1,5	2,5	1,5	6,0	n/a
1995	2,5	1,5	2,5	1,5	2,5	1,5	6,0	3,0
2003	2,5	1,5	2,5	1,5	2,5	1,5	6,0	3,0
2008	2,5	1,5	n/a	n/a	2,0	1,0	6,0	3,0

	Unfair dismissal compensation at 20 year tenure		Extent of reinstatement		Notice period after tenure of 20 years		Severance pay after 20 years	
	DE	JA	DE	JA	DE	JA	DE	JA
1985	18,0	10,0	1,5	3,0	4,5	1,0	0,0	4,0
1995	18,0	10,0	1,5	3,0	7,0	1,0	0,0	4,0
2003	18,0	9,0	1,5	3,0	7,0	1,0	0,0	2,9
2008	n/a	n/a	1,5	3,0	n/a	n/a	18,0	6,0

Sources: OECD (1994, 2004), Bertola et al (1999), Venn (2009) and www.oecd.org/employment/protection (last accessed in January 2012) for all tables in this section.
Note: A higher score indicates a higher level of regulation except for the lower table where scores indicate months.

A closer look at the individual scores reveals a noticeable lack of major changes, even though smaller reforms of employment protection, such as those linked to firm size in Germany are not visible (though in 2009 an additional score was published in Venn 2009: 19-21). Changes in severance pay are probably due to changing assessment criteria applied by the OECD rather than actual legislative reform (i.e. the OECD has been trying to indicate actual regulation, which in the case of Germany is largely determined by collective bargaining). Secondly, it shows that employment protection is considerably less strict in Japan than in Germany although the actual level of protection clearly depends on legal practice (see below). Table A-1 reports all individual scores as far as they have been available. In more recent editions of the EPL individual scores for the components were only reported when they have been changed. See also annex C for details on individual legislative changes.

9.1.2 The indicator for collective dismissals

The indicator for collective dismissals is an addition to the indicator for individual employment protection. In most countries additional provisions apply if employers try to dismiss several employees at once on economic grounds. In comparison this

specific area of regulation has hardly changed in any of the countries surveyed since 1998 and 2008. Furthermore, OECD-authors conclude that collective dismissal regulation hardly affects the overall assessment of employment protection in a country. The same applies to Germany and Japan with the exception of additional notification requirements and days involved for the process of dismissals. Again, it is likely that these changes are due to changes in how data was assessed rather than actual legislative changes. Noteworthy is the considerable gap between the two countries, with regulation in Germany being distinctly stricter.

Table A-2 **Scores for individual components of the collective dismissals indicator**

	Definition of collective dismissals		Additional notification requirements		Additional days involved		Other special costs to employers	
	DE	JA	DE	JA	DE	JA	DE	JA
1995	4,0	2,0	1,0	1,0	28,0	0,0	1,0	0,0
2003	4,0	2,0	4,0	2,0	31,0	0,0	1,0	0,0
2008	4,0	2,0	4,0	2,0	31,0	0,0	1,0	0,0

	Collective dismissal overall score	
	DE	JA
1995	3,8	1,5
2003	3,8	1,5
2008	3,8	1,5

Note: A higher score indicates a higher level of regulation/protection except for "additional days involved" which is meant to express the average duration of the whole process in addition to other provisions that may apply.

Recently the OECD has also tried to measure the relevance of collective agreements for employment protection more systematically (using data from the ICTWSS database). However, as information on several countries is still scarce - this applies particularly to Japan – this is still very much work in progress. For Germany Venn reports that many collective agreements entail provisions on severance pay for older workers but that they can differ depending on industry and corporate practice. Some collective agreements also modify the legal notice period. In theory, collective agreements could provide for different notice periods than set in law while this is not possible in Japan. Like Germany, collective agreements in Japan can have an impact on the notice period (but cannot undercut it) as well as with regard to severance pay. Due to the specific structure of Japanese industrial relations (enterpris-oriented bargaining) no further details were available (Venn 2009: 16-18).

9.1.3 Indicators for temporary employment (fixed-term and temp agency)

Two components make up the indicator for "overall strictness of temporary employment" provisions: fixed-term employment and regulation of temp agency work. The regulation of fixed-term employment is measured based on the three categories: Valid reasons for fixed-term employment (the stricter, the higher the score), the number of times a temporary contract can be renewed and the maximum number of months successive temporary contracts may run. Regulation of temp agency work is assessed by comparing restrictions on temp agency work (ranging from illegal to no restrictions), restrictions on number of renewals for temp agency work and the maximum duration of temp agency contracts.

Table A-3 **Scores for individual components of the temporary employment indicators**

	Valid cases other than the usual objective reasons		Maximum number of successive contracts		Maximum duration in months	
	DE	JA	DE	JA	DE	JA
1985	2,0	2,5	1,0	No limit	18,0	No limit
1995	2,5	2,5	4,0	No limit	24,0	No limit
2003	2,5	2,5	4,0	No limit	24,0	No limit
2008	3,0	2,5	4,0	No limit	36,0	No limit

	Types of work for which temp agency work is legal		Restrictions on number of renewals		Maximum duration of TWA contracts in months	
	DE	JA	DE	JA	DE	JA
1985	2,0	1,5	Yes	Yes	6,0	36
1995	3,0	2,0	Yes	Yes	12,0	36
2003	3,0	3,0	Yes	Yes	No limit	36
2008	3,0	3,0	Yes	Yes	No limit	36

The tables illustrates several differences between Germany and Japan, most noticeably that fixed-term employment is more strictly regulated in Germany while temp agency work appears somewhat less strict in Germany than in Japan. Yet, here too some clarifications are at order: By not limiting temp agency contracts, German legislators have been trying to encourage stable employment relationships. This means temp agency jobs are supposed to resemble other regular jobs by offering a similar level of employment stability. However, as chapter 7 has demonstrated, in reality many German temp agency contracts are terminated rather quickly if there are no alternative placements or "initial" fixed-term contracts are simply not

extended if there is no demand. In Japan the situation differs depending on what kind of temp agency work a person is engaged in. Permanently employed temp agency workers are rare so the limit is intended as protecting permanent contracts from being "crowded out" by non-regular ones. This makes it much easier for Japanese temp agencies to adjust their workforce in line with fluctuation in demand which is also apparent if one considers the much steeper decrease in the number of temp agency workers in Japan during the 2008 crisis. In comparison, therefore, the Japanese arrangements appear even more flexible than the German one even though this is not necessarily mirrored in the indicator. There are also some exceptions to regulations which are not considered in the EPL: for instance, in Japan short-term jobs have often been exempted from regulation, i.e. workers who were employed on a daily basis (e.g. *hiyatoi haken*); workers with a work contract whose duration is less than two months; workers employed in seasonal work which runs for a maximum of four months (Venn 2009: 26). A more meaningful distortion stems from the fact that the LSL does limit the maximum duration of individual fixed-term contracts to a maximum of 3 years (5 years if 60 years or older) but places no limit on the succession of contracts. On the other hand, labour courts have set through case law a rule according to which fixed-term jobs become permanent after some time. This means that regulation is considerably less flexible than it may appear formally.

Comparing Japan and Germany, it is obvious that both countries have reached a similar level of overall regulation by 2008. In general, this has meant larger changes in Germany as its level of regulation was much higher in the mid-1980s. If other advanced democracies are taken into account (figures A-1 and A-2) an almost universal international trend towards deregulation of temp-agency work is visible. Few countries have actually maintained strict levels of regulation or even enhanced regulation. The same applies to fixed-term employment. While part of this may be accredited to factors such as the OMC in the EU, it is likely that institutional learning and benchmarking as well as the lobbying of large international temp agency firms have contributed to the trend of liberalisation and deregulation (cf. Peck, Theodore and Ward 2005). Not least the OECD itself has repeatedly issued recommendations that labour markets should become more flexible, for instance in it its publications called *economic outlook* for each member state. This raises the question to what extent individual countries have felt pressure to give in growing demands for more facilitating temporary employment and to follow a more or less specific pathway.

Although this question cannot be addressed here in more detail, evidence presented in chapter 5 suggests that domestic debates have been very much informed by "international factors" and influences. The most recent example for external factors shaping domestic reforms is the Eurozone crisis where labour market reforms have been part of the conditions of further financial assistance through EU and IMF.

Table A-4 **Overall scores for the OECD temporary employment indicator**

	Fixed-term employment		Temp agency work		Overall strictness of regulation on temporary work	
	DE	JA	DE	JA	DE	JA
1985	3,5	0,5	4,0	3,1	3,75	1,81
1995	1,8	0,5	2,8	2,8	3,50	1,38
2003	1,8	0,5	1,8	2,0	1,50	1,00
2008	n/a	0,5	n/a	n/a	1,25	1,00

Figure A-1 **Regulation trends for fixed-term employment in international comparison**

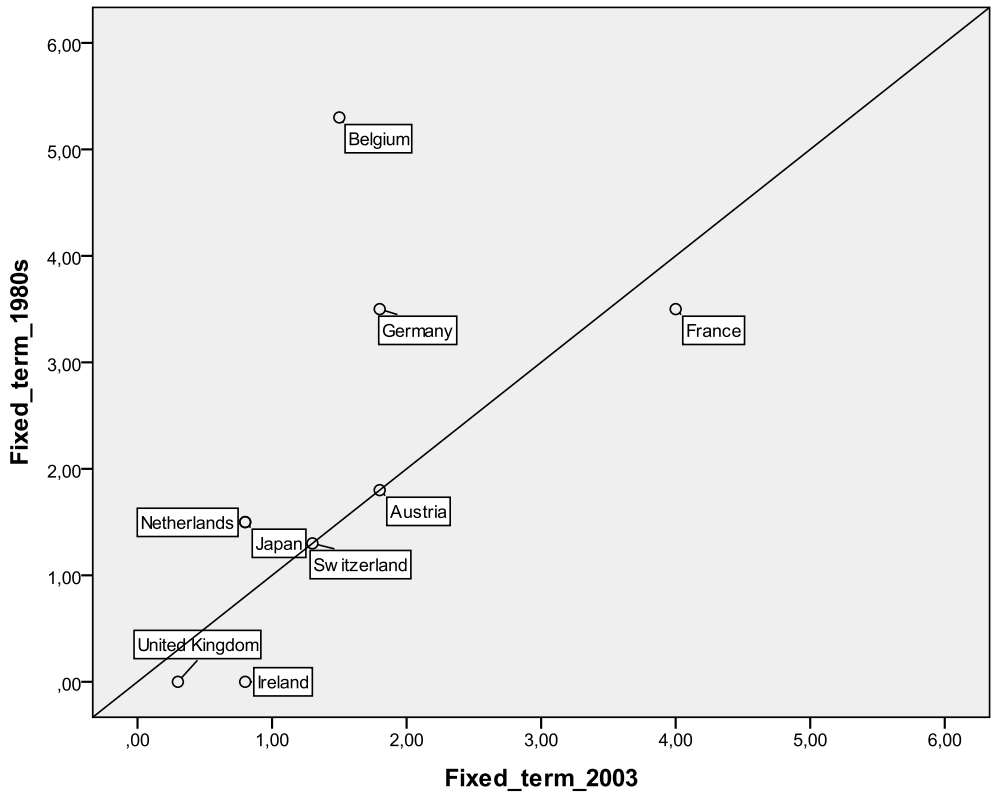
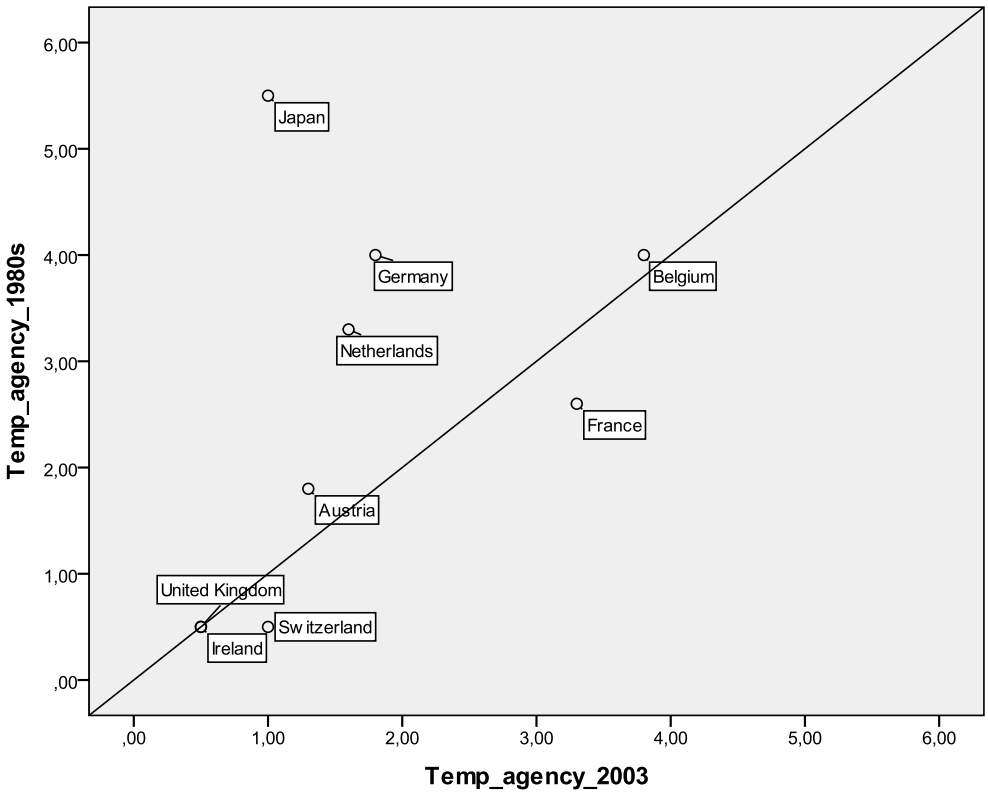


Figure A-2 **Regulation trends for temp agency work in international comparison**



9.1.4 Enforcement of employment protection

There is little doubt that the gap between legal theory and practice is crucial if one wants to understand the actual level of protection individual workers enjoy. Yet, comparisons across legal systems are difficult even when, as is the case with Germany and Japan, they share similar historical roots (Japanese law has been strongly influenced by German law in the Meiji period). Moreover, Japan appears to be an outlier with regard judicial practice. For instance, there are relatively few lawyers and court cases in comparison to other countries across all fields of legal practice. Araki (2003)[117] reports that in 2004 there were 3.168 cases involving labour issues in Japanese courts while there were 630.666 cases in Germany in that year. The Japanese judicial system in general emphasises practices such as mediation (*choutei* 調亭) so the low number of cases does not necessarily reflect a weaker position of workers seeking compensation for unfair treatment. There is a substantial literature on whether the low prevalence of court cases should be regarded as a cultural legacy or has been actively promoted by authorities fearing

[117] The estimate was taken from an unofficial publication by law professor Takashi Araki available at the University of Tokyo's website (last accessed in February 2012): http://www.j.u-tokyo.ac.jp/~sota/info/Papers/Araki%20Labor%20Tribunal%20final080907.pdf.

the costs of a fully fledged judicial system (see e.g. Sugeno 2006; Upham 1998) but evidence is mixed. From an institutional point of view it can be said that mediation in place of court hearings allows limiting face loss and reputational risks which can be important both for employers (reputation as a good employer) as well as employees (reputation as trustworthy employee). The comparatively small number of cases may thus be due - at least to some extent - to the effectiveness of alternative bodies of conflict resolution, e.g. the Labour Relations Committees (*roudou iinkai* 労働委員会) which exist on prefectural and national level.

In both countries there is a clear tendency toward growing polarisation of employment relations at least as far as the number of court cases is concerned. This has to do with the economic difficulties and increase in corporate re-structuring both countries experienced since the early 1990s. Bertola et al (2000) show that in Germany the number of court cases has grown in line with unemployment. A similar observation can be made for Japan: Even before the introduction of the labour tribunal system (*roudou shinpan seido* 労働審判制度) in April of 2006 - which constitutes a major step with regard to facilitating the settlement of individual labour cases - the number of court cases had increased significantly. Kezuka (2006) attributes this to the fact, that in the 1990s several large firms underwent corporate restructuring which resulted in a dramatic increase in lay-offs. This development prompted the MHLW to review the system of labour dispute resolution several times since the early 1990s.

Another important change in the Japanese context concerns the relevance of the above mentioned labour relations commissions. According to Sugeno (2006) the commissions have lost most of their relevance not least because it takes them on average 3 and a half years to resolve a case (German courts, he notices, need 3-4 months). Moreover, they have been only relevant in industries with a strong union presence, such as railways before their privatisation and are beyond the scope of workers in SMEs or in the service industry, for instance.

In response to the growing number of individual disputes the MHLW set up a specialised administrative unit in 2001 which can be contacted by individuals and asked to “inspect” the workplace and provide “counselling”. Sugeno (2006: 8) reports that the number of cases heard by regional branches of the MHLW amounted to 730.000 cases in 2003 of which about 5.000 were officially settled. However, the

number of cases does not necessarily give an adequate indication of whether justified complaints are resolved fairly or whether individuals stand a similar chance of settling their complaint. Also, it is unclear whether the labour tribunal system has improved the enforcement of employment protection as rulings are non-binding. If no agreement is reached between the parties concerned, regular district courts will take over the case as in the past. Another aspect relevant for enforcement is the cost of judicial processes. In both Germany and Japan workers have to cover all of their legal expenses unless they succeed. Several experts interviewed pointed out that the active support of unions is crucial in court cases and that unions often try to set a precedence (e.g. a court ruling about a contentious practice) which they hope will benefit other workers who cannot or do not want to sue themselves.

The vast differences between German and Japanese judicial practices require much more careful consideration than was possible in the limited context of this study. Different conclusions can be drawn: Japanese employers and employees many have in general tried to settle disputes in a more consensual manner than their counterparts in Germany. Yet it could also mean that the threshold for potential litigants to go to court is considerably lower in Germany. Whether and to what extent this affects an individual's level of protection cannot be said with certainty however. However, clearly in both countries workers in large firms, with regular work contracts and a large union presence are in a considerably better legal position than other workers.

9.2 Spending on labour market policies (LMP)

Reliable and detailed data on public spending on labour market policies is difficult to obtain as national as well as international bodies do not report data in exactly the same way. The most comprehensive resources for comparative data on ALMP is the OECD's database on public spending which includes details on 9 different policy programmes related to active and passive labour market policies. These include: Public employment services (placing), job rotation and job sharing (e.g. to facilitate entry into the labour market by dividing existing work more equally), employment incentives (e.g. employment maintenance), employment support and rehabilitation (for workers with a reduced capacity to work), start-up incentives (e.g. to encourage entrepreneurship among unemployed), unemployment support (especially unemployment benefits), direct job creation (usually in the non-profit sector), early

retirement and training. The latter three policy programmes are directly relevant for labour market flexibility as they can be used to facilitate numerical adjustments by reducing the social and economic costs of downsizing (early retirement) and by providing job alternatives (job creation). Training can also increase functional flexibility by updating the skills of workers and thus improving their "employability". The remaining programmes are not necessarily related to flexibility-concerns but provide an additional indicator on how large state intervention is and whether there have been larger policy changes. As for other programmes, they may have an indirect impact by allowing firms to dismiss labour or to cut recruitment while keeping the political costs of such moves relatively low.

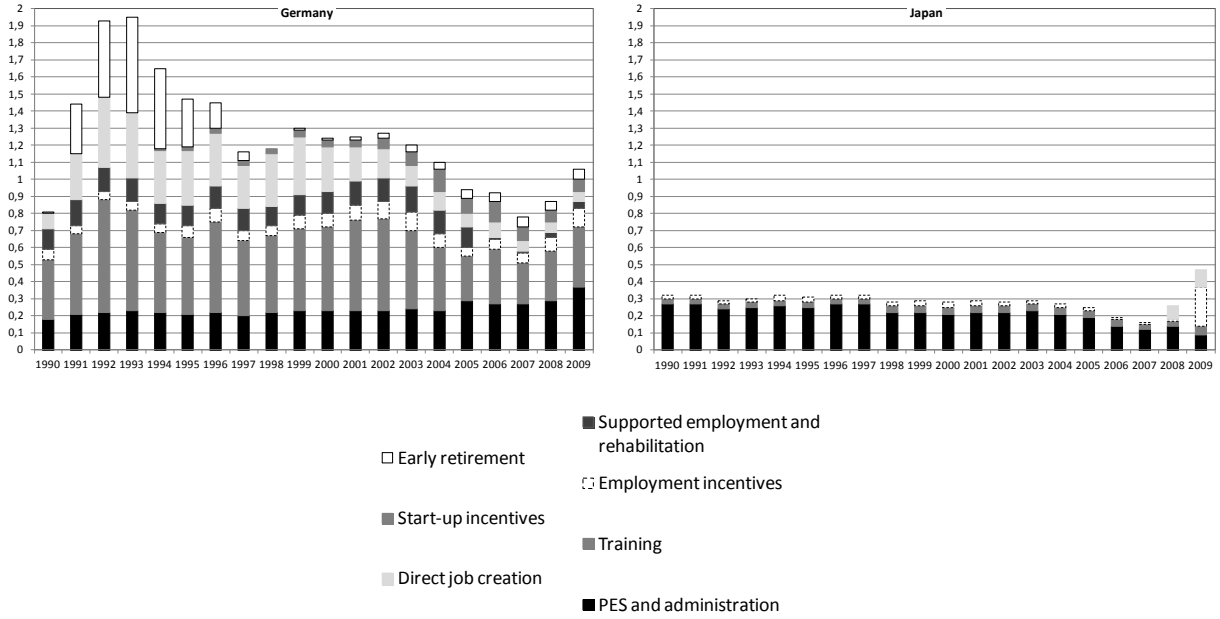
The OECD itself cautions that comparisons may not be adequate in all cases (see http://www.oecd.org/dataoecd/49/50/38803588.pdf accessed in May 2011, and Grubb and Puymoyen (2008)). As a detailed analysis is beyond the scope of this study given the complexity of this policy area, the following section does not seek to identify potential political and economic determinants of but rather seeks to substantiate the arguments made in the study stressing the importance of ALMP for strategies of flexibility enhancement. Most importantly, spending on LMPs provides an additional line of evidence for detecting changes in government intervention. Last but not least, the section will indicate how spending patterns in Germany and Japan compare with those of other industrialised democracies in order to get a better idea of the prominence and relevance of such policies.

Fundamentally, LMPs can be distinguished using two sets of categories, that is, based on the "instrument" or based on the policy goal of ALMPs (a good overview of such categorisations can be found at Bonoli 2010: 7-11). In the literature both concepts have been used, yet in recent years the switch toward "activation" has popularised models which emphasise the goal of strengthening work incentives. This goal, most prominently represented by reforms implemented by 'New Labour' governments in the UK (1997-2010), is usually addressed through combined reforms of ALMP and welfare provision. For instance, a cut of unemployment benefits (e.g. shortening the period of entitlement or introducing elements of means-tests) is usually accompanied by extended training possibilities or enhanced entitlements for job training by those looking for a job and/or receiving unemployment benefits. In Germany this concept has been adapted in the so called "Hartz IV" reform which makes the full entitlement to unemployment benefits subject to the willingness of the

recipient to engage in job search and/or participate in training measures. In many countries where similar policies have been implemented, this has led to an increase in the spending for training but at the same time to a decline in spending on welfare. However, national arrangements and the focus of policies differ considerably as does the amount of public money spent on ALMPs (see figure A-3 and).

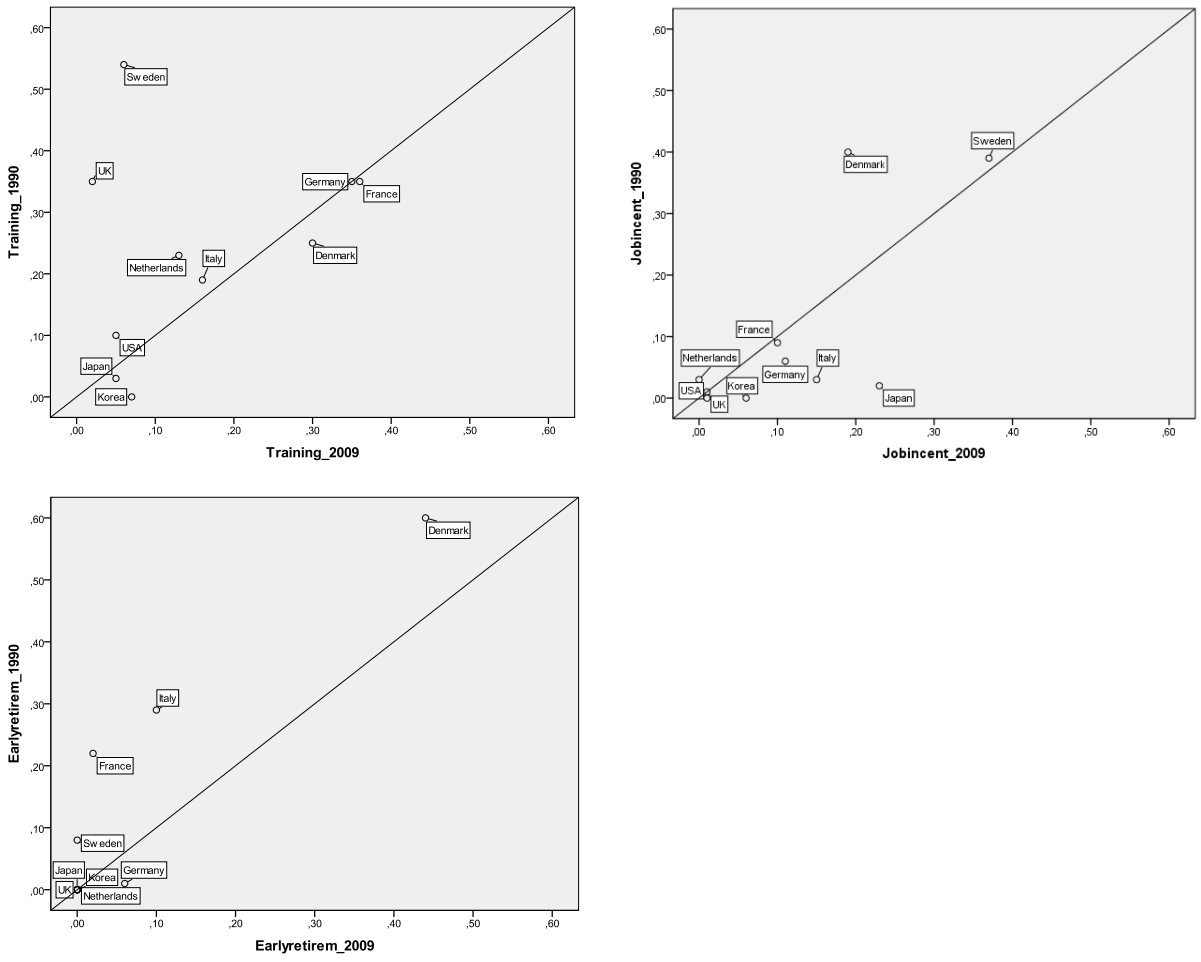
Data for 2009 underlines the importance Japanese authorities give to maintaining employment yet also the flexibility in changing instruments if deemed necessary: Expenditure for "employment maintenance incentives" increased from 0,07% of GDP in 2008 to 0,23% in 2009. In Germany, which relied on short work in a similar manner, the hike was much more moderate from 0,06% in 2007 to 0,11% in 2009 (see also 1.7 in annex A) - although this is also due to the fact that the budget for the *Bundesagentur für Arbeit*, which hands out short work subsidies, falls under the category "PES and administration". The Japanese response is consistent with previous responses to economic problems, that is, ministries have shown a great concern for the stability of large employers and have tried to prevent bankruptcies in order to presever the attained social status of the firms' employees. Due to the small size of the external labour market (until the 1990s mid-career hires were very uncommon) and the limited benefits offered by the Japanese welfare state (only 30% of unemployed receive unemployment benefits), employment stability has been a major concern for all post-war governments.

Figure A-3 **Spending on labour market policies as percentage of GDP**



Source: OECD.Stat (accessed May 2011).

Figure A-4 **Spending on flexibility-related labour market policies (as % of GDP, 1990 to 2009)**



Source: OECD.Stat (accessed May 2011).

9.3 Government changes, elections and coalition parties

Chapters 3, 5 and 7 assess potential "critical junctures" for policy decisions. This section provides further details on these changes in three separate tables which include information on national elections and government changes (i.e. coalition change, change of Prime Minister or Chancellor). In the German case only Federal state elections are mentioned which proved to be decisive for majorities in the Bundesrat. Although decisive elections which confirm the status-quo have been excluded and some states have been strongholds of one party (e.g. the SPD has been electorally weak in Bavaria for most of the post-war period, while it dominated in Bremen and Hamburg), this approach can provide useful hints at the incidence and frequency of potential critical junctures. Even though the relevance of smaller states for national politics is limited due to their lower number of Bundesrat votes, all state elections are nonetheless discussed on the national level as well and the national party organisations will always held press conferences on the results. Hence, there is a link between national and state politics and regional and national party organisations. However, despite the high nominal number of Federal state elections in Germany, there are considerably fewer "disruptions" on the German national stage than in Japan. For Germany 24 events can be identified in the period 1970 to 2011 while there were 45 for Japan - and this excludes cabinet reshuffles (Japanese ministers rarely stay in their office for more than a year).

In Japan, Upper House elections receive less public and media attention than elections to the LH. This is also visible in the lower turnout for UH elections. Also, UH politicians generally have a much lower public profile than members of the Lower House and have les name recognition. This is one of the reasons why parties have increasingly tried to attract "celebrities", such as former sports professionals, actors or TV-anchors to raise the profile of their UH caucuses. On the other hand, UH elections are, unlike some Federal state elections, clearly national affairs and require a strong and direct commitment from the national party organisation. Hence, the link between government politics and second chamber elections is considerably stronger in Japan than in Germany.

Table A-5 **Major events in national German politics, 1970-2012**

Year	Month	Cabinet	Coalition Parties	Type of majority Bundestag	Type of majority Bundesrat	EVENT
1970	April	Brandt I	SPD/FDP	Minimal winning coalition	**Coalition minority**	State election
1972	May	Brandt I	SPD/FDP	Minimal winning coalition	**Opposition majority**	State election
1973	January	Brandt II	SPD/FDP	**Minimal winning coalition**	**Opposition majority**	BT election, State election
1977	January	Schmidt II	SPD/FDP	**Minimal winning coalition**	Coalition minority	BT election
1978	July	Schmidt II	SPD/FDP	Minimal winning coalition	**Opposition majority**	State election
1980	November	Schmidt III	SPD/FDP	**Minimal winning coalition**	Opposition majority	BT election
1982	October	Kohl I	CDU/CSU/FDP	Minimal winning coalition	Coalition majority	Coalition and BK change
1983	April	Kohl II	CDU/CSU/FDP	**Minimal winning coalition**	Coalition majority	BT election
1987	March	Kohl III	CDU/CSU/FDP	**Minimal winning coalition**	Coalition majority	BT election
1991	February	Kohl IV	CDU/CSU/FDP	**Minimal winning coalition**	**Coalition minority**	BT election, State election
1994	December	Kohl V	CDU/CSU/FDP	**Minimal winning coalition**	Coalition minority	BT election
1997	October	Kohl V	CDU/CSU/FDP	Minimal winning coalition	**Opposition majority**	State election
1998	November	Schröder I	SPD/Greens	**Minimal winning coalition**	Coalition majority	BT election
1999	September	Schröder I	SPD/Greens	Minimal winning coalition	**Coalition minority**	State election
2002	May	Schröder I	SPD/Greens	Minimal winning coalition	**Opposition majority**	State election
2002	November	Schröder II	SPD/Greens	**Minimal winning coalition**	Opposition majority	BT election
2005	November	Merkel I	CDU/CSU/SPD	**Surplus majority coalition**	Coalition majority	BT election
2009	October	Merkel II	CDU/CSU/FDP	**Minimal winning coalition**	**Coalition majority**	BT election
2010	August	Merkel II	CDU/CSU/FDP	Minimal winning coalition	**Coalition minority**	State election

Table A-6 **Major events in national Japanese politics, 1970-1989**

Year	Month	Cabinet	Coalition Parties	Type of majority Lower House	Type of majority Upper House	EVENT
1970	January	Sato III	LDP	**Single majority government**	Government majority	LH election
1971	August	Sato III	LDP	Single majority government	**Government majority**	UH election
1972	July	Tanaka I	LDP	Single majority government	Government majority	PM change
1972	December	Tanaka II	LDP	**Single majority government**	Government majority	LH election
1974	August	Tanaka II	LDP	Single majority government	**Government majority**	UH election
1974	December	Miki	LDP	Single majority government	Government majority	PM change
1977	January	Fukuda, T.	LDP	**Single majority government**	Government majority	LH election
1977	August	Fukuda, T.	LDP	Single majority government	**Government minority**	UH election
1978	December	Ohira I	LDP	**Single majority government**	Government minority	LH election
1979	November	Ohira II	LDP	**Single majority government**	Government minority	LH election
1980	July	Suzuki	LDP	**Single majority government**	**Government majority**	LH UH elections

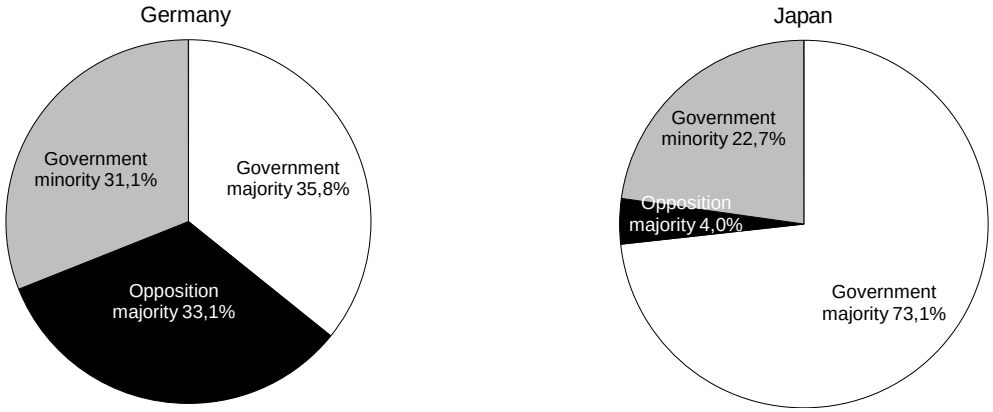
1982	December	Nakasone I	LDP	Single majority government	Government majority	PM change
1983	July	Nakasone I	LDP	Single majority government	**Government majority**	UH election
1984	January	Naksone II	LDP	**Single majority government**	Government majority	LH election
1986	August	Nakasone III	LDP	**Single majority government**	**Government majority**	LH and UH elections
1987	November	Takeshita	LDP	Single majority government	Government majority	PM change
1989	June	Uno	LDP	Single majority government	Government majority	PM change
1989	August	Kaifu I	LDP	Single majority government	**Government minority**	UH election

***Table A-7* Major political events in national Japanese politics, 1990-2012**

Year	Month	Cabinet	Coalition Parties	Type of majority Lower House	Type of majority Upper Hourse	EVENT
1990	March	Kaifu II	LDP	**Single majority government**	Government minority	LH election
1991	November	Miyazawa	LDP	Single majority government	Government minority	PM change
1992	August	Miyazawa	LDP	Single majority government	**Government minority**	UH election
1993	August	Hosokawa	SDP/JRP/CGP/ JNP/DSP/NPH/ SDL/DRL	**Minimal winning coalition**	Government majority	LH election
1994	May	Hata	JRP/CGP/JNP/ DSP/LP	Minority coalition government	Government minority	PM/coalition change
1994	July	Murayama	LDP/SDP/NPH	Surplus majority coalition	Government majority	PM/coalition change
1995	August	Murayama	LDP/SDP/NPH	Surplus majority coalition	**Government majority**	UH election
1996	January	Hashimoto I	LDP/SDP/NPH	Surplus majority coalition	Government majority	PM change
1996	November	Hashimoto II	LDP (SDP/NPH)	**Single minority government**	Government minority	LH election
1998	August	Obuchi	LDP	Single majority government	**Government minority**	UH election
1998	December	Obuchi	LDP/LP	Surplus majority coalition	Government minority	Coalition change
1999	October	Obuchi	LDP/LP/CGP	Surplus majority coalition	Government majority	Coalition change
2000	April	Mori I	LDP/CP/CGP	Surplus majority coalition	Government majority	PM/coalition change
2000	July	Mori II	LDP/CP/CGP	**Surplus majority coalition**	Government majority	LH election
2001	May	Koizumi I	LDP/CP/CGP	Surplus majority coalition	Government majority	PM change
2001	August	Koizumi I	LDP/CP/CGP	Surplus majority coalition	**Government majority**	UH election
2003	December	Koizumi II	LDP/CGP	**Minimal winning coalition**	Government majority	LH election
2004	August	Koizumi II	LDP/CGP	Minimal winning coalition	**Government majority**	UH election
2005	October	Koizumi III	LDP/CGP	**Surplus majority coalition**	Government majority	LH election
2006	October	Abe	LDP/CGP	Surplus majority coalition	Government majority	PM change
2007	July	Abe	LDP/CGP	Surplus majority coalition	**Opposition majority**	UH election
2007	October	Fukuda	LDP/CGP	Surplus majority coalition	Government majority	PM change
2008	October	Aso	LDP/CGP	Surplus majority coalition	Opposition majority	PM change
2009	September	Hatoyama	DPJ/SDP/PNP	**Surplus majority coalition**	Government majority	LH election
2010	May	Hatoyama	DPJ/PNP	Surplus majority coalition	Government majority	Coalition change
2010	June	Kan	DPJ/PNP	Surplus majority coalition	Government majority	PM change

2010	July	Kan	DPJ/PNP	Surplus majority coalition	**Opposition majority**	UH election
2011	September	Noda	DPJ/PNP	Surplus majority coalition	Opposition majority	PM change

Figure A-5 **Majorities in the Bundesrat and the Upper House of the Japanese Diet (1966-2009)**



Note: Percentages calculated based on full months.

9.4 Policy positions of major political parties since the early 1990s

Estimating the policy positions of parties in a comparative context is a complex undertaking. At present, two sets of data can be applied for comparative purposes. The Comparative Manifesto Project (https://manifesto-project.wzb.eu/information/project) provides data for most major parties in and most of the post-war period in several democracies. Data is derived from a qualitative content analysis of party statements and manifestos which codes "quasi-sentences" and assesses their meanings by categorising them into pre-fixed categorises, covering all main fields from economics to social values. The project has the advantage that is catches many aspects of partisan positioning and that it covers arguably the largest set of parties and years of all comparable projects so far. However, since Japanese parties have not started using manifestos before the general election of 2000 and the data set does not allow placing parties in relation to each other, it only has limited use for this study. As the recent transformation of the Japanese party system is particularly complex data from Kato has been used instead. Junko Kato's dataset represents an alternative methodology in that it estimates of policy positions based on surveys of experts. More recent contributions which rely mostly on media content have been excluded on the ground that they are usually

limited to specific periods and countries. However, where useful, results have been integrated into the analysis (see chapters 3 and 5).

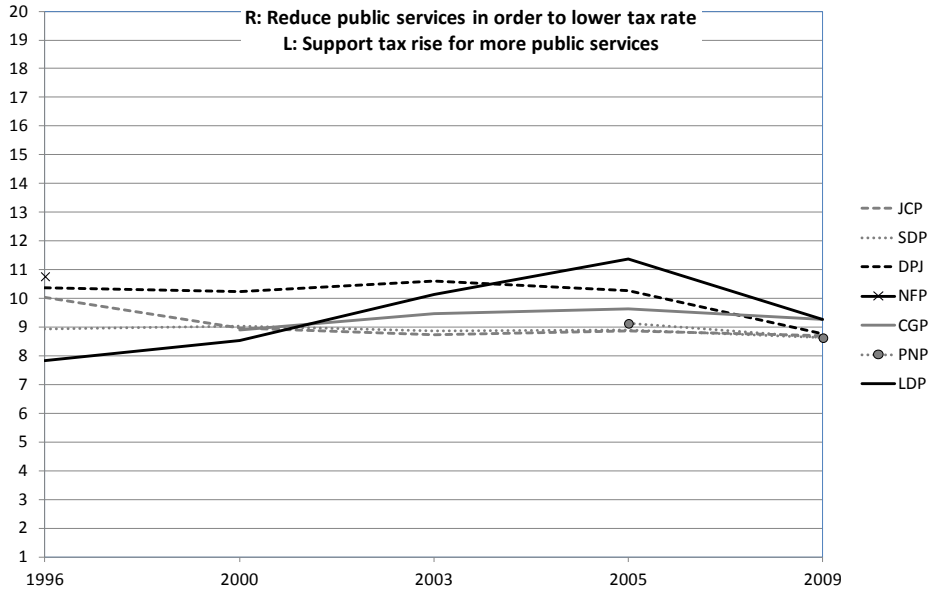
The data used here was chosen based on the grounds that it is comparable and available for a recent period. As the German party system has been more stable in nominal terms, priority was given to Japanese data. Here, only Junko Kato's data at the University of Tokyo covers the general election of 2009. Her expert survey include the estimates of between 48 and 72 experts. She has conducted four waves of surveys in total after the national general election to the Lower House in 1996, 2000, 2003 and 2009. For explanations of the data in English see Kato and Kannon (2008: 345-347). For all figures on Japanese parties see Junko Kato's homepage (last accessed in March 2012, http://www.katoj.j.u-tokyo.ac.jp/). A comparative dataset that covers Germany is the so called Chapel Hill Expert Survey Series (CHESS) dataset which applies a similar methodology to derive expert estimates of party positions (available at (http://www.unc.edu/~gwmarks/data_pp.php). Its main focus is on European integration and the latest available data is from 2006, however, as does cover some topics that are of particular interest to this study and which are comparable to those surveyed by Kato.

As stated in chapters 3 and 5, qualitative assessments of party positions face some important limitations. In the cases of the Kato and the Chapel Hill datasets the most serious impediment is that in many instances it connects issues (tax and "public services") which are not necessarily indicative of how parties' positions on labour market regulation or welfare. For instance, the questionnaires do not ask about priorities between social protection and economic efficiency or labour market regulation or employment. While in Germany parties are relatively cohesive in their ideological positioning, this is less clear in Japan where even the two major parties DPJ and LDP continue include groups representing very different positions on economic issues or foreign policy (e.g. before joining the DPJ, Ozawa's group, then the Japan Renewal Party was considered to be considerably to the right of the LDP).

On the other hand, taxes and spending on public services may be particularly interesting in the Japanese context as taxes have proven to be highly controversial throughout the 1990s and 2000s. At least two cases of electoral defeats are credited to planned or implemented tax rises, e.g. the LDP's defeat in the 1989 UH election and the DPJ's defeat in the UH election of 2010. Kato's surveys offer four measures to assess fundamental differences between parties on socio-economic issues and

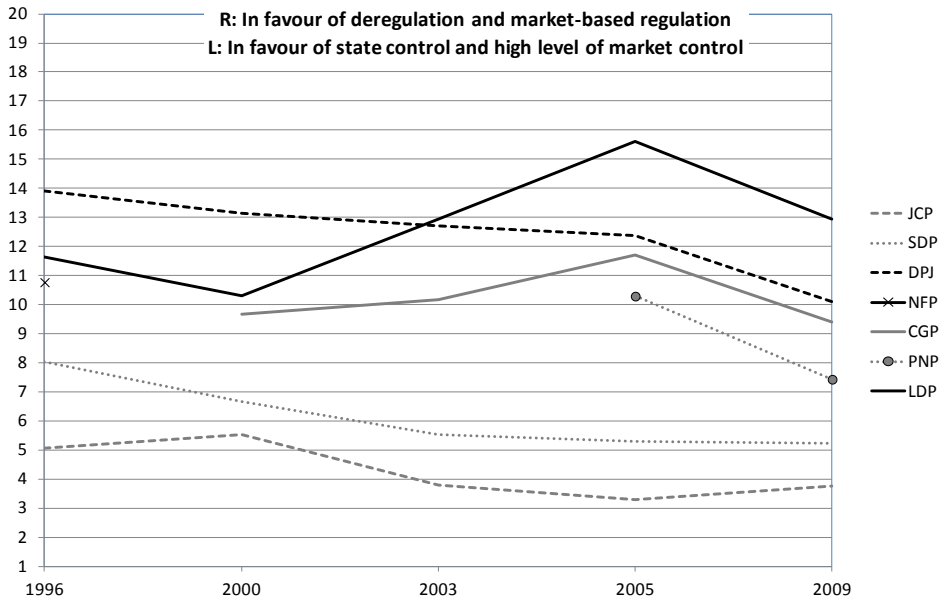
regulation as in reported in figures A-6, A-7 and A-8. The socio-economic categories included in CHESS are somewhat different but match them fairly well (figures A-11 and A-12).

Figure A-6 **Positions of Japanese parties on taxes and public services**



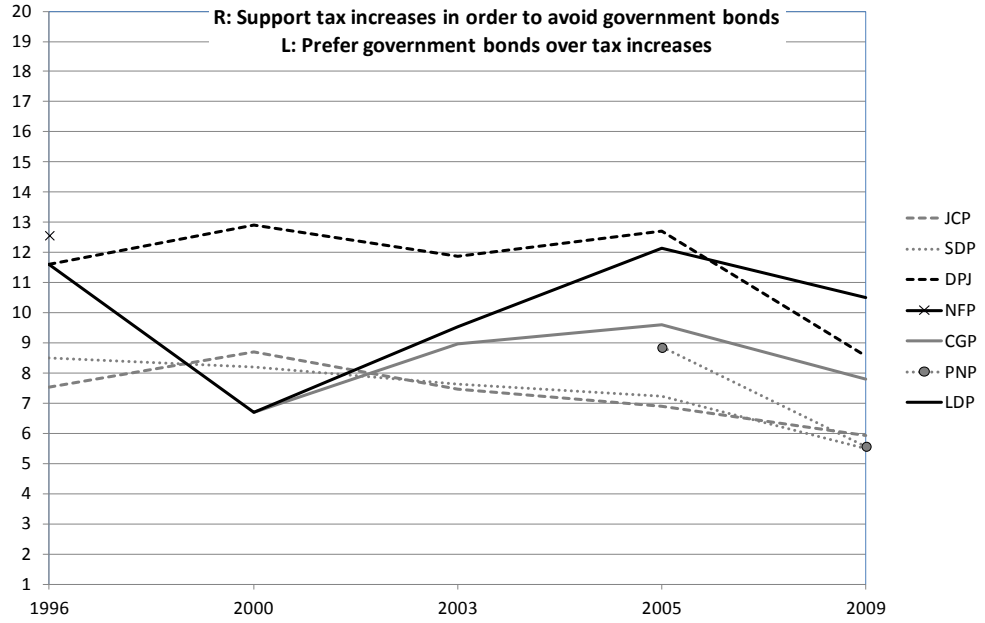
Note: For 2000-2009 the left position (low scores) was described as "support tax increase for public services by the government" (政府の公共サービスのために増税を支持する), right position (high scores) as „support a cut in public services by the government in order to reduce the tax rate". (減税のために政府の公共サービスを減らすことを支持する). For 1996 formulation of positions differed.

Figure A-7 **Positions of Japanese parties on deregulation and market-based regulation**



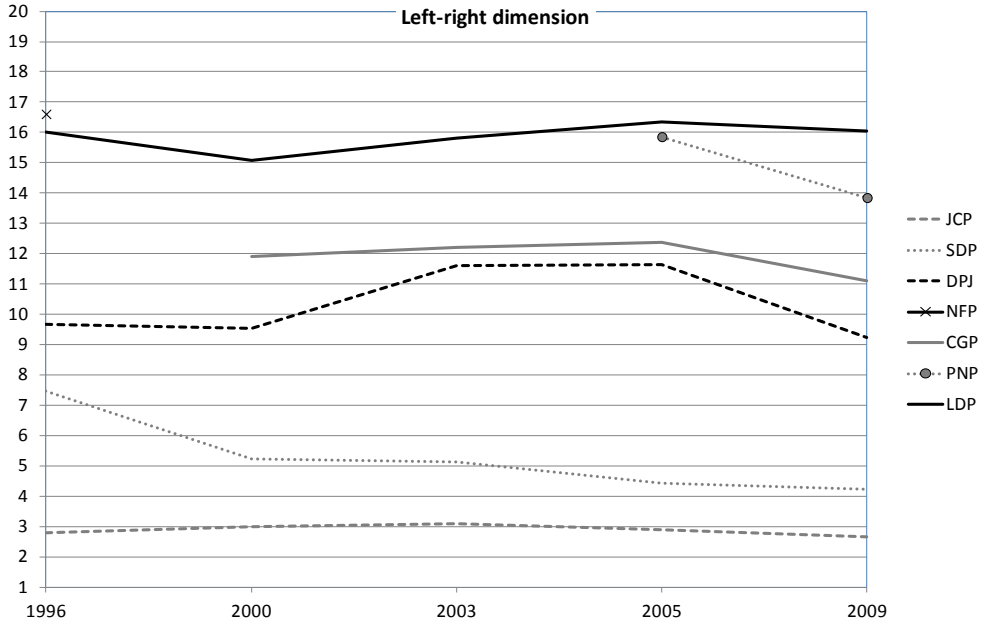
Note: For 2000-2009 the left position (low scores) was described as "support a high level of market regulation and control by the government" (国家による市場の規制とコントロールを高レベルで行うことを支持する), right position (high scores) as „support market-based deregulation in all cases ". (あらゆる機会を通じて市場における規制緩和を支持する). In 1996 left position emphasised opposition to a transfer of authority to the private sector while the right position emphasised support for less public authority.

Figure A-8 Positions of Japanese parties on deficit spending



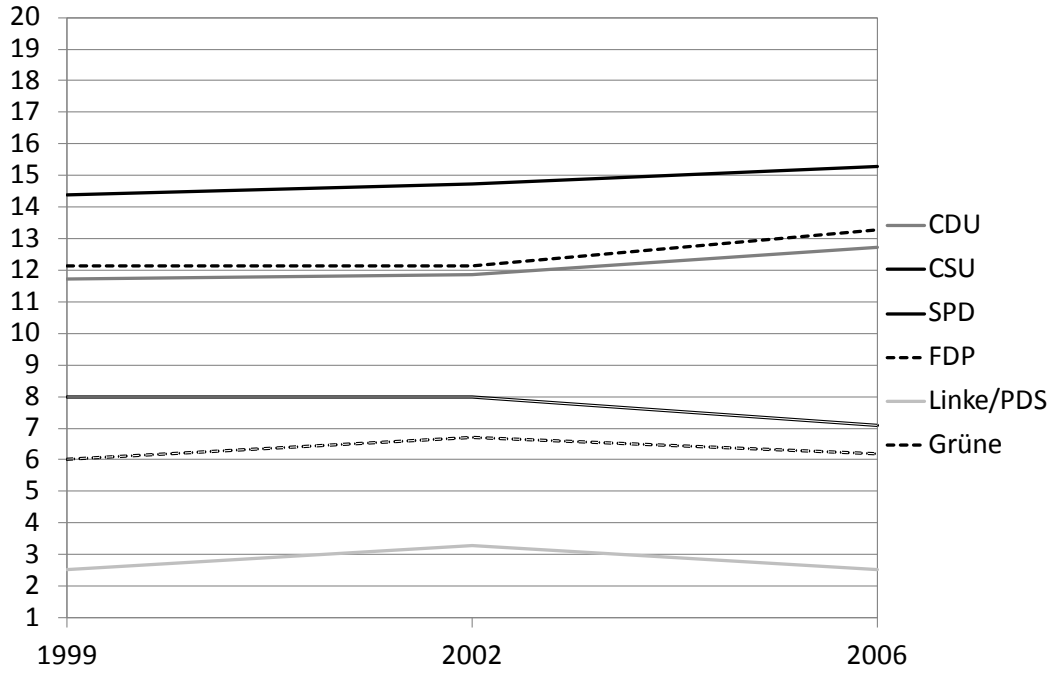
Note: In all surveys the left position (low scores) was described as "in comparison to a tax increase rather support issuance of more government bonds" (増税よりは赤字国債の発行を支持する) and the right position (high scores) as „support tax increases in order to avoid government bonds". (赤字国債の発行をなるべく避けるために増税を支持する).

Figure A-9 Expert estimates of Japanese parties' position on left-right ideological space



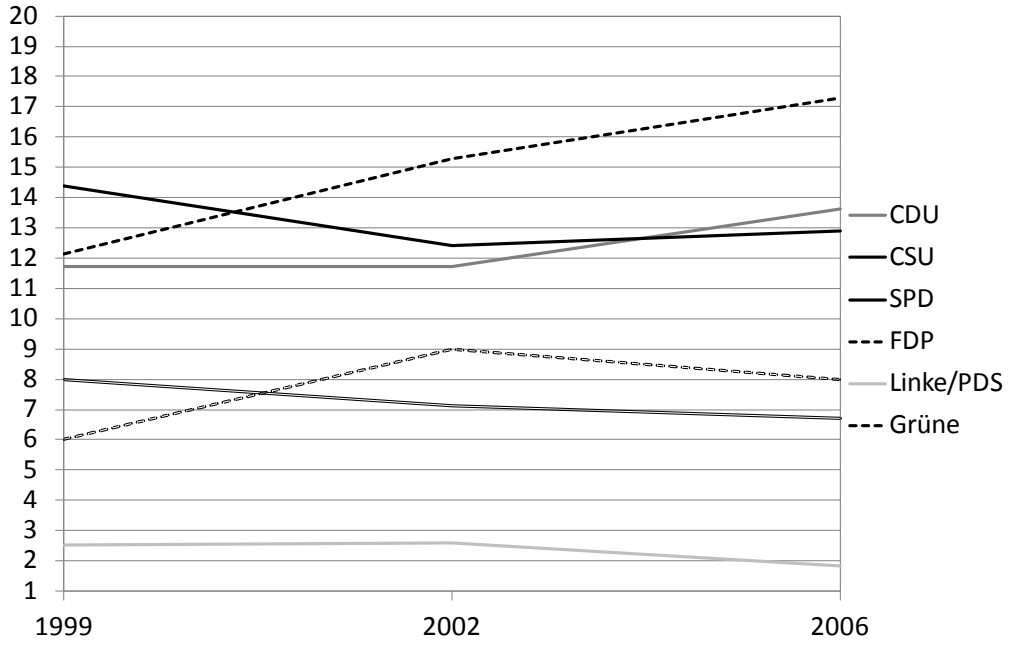
Note: Low scores = left policy position, high scores = right policy position.

Figure A-10 **Expert estimates of German parties in a general left-right ideological space**



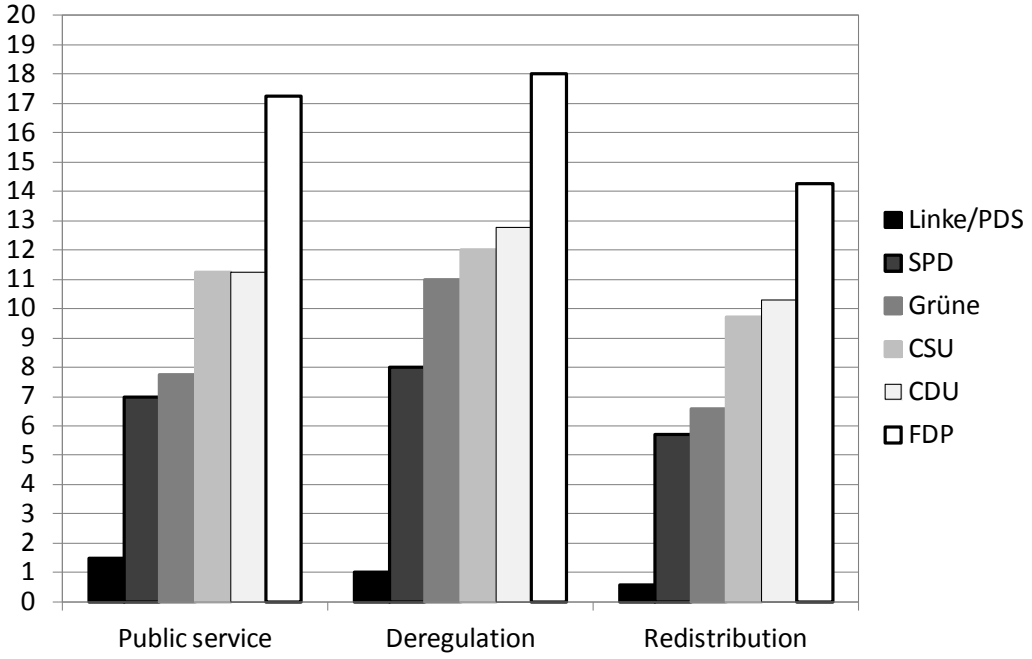
Source: Chapel Hill Survey, see text. High scores = right policy position; low scores = left policy position.

Figure A-11 **Expert estimates of German parties' positions on economic policy**



Source: Chapel Hill Survey, see text. Note: In the questionnaire economic positions were described as follows: "Parties on the economic left want government to play an active role in the economy. Parties on the economic right emphasize a reduced economic role for government: privatization, lower taxes, less regulation, less government spending, and a leaner welfare state." High scores = right policy position; low scores = left policy position.

Figure A-12 **Estimates of German parties' positions on three socio-economic dimensions (2006)**



Source: Chapel Hill Survey (2006). Note: High scores = right policy position; low scores = left policy position.
Public service: Left = "strongly in favour of more public services", right = "strongly in favour of tax reduction"; Deregulation: Left = "strongly opposes deregulation of markets", right = "strongly in favour of deregulation of markets"; Re-distributions: left = "Strongly favours re-distribution", right = "strongly opposes re-distribution".

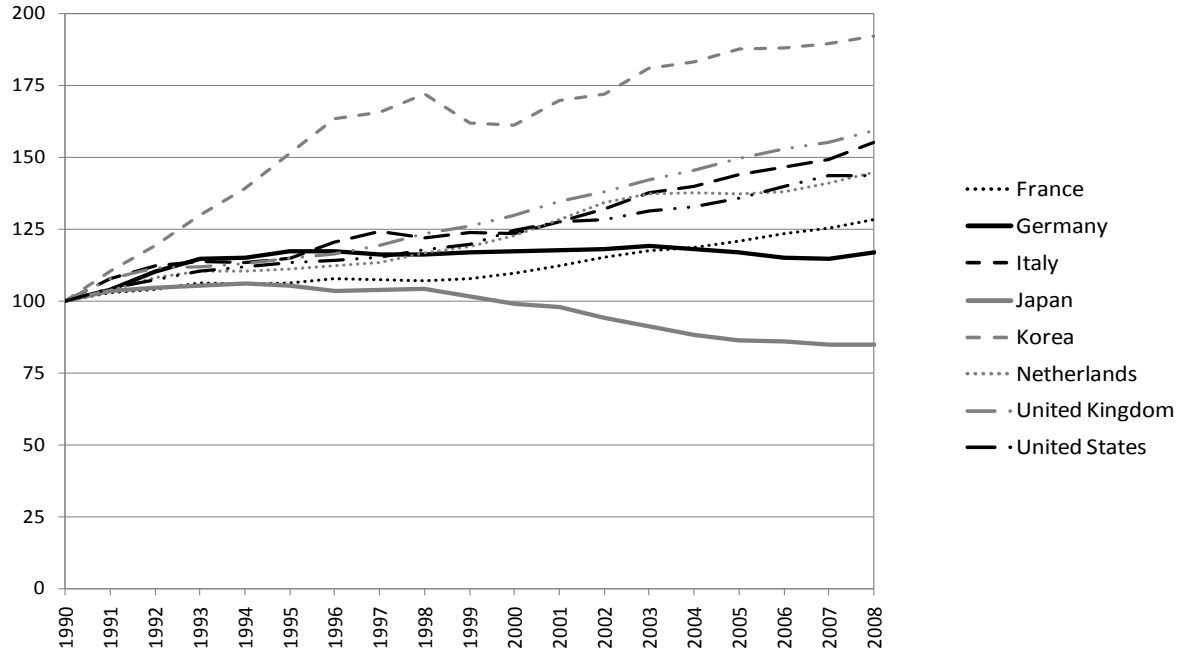
9.5 Wage moderation and unit labour costs

Unit labour costs (ULC) can be indicative of larger comparative trends in regard to the cost of labour. The OECD defines ULC as follows: "Unit labour costs are a key determinant of the competitiveness of the productive system of a country in both domestic and foreign markets. Unit labour costs reflect the combined evolution of compensation of employees per unit of labour input and of labour productivity, and can be an indicator of inflationary pressure on producer prices." (OECD Yearbook 2010). However, it cautions that "ULCs should not be interpreted as a comprehensive measure of competitiveness, but as a reflection of cost competitiveness. Unit labour cost measures deal exclusively with the cost of labour, which though important, should also be considered in relation to changes in the cost of capital, especially in advanced economies" (OECD Online Glossary).

This means that ULC can give a good indication of how well the effort of workers is rewarded in regard to output but it is not an indicator of overall competitiveness. In regard to Germany and Japan, however, the fact that ULCs have stagnated for most of the 1990s and 2000s can thus be seen as a reflection of the

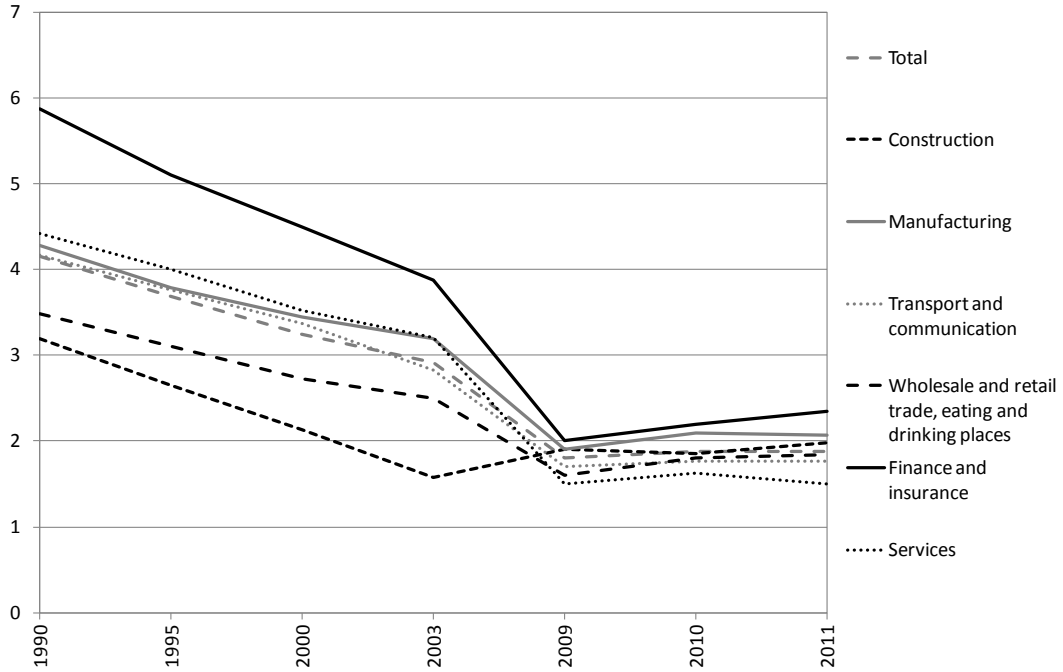
substantial wage moderation in both countries since 1990. This is also clearly visible in figures A-14, A-15 and A-16.

Figure A-13 **Unit labour costs in selected countries (all industries)**



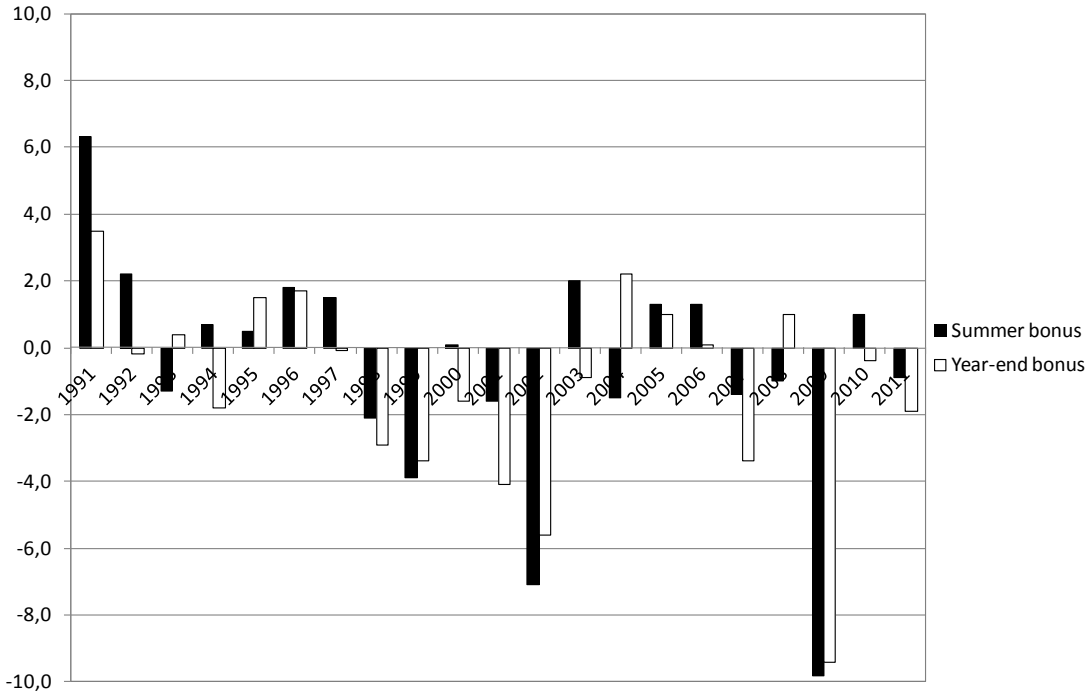
Source: OECD Factbook 2010.

Figure A-14 **Ratio of bonus to monthly income by industry (Japan), 1990-2011**



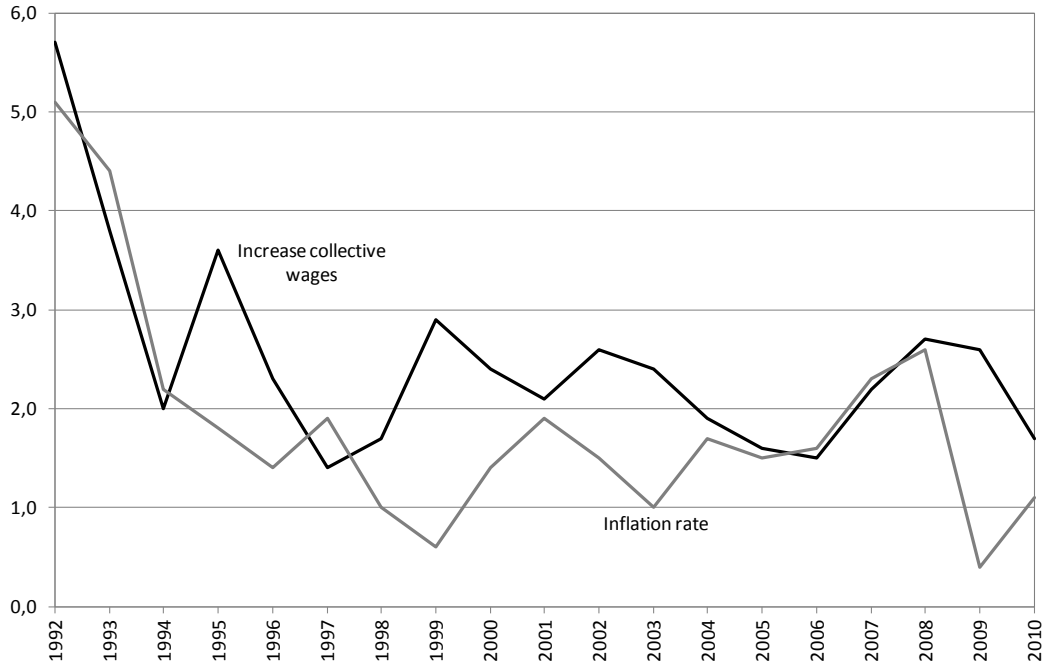
Source: Time series database at http://www.stat.go.jp/data/chouki/19.htm (accessed in August 2012), table 19-49 "Index of bonus wage rate and special wage bonus per month according to enterprise structure" [*kigyou kibo-betsu shoutei-nai kyuuyo chingin-ritsu shisuu oyobi tokubetsu kyuuyo shikyuu tsukisuu* 企業規模別所定内給与賃金率指数及び特別給与支給月数]. Data after 2004 was taken from the monthly labour statistical survey [*maigetsu kinrou toukei chousa* 毎月勤労統計調査]. The survey asks firms for averages for their whole workforce.

Figure A-15 **Change in summer and year-end bonuses in Japan, 1991-2011**



Source: MHLW (1991-2012) Monthly labour statistical survey [maigetsu kinrou toukei chousa 毎月勤労統計調査]. Aggregated data for all industries and enterprises with 5 or more employees. Indicates change to previous year. Note: Usually, there is no formal difference in the height of bonuses although statistics indicate that year-end or winter bonuses in most industries tend to be somewhat higher than in the summer.

Figure A-16 **Collective wages and inflation in Germany, 1992-2010**

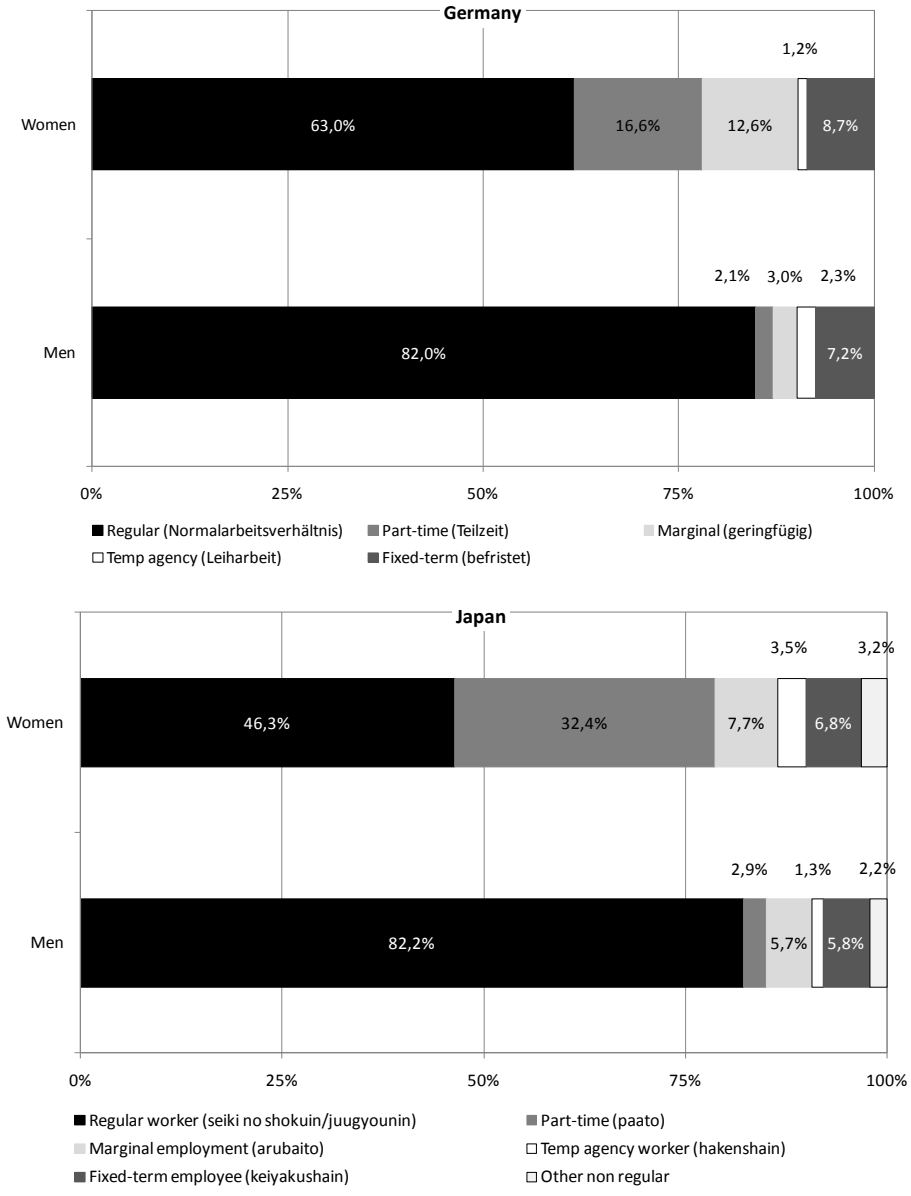


Source: Data for increases of collective wages are from the WSI Tarifarchiv (http://www.boeckler.de/wsi-tarifarchiv_39029.htm, last accessed in August 2012). Data for inflation rate is from the Statistische Bundesamt (2011): Preisindizes für Deutschland, Fachserie 17, Reihe 7", using a consumer price index definition.

9.6 Labour market dualism in Germany and Japan

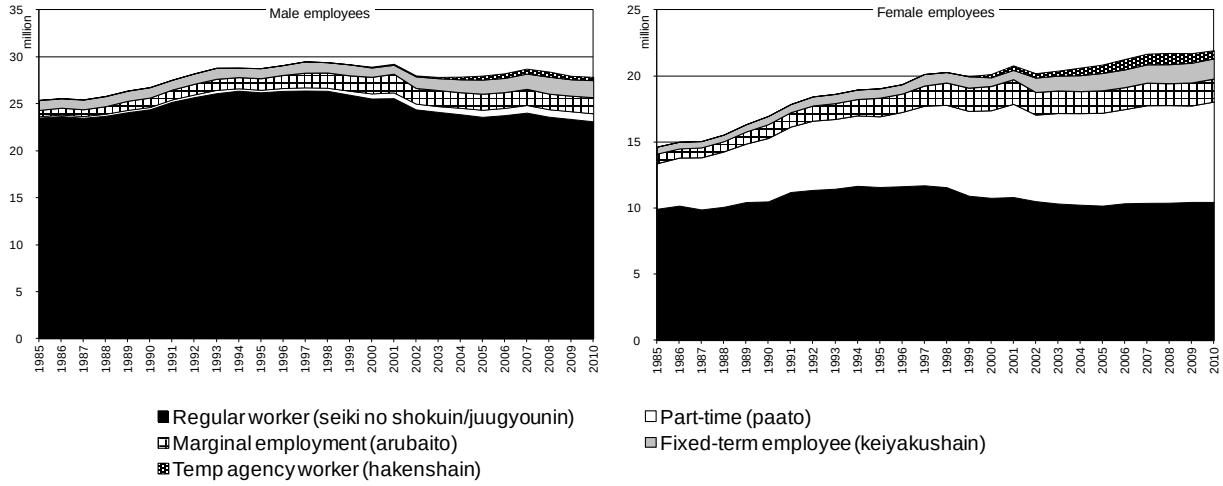
In Germany and Japan several data sources exist that can be used to describe the extent and development of labour market dualism. Results however vary somewhat depending on source. This section uses the most comprehensive data-sets available both in scope and time. It aims at providing background information on the temporal development, gender, welfare and income-specific patterns.

Figure A-17 **Regular and non-regular employment in Germany and Japan (2008/2009)**



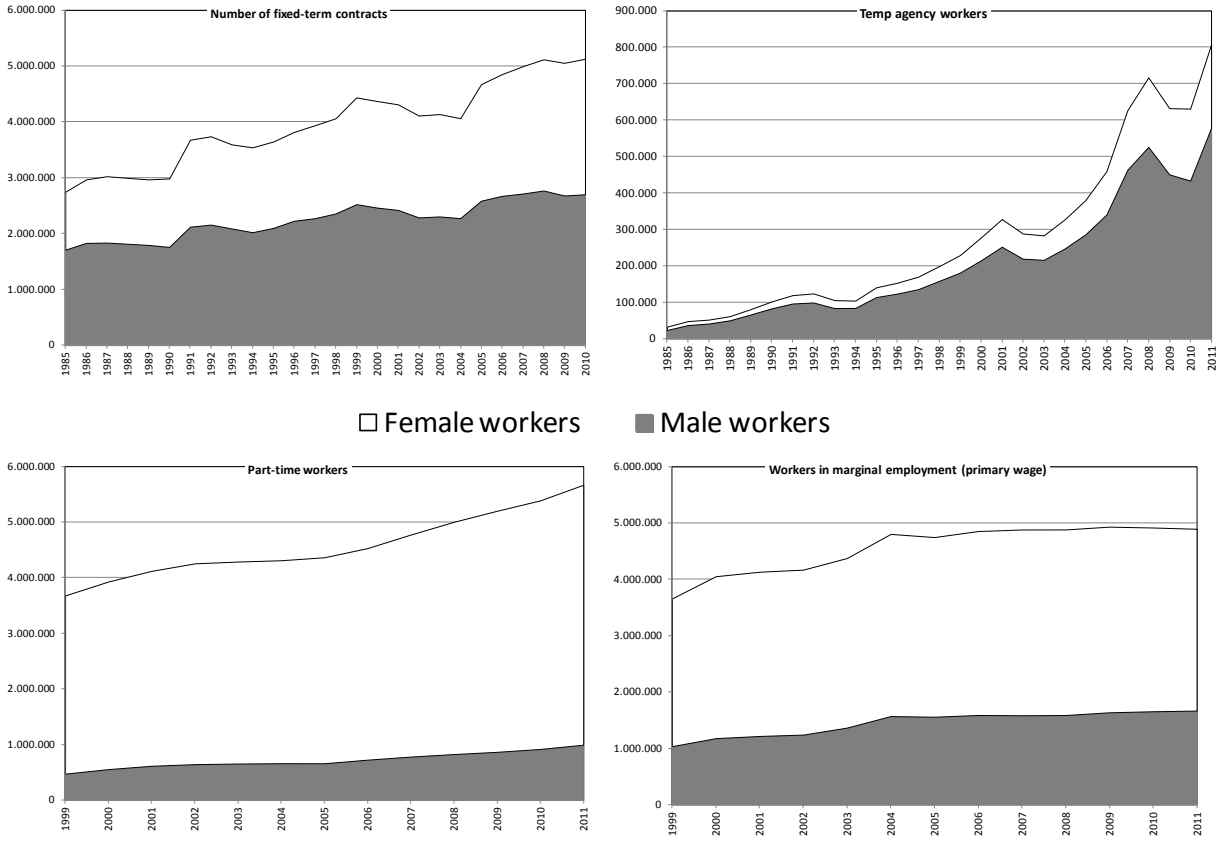
Source: MHLW (2010): Labour Force Survey [roudou ryoku chousa] and Mikrozensus as cited in Statistisches Bundesamt (2009): Niedrigeinkommen und Erwerbstätigkeit.
Note: The Japanese survey asks respondents how employers refer to their job which may distort the distinction between different job types as employers may use different criteria for differentiating between jobs. In Germany, overlaps between different forms of non-regular workers are not addressed in official statistic and rely entirely on estimates. The data has been adjusted based on a special investigation of the Mikrozensus. Japanese data is from 2009, German data from 2008.

Figure A-18 **Number of regular and non-regular workers in Japan, 1985-2010**



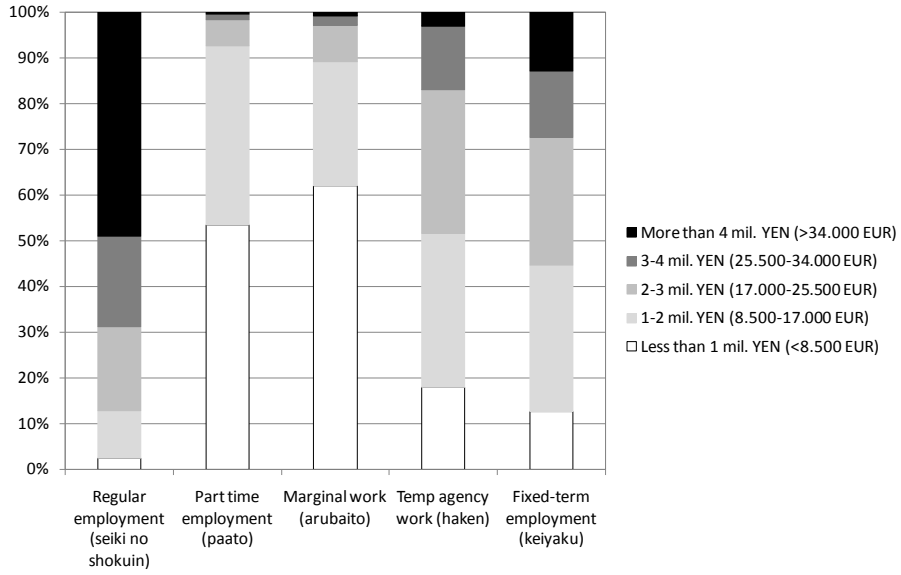
Source: MHLW (2012): Labour force survey [rodou ryoku chousa 労働力調査].

Figure A-19 **Number of non-regular workers in Germany, 1985-2010/1999-2011**



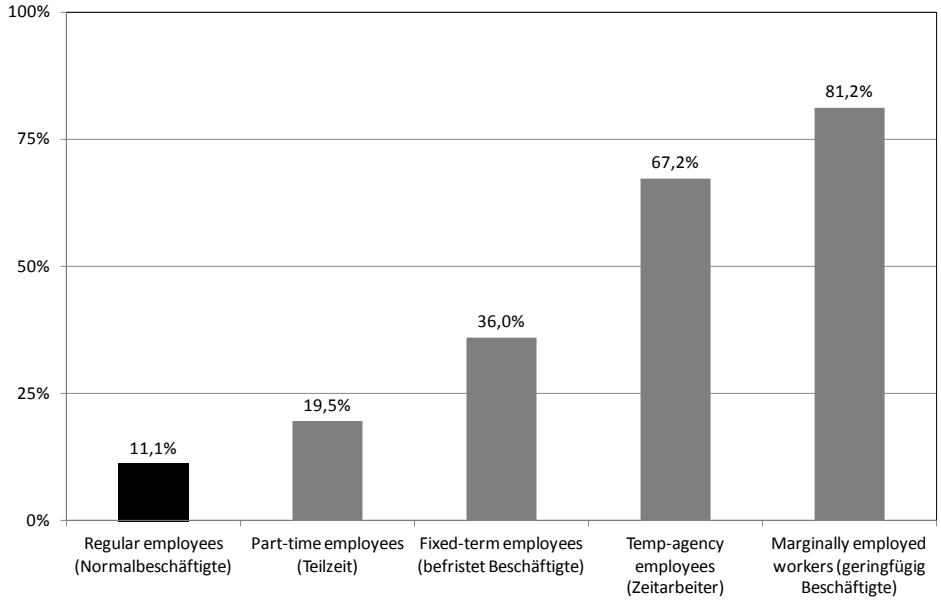
Sources: Data for part-time workers, marginal employment and temp agency workers were obtained from the Bundesagentur für Arbeit (as of January 2012), data is available at http://statistik.arbeitsagentur.de/Navigation/Statistik/Statistik-nach-Themen/Beschaeftigung/Beschaeftigung-Nav.html. Data for fixed-term contracts were obtained from the Statistisches Bundesamt (as of 2012), accessible at https://www-genesis.destatis.de/genesis/online/link/tabelleErgebnis/12211-0009. All websites were last accessed in March 2012. For data on part-time workers and Mini-jobs no directly comparable data was available for the period before 1999. Data on fixed-term contracts are estimates from the Mikrozensus, temp-agency employment from the monthly *Leiharbeiterstatistik* (official registrations of temp agency workers), part-time and marginal employment data are from the official *Beschäftigungsstatistik* (employment survey) which is published annually by the Bundesagentur für Arbeit.
Note: The number of jobs cannot be added to derive a total number of atypical jobs as there are considerable overlaps. While mini-jobs and temp agency jobs can be identified easily as they have to be registered officially, there are only estimates based on panel data for the number of fixed-term contracts and part-time workers. Depending on survey estimates can vary widely.

Figure A-20 Annual income by employment status in Japan (2005)



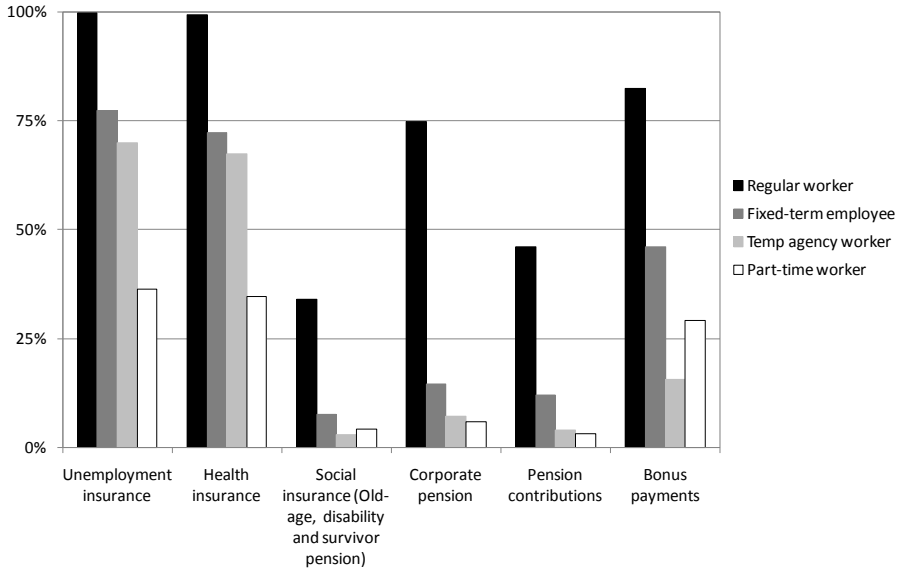
Source: Toda (2007), p. 27. Data is from the Labour Force Survey, detailed data 2005.

Figure A-21 Incidence of low pay in Germany by employment status (2006)



Source: Wingerter (2009), p. 1088. Note: Wingerter's analysis is based on data from the *Verdientsstrukturerhebung* (structure of income survey) which is conducted annually by the Statistische Bundesamt and its Länder branches. It is based on nominal working hours to assure comparability. Some industries where low pay is common are not included however and Wingerter assumes that the percentage of low pay among regular employees may thus be understated. Low pay (*Niedriglohn*) is defined as income below 2/3 of median wage (*Medianlohn*).

Figure A-22 **Participation in social security by employment status (Japan)**



Source: MHLW (2003): Comprehensive survey of employment diversification [Shuugyou keitai no tayouka ni kan suru sougou jittai chousa].

Table A-8 **Regulation of regular and non-regular employment in Japan**

	Regular (*seishain*)	**Part-time (*paato*)**	**Temp-agency (*haken*)**	**Contract (*keiyaku*)**	**Marginal (*arubaito*)**
Regulation of working conditions	▪ Firm and industry-level bargaining ▪ Labour law	▪ Firm-level bargaining ▪ Labour law	▪ Labour law ▪ Firm-level bargaining	▪ Individual bargaining ▪ Labour law	▪ Individual bargaining ▪ Labour law
Wage setting	▪ Medium to high depending on industry and size of company	▪ Low to medium depending on industry, firm	▪ Varying (equal treatment clause)	▪ Varying	▪ Regional minimum wage legislation
Social protection	▪ High hurdles against dismissals (mainly case law) ▪ Unemployment benefits up to 12 months	▪ Entitled to unemployment benefits after 6 months (up to 12 months)	▪ Eligible if consecutive employment >6 months (up to 12 months)	▪ Eligible if consecutive employment >6 months (up to 12 months)	▪ Entitled to unemployment benefits after 6 months (up to 12 months)
Corporate welfare	▪ Firm-specific and non-transferable ▪ Can include pension, health care, housing	▪ Limited compared to *seihshain* ▪ Varying acc. to firm	▪ limited compared to *seishain*	▪ Limited compared to *seihshain*	▪ None
Profile	▪ Predominantly male (70%)	▪ More than 70% are 35 or older	▪ Almost 50% are between 25-34 years of age	▪ 50% are between 25-34 and 55-64	▪ Over 80% are younger than 34

Source: Author's own. Profile data from the Labour Force Survey 2004 (*roudou ryoku chousa*).

Table A-9 **Regulation of regular and non-regular employment in Germany**

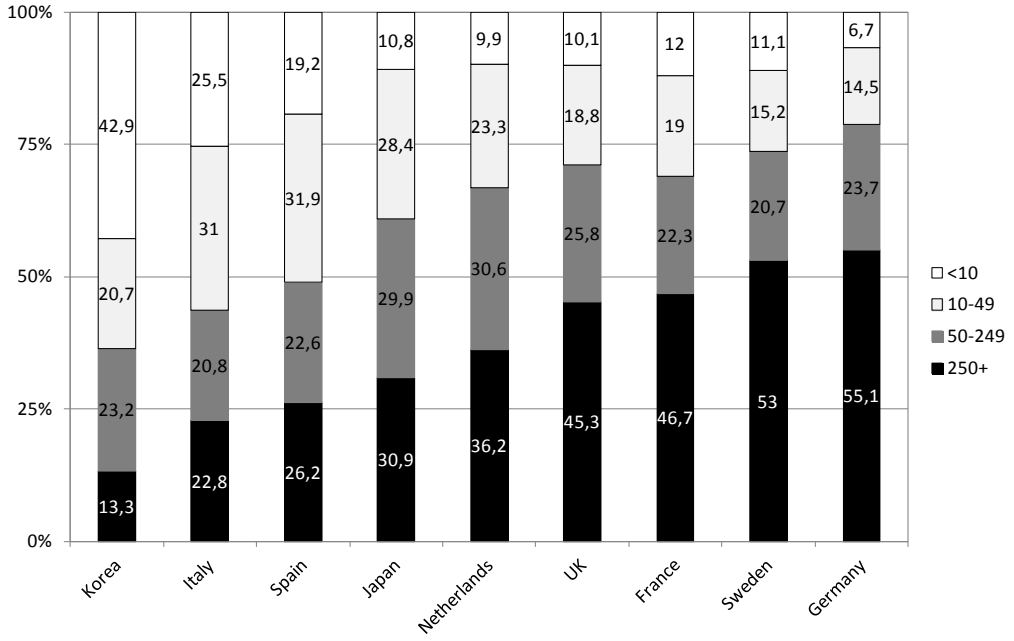
	Regular (*Normalarbeits-verhältnis*)	**Part-time (*Teilzeit*)**	**Temp-agency (*Zeitarbeit*)**	**Contract (*befristet*)**	**Marginal (*geringfügig*)**
Regulation of working conditions	▪ Industry-wide collective bargaining ▪ Labour law	▪ Enterprise-based bargaining ▪ Labour law	▪ Temp-agency industry bargaining ▪ Enterprise agreements ▪ Labour law	▪ Labour law ▪ Industry- and enterprise-based bargaining	▪ Labour law ▪ Social security law
Wage setting	▪ Collective agreements within business sectors ▪ And/or enterprise and regional agreement	▪ Within business sectors ▪ And/or enterprises and regional agreements	▪ Within temp agency industry but wage gap to regular workers	▪ Individual bargaining ▪ And/or collective agreements	▪ Individually ▪ By social security law (400EUR max)
Social protection	▪ High employment protection ▪ Unemployment benefits up to 24 months	▪ High employment protection ▪ Unemployment benefits up to 24 months	▪ Eligible if consecutive employment >1 year	▪ Eligible if consecutive employment >1 year	▪ Not eligible
Corporate welfare	▪ E.g. corporate pensions	▪ E.g. corporate pensions	▪ Usually without extra corporate benefits	▪ Often not eligible for corporate welfare	▪ None
Profile	▪ Predominantly male (69%)	▪ 60% are between 35 and 55 years	▪ More than 50% are 35 or younger	▪ About 60% are younger than 35	▪ About 50% are between 35 and 55 years of age

Source: Compiled by author. Profile data from Mikrozensus 2008.

9.7 Employment by firm size in international comparison

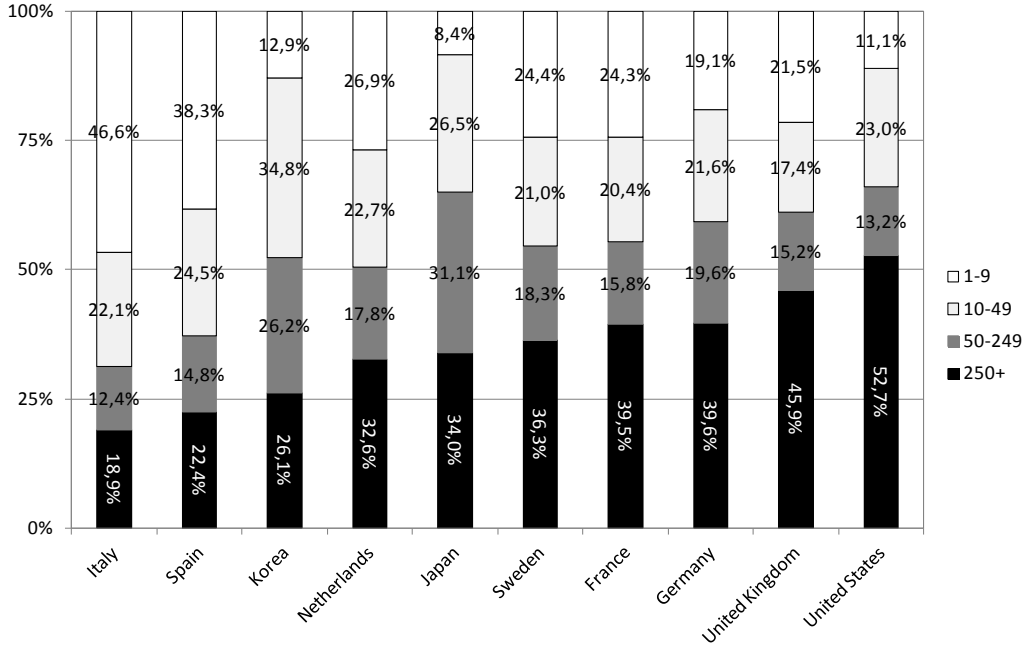
Firm size data is mentioned here as it indicates how prevalent different modes of regulation of working conditions are. As has been demonstrated , large firms in both countries tend to rely more on institutionalised and coordinated modes of regulation while working conditions in SMEs are more likely to be decided in less formal modes. Here two types of data are provided: The first figure is on overall employment according to firm size. The second depicts firm size in manufacturing, one of the core industries and politically most influential. As reliable (comparable) time series data is not available, the following illustrations are limited to “snapshots” on the most recent data available (2001 and 2007).

Figure A-23 **Employment by firm size in manufacturing (2001)**



Source: OECD (2005), p. 390.

Figure A-24 **Employment by firm size (all industries, 2007)**



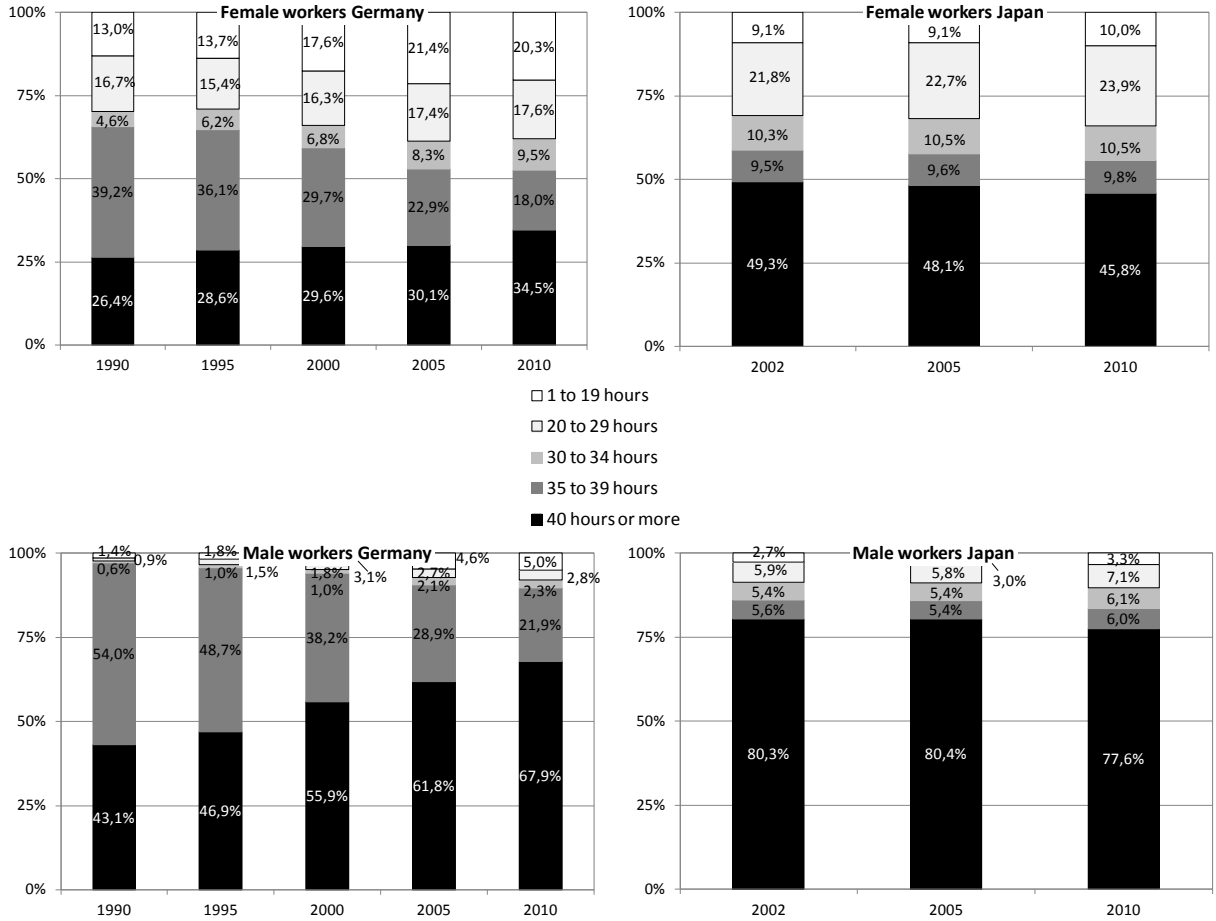
Source: OECD (2011), p. 45.

9.8 Hours worked per week

Apart from employment status and wages, the average hours worked constitutes a third vital indicator on the quality and type of job individuals hold. To some extent this also allows to infer to developments in working time and collective bargaining

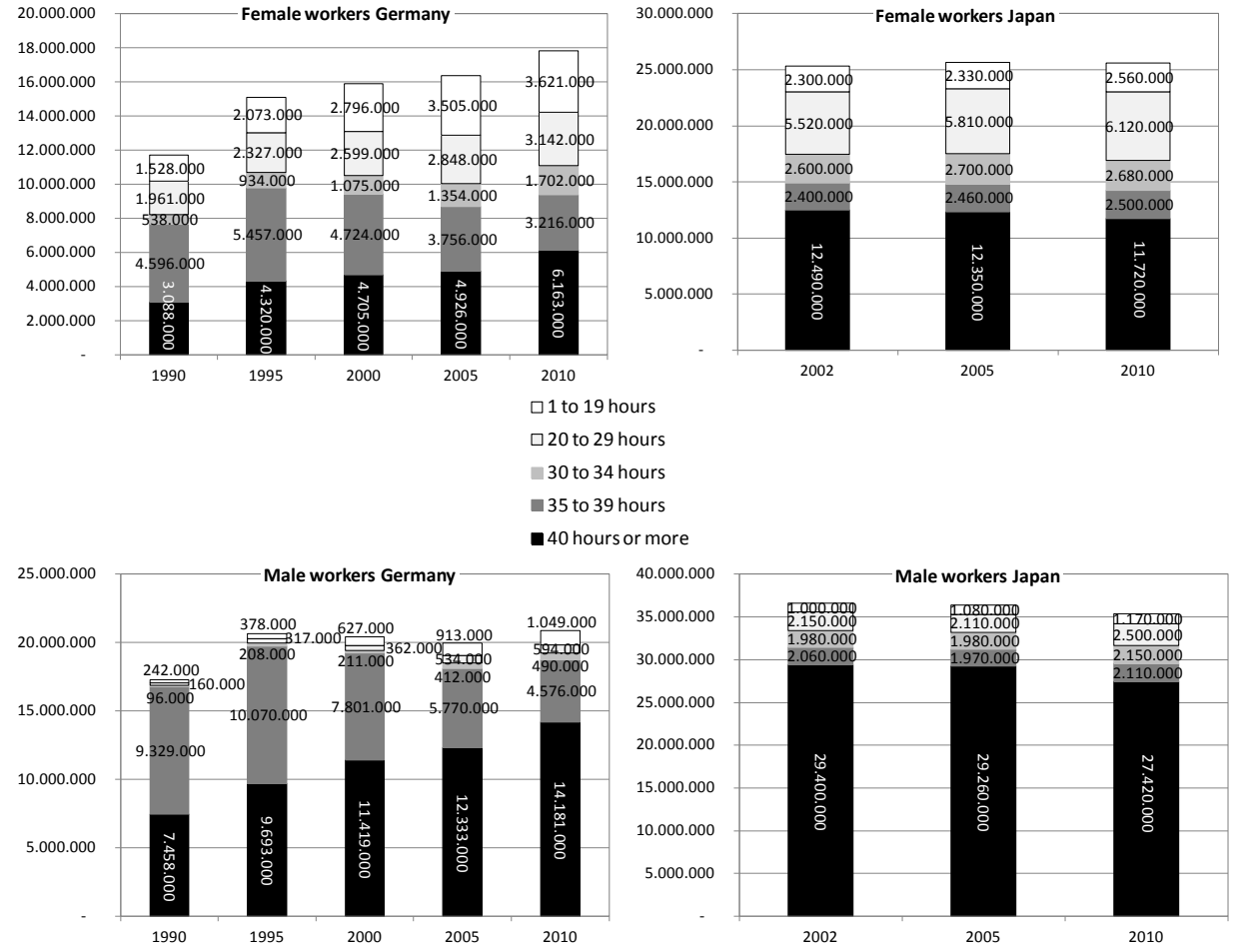
(such as the increase of jobs with 40h and more in Germany) and the noticeable increase in labour market participation of women in Germany and men in Japan since the early 1990s. The national data reported to the OECD statistics differ on whether actual hours worked (Japan) or scheduled hours (Germany) are reported. Hence, some jobs with reduced hours may have been "inflated" due to overtime while in Germany they may understate the actual time worked. Also, some 40h+ jobs may have been temporarily reduced due to short work schemes which were still widespread in 2010 in both countries. However, in terms of job quality, average weekly hours worked provide a more accurate depiction than annual hours worked which also include extra-time, different holiday allowances and other factors.

Figure A-25 **Percentage of jobs by weekly working hours, 1990-2010**



Source: OECD Employment and labour market statistics (accessed through OECDilibrary, April 2012).

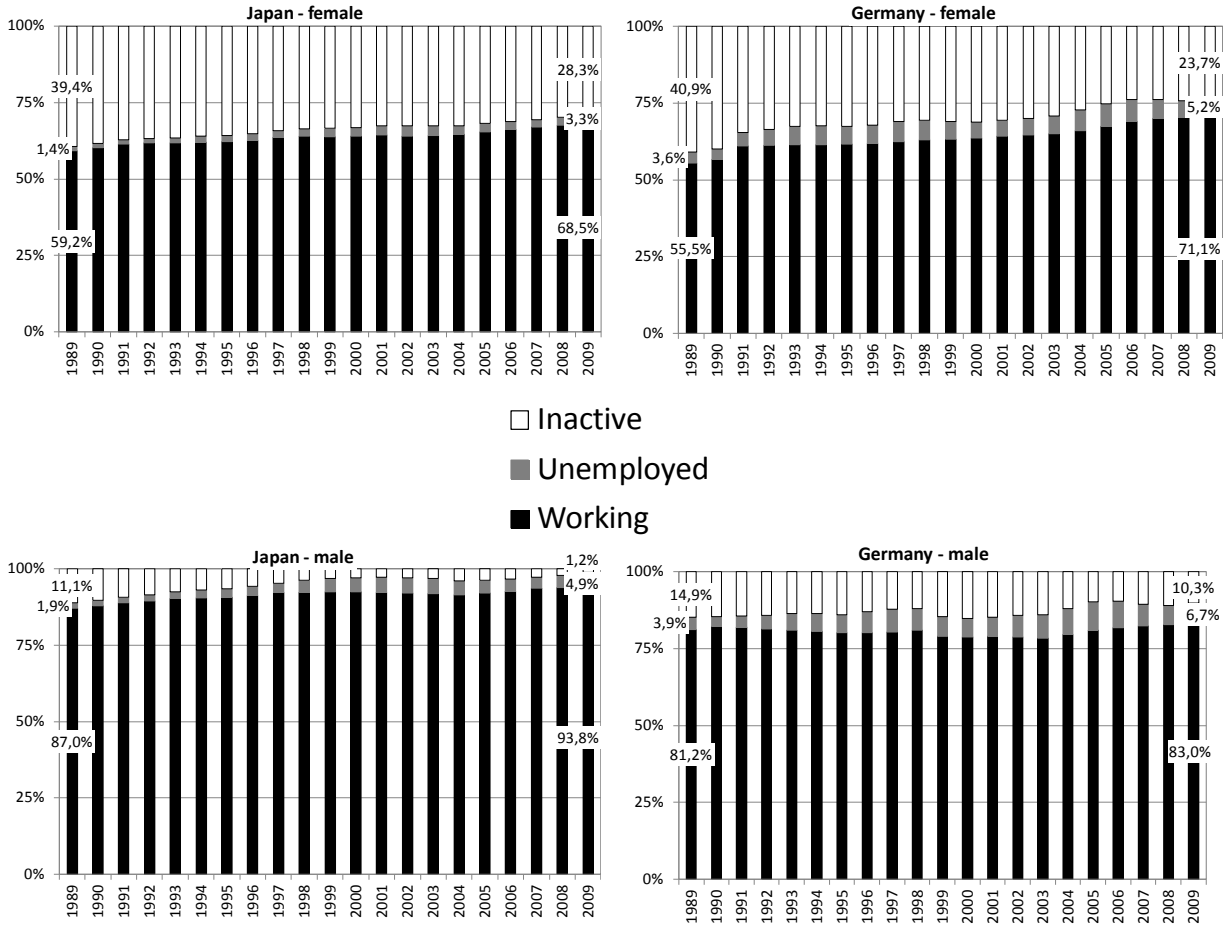
Figure A-26 **Number of workers and average weekly working hours, 1990-2010**



Source: OECD Employment and labour market statistics (accessed through OECDilibrary, in April 2012).

9.9 Labour market participation rates

Figure A-27 **Labour market participation of men and women, 1989-2009**



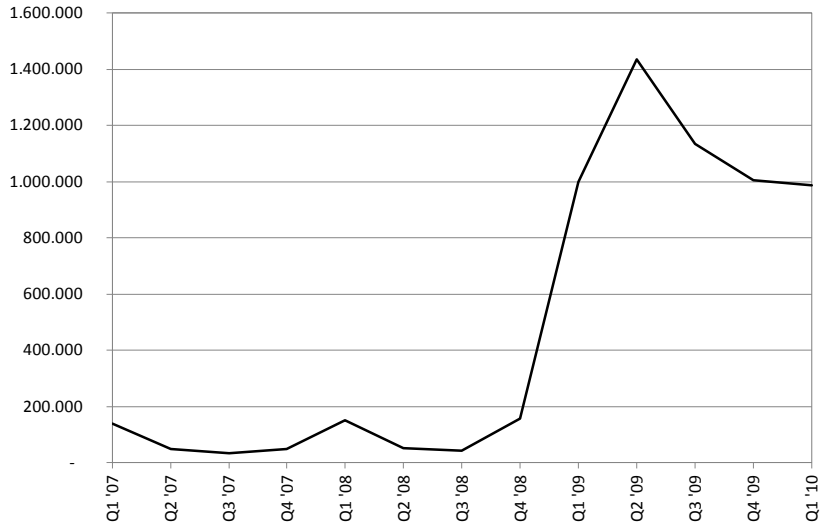
Source: OECD Labour Force Statistics (accessed in April 2012). Participation rates of workers aged between 15 and 64 years.
Note 1: Participation rates cannot be used to infer to the quality of jobs held or income. However, a temporal comparison can be indicative of the importance of non-regular jobs for participation rates.
Note 2: Data before 1991 are for West Germany.

9.10 Short work during the 2008 crisis

Short work schemes have been used in Germany since 1956 and in Japan since the Oil Crisis 1975. There are some differences between both schemes, for instance the application process is stricter and there are more limitations for firms in Germany but also usage has been much higher throughout the period. In contrast, according to Japan Knowledge Plus (electronic database, access provided by the Staatsbibliothek Berlin through CrossAsia), the monthly average of recipients of the Employment Adjustment Subsidy EAS before 2008 (*koyou-chousei josei-kin* 雇用調整助成金) stood at mere 3.000 persons a month. During the crisis, the number surged to about 2.5 million in mid 2009 and still stood at about 1.5 million in June of 2010. This matches more or less the development in Germany where the number of *Kurzarbeiter* shot up

in the second quarter of 2009 and only decreased gradually after that (figure A-24). Given the high number of workers in such schemes, short work compensation schemes clearly contributed to the stabilisation of overall employment levels, although it cannot be said with certainty how many workers would have been laid-off had such schemes not been in place.

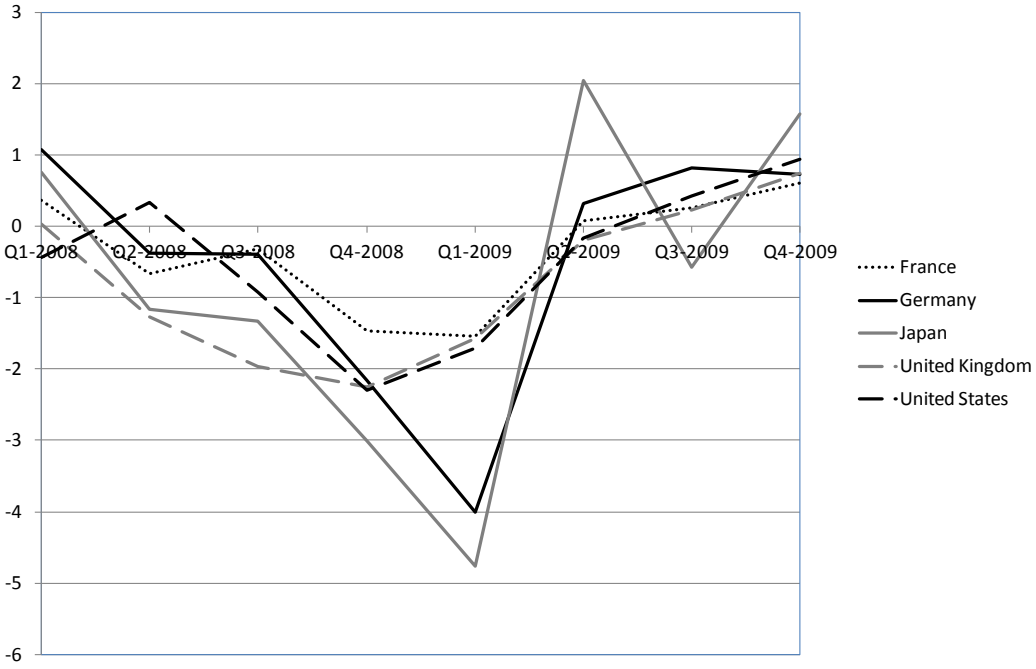
Figure A-28 **Number of workers receiving short-work compensation in Germany**



Source: Bundesagentur für Arbeit (2010) Arbeitsmarkt in Zahlen, Kurzarbeit. Available at http://www.pub.arbeitsamt.de/hst/services/statistik/detail/s.html (last accessed November 2010).

9.11 GDP growth rates during the 2008 crisis

Figure A-29 **GDP growth in selected OECD countries, 2008-2009**



Source: OECD (2011): Quarterly National Accounts. Expenditure approach, compared to previous quarter.

9.12 Expert interviews

Qualitative interviews have been an important source for the analyses in chapters 5 and 5. The main objective of the interviews has been to improve the author's understanding of informal decision-making processes and of major legislative changes. Given the informality of Japanese political decision-making, the interviews in Japan were of particular importance.

9.12.1 Selection of interviewees

Selection of interviewees was informed by the understanding, that members in academia often perform multiple roles, e.g. serve in advisory councils to Ministries or governments. This applies to most experts interviewed for this study. In total, interviews with 19 experts were conducted by the author, 3 in Germany and 16 in Japan. In addition interviews were used that had been conducted in a comparative research project led by Professor Karen Shire at the University of Duisburg-Essen and funded by the German Research Foundation (DFG). Dr Katrin Vitols (now Institut für ökologische Wirtschaftsentwicklung, Berlin) and Prof. Jun Imai (now Hokkaido University, Sapporo) were the main investigators, studying the process of policy change in Germany and Japan respectively. The author likes to express his gratitude to all three for granting him the chance to use the data for his own work. The interviews used in the context of this study are listed in the interview section and marked accordingly ("transcript Shire/Imai/Vitols").

Interviewees were selected as to ensure a balanced view of policy-making processes. As governments changed 12 times during the period under investigation and ministerial portfolios have changed even more frequently there are few politicians who could be regarded as experts of a specific field. For that reason, party politicians were not targeted. All interviews were conducted using a semi-structured interview guide focusing on political decision-making and the perception of the relevance of economic and political factors, in particular, economic development, business, organised labour and business, political parties and the MoL/MHLW bureaucracy.

Table A-10 **List of experts interviewed**

ID	Position	Country	Type of interview	Date of interview
1	Keidanren, Labour policy section	Japan	Transcript (Shire/Imai/Vitols)	17.02.2002
2	Researcher at the IG-Metall working on corporate policy	Germany	Transcript (Shire/Imai/Vitols)	17.10.2002
3	Member of the board of the DGB	Germany	Transcript (Shire/Imai/Vitols)	17.10.2002
4	Academic, political scientist, expert on labour market reform in Japan	Japan	Transcript (Shire/Imai/Vitols)	18.10.2002
5	Japan Staffing Services Association	Japan	Transcript (Shire/Imai/Vitols)	09.11.2002
6	Official at the labour demand and supply section at the Ministry of Health, Labour and Welfare	Japan	Transcript (Shire/Imai/Vitols)	12.11.2002
7	Academic and shingikai member, labour economist	Japan	Transcript (Shire/Imai/Vitols)	12.12.2002
8	Academic and government advisor (member of the Hartz commission), labour sociologist	Germany	Transcript (Shire/Imai/Vitols)	05.03.2004
9	Representative of VERDI	Germany	Transcript (Shire/Imai/Vitols)	04.05.2004
10	Research associate to union executive (member of the Hartz commission)	Germany	Transcript (Shire/Imai/Vitols)	05.05.2004
11	Assistant to Hartz committee member, representative of the DGB	Germany	Transcript (Shire/Imai/Vitols)	06.05.2005
12	Academic, sociologist, expert on German welfare politics	Germany	Personal interview	12.07.2006
13	German Japan correspondent for several European newspapers	Japan	Personal interview	06.08.2007
14	Academic, expert on industrial relations	Japan	Personal interview	22.10.2007
15	Academic and government advisor, labour economist	Japan	Personal interview	05.11.2007
16	Academic, political scientist, expert on labour market reform	Japan	Personal interview	07.03.2008
17	Academic and former official at the Ministry of Labour	Japan	Personal interview	14.03.2008
18	Academic, expert on labour market adjustment processes	Japan	Personal interview	18.03.2008
19	Researcher at union-affiliated research institute, member of several shingikai and advisory councils	Japan	Personal interview	19.03.2008
20	Researcher at union-affiliated research institute, member of several shingikai and advisory councils	Japan	Personal interview	19.03.2008
21	Academic, labour economist, member of several shingikai	Japan	Personal interview	24.03.2008
22	Official at the labour economics survey section at the Ministry of Health, Labour and Welfare	Japan	Personal interview	25.03.2008
23	Representative of Rengo, department of working conditions, member of several shingkai and advisory councils	Japan	Personal interview	26.03.2008
24	Academic, specialist of labour law, shingikai member	Japan	Personal interview	26.03.2008

25	Representative of Rengo, employment and labour legislation divison, shingikai member	Japan	Personal interview	26.03.2008
26	Academic, expert on industrial relations	Japan	Personal interview	27.03.2008
27	Academic, economist, expert on youth employment	Japan	Personal interview	25.05.2008
28	Manager at major Japanese car manufacturer and shingikai member	Japan	Personal interview	25.09.2008
29	Academic and government advisor (member of the Hartz commission), labour sociologist	Germany	Personal interview	12.05.2009
30	Academic and government advisor (member of the Hartz commission), political scientist	Germany	Personal interview	14.05.2009

10. Annex B: Industrial relations and non-legislative regulation

Labour markets and industrial relations are without doubt among the most analysed areas of social research. Yet, despite the wealth of information and data that is available, it still can be difficult to paint a concise yet compact overview of changes and trends. Labour market arrangements can vary widely even within a single country and not all data does reflect the heterogeneity reliably. Some of the controversies in the fields of labour economics, sociology, industrial relations and political science can certainly be attributed to researchers using different definitions or datasets. The following sections will introduce and discuss major national sources of data on industrial relations and labour markets which make it possible to compare national arrangements internationally. However, the section will also point out the limitations and in particular data that requires additional explanation.

A more general limitation is that most surveys are biased toward the core industries and large firms. Newly emerging industries and peripheral industries with very low working standards are likely to be underrepresented as are employees in very small firms (< 5 employees). Another important limitation is that surveys tend to focus solely on dependent employment. As a consequence developments outside formal and traditional employment relationships are seldom adequately covered, even though it seems likely that there are important interaction effects. This concers, for example, solo-self employment of former employees.

10.1 Comparative data on industrial relations

In this section, some comparative indicators will be discussed to illustrate how Germany and Japan can be positioned in comparison to other advanced democracies. This is by no means meant to be a comprehensive survey of approaches and data but rather aims at providing background information useful for understanding commonalities and differences.

10.1.1 Additional remarks on collective bargaining in international comparison

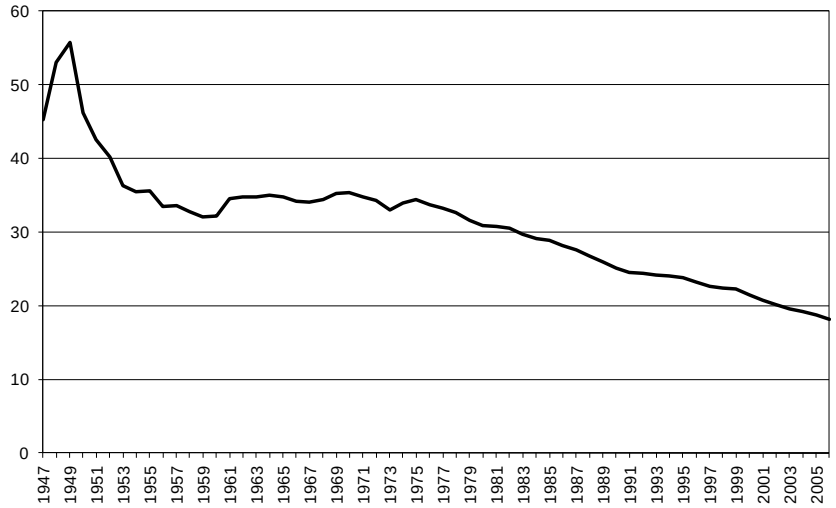
Indicators on the coverage of collective bargaining have to be interpreted with caution. A low rate of nominal coverage does not necessarily mean that the scope of collective bargaining is limited to those workers whose firms formally participate. Often firms more or less follow collective agreements without formal participation. As has been pointed out in the study, especially small firms in Japan are likely to

consider collective agreements as implicit wage ceilings. At the same time, a high coverage rate does not necessarily mean that wage standardisation is high. Chapters 4 and 6 have shown that there can be several channels for firms to negotiate and implement exceptions. Furthermore, since the distinction between enterprise unions and unions related to a specific production site in Japan is difficult to draw, surveys are likely to misreport the actual situation to some degree.

10.1.2 Unionisation rates in comparative perspective

Similar caveats apply to the question of union strength. Although several international bodies such as the ILO and OECD compile comparative data on union strength, aggregate numbers do not necessarily give an accurate picture of the actual political influence. As has been acknowledged in chapters 3 and 6, many factors influence the rate of unionisation and the actual influence of unions depends on many institutions which are outside the scope of formal unionisation rate, e.g. the scope of collective agreements (e.g. closed shop agreements vs. industry-wide settlements). Nonetheless, figure B-1 and table B-1 cleary indicate that union membership has been on the decline in both countries for some time and that this applies in particular to the main union umbrella organisations, DGB and Rengou.

Figure B-1 **Unionisation rate in Japan, 1947-2006**



Percentage of all employees. Source: MHLW (2007): Basic survey on labour unions [労働組合基礎調査]. The survey distinguishes between unit unions (単位組織)組合) on the enterprise level without subsidiaries and "united unions" (単一組織組合) which include unions at the corporate level with subsidiaries on the enterprise level. The percentage was calculated using the latter definition.

Table B-1 **Total number of union members in Japan and Germany, 1986-2009**

Year	Members of Rengou unions	Total union membership
1986	4.270.044	12.343.031
1987	4.074.774	12.272.005
1988	7.423.150	12.227.039
1989	7.545.297	12.227.038
1990	7.613.517	12.701.522
1991	7.615.448	12.396.592
1992	7.642.485	12.540.691
1993	7.819.065	12.663.484
1994	7.823.352	12.698.847
1995	7.725.317	12.848.317
1996	7.869.257	12.451.149
1997	7.813.830	12.284.721
1998	7.683.372	12.092.879
1999	7.589.095	11.824.593
2000	7.448.441	12.084.441
2001	7.292.651	11.212.108
2002	7.183.913	10.800.608
2003	6.936.340	10.531.329
2004	6.563.000	10.209.000
2005	6.507.000	10.138.000
2006	6.500.000	10.041.000
2007	6.602.000	10.080.000
2008	6.587.695	10.065.045
2009	6.600.000	10.078.000

Year	Members of DGB unions	Total union membership
1986	7.764.497	9.523.800
1987	7.757.039	9.515.200
1988	7.797.077	9.555.400
1989	7.861.120	9.633.500
1990	7.937.923	9.796.300
1991	11.800.412	13.966.200
1992	11.015.612	13.223.400
1993	10.290.152	12.426.600
1994	9.768.373	11.906.200
1995	9.354.670	11.571.300
1996	8.972.672	11.073.000
1997	8.623.471	10.738.800
1998	8.310.783	10.489.700
1999	8.036.687	10.249.600
2000	7.772.795	10.000.500
2001	7.899.009	9.686.500
2002	7.699.903	9.509.900
2003	7.363.147	9.195.100
2004	7.013.037	8.843.275
2005	6.778.429	8.619.100
2006	6.585.774	8.418.350
2007	6.441.045	8.292.400
2008	6.371.475	8.193.477
2009	6.264.923	8.049.923

Sources: ICTWSS database, MHLW (2007): Basic survey on labour unions [労働組合基礎調査], DGB homepage (www.dgb.de, last accessed in November 2011). Note: Instead of the number of net union members (which excludes union members not in employment) the total number of union members was used.

10.2 Minimum wage levels in comparison

As of October 2012, German minimum wages are still restricted to a limited number of service industries and the construction sector. Almost all of them are set in collective agreements. According to Hurley, minimum wages set through collective agreements in Europe on the whole average about 50% of median wages in all industries, although there are exceptions, such as the construction industry in Germany where statutory minimum wages reach almost 70% of median wages (Hurley 2007: 3). This constitutes an exceptionally high value in comparison (see figure B-2).

The few cases where industry-wide minimum wages have been introduced indicate that AVEs can involve a considerable deal of power politics and industrial policy. In the case of postal services (*Briefdienstleistung*), the industry was included in the AEntG in 2007 briefly before the market for private mail delivery was fully liberalised. As a consequence, VERDI and Deutsche Post AG, the largest union and the biggest provider of mail services (with more than 80% market share) negotiated a new collective agreement which set minimum wages at a relatively high level (9,00 Euro/h). Competitors such as TNT Post, however, negotiated their own agreements with smaller unions and lower minimum wages. In response, VERDI and Deutsche Post asked the BMAS to declare their agreement legally binding for the whole industry through an AVE and the ministry, led by the Social-Democrat Olaf Scholz, complied. Scholz argued that regulation was necessary in order to avoid a race to the bottom in the industry. As a consequence, all firms had to use the VERDI-Deutsche Post agreement even if they had signed other agreements. Deutsche Post's competitors, arguing that this constituted a case of unfair interference in collective bargaining, filed a lawsuit which they eventually won in January 2010 (SZ, 29.01.2010). The verdict accepted the alternative agreements as equivalent thus effectively suspending the AVE. Hence, there is no universal minimum wage in the postal sector despite it being explicitly mentioned in the AEntG.

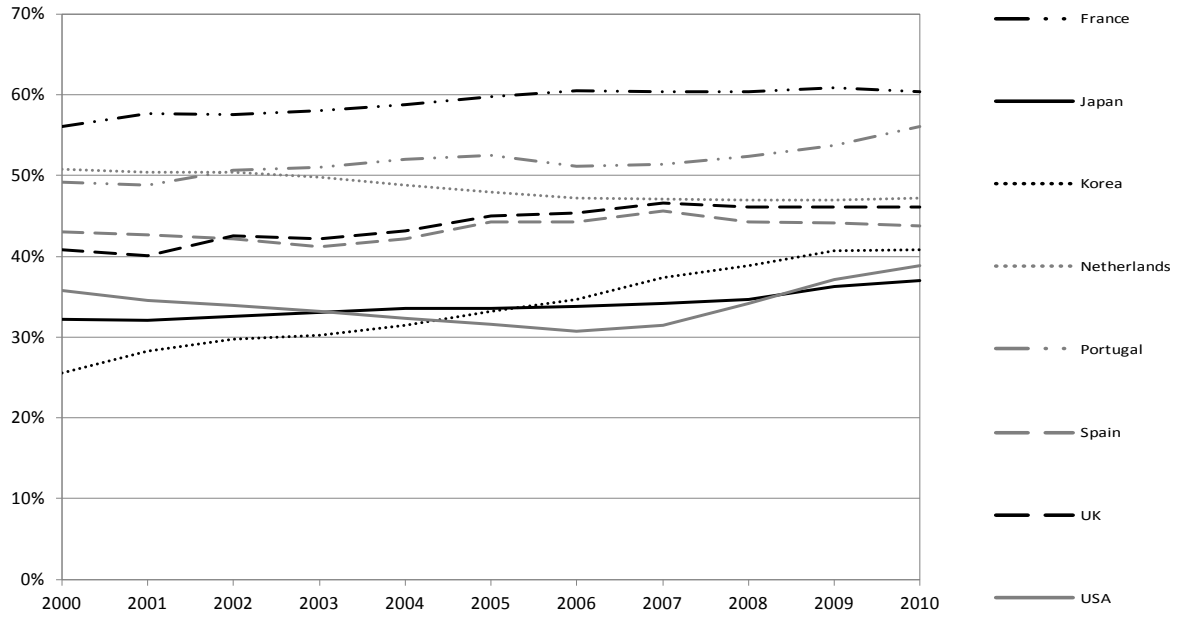
While in Japan all industries have been covered by minimum regulations since about the mid-1980s, in Germany minimum wages have been set in eleven industries (as of May 2012): These include coal mining (*Bergbau-Spezialgesellschaften*), tilters (*Dachdecker*), construction (*Bauhauptgewerbe*), painters (*Maler und Lackierer*), electricians (*Elektrohandwerk*), building maintenance (*Gebäudereinigung*), waste

disposal and related service industries (*Abfallwirtschaft*), care work (*Pflege*), security services (*Sicherheitsdienstleistungen*), and specified laundry services (*Wäschereigewerbe*). Minimum wages in these 10 industries are regulated through inclusion in the AEntG or through established AVE practices while minimum wages in the temp agency work (*Arbeitnehmerüberlassung*) were inserted into the AÜG. In all cases, however, collective agreements serve as the base for actual wage levels. The AEntG also includes postal services (*Briefdienstleistungen*) and training services or recipients of social assistance or other benefits (*Aus- und Weiterbildungsdienstleistungen nach dem zweiten oder dritten Sozialgesetzbuch*) but so far this provision has not been applied.[118]

Comparing minimum wages across countries and industries is difficult because the mechanisms according to which countries adjust national minimum wages to regional living standards and wage levels common in an industry differ widely. Also in some countries there are automatic mechanisms such as wage indexation (minimum wages are raised in line with private enterprise agreements) which make negotiations almost obsolete. In addition, wages may reflect only nominal provisions which are further differentiated according to industry, region or employment status (e.g. exemptions for unemployed). Yet with regard to the level it is easy to see that the Japanese minimum wage level is at the lower end of the countries shown in figure B-2.

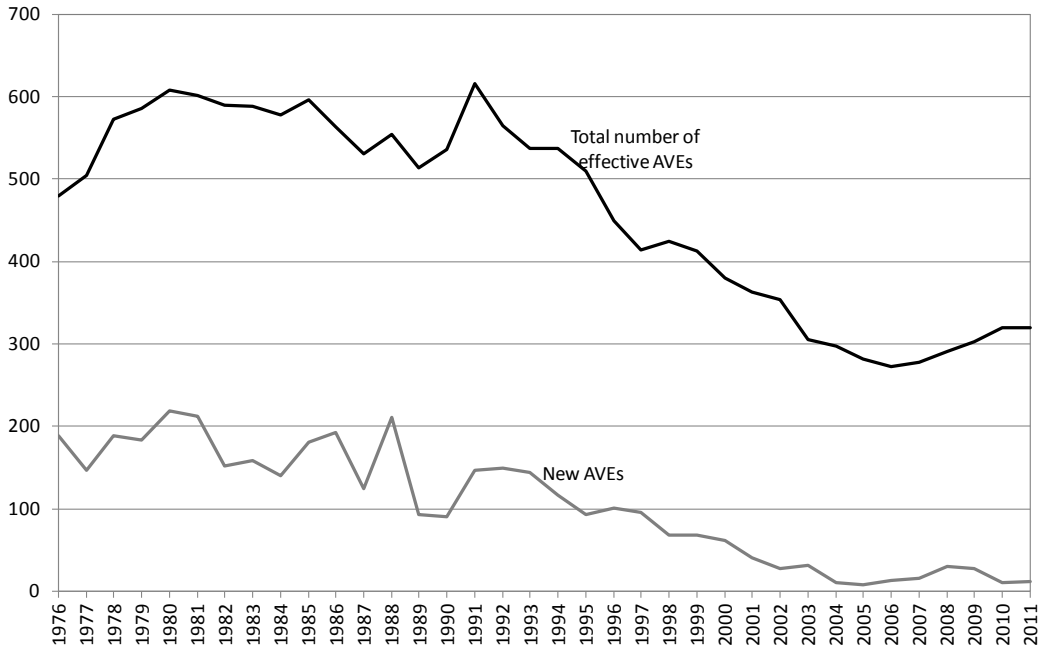
[118] Currently, 8 industries are included in the AEntG: Construction, building maintenance, postal services, security services, specialised tasks in coal mining, and specialised tasks in laundry services, waste disposal services and training services for recipients of social assistance or unemployment benefits. Minimum wages in all other industries have been set through regular AVE-procedures following targeted negotiations in collective bargaining. Only in the case of temp agency workers a special provision was added to the AÜG.

Figure B-2 **Levels of statutory minimum wages as percentage of median income, 2000-2010**



Source: OECD employment and labour market statistics (OECD ilibrary, last accessed in April 2012).

Figure B-3 **Number of AVEs in West Germany, 1976-2011**



Source: BMAS (2012): Verzeichnis der für allgemeinverbindlich erklärten Tarifverträge, available at http://www.bmas.de/SharedDocs/Downloads/DE/arbeitsrecht-verzeichnis-allgemeinverbindlicher-tarifvertraege.pdf?__blob=publicationFile (as of 1 October 2012). „New AVEs" stands for new AVEs which have been issued within the repse

Note: If East German AVEs are included than the decline is less steep which means AVEs are more frequently used in East Germany in particular to stabilise the much less institutionalised system of collective bargaining.

10.3 Employer associations: Membership and political influence

Employers' associations tend to receive much less attention among scholars than those of unions. One reason may be that there are few statistics which detail the rate of organisation of firms or industries. Schnabel (2005) and others argue that the available data is not reliable enough to analyse in detail the organisational dynamics of employer associations. In most countries employer associations tend to be dominated by large firms but it is less clear to what extent SMEs are integrated into the political process. Also, in most cases central associations appear to have lost members not least due to increasingly divergent interests of firms. In the case of Germany, defections from employer associations have been widely reported and discussed by scholars (e.g. Thelen and Van Wijnbergen 2003).

Another indicator for dwindling organisational centralisation have been the merger talks between the two largest business federations in Germany, the BDI (*Bundesverband der Deutschen Industrie*) and BDA (*Bundesverband der Deutschen Arbeitgeber*). Although a majority of members in 2006 declared approved of the proposed merger, BDI and BDA have remained separate organisations. The Japanese equivalents of the BDA *Nikkeiren* (日経連 abbreviation of *nihon keieisha dantai renmei* 日本経営者団体連盟) and BDI, *Keidanren* (経団連, abbreviation of *keizai dantai rengou-kai* 経済団体連合会), merged in May 2002 consolidating the political field somewhat. Both associations cited the need to consolidate the voice of business in policy matters and the overlap in activities as the main motive for the merger. It cannot be verified whether declining membership rates also played a role. Traxler (2010) reports that *Nikkeiren* organised about 40% of all employers in 1997. Keidanren itself declares that is members comprises 1600 individual firms and 147 industrial and regional employer associations but provides no further details. Traxler estimates, however, that *Nikkeiren* played a more active role in collective bargaining than the BDA as it coordinated the wage offers of its members in the *shuntou* process.

Overall the major business associations in Germany and Japan have followed a similar trend of emphasising lobbying activities and public relations and a declining importance of institutionalised bargaining. This means that lobbying in policy-making processes has become even more important as the raison d'être for national umbrella organisations Traxler summarises this as follows: "die Beeinflussung der Öffentlichkeit vermittels systematischer Kampagnen und Meinungsbildung [gewinnt]

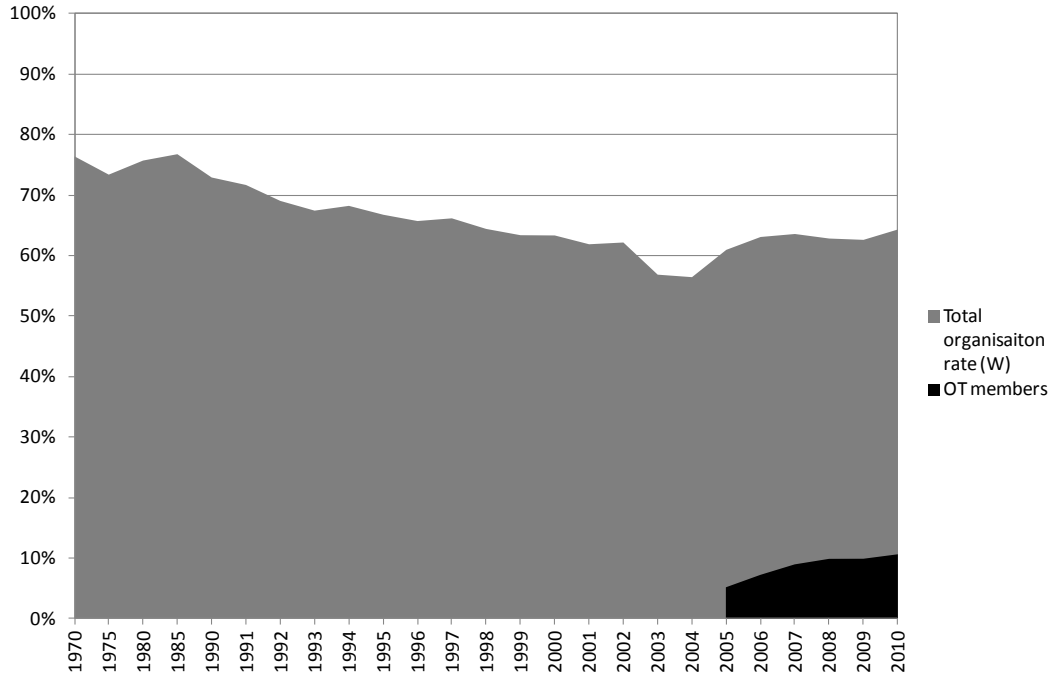
zunehmend an Bedeutung. Zum einen reflektiert dies (…) Funktionswandel, namentlich die abnehmende Relevanz der Tariffunktion und den Trend zu Universalverbänden. Zum anderen entspricht dies der Vorreiterrolle des Kapitals in der Forcierung einer Agenda, die sich umrisshaft als neoliberaler Umbau der Gesellschaft beschreiben lässt: Deregulierung, Privatisierung und der Rückbau des Wohlfahrtsstaates“ (2010: 446). This certainly holds for Japan, where *Keidanren* started a campaign for deregulation (*kisei kanwa* 規制緩和) in the early 1990s and lobbied hard on the first non-LDP government in 1993 to “deregulate the economy” and to open domestic markets (c.f. Yoshimatsu 1998). It is also visible in the fact that *Keidanren* publishes policy evaluations of all government proposals and also promotes its own policies from time to time. In Germany the BDA and BDI are also the main associations on the business side when it comes to policy formulation and consultation processes. The wider organisational picture of business and employer associations is similar in both countries. Chambers of Commerce, business associations and employer associations constitutes the main national associations of business with the Chambers serving as the main organisations for SMEs.

With regard to collective bargaining a decline in membership is particularly relevant in Germany because the system of comprehensive industry-wide and regional bargaining requires functional associations on both sides. So a decline in membership is possibly more significant here. Another challenge to the system stems from unification: the majority of East German firms has either never joined or has quickly left employer associations so that in most industries organisation rates remain well below West German levels. Membership numbers are rarely reported by employer associations, with the exception of *Gesamtmetall* which frequently publishes an updated time series of its membership on its website. According to Silvia (2010) this trend is not necessarily indicative of all industries. For instance, in the chemical industry coverage has been relatively stable at around 70% of all employees since the early 1990s and the BDA reports a stable organisation rate of 80%. However, since the metal sector has a central place in the German regulatory framework and other industries face similar problems of organising, the problems of organisation in this sector are certainly particularly relevant for the German economy as a whole.

The crucial role of employer associations in industrial collective agreements (*Flächentarifverträge*) makes the organisational capacity of employer associations

critical for the maintenance of the whole system of multi-dimensional regulation. For that reason it is noteworthy that *Gesamtmetall* managed to increase its membership since 2005 only because it also integrates *OT-associations* (OT = *ohne Tarifbindung*). OT members profit from all lobbying activities and other organisational resources the association offers, but are not obliged to implement the *Flächentarifvertrag* that is negotiated by *Gesamtmetall*. On the other hand, OT members will not receive any financial support in case unions single them out for warning strikes. Silvia reports that contrary to hopes of most associations that offer OT-membership, there are cases where firms eventually opt for full membership. Small and East German firms are most likely to choose OT-membership. Of course, membership/coverage are only rough estimates of the actual influence employer associations can exert on policy decisions. See chapters 5 and 6 for details.

Figure B-4 **Organisation rate of *Gesamtmetall* in West Germany (% of employees in metal industry)**



Source: Gesamtmetall's website: http://www.gesamtmetall.de/gesamtmetall/meonline.nsf/id/DE_Zeitreihen, last accessed in April 2012. Note: The organisation r ate for East Germany has developed very differently. It dropped from 65% in 1991 to less than 25 % in 2010. This includes OT employer associations.

10.4 Additional data on German industrial relations

Most data on industrial relations in Germany is compiled, processed and made available by the WSI Institute of the Hans-Böckler Foundation in Düsseldorf. The WSI-Tarifarchiv (archive of collective agreements, http://www.boeckler.de/index_wsi_tarifarchiv.htm) offers a web-based search

engine for all collective agreements since the early 2000s. The WSI has also been the main contributor on German industrial relations to the EU-funded EIROnline project (http://www.eurofound.europa.eu/eiro/eirobserver.htm) which compared developments in European industrial relations, Japan and the US from 1997 to 2004. Most other sources of international and comparative data usually rely on WSI data as well.

10.4.1 Collective bargaining and wage-setting in Germany

Arguably the best data on collective bargaining is provided by the WSI which also maintains an archive of collective agreements since the early 1990s. Alternative sources are the Deutsche Bundesbank and the Statistische Bundesamt who also release comprehensive data on collective agreements and results of bargaining processes. For wages the "Fachreihe 16" and "Fachreihe 18" offer an industry-specific overview of wage development in general and the impact of collective agreements in particular.

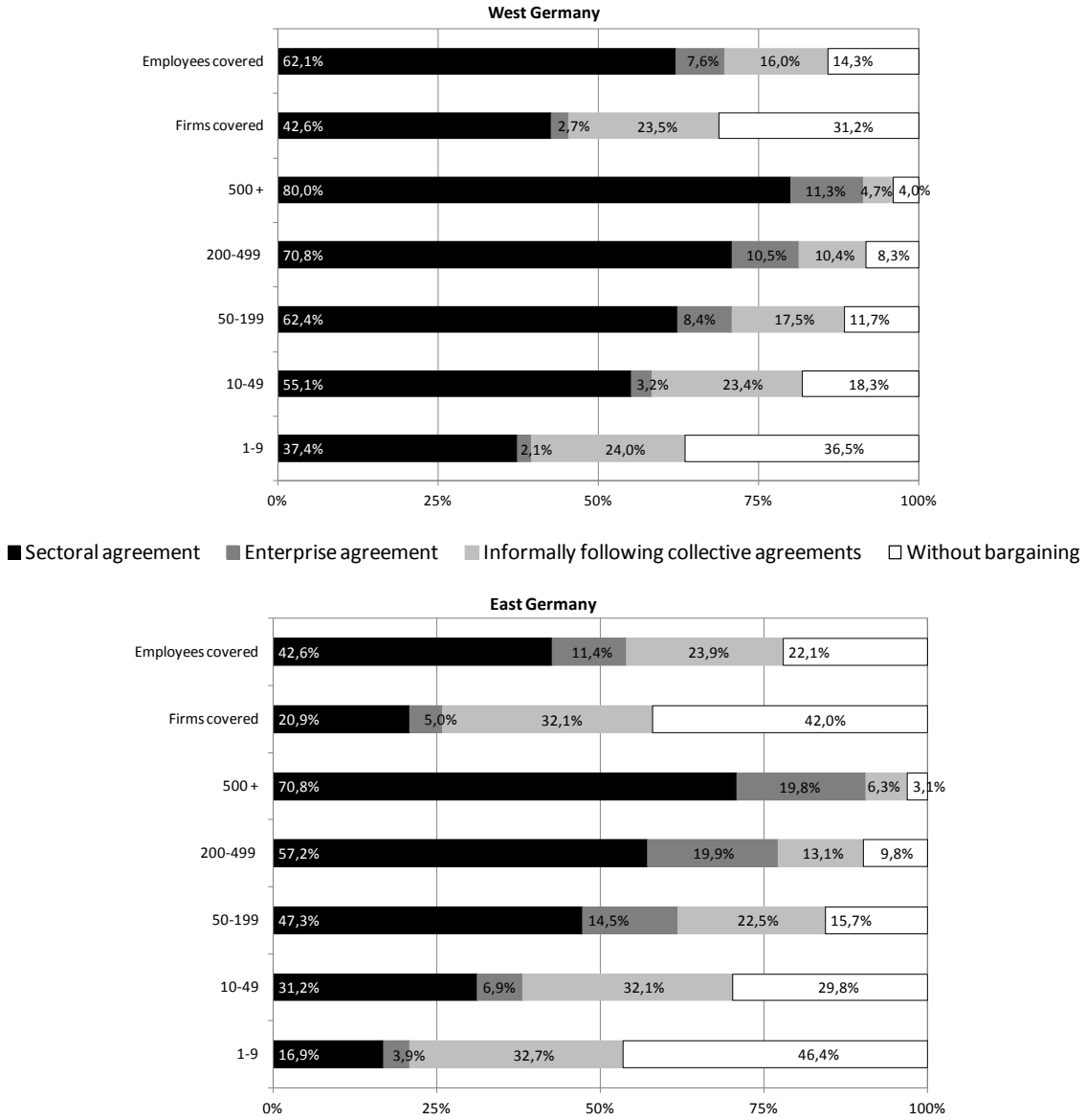
A particular challenge with regard to German industrial relations is the question how German re-unification was accounted for in comparative data-sets. Differences between West and East Germany are important in several aspects, for instance with regard to female labour market participation (which has been considerably higher in the East) and also with regard to collective bargaining and organisation of labour and capital. Also, there still is a clear wage gap. Several observers argue that there has been a mutual institutional learning process in both Germanys: Although after unification institutions were usually expanded to the East without modifications (which resulted briefly in a high organisation rate in East Germany that exceeded Western levels), East German firms more openly welcomed new forms of collective bargaining and often innovated new strategies such as enterprise pacts.

Data from the IAB-Betriebspanel confirms these observations also with regard to coverage by collective agreements. East German firms generally display a higher share of more flexible and informal bargaining patterns (unofficial and flexible adoption of industrial collective agreements but no formal participation). Also there is a higher degree of so called *Firmentarifverträge* (enterprise collective agreements); though these are often used in large firms in the West to formalise specific provisions (Volkswagen being an example), in the East they seem to signal a

different trend: Enterprise agreements here are mainly used to formalise deviations from sectoral bargaining. Also, the percentage of workers not covered by any collective agreement is considerably higher in the East at 46% compared to 30% in the West. The same is true for workers covered informally by agreements: this applies to 22,1% of all workers in the East and to 14% in the West.

It is also interesting to note formal coverage has been declining in both Germanys yet this has not affected the gap between both regions has persisted.

Figure B-5 **Coverage of collective agreements in Germany by firm size (2003)**



Source: IAB-Betriebspanel 2003 as cited in Schnabel (2005): 189.

The importance of collective agreements for wage-setting and wage standardisation differs according to firm size and industry. According to Schnabel, only in public enterprises collectively agreed wages can be seen as the de-facto

wages for employees. In many industries in the private sector, however, it is common that collective agreements deliberately set moderate or relatively low wage limits "da diese für die meisten Betriebe eine wirksame Mindestlohnrestriktion darstellen" (Schnabel 2005: 191). Hence, collective agreements in many industries provide a de-facto wage floor and ensure minimum working conditions. The provisions discussed in chapter 6 which allow the BMAS to intervene in minimum wage regulation (MiArbG) do not stand in contrast to this arrangement. Instead, they are based on the understanding that social partners are negotiating provisions independently and only under exceptional circumstances may it become necessary for the state to intervene. Formally, this suggest a sharp contrast to the Japanese system where a national and related prefectural commissions decide on the height of minimum wages for each industry and region – and in case of conflict experts appointed by the MHLW (formerly MoL) take decisions.

In conclusion it can be said that despite a clearly visible decline in coverage and regional disparities between East and West Germany, collective bargaining still remains the most important institution for regulating the working conditions of the vast majority of German employees – even when they are not formally part of bargaining processes. At the same time, the fact that the group of workers and firms not covered is growing suggests a parallel expansion of enterprise-based bargaining that resembles the Japanese pattern.

10.4.2 Structure of collective bargaining in Germany

Formally, German industrial relations are regional and vary depending on industry. The conclusion of regional agreements is meant to reflect differences in cost of living and economic development; industry-specific bargaining allows taking into account the particular situation of each sector which may different to the overall economic situation. However, firms can choose to opt out from collective bargaining and instead conclude a *Haustarif* (or *Firmentarifvertrag*) which is only valid at the firm or production site. In practical terms therefore the situation is actually considerably more heterogeneous than the formal set-up suggests. Also, it is not uncommon that several collective agreements co-exist that cover different types of employees (who may be organised by different unions) or which cover only a limited set of issues. As a consequence, collective agreements regulating different aspects of work may have to be negotiated at different times. In some cases the social partners may even

deliberately choose not to re-negotiate a specific agreement at all and instead extend its validity.

Even though bargaining is conducted on a regional-industrial level, very often there is a "pilot agreement" (*Pilotabschluss*) that is adopted with only minor variations by other regions. This process, however, applies mainly to core industries where employer associations and unions enjoy high membership numbers. In some industries organisation rates are so low that there is basically no collective bargaining in the formal sense. Hence, any aggregated statement about the development of collective bargaining in Germany as a whole is bound to downplay differences that can be substantial. At the same time, policy-makers have overall and regardless of partisan affiliation been supportive of strong and independent collective bargaining. The once fairly frequently used instrument of AVEs is a case in point.

With regard to the potential political implications of industrial relations, it is most useful to distinguish collective agreements based on the issues they cover and on the scope of coverage. Three main groups[119] of agreements can be identified if one solely considers the content they regulate:

(1) *Manteltarifverträge* ("framework agreements"): regulate basic working conditions and wage categories. They include regulations on working time, wage-setting principles, income groups (e.g. whether workers and white collar employees are treated differently), regulations regarding recruitment and dismissal of employees, holidays, conditions and amount of wage supplements, training and related aspects. Most framework agreements run for several years or have no termination date. Usually they are updated rather than replaced. However, for specific element of the agreement there may be shorter validity periods, e.g. on vacation times and additional regulations for dismissals.

(2) *Rahmentarifverträge* (framework agreements for wages also sometimes called *Lohn- und Gehaltrahmentarifverträge*) settle wages basic levels and define the individual wage categories. In other words, they standardise jobs and wage categories for a whole industry. Usually they run longer than *Lohntarifverträge* (see 3) and parallel to *Rahmentarifverträge*.

[119] The description here follows information provided by the WSI website http://www.boeckler.de/wsi-tarifarchiv_2267.htm (last accessed in October 2012).

(3) *Lohn*-, *Gehalt*- and *Entgelttarifverträge* (wage agreements) include details (tables) on wages and extend to those in vocational training who only receive a stipend rather than a full wage. They usually run for one to two years and are then re-negotiated or extended. Whether agreements are called *Lohn*-, *Gehalt*- or *Entgelttarifvertrag* depends whether employees receive *Lohn* (earnings) or a *Gehalt* (salary). Under the former employees are paid by the hour (so depending on the number of working days in a month, income may vary) while the latter group receives a fixed salary. In some cases firms and industries have threatened to opt-out before the regular collective agreement expires or have delayed negotiations on new provisions. However, the legal situation to what extent this is possible and acceptable is complex. As long as a new agreement is not found, the provisions of the old continue to be valid.

With regard to the scope of collective agreements, three different types can be distinguished which sometimes overlap. The third group, *Betriebsvereinbarungen*, are not collective agreements in the formal sense, however, as they tend to regulate areas which are normally stipulated in *Flächen*- or *Haustarifverträgen* they have been included here as well.

(1) *Flächentarifverträge* (also *Branchentarifverträge* or "industry agreements") cover a particular industry and region (=*Fläche*). If a firm is a regular member in the respective employer association, then there normally is a *Flächentarifvertrag* which applies to the firm and the firm has no choice but to adopt the agreement (*Tarifbindung*). However, *Flächentarifverträge* can also include negotiated or corporate *Öffnungsklauseln* which allow for *Betriebsvereinbarungen* which then can entail deviations or specifications. Firms who are not members of employer associations have no legal obligation to follow the provisions unless there is an AVE which makes the *Flächentarifverträge* compulsory for non-members.

(2) *Firmentarifverträge* (also *Haus*- or *Unternehmenstarifvertrag*): This type of collective agreements is used by firms who are either not or not full members of the respective employer associations in the industry and region. In these cases, a firm does not fall under *Tarifbindung* and can in principle negotiate a collective agreement of its own with representatives of the firm (however, not the *works councils* who by law are not allowed to negotiate collective agreements). In many cases where employers are not members of the employer association *Firmentarifverträge* are merely *Anerkennungstarifverträge* (recognition agreements),

that is, they implement the provisions of the *Flächentarifvertrag*. However, in some cases they are an alternative to *Flächentarifvertrag*, for which Volkswagen is the most prominent example (VW left the employer association responsible for the *Flächentarifvertrag*). There may also be additional agreements which complement the *Flächentarifvertrag* and stipulate higher corporate wages. The number of *Firmentarifverträge* has increased considerably in the course of the last 20 years: In 1990 there were about 2.100 corporate agreements (of which 210 covered East German enterprises). In 2011 there were 9.900, of which 2.740 concerned East German firms (data from the annually updated *Tarifregister* of the BMAS, available online at the WSI-Tarifarchiv).

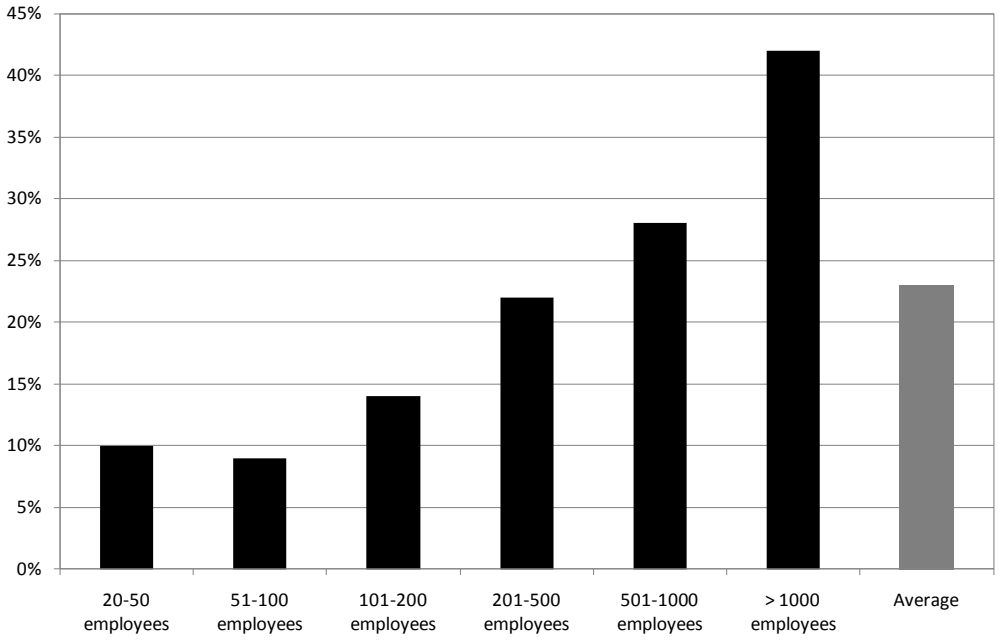
(3) *Betriebsvereinbarungen* ("enterprise pacts") are by definition not collective agreements. At the same they usually concern areas which are normally subject to collective agreements. In large firms enterprise pacts are negotiated between management and works councils and can include a wide range of issues, such as pay, working time and training (see chapter 6 and next section). Legally, pacts may not set alternative provisions to those set in applicable collective agreements. Pacts are permitted if collective agreements include respective escape clauses but in many cases pacts have simply been tolerated by unions and employer associations not least to counter frequent criticism of *Flächentarifverträge* being too rigid especially in cases of corporate re-structuring.

10.4.3 Enterprise pacts in Germany (*Betriebsvereinbarungen*)

The most comprehensive studies on enterprise pacts so far have been conducted by Rehder (2003), Massa-Wirth and Seifert (2005) as well as Nienhüser (2005). The following figures are based their analyses. All have used data from the *Betriebsrätebefragung* (works council survey) conducted by the WSI. As there are few formal rules governing EPs, they may run for different periods of times and can include many different provisions. Also, there are several organisations and websites which assist works councils and employer when negotiating enterprise pacts. Hence, it is likely that "successful" and common provisions are copied in newly negotiated pacts. As for the temporal development, since there has been no frequent investigation of the issue, the best estimate is provided by special investigations of the works council survey as it covers all industries and firms of different sizes. The most recent one has been conducted in 2005 by Massa-Wirth and Seifert. According

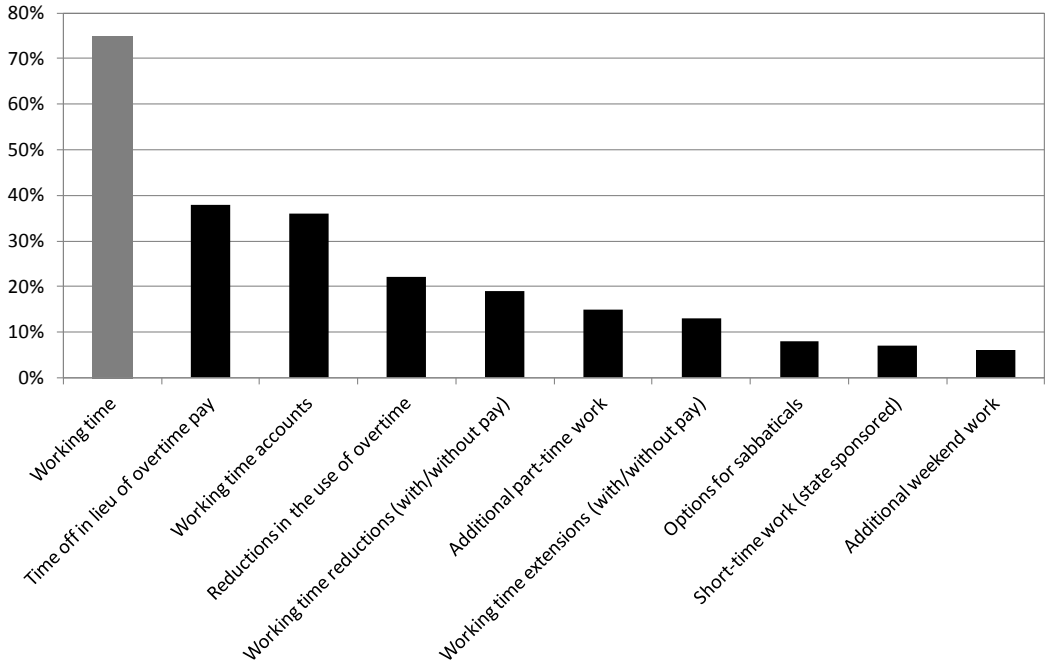
to Heidemann (1999: 12-13), enterprise pacts are common across all industries but especially prevalent in manufacturing (roughly half of all pacts in his sample) and in public (communal) employment (esp. with regard to working time extensions). When considering firm size it becomes apparent that especially large firms in manufacturing have been successful in negotiating EPs. Hence, large firms seem to be most able to profit from such arrangements and thus command over more flexibility, which suggests that less well coordinated industries and particularly small firms have fewer instruments of flexibility-enhancement - or they are less dependent on formal changes.

Figure B-6 **Incidence of enterprise pacts by firm size (of all firms)**



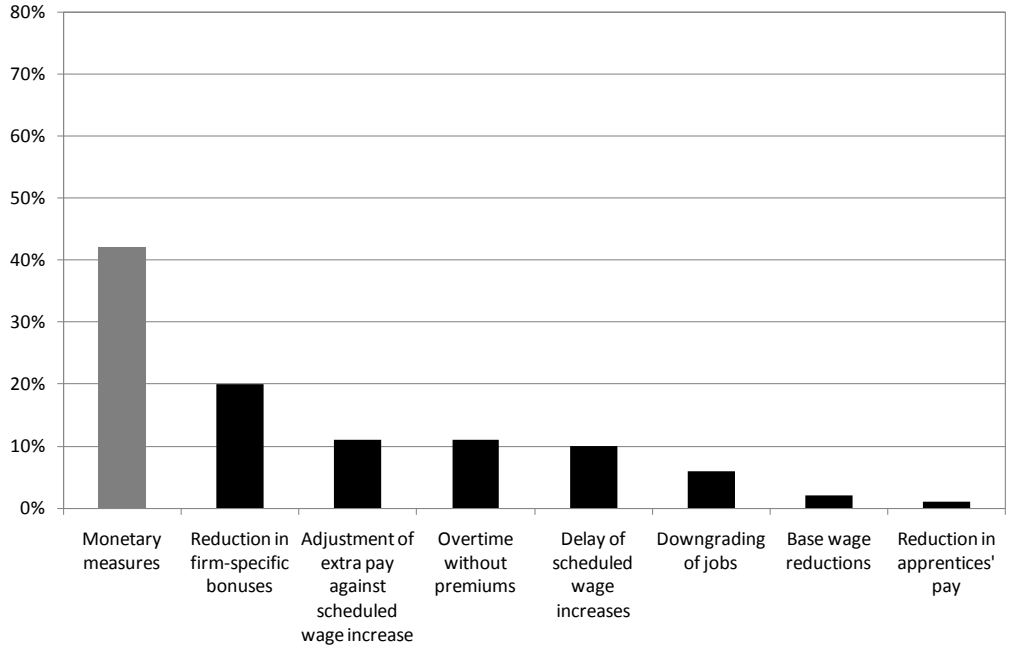
Source. Seifert and Massa-Wirth (2005), p. 223. Data is from 2003.

Figure B-7 **Contents of enterprise pacts: Working time related measures**



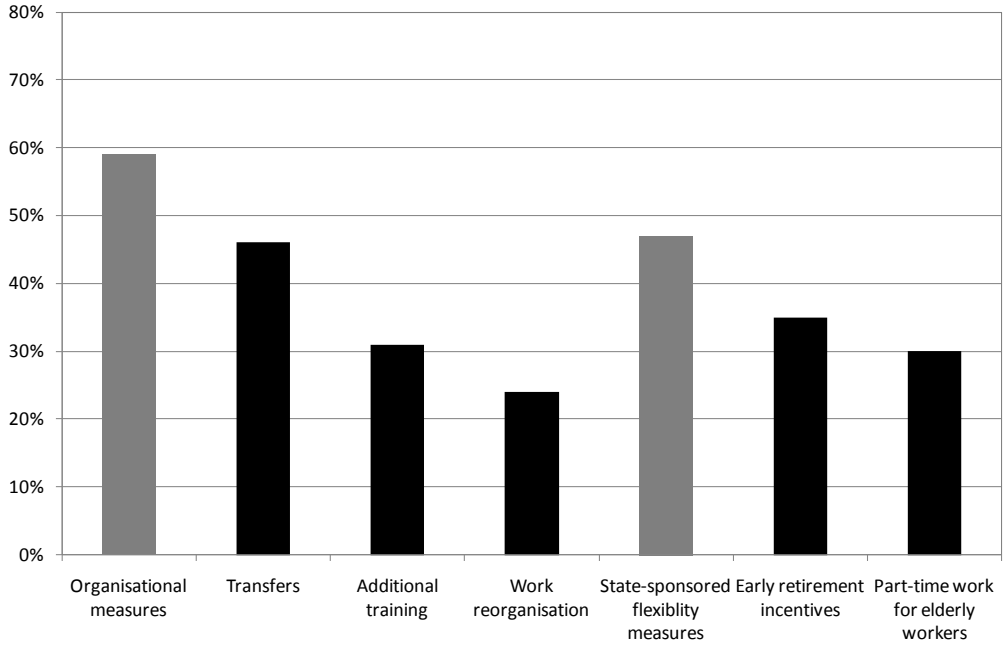
Source: Seifert and Massa-Wirth (2005), p. 225. Data is from 2003. Multiple answers were possible. Grey column shows average for all working-time related measures of total of enterprise pacts

Figure B-8 **Contents of enterprise pacts: Monetary measures**



Source: Seifert and Massa-Wirth (2005), p. 225. Multiple answers possible. Grey column shows average for all types of pay-related measures of total enterprise pacts.

Figure B-9 **Contents of enterprise pacts: Organisational and state-sponsored adjustments**



Source: Seifert and Massa-Wirth (2005), p. 225. Data from 2003. Grey columns show average for two types of adjustment measures of total enterprise pacts.

10.5 Additional data on Japanese industrial relations

The most comprehensive data on Japanese industrial relations in terms of sample size, regional, industrial and temporal coverage is gathered by the Ministry of Health, Labour and Welfare (MHLW, 厚生労働省) and its predecessor the Ministry of Labour (MoL, 労働省). The ministry has been conducting surveys annually on the state and development of industrial relations in Japan with varying focus. In total there are 5 different surveys which rotate annually. Results are published in Japanese only.

(1) "Survey on labour-employer communication" [*roushi kommyunikeeshyon chousa* 労使コミュニケーション調査], which surveys both firm representatives as well as workers on different aspects of internal consultation practices.

(2) "Survey on the current state of collective bargaining and labour dispute [*dantai koushou to roudou-sougi ni kan suru jittai-chousa* 団体交渉と労働争議に関する実態調査]". Surveys representatives of enterprise unions and in particular how unions and employers conduct collective bargaining and resolve labour disputes.

(3) "Survey on the current state of labour unions [*roudou kumiai jittai-chousa* 労働組合実態調査]". This survey focuses mainly on organisational aspects of labour unions, in particular, financing and selection of leadership

(4) "Survey on the current state of labour agreements [*roudou kyouyaku-tou jittai-chousa* 労働協約等実態調査]". Surveys representatives of labour unions that have 30 or more members.

(5) "Survey on the current state of labour union activities. [*roudou kumiai katsudou jittai-chousa* 労働組合活動実態調査]". Focuses on the activities of enterprise unions and in particular their activities for members and their strategies for winning new members.

Only aggregated data is available to scholars. Data can be obtained from the website of the MHLW (http://www.mhlw.go.jp/toukei/list/list15-19.html) and from the designated website of the Statistics Bureau of the Ministry of Internal Affairs and Communications (www.e-stat.go.jp). Summaries and questionnaires are also published as well as an updated glossary explaining important terms. The results of earlier surveys are available through publications from the respective ministries. Some older data were graciously made available by the MHLW to the author.

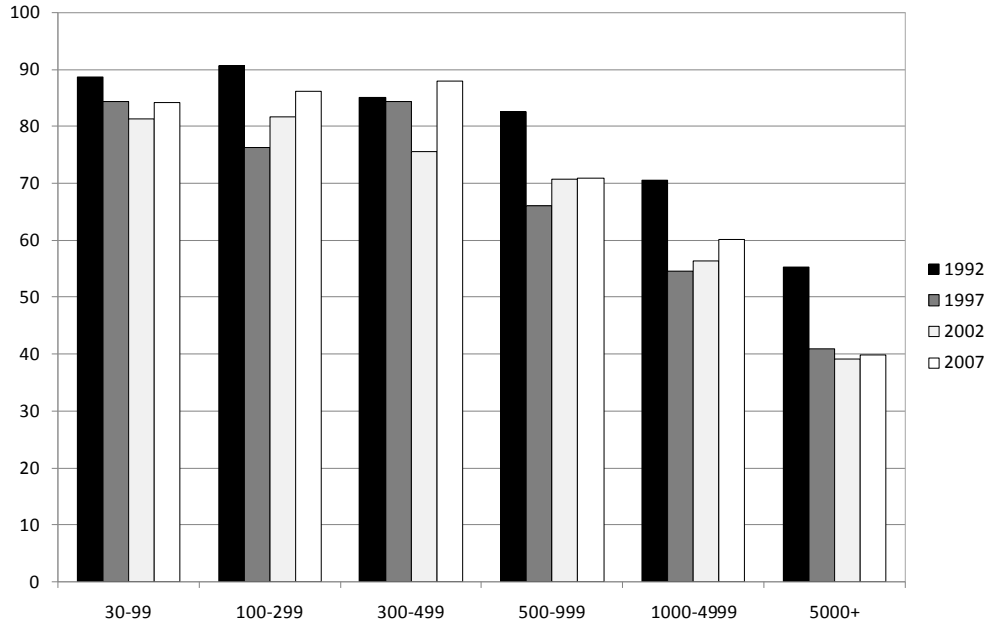
These surveys are by far the most comprehensive data on Japanese industrial relations and also allow investigating, though to a limited extent, emerging topics such as *risutora* (corporate restructuring) in the late 1990s. The following description is entirely based on the above mentioned surveys except where noted otherwise.

10.5.1 Collective bargaining and wage-setting in Japan

As was pointed out in chapters 3, 4 and 6, taking full stock of collective bargaining patterns in Japan is difficult. This stems partly from the fact that the MHLW survey targets unions rather than firms. Unionised firms are much likelier to conduct collective bargaining regularly so that insights are limited to a specific section of the Japanese labour market. In addition, there is much less information on how firms which do not conduct formal bargaining decide wages. As has been pointed out before many firms follow *shuntou* processes by considering it as a de-factor wage ceiling. For data the best source in terms of coverage and depth is the MHLW survey on collective bargaining. The survey targets production-site based unit unions (*tani roudou kumiai* 単位労働組合) and thus understates the actual level of collective

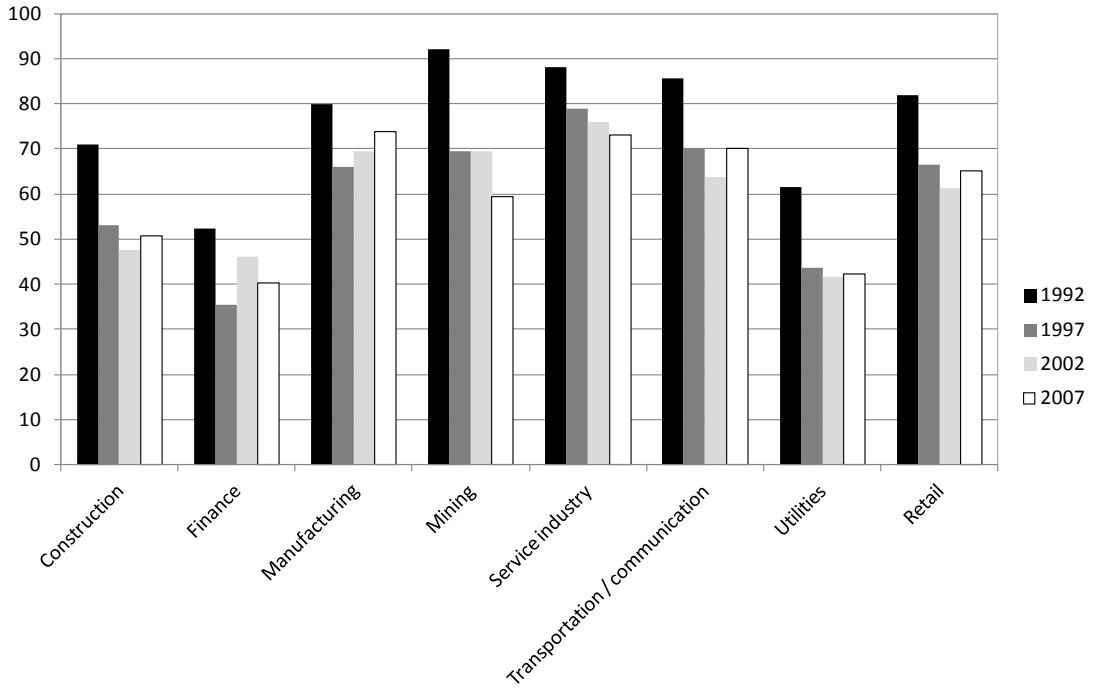
bargaining within a firm as in large firms it is likely to occur at a level above individual sites. Figure B-18 shows that what is commonly referred to as enterprise union can in reality be organised quite differently. While in some firms corporate enterprise federations (*kigyouren* 企業連) organise several unit unions and bargain at the corporate level, in others local bargaining independent of bargaining at the level of the federation may be more important. Large firms are more likely to have collective bargaining above the level of the unit union. The relative low rate of wage increases suggests that many firms did not conduct collective bargaining but agreed on wage freezes.

Figure B-10 **Incidence of collective bargaining and firm size (Japan)**



Source: MHLW (1993, 1998, 2003, 2008): Survey on the current state of collective bargaining and labour dispute.
Note 1: Firm size is measured by the number of employees working at an "enterprise" as reported by union representatives.
Note 2: The survey asked respondents (enterprise union representatives) to state whether there had been collective bargaining processes in the three years prior to the interview. In some cases collective bargaining has been conducted by other unions or at a different corporate level, however, only the 2007 survey included such questions.

Figure B-11 **Firms conducting collective bargaining by industry (Japan)**

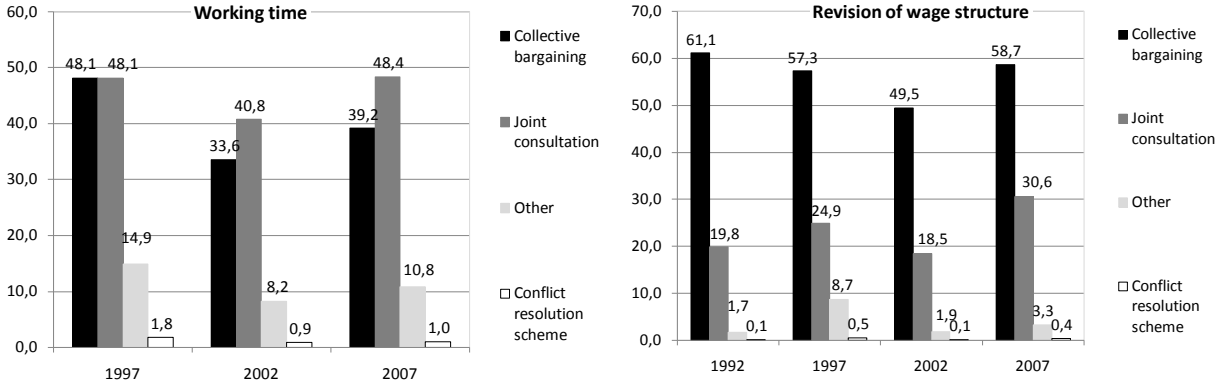


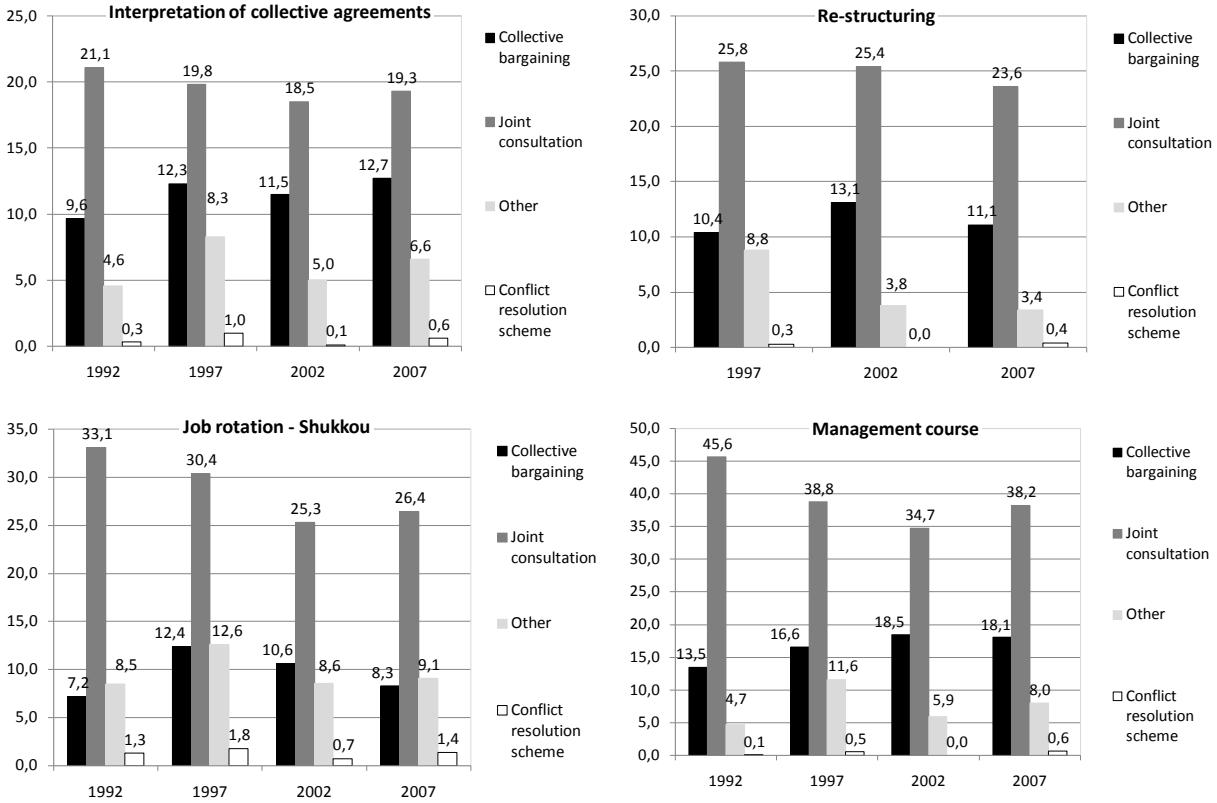
Source: MHLW (1993, 1998, 2003, 2008): Survey on the current state of collective bargaining and labour dispute.
Note: Percentage of all firms surveyed. The question asked whether collective bargaining had been conducted at any time in the 3 years prior to the survey. It does not include collective bargaining on other levels of the corporation or by other unions.

10.5.2 Joint consultation and micro/meso contestation in Japan

According to Nakamura (1997: note 1, 292) the MHLW survey on joint consultation severely understates the actual extent of worker participation because large firms in particular have several bodies for consultation many of which do not appear in the survey because only "enterprises" were targeted. Surveys conducted by the JPC suggest that roughly 7% of all firms have some form of joint consultation.

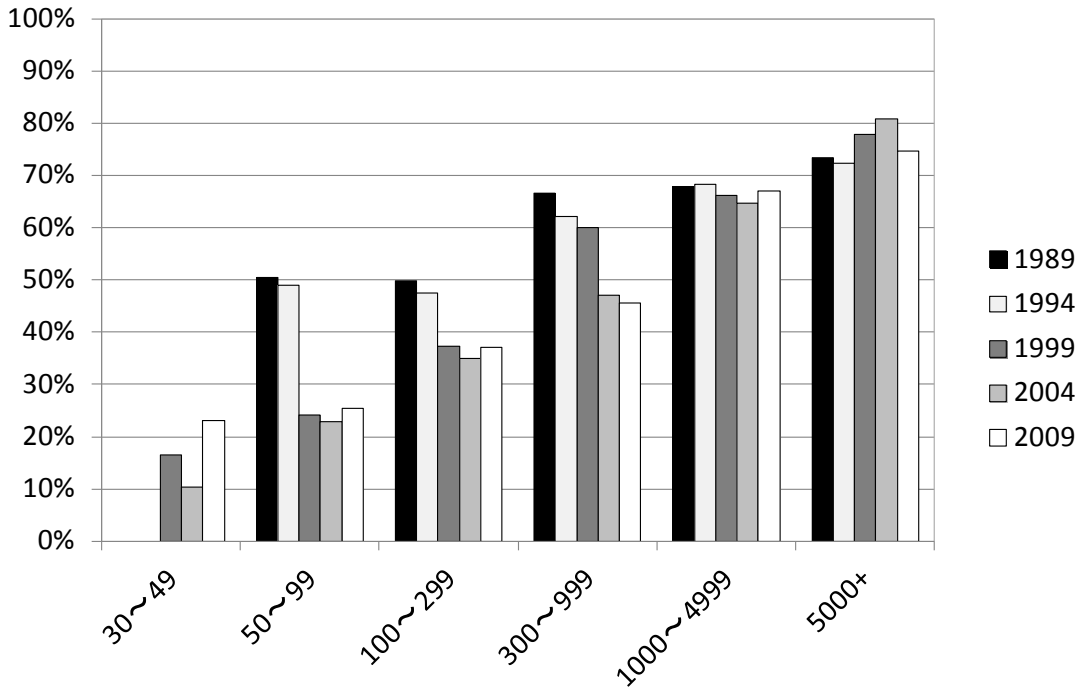
Figure B-12 **Corporate coordination: Topics and mode of consultation (Japan)**





Source: MHLW (1992, 1997, 2002, 2007): Survey on current state of collective bargaining and conflict resolution [団体交渉と労働争議に関する実態調査].
Note: Respondents could name several categories. Percentage is of the total of unions that have been actively involved in discussing matters mentioned in the questionnaire. The 1992 questionnaire included fewer categories than later surveys.

Figure B-13 Percentage of firms with joint consultation bodies by firm size (Japan)

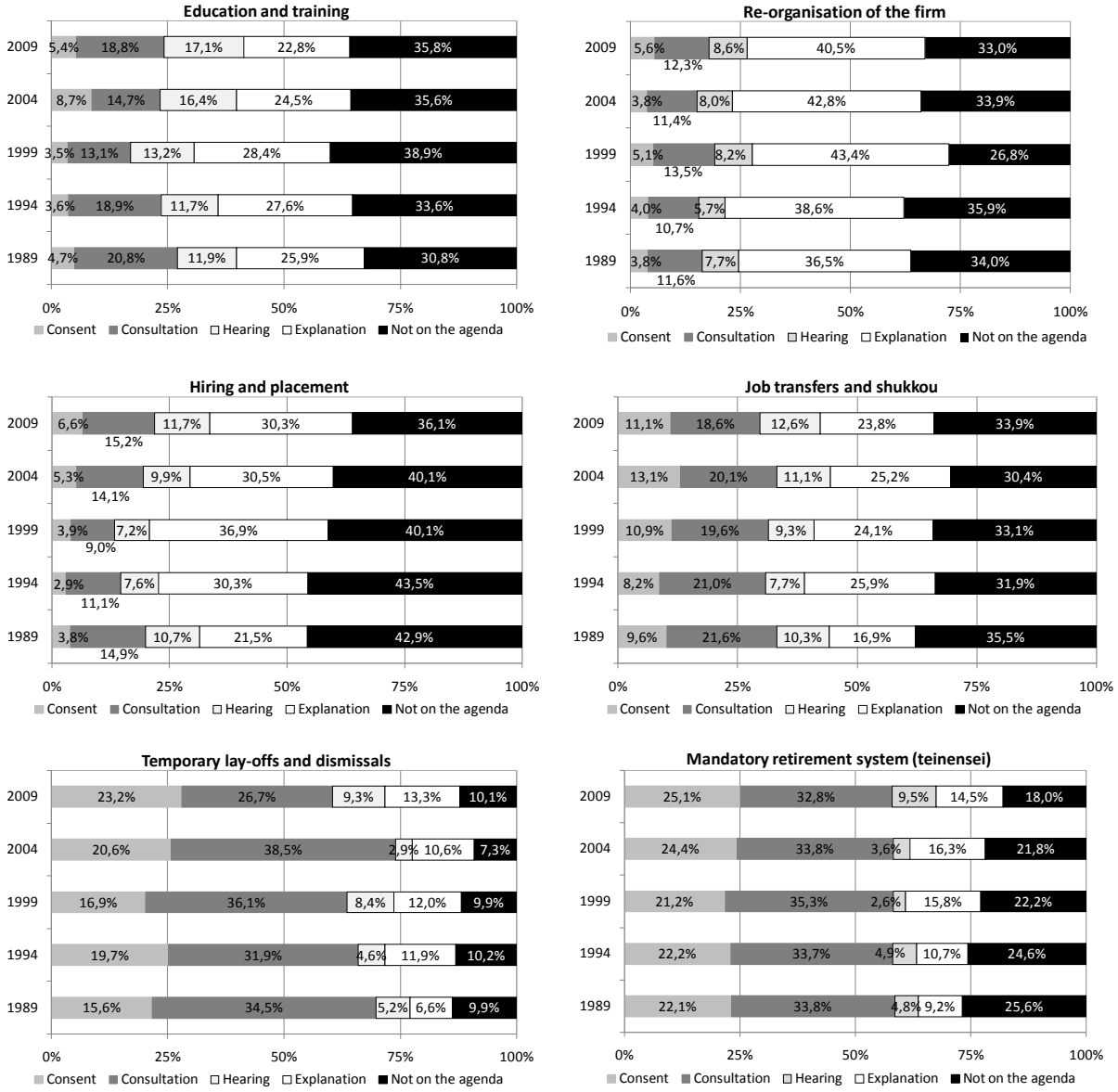


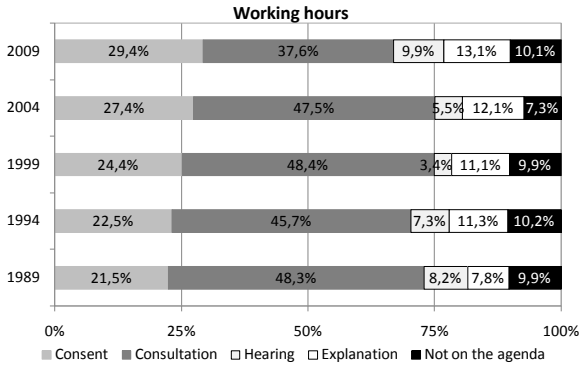
Source: MHLW (1989, 1994, 1999, 2004, 2009): Labour-management communication survey [労使コミュニケーション調査]'. The category „enterprises with 30 to 49 employees" was introduced in 1999.

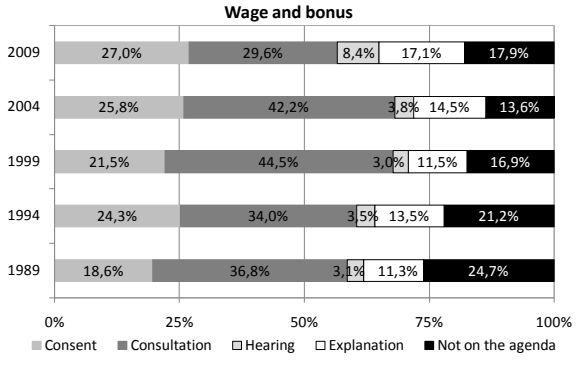
Topics discussed in joint consultation bodies

Respondents were asked whether they discussed a topic in joint consultation and to what extent enterprise labour has participated in decision-making. The survey offered four different categories: consent (*doui* 同意), consultation (*kyougi* 協議), hearing (*iken choushu* 意見聴取), and explanation (*setsumei houkoku* 説明報告). To indicate the frequency and importance of topics over time, the category of "not on the agenda" (*fugi jikou de nai* 付議事項でない) was also included. Percentages given are of all respondents that report joint consultation practices in their enterprise.

***Figure B-14* How Japanese firms coordinate flexibility-related measures with employees**

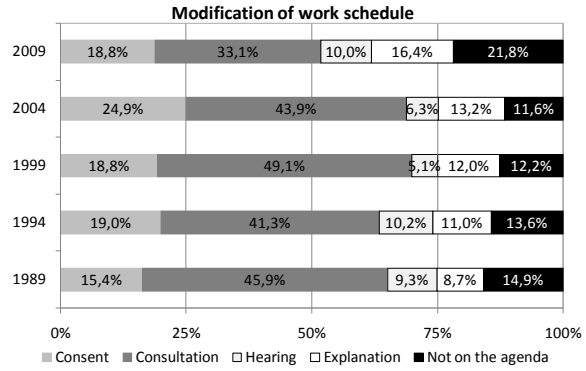


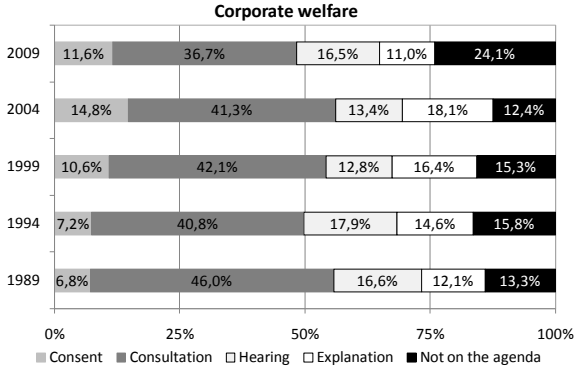


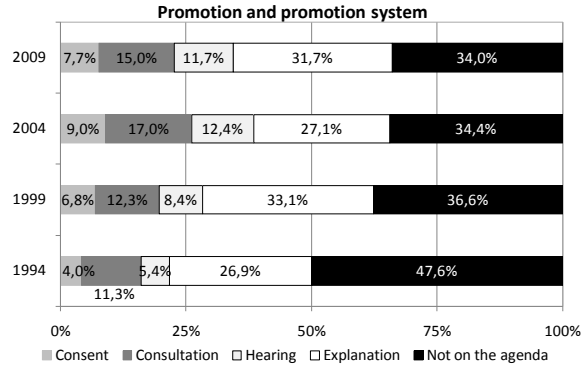


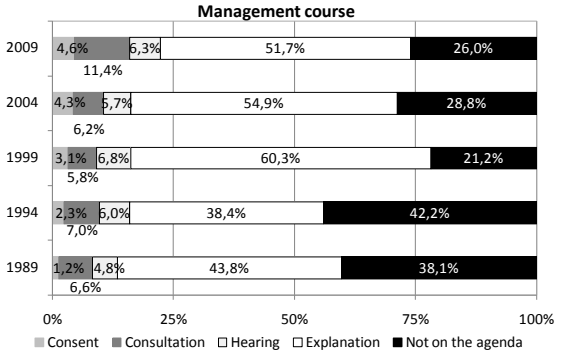
Source: MHLW (1989, 1994, 1999, 2004, 2009): Survey on labour-management communication [労使コミュニケーション調査].

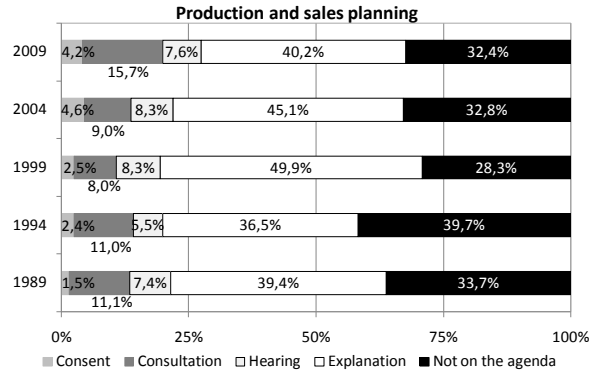
Figure B-15 Labour-management consultation on non-flexibility related issues (Japan)





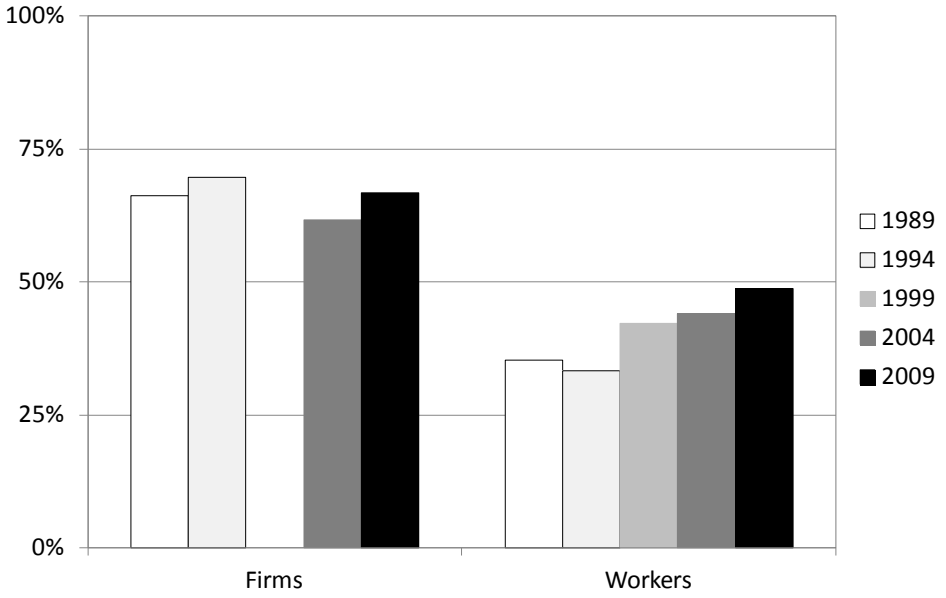






For details on sources see previous figure.

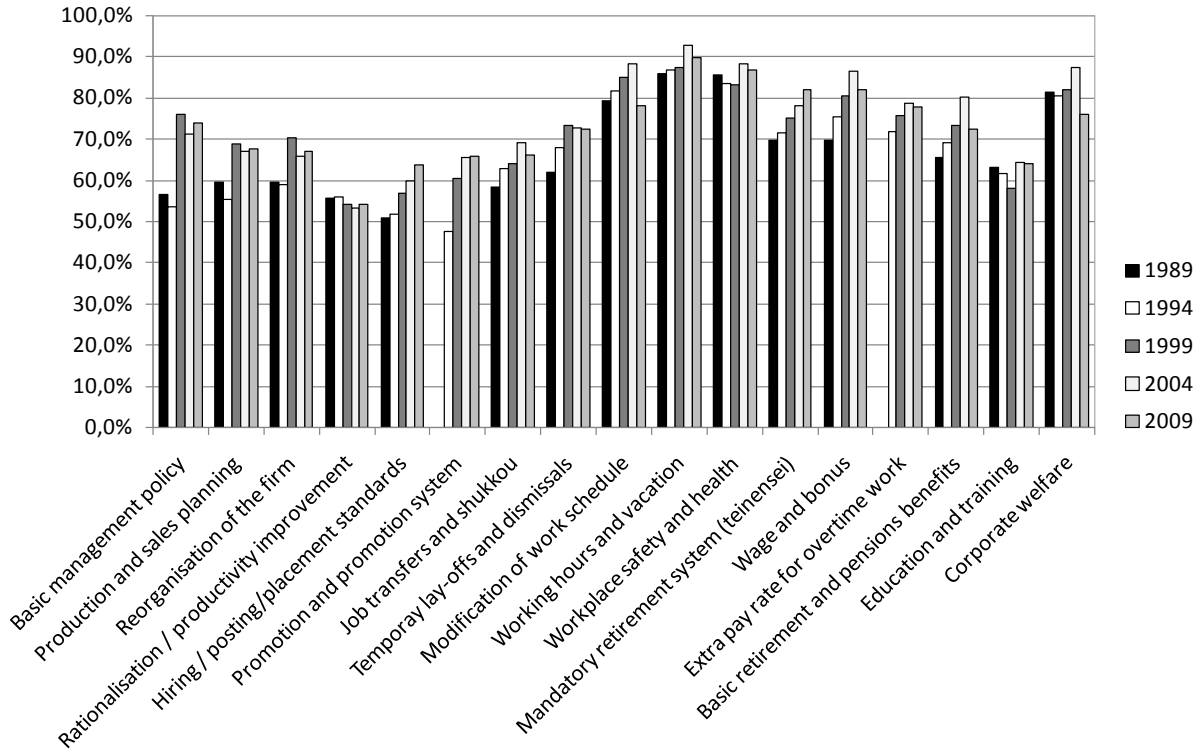
Figure B-16 **Rate of positive evaluations of joint consultation by firms and workers (Japan)**



Source: MHLW survey on joint consultation (1989, 1994, 1999, 2004, 2009). For 1989 and 1994 percentage of workers who replied that joint consultation had led to "substantial results" (かなり成果があった). For 1999, 2004 and 2009 percentages show those who either valued joint consultation either as "very positive" or "positive" (非常に良い and やや良い). No percentages were reported for firms in 1999.

The 1989 survey also shows that workers in firms where management representatives are more critical of joint consultation have a slightly more positive view of it and vice versa.

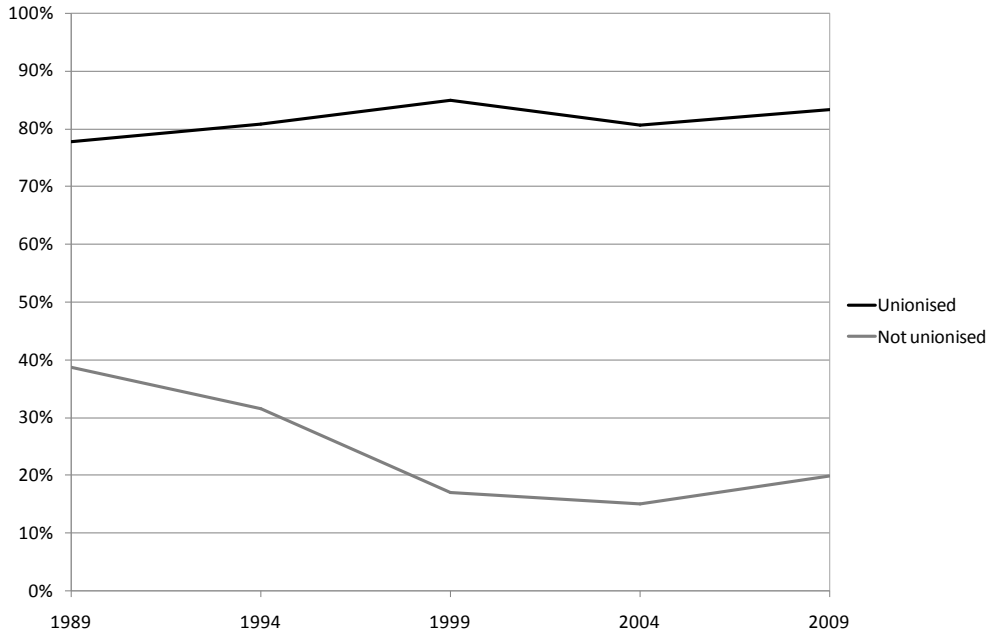
Figure B-17 **Topics of joint consultation processes in Japanese firms**



Source: MHLW surveys on joint consultation. 'Promotion and promotion system' as well as 'extra pay for overtime work' were not included in the 1989 survey.

Note: Figure shows percentage of firms surveyed that have had joint consultation about the topics in the past.

Figure B-18 **Incidence of joint consultation in unionised and non-unionised firms**



Source: MHLW (several years) survey on labour-employer communication.

10.5.3 The MHLW survey on collective bargaining and labour dispute resolution

The MHLW and its predecessor, the Ministry of Labour (MOL) have been conducting the 'survey on the current state of collective bargaining and complaint resolution' (団体交渉と労働争議に関する実態調査) throughout the period under investigation. The data of four surveys (1992, 1997, 2002, 2007) were used and, where possible, compared (some questions have been altered, excluded or were introduced at a later stage). However, just as with the surveys on joint consultation mechanisms, it has to be pointed out that some of longitudinal differences may be a result of a changing make-up of the survey sample. Furthermore, data can only be accessed in the form of aggregated tables.

The earlier surveys do not distinguish between enterprise or corporate unions, only the 2007 survey offers more detailed information on the union unit actually surveyed. The comparatively low rate of collective bargaining in large firms indicates that many issues are negotiated above the enterprise level. If collective bargaining conducted by other unions or on different levels of the firm are considered, collective bargaining rate are usually above 90% for all unionised firms regardless of firm size. The tables published by the MHLW also indicate that the samples have been dominated by firms with high or very high unionisation rates (over 80% report a

unionisation rate of more than 50%) and this is true for all four waves. This indicates, on the other hand, that the samples are roughly comparable over time and that sample effects should not be a major concern. However, it also indicates that firms with strong union presence are.

In 2008 the survey covered all regions in Japan and has targeted unions with more than 30 employees. About 3.700 enterprises were asked to participate since 2004. Before about 4000 firms had been contacted. In 2009 70.6% of firms contacted participated. Numbers for previous surveys are similar. The original questionnaire is available for the 2007 and 2004 surveys on the MHLW's website (http://www.mhlw.go.jp/toukei/chousahyo/). The questionnaires of previous surveys can be accessed through the official survey publications (available, for instance, through the National Diet Library in Tokyo).

10.5.4 Other surveys on Japanese industrial relations

Apart from the MHLW, the Japan Productivity Center (JPC, *Nihon seisansei honbu* 日本生産性本部), a semi-governmental institution originally associated with the Ministry of International Trade and (MITI)[120], has been conducting similar surveys on 'labour-employer communications' in 1995, 2000, 2005 and 2009. Although considerably smaller in sample size, these surveys cover some aspects which are not included the MHLW surveys, such as the relationship between institutions of collective bargaining (*dantai koushou*団体交渉) and joint consultation (*roushi kyougi*労使協議). The JPC has been annually publishing the 'white book of labour relations' (*roushi kankei hakusho* 労使関係白書) until 1993. After 1993, three more white books have been published in 1995, 2000 and 2009 which contain data, questionnaires and summaries of the JPC surveys of industrial relations in Japan.

Also Keidanren (the umbrella organisation of Japanese employers and business) has published a survey on labour-employer communications in 2006, which uses similar questions as the other surveys mentioned but also does not offer the possibility of more detailed cross-sectional comparisons. It seems to confirm, however, that joint consultation practices continue to be wide-spread (it is available at www.keidanren.or.jp/japanese/policy/2006/029/shiryo1.pdf).

[120] The JPC members come from labour and organised business. Its broad membership is an indicator of its role in facilitating cooperation and consultation between employer and union interests.

10.5.5 About the MHLW surveys on Japanese industrial relations

The 'survey on joint labour-employer communication'[121] has been conducted in 1989, 1994, 1999, 2004 and 2009. The actual surveying took place in the year prior to publication (which is used here to identify the different waves). All results are published in the form of aggregated data in tables and micro-data (firm-level data) is unfortunately not available. The influence of specific factors and/or constellations of factors can thus not be analysed using quantitative methods. However, since methodology and questionnaires have been relatively consistent over time it is possible to conduct a limited range of inter-temporal comparisons. Only the more recent publication offer data tables which differentiate based on unionisation rate and union structure (local union or industry union), presence of non-regular workers and evaluation of the effectiveness of joint consultation.

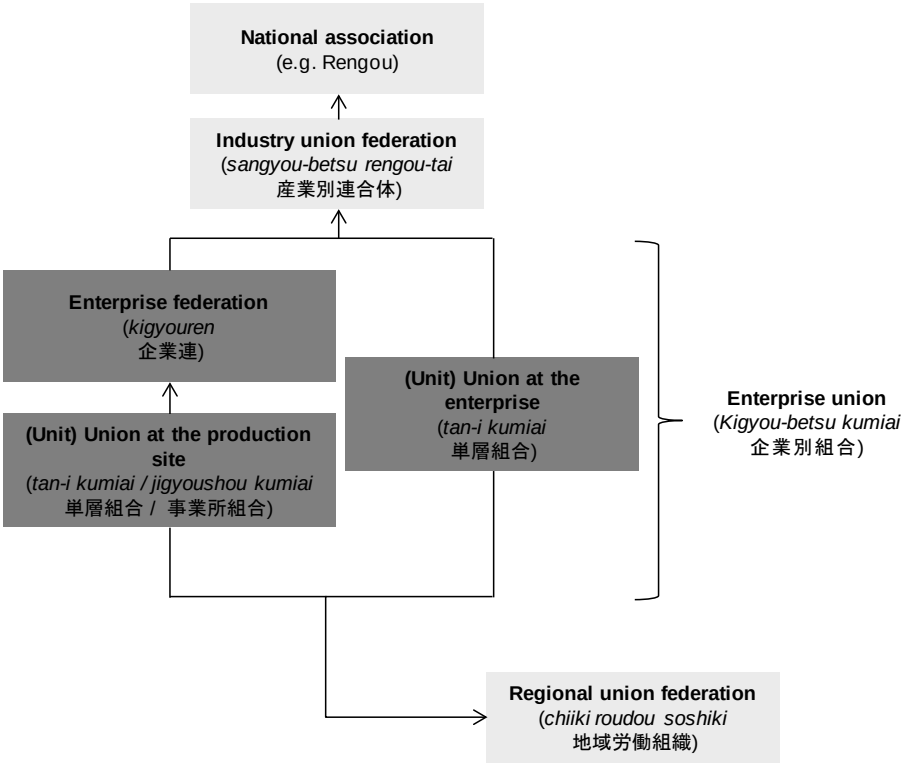
It is important to keep in mind that, as with all MHLW surveys on industrial relations, the surveys are not panel data. However, the sampling method and descriptions provided by the MHLW indicate that the sample's composition is relatively homogeneous. According to Kato, the surveys are conducted by experienced researchers of the MHLW who personally visit the firms and fill out the questionnaires together with respondents (Kato 2000: Footnote 8). The MHLW itself stresses that is considers regional aspects as well as the importance of individual industries and firm size. Furthermore, the large sample of the surveys is supposed to ensure that numbers are representative.

It is important to note that the MHLW surveyed "enterprises" not "firms" which means that the same large corporation firm may be covered several times in the survey if it consists of several enterprises. The distinction is important not least due to the fact that there can be several unions operating on different levels of a firm.

[121] The author likes to thank the MHLW's 2nd section on wage-welfare statistics and labour-employer relations for promptly providing detailed data on the early 1990s and Toshi Yamada, University of Duisburg-Essen, as well as Takao Kato, Colgate University, for providing important clues on sources.

10.5.6 The organisational structure of Japanese unions

Figure B-19 **Organisation and political affiliations of Japanese enterprise unions**



Source: Kawanishi (1992), p.11, with amendments by the author.
Note. Dark shaded rectangles represent enterprise unions, lighter rectangles represent federations that organise several enterprise unions. Arrows indicate the direction of affiliation. As is apparent from terms, the boundaries between different union organisations can be fluent. It is important to keep this in mind when looking at comparative data on Japanese industrial relations as there likely is some confusion in surveys on what constitutes the actual unit underlying the investigation.

10.5.7 The political role of Japanese unions in the post-war era

Table B-2 **Political participation and strategies of Japanese labour unions**

	Locus of political activity	Labour movement activities (outsider participation)	Institutional activities (insider participation)
Until the 1970s	**Parliamentary and societal levels**	Until mid-1970s: industrial disputes focus on public employment	none
	Enterprise and industry-specific activities	Struggle to unify movement through *shuntou*-process (from the mid 1950s onwards); resistance to rationalisation (esp. public corporations and SMEs)	Labour-management relationships based on mutual trust (from the mid-1960s onwards
1970s to 1989	**Parliamentary and societal levels**	no major activities	Promoting a policy of a national "social contract" (1975 *shuntou*) (informal agreements leading to lower wage growth)
	Enterprise and industry-specific activities	Initiatives by Souhyou to establish prefectural organisation and to organise part-time workers	Policy of mutual trust is deepened in large private enterprises; metal union seeks "concentrated decisive battle" on establishing a "pattern-setting" *shuntou* mechanism
After 1990	**Parliamentary and societal levels**	Due to their outsider status Rengou is forced to pursue political activism	Influence in policy-making weakens
	Enterprise and industry-specific activities	Focus on local level and specific ("landmark") cases of individual disputes with management	Continuation and deepening of mutual trust in labour-management relations

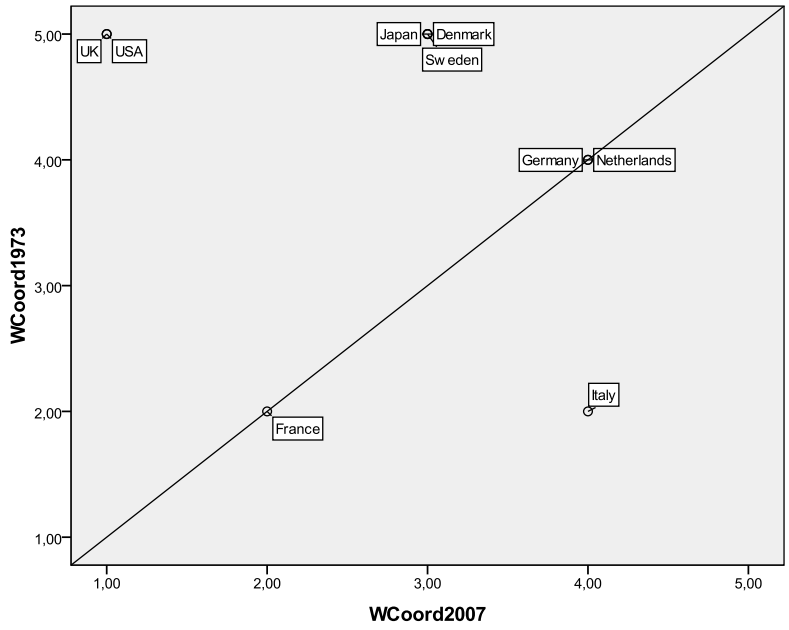
Source: Based on Suzuki (2007).

10.5.8 Institutional change in industrial relations in comparative perspective

There are several indicators for quantitatively describing the degree of corporatism and changes therein. Almost all of these, however, depend on the unionisation rate as the main indicator as well as the degree of centralisation of wage bargaining (e.g. Kenworthy 2003). Visser's ICTWSS database offers a more detailed alternative on indicators of which two components are particularly interesting in the context of this study: Wage coordination (whether bargaining is nation-wide or enterprise-based) and state intervention in wage bargaining processes. In the former cases, the data (figure B-20) suggests a major shift in wage coordination in Japan between 1973 and 2007. This mirrors the heightened importance of the *shuntou* process after the first Oil shock and the decrease in the number of firms taking part in *shuntou* directly.

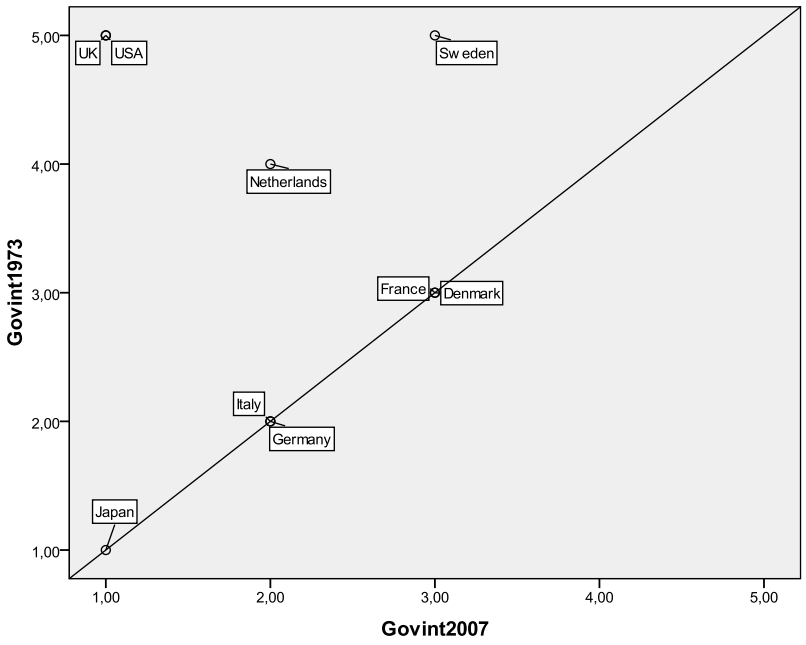
Figure B-21 confirms the low level of government intervention in wage setting in both countries

Figure B-20 **Wage coordination (1973 to 2007)**



Source: Visser (2009).
Note: Wage coordination is defined by Visser by the following categories: 5 = economy-wide bargaining; 4 = mixed industry and economy-wide bargaining, 3 = industry bargaining with limited involvement of central organisations; 2 = mixed industry- and firm level bargaining, 1 = fragmented bargaining at company level.

Figure B-21 **Government intervention in wage bargaining (1973 to 2007)**



Source: Visser (2009).
Note: Government intervention is measured according to the following scale: 5 = government imposes wage settlements in private sector, 4 = government participates directly in wage setting, 3 = government influences wage bargaining indirectly (e.g. through price ceilings), 2 = government influences wage bargaining by providing institutional framework for conflict resolution, 1 = no state involvement.

11. Annex C: Legislative reform in Germany and Japan

Any attempt at qualitatively evaluating legislative changes faces several challenges. Often it is impossible to verify with certainty whether a specific change has caused or an observed outcome. Moreover, the intention as stated within a bill or in the public deliberations may be very different to the actual outcome. Sometimes this discrepancy is intentional, e.g. policy-makers trying to sell an idea that otherwise would be very unpopular, but frequently it appears that policy-makers themselves are not entirely sure about the impact of a reform. Many legislative changes, especially if they prove to be contentious and when windows of opportunity are short, are devised on an ad-hoc basis. This may also explain why court decisions frequently overrule legislative decisions or demand changes therein. In addition, policy-making processes are subject to various agenda-setting dynamics, which may be influenced by scandals, macro-economic shocks, unexpected court decisions or cross-issue deals which originate in a completely different policy area. Policy-makers may not always have sufficient time to carefully draft measures, in particular when they are under pressure to act swiftly. In the case of Germany, there are also European impulses which can alter the agenda of policy-makers, sometimes unexpectedly. Moreover, ILO, OECD, the World Bank and many other institutions also influence domestic discussions through publications, public recommendations and the conclusion of international agreements (although national governments do participate). Hence, in labour politics policymakers may as much try to influence agenda-setting as they are influenced by external agenda-setting.

Last but not least, legal changes are usually accompanied by changes in related laws. In the German case for instance, most de-regulatory laws have been part of a much larger legislative "package" aiming, for example, at reducing unemployment. In other instances, legal changes in one area can require changes in another area, e.g. the introduction of private placement agencies (PSA) in Germany made it necessary to review the regulation of temp agencies. In some cases provisions have remained in place even though they had already been declared invalid by courts. An exclusively legislative review therefore must inevitably be an imprecise reflection of the actual situation. The following summary of legislative changes therefore will not only list and describe the main changes but also explain the main intention or main push factor to clarify the actual dynamics of decisions. This includes major court decisions.

All assessments are primarily concerned with legislative acts that have had a direct impact on one of the four dimensions of flexibility described in chapter 4. The second crucial element of these assessments concerns the role of the state vis-à-vis non-legislative LoRs. To assess to what extent the balance has shifted over time and which LoR has gained relevance, laws from several areas are considered. In addition to questions of working conditions this includes corporate governance reform. Although employment may not have been the primary concern when devising corporate governance change, such reforms inevitably have an impact on how working conditions are regulated and policy-makers have to take into consideration possible implications as it can affect many other areas of regulation as well. The way legislation at the margins of flexibility is drafted, therefore, can be indicative of how policy-makers would like the whole regulatory arrangement to develop in future. For instance, if decentralisation is seen as beneficial, it is likely that policy-makers will try to give employers more leeway in negotiating working conditions on a corporate or even individual basis, while a government keen on maintaining or strengthening existing institutions may set a number of incentives that encourage collective consultation.

The purpose of the following sections is to lay out transparently the criteria for all qualitative assessments. It will first discuss in general terms how the degree of change a single piece or a set of related legislation bring about can be differentiated drawing from Hall's typology of reforms (1993) which has been applied by several authors to distinguish policies within and across countries. It proposes a typology of 1st, 2nd and 3rd order change specific to the area of labour market regulation. Legislative changes are then presented tables where the names of specific provisions changed and a justification for the assessment is given. If specific reforms touch on several of the policy areas, they are listed in all respective tables. Legislative changes were assessed for the period between 1985 and 2012 only unless indicated otherwise.

11.1 Assessing the degree of legislative change in Germany and Japan

Even a superficial analysis of legislative changes will show that there are very few instances, which mark a turning point which instantly changed how specific regulatory matters were handled. For this reason, none of the legal changes discussed in this study was evaluated as a 3rd order change, even though

theoretically, this possibility exists and may be observable in some cases, e.g. labour market reforms in the UK in the 1980s. For the sake of conceptual consistency the following description includes all three types of legislative reform.

Table C-1 **Criteria for assessing the scope of legislative reforms**

Scope of change	Criteria
C - First order legislative change	This category includes all changes that can be evaluated as minor adjustments (in particular, cost containment and regulatory re-calibration). For instance, legislation that mirrors earlier legislative steps will be evaluated as first order change as long as it does not lead to a major re-interpretation of existing regulations. First order changes concern only minor shifts or incremental reforms.
B - Second order legislative change	Second order changes are defined as cases where new regulation changes the existing arrangement by changing the way institutions function, or where new institutions are added (institutional layering) which, however, do not replace existing ones. Examples are the deregulation of temp agency work in the early 2000s which followed a number of smaller-scale deregulations but which nonetheless constitute a major deregulatory step. In terms of changes affecting the balance between legislative vs. non-legislative regulation second order changes come closest to "institutional layering", e.g. by adding non-legislative regulation where legislative regulation has been common and vice versa.
A - Third order legislative change	Third order changes are reforms that fundamentally challenge the way existing institutions work or their very existence, such as creating new institutions and rules or by abolishing existing ones. This would include, for instance, the abolishment of the *Günstigkeitsklausel* in Germany or the abolishment of the employment protection criteria originally developed by Japanese courts. Third order changes clearly indicate a major re-orientation. Aggregated institutional change consisting of several first and/or second order changes may in sum and over time amount to third order change but here only individual pieces of legislation are considered.

Source: Adapted from Hall (1993) and Pierson (2001a).

11.2 Details on the qualitative assessment of reforms and legal changes

In the following sections, all major labour market reforms in Germany and Japan are listed and described. Apart from the German/Japanese title of a reform, the English title will also include the common abbreviation of the main laws concerned. Official English titles of laws were taken from Weiss (1997) and Hanami (1997) while the original titles of bills were taken from national databases on parliamentary proceedings. As far as possible the data was cross-checked with the ILO NATLEX database and the website and from publications by the Japan Institute of Labour Policy and Training (JILPT). In Japan, databases on the parliamentary proceedings in both chambers as well as on laws and bills are provided by the National Diet Library

(NDL).[122] In addition, standard handbooks on labour law (e.g. Mizumachi 2007) as well as several other scholarly sources (see tables) were used. In Germany the Bundestag's DIP database was used, which allows looking up all legislative processes and parliamentary proceedings. The website of the Federal Ministry of Justice offers up-to-date versions of all German laws. All information was verified using at least three different sources: in Germany the database Juris Gesetze (onlinw access provided by the University of Heidelberg library), NatLex database on the website of ILO, and the legislative review (entitled: Aus der Gesetzgebung / Berliner Bericht) published in the journal Arbeit und Recht (AuR). For Japan additional sources to those already mentioned, were the Japan Labour Bulletin (published until 2003 by the JILPT), the Japan Labor Flash (JLF, published until 2006), the Weekly Labour News (SRN, *shuukan roudou nyuusu*週刊労働ニュース, published until 2003) and the Japan Labour Review.

The following tables list all legislative changes since 1985 which have had impact one of the flexibility dimensions defined in chapter 4. The respective laws and their relevance for the evolution of regulatory arrangements are described in detail in chapter 5. As reforms frequently entail changes in several laws, some reforms were included in more than one table. Particularly prominent reforms and related changes were included even if they have no direct impact on flexibility, in order to clarify their actual relevance and to avoid any ambiguity that may arise from the usage of similar terms and laws, such as the "Hartz reforms". To illustrate major reforms in the post-war period, some major legislative projects such as German co-determination in the 1970s were also included. In the Japanese case some important government bills were included that were no implemented due to internal or parliamentary opposition, e.g. the White Collar Exemption Bill of 2007. Bills proposed by the government that do not become law are rare in Japan as governments only introduce bills when they expect they will be approved by both houses. In contrast, opposition parties usually only initiate bills that stand little chance of being approved by a majority, solely to demonstrate publicly its

[122] The NDL's index of Japanese laws and ordinances (*nihon hourei sakuin* 日本法令索引) can be accessed at http://hourei.ndl.go.jp/SearchSys/. Parliamentary proceedings including full speeches of representatives and ministers before the Diet are accessible at http://kokkai.ndl.go.jp/. Recent English translations of main Japanese labour laws can be found at the JILPT's website at http://www.jil.go.jp/english/laborinfo/library/Laws.htm. Most laws are accessible in a bilingual version which allows for direct verification of translations. The main Bundestag database can be accessed at http://dip.bundestag.de/, most recent versions of laws are available at http://www.gesetze-im-internet.de/ (service of the Federal Ministry of Justice). The service is available in German only.

commitment to a cause. Due to the high number of opposition proposals, only government-sponsored bills were considered. Also, changes in elements that have been discussed in the context of the OECD's EPL indicator are also mentioned.

In all tables German and Japanese laws are identified with their official title as well as the date of the official promulgation. English titles are not exact translations but emphasise the act or aspect of a bill which deserves most attention in the context of the analysis. In addition, common abbreviations of acts are mentioned in German or English. To facilitate further research and a critical re-assessment of coding all Japanese laws are identified by two codes: The first numerical code indicates the number of the ordinary Diet session, the second code the number of the promulgated law.

The scope of changes is indicated by a three-letter code:

A Third order change

B Second order change

C First order change

To indicate the direction of changes the following symbols are used:

+ Flexibility-related legislation that limits labour market flexibility
Industrial relations: Enhances role of non-state regulation

- Flexibility-related legislation that enhances labour market flexibility
Industrial relations: Boosts state-centred regulation (i.e. through law)

X Reform has no obvious impact on labour market flexibility or relationship of regulatory sources, has not been implemented or an assessment was not possible due to other reasons

11.3 Reforms of employment protection legislation

Employment protection legislation here is defined as protection of individuals against dismissals. Yet, collective regulation on employment protection, as has been discussed , is also important for individuals. In the German case, several laws have clarified the conditions for *Sozialauswahl*. This issue alone has prompted numerous changes and court decisions and the actual impact on corporate practice thus is difficult to assess. Moreover, works councils and industry unions may also modify the criteria used for determining and individual's level of protection. At the same time, firms have always enjoyed a privilege to protect "crucial employees" who may be particularly important due to their skills. For these reasons this type of regulation is

particularly complex to assess but not necessarily indicative of overall employment protection. It was thus was not included in the assessment.

Table C-2 **Reforms of employment protection legislation in Germany, 1985-2012**

MM/ Year	Cabinet	Official title	English title (act concerned)	Description of changes	Intention/ push factor	Assessm.
10/ 1993	Kohl IV	Gesetz zur Vereinheitlichung der Kündigungs-fristen von Arbeitern und Angestellten	Law on the equalisation of notice periods for wage and salaried employees	- Special provisions for white collar employees are abolished and a unified notice period is introduced for employees and workers - simplification and clarification of existing legislation	- Changes required due to rulings by BVerfG and Bundesarbeits-gericht	**X** (not relevant)
09/ 1996	Kohl V	Arbeitsrechtliches Gesetz zur Förderung von Wachstum und Beschäftigung	Reform of protection against dismissals act (*KschG*)	- First genuine relaxation of the act since 1969 - Firms with less than 10 employees are exempted from the provisions of the *KschG* - Limits *Sozialauswahl* to three categories (tenure, age, number of children)	- To promote employment and facilitate labour regulation for small enterprises	**- / C** (lower EP)
12/ 1998	Schröder I	Gesetz zu Korrekturen in der Sozialversicherung und Sicherung der Arbeitnehmerrechte	Reform of protection against dismissals act (*KschG*)	- Requirements of the *KschG* apply to all firms with more than 5 employees - Re-establishes original criteria in *Sozialauswahl*	- Fulfils election promise of restoring old labour market regime	**+ / C** (higher EP)
12/ 2003	Schröder II	Gesetz zu Reformen am Arbeitsmarkt (Agenda 2010)	Reform of protection against dismissals act (*KschG*)	- New employees are not counted when determining firm size threshold of 5 employees - Court review of dismissals less rigorous - *Sozialauswahl* criteria are relaxed	- Part of the implementation of recommendations of Hartz committee - Clear intention to promote employment by enhancing flexibility of existing regulations	**- / C** (lower EP)

Additional sources: Kemmerling and Bruttel (2006), Egle (2009), Zohlnhöfer (2001).

Table C-3 **Reforms of employment protection legislation in Japan, 1985-2012**

MM/ Year	Cabinet	Official title	English title (act concerned)	Description of changes	Intention/ push factor	Assessm.
07/ 2003	Koizumi I	労働基準法の一部を改正する法律案 [Roudou kijun hou no ichibu wo kaisei suru houritsu-an]	Reform of the Labour Standard Act (LSL, 156-82)	- Establishes principle that "abusive dismissals" are illegal and thus void Employers have to produce awritten statement about reasons for dismissals and hand statement to workers - Actual effect on employment practices arguably small as it follows established principles	- Facilitate and clarify dismissal processes by including dismissal criteria into LSL - Prevent and simplify labour disputes to counter rising number of individual labour disputes - Initially to fixate right to dismissal but later abandoned due to opposition in Diet	**+ / C** (largely confirms stricter regulation set by case law, little practical impact)
12/ 2007	Fukuda	労働契約法案 [Roudou keiyaku houan]	Introduction of the labour contract act (166-128)	- Regulations on dismissals are transferred from LSL to newly introduced labour contract act	- Clarify and streamline regulation on labour contracts in a single act	**X** (no qualitative change)

Additional sources: Araki (2009), Nakakubo (2004).

11.4 Reforms of temp agency employment

Table C-4 **Legislative reforms of temp agency work in Germany, 1972-2012**

MM/ Year	Cabinet	Official title	English title (act concerned)	Description of changes	Intention/ push factor	Assessm.
08/ 1972	Brandt I	Gesetz zur Regelung der gewerbsmäßigen Arbeitnehmerüber-lassung	Introduction of the worker assignment act (*AÜG*)	- Fixed-term contracts are banned in temp agency industry - Length of assignments limited to 3 months - Laid-off workers cannot be re-hired within 3 months on fixed-term contracts	- "Legalisation" of court decisions by the BVerfG and labour court which effectively set first regulatory framework	**X**
04/ 1985	Kohl III	Beschäftigungsförde-rungsgesetz (BeschFG)	Reform of the worker assignment act (*AÜG*)	- Maximum length of assignments with client firm extended from 3 to 6 months	- Promise of Kohl government to implement labour market deregulation	**- / C** (facilitates use of temp agency work)
12/ 1993	Kohl IV	Erstes Gesetz zur Umsetzung des Spar-, Konsolidierungs- und Wachstumsprogramms	Reform of the worker assignment act (*AÜG*)	- Expands maximum period of assignments with the same host firm from 6 to 9 months - Lifts restrictions which prohibit assignments in the same industry	- Increase dynamic in German labour market	**- / C** (facilitates use of temp agency work)
07/ 1994	Kohl IV	Beschäftigungsförde-rungsgesetz (BeschFG)	Reform of the worker assignment act (*AÜG*)	- Allows to employ workers with particular handicaps to be employed on fixed-term contracts provided they will receive permanent contract by host firm	- Improve employment prospects of disadvantaged workers	**X** (minor change)

03/ 1997	Kohl V	Arbeitsförderungs-reformgesetz (AFRG)	Reform of the worker assignment act (*AÜG*)	- Recognises temp agencies as commercial operations; temporary assignments are possible for 12 instead of 9 months; temp agency work remains illegal in construction sector unless they fulfil specialist work - Initial contract may expire parallel to first assignment	- Increase employment by offering more flexible jobs	**- / C** (facilitates use of temp agency work)
12/ 2001	Schröder I	Job-AQTIV Gesetz	Reform of the worker assignment act (*AÜG*)	- Temporary assignments possible for up to 24 months - Introduces limited equal treatment clause: if temp agency workers are employed beyond 12 months they have to be treated equally with comparable employees in the firm to which they have been assigned	- Increase employment by offering more flexible jobs - Facilitate labour market entry for long-term unemployed workers - Limit crowding out of regular jobs through equal treatment clause	**- / C** (facilitates use by extending maximum assignment period) **+ / C** (limits flexibility by introducing equal pay clause)
12/ 2002	Schröder II	Erstes Gesetz für moderne Dienstleistungen am Arbeitsmarkt (ArbMDienstLG 1)	Reform of the worker assignment act (*AÜG*)	- All restrictions on fixed-term contracts and length of assignments are lifted (provisions of *TzBfG* are still valid) - No restrictions on industries or work tasks - Temp-agency work allowed in construction sector - Equal-treatment clause unless there is a valid collective agreement in the temp agency sector which can deviate in both directions	- Increase employment by offering more flexible jobs - Assist unemployed to enter labour market	**- / B** (lifts major restrictions on temp agency work) **+ / C** (equal treatment clause limits flexibility)
03/ 2009	Merkel II	Gesetz zur Sicherung von Beschäftigung und Stabilität in Deutschland	Reform of the worker assignment act (*AÜG*)	- Temp agency jobs become eligible for *Kurzarbeitergeld* (short work compensation)	- To stabilise situation of temp-agency workers affected by 2008 crisis - To overrule court decisions which outlawed short work compensation due to the temporary nature of temp agency work	**X** (no effect on flexibility)
04/ 2011	Merkel II	Erstes Gesetz zur Änderung des Arbeitnehmerüber-lassungsgesetzes - Verhinderung von Missbrauch der Arbeitnehmerüber-lassung	Reform of the worker assignment act (*AÜG*)	- Limits possibilities of re-employing former permanent workers as temp-agency workers and paying them less than regular staff - Minimum wage criteria is added into the law	- Labour mobility for three East European EU members prompts government to agree to minimum wage clause which is included in AÜG - Response to scandal of a firm re-hiring employees as temp-agency workers on lower pay - Mirrors emerging consensus to establish more comprehensive minimum wages	**+ / C** (minimum provisions limit flexibility of settin working conditions)

Additional sources: Vitols (2008), Bode et al. (1994), Buschmann (2005).

The regulation and deregulation of temp agency work in Japan has been based on a range of different legislative vehicles. For example, the list of occupations eligible for temp agency work has been modified through cabinet orders or

ministerial ordinances which provide details on the execution of the WDL's more general provisions. In the literature authors somewhat disagree about the exact timing of some of these modifications (in particular when and how the list of occupations was expanded from 16 to 18) and in some cases an additional verification through government sources was not possible as details on ministerial are not as extensive in the National Diet Library as for laws. For these reasons, the table includes only those changes that could be verified. Nonetheless the table does include all major changes that have prompted political contention within the *shingikai*, the Diet or the public realm.

Table C-5 **Legislative reform of temp agency work in Japan, 1985-2012**

MM/ Year	Cabinet	Official title	English title (act concerned)	Description of changes	Intention/ push factor	Assessm.
07/ 1985	Nakasone II	労働者派遣事業の適正な運営の確保及び派遣労働者の就業条件の整備等に関する法律 [Roudou-sha haken jigyou no tekiseina unei no kakuho oyobi haken roudou-sha no shuugyou jouken no seibitou ni kan suru houritsu]	Act for securing the proper operation of worker dispatching undertakings and improved working conditions for dispatched workers (WDL, 102-88)	- Legalises temp agency work for 13 industries/occupations and bans temp agency practices in all other industries - Temp agency work allowed in limited number of industries	- Activate external labour market in order to facilitate employment of handicapped workers - Regulate growing grey zone of labour subcontracting within keiretsu	**- / C** (facilitates temp agency work)
07/ 1985	Nakasone II	労働者派遣事業の適正な運営の確保及び派遣労働者の就業条件の整備等に関する法律の施行に伴う関係法律の整備等に関する法律案 [Roudou-sha haken jigyou no tekiseina unei no kakuho oyobi haken roudou-sha no shuugyou jouken no seibitou ni kan suru houritsu no shikou ni tomonau kankei houritsu no seibitou ni kann suru houritsuan]	Act related to the execution of the act for securing the proper operation of worker dispatching undertakings and improved working conditions for dispatched workers (WDL, 102-89)	- Changes terms and details of existing provisions in the LSL	- See WDL, 102-88	**X** (as only nominal adjustments to the LSL)
09/ 1990	Kaifu II	労働者派遣事業の適正な運営の確保及び派遣労働者の就業条件の整備等に関する法律施行令の一部を改正する政令 [Roudou-sha haken jigyou no tekiseina unei no kakuho oyobi haken roudou-sha no shuugyou jouken no seibi-tou ni kan suru houritsu shikourei]	Cabinet order on the partial amendment of the act for securing the proper operation of worker dispatching undertakings and improved working conditions for dispatched workers (Cabinet order no. 267)	- Extension of 'positive list' of occupations from 13 to 16 - Extension of maximum term of assignments from nine months to one year	- Positive evaluation by administration of WDL lead to further expansion of temp agency work	**- / C** (expands usage of temp agency work)

06/ 1994	Hata	高年齢者等の雇用の安定等に関する法律の一部を改正する法律案 [Kounenrei-sha-tou no koyou no antei-tou ni kann suru houritsu no ichibu wo kaisei suru houritsu-an]	Partial ammendment of the act for the stabilisation of employment of elderly workers (129-30)	- For elderly workers (60 years and older) 'positive list' is replaced with short 'negative list' of occupations for which temp agency work remains illegal	- Based on recommendations of the tripartite Central Labour Security Commission - Goal to improve jobs prospects of at-risk/unemployed elderly workers at the background of worsening macroeconomic development	**- / C** (minor expansion of temp agency work)
06/ 1996	Hashimoto I	労働者派遣事業の適正な運営の確保及び派遣労働者の就業条件の整備等に関する法律等の一部を改正する法律 [Roudou-sha haken jigyou no tekiseina unei no kakuho oyobi haken roudou-sha no shuugyou jouken no seibito ni kan suru houritsu-tou no ichibu wo kaisei suru houritsuan]	Partial ammendment of the act for securing the proper operation of worker dispatching undertakings and improved working conditions for dispatched workers (136-90)	- List of occupations eligible for temp agency work is expanded from 18 to 26 - For all other occupations the maximum period of assignments is 1 year - Employers are obliged to "consider" direct employment of temp agency workers	- Relaxation result of recommendations formulated by deregulation sub-committee and "deregulation 5 year plan" approved by cabinet and re-orientation of MoL - Intentiona to stimulate Japanese economy and assist firms with dealing with labour issues - Some protective measures are included during Diet negotiations	**- / C** (minor relaxation of regulation of temp agency work)
07/ 1999	Obuchi	労働者派遣事業の適正な運営の確保及び派遣労働者の就業条件の整備等に関する法律等の一部を改正する法律案 [Roudou-sha haken jigyou no dekiseina unei no kakuho oyobi haken roudou-sha no shuugyou jouken no seibitou ni kan suru houritsu-tou no ichibu wo kaisei suru houritsuan]	Partial ammendment of the act for securing the proper operation of worker dispatching undertakings and improved working conditions for dispatched workers (143-84)	- Replaces positive with negative list system: all occupation unless explicitly stated in the WDL or ESL are eligible for placement through commercial temp agencies - Only marginal occupations remain banned from temp agency work	- Reform partially motivated by change in ILO convention	**- / B** (major relaxation of regulation of temp agency work) **+ / C** (limits length of assignments to 1 year)
07/ 2003	Koizumi I	職業安定法及び労働者派遣事業の適正な運営の確保及び派遣労働者の就業条件の整備等に関する法律の一部を改正する法律案 [Shokugyou antei hou oyobi roudou-sha haken jigyou no tekiseina unei no kakuho oyobi haken roudou-sha no shuugyou jouken no seibi-tou ni kan suru houritsu no ichibu wo kaisei suru houritsuan]	Partial ammendment of the Employment Security Law and the act act related to the execution of the act for securing the proper operation of worker dispatching undertakings and improved working conditions for dispatched workers (156-82)	- Expands the list of industries where temp agency employment is allowed, such as manufacturing - Maximum length of assignments abolished for 26 occupations and expanded to 3 years (prev. 1 year) for all other occupations - Employers must give temp agency workers priority when hiring a regular employee after 3 years	- Privatises job placement and modernises public job placement - Partially related to activation policy and measures to battle rising unemployment - Agenda setting through council on economic and fiscal policy	**- / B** (major relaxation of limits on temp agency work)

03/ 2012	Noda	労働者派遣事業の適正な運営の確保及び派遣労働者の就業条件の整備等に関する法律等の一部を改正する法律案 [Roudou-sha haken jigou no dekiseina unei no kakuho oyobi haken roudou-sha no shuugzou jouken no seibitou ni kann suru houritsu-tou no ichibu wo kaisei suru houritsuan]	Partial ammendment of the act related to the execution of the act for securing the proper operation of worker dispatching undertakings and improved working conditions for dispatched workers (174-27)	- Bans temp agency work for jobs that run for 30 days or less (hiyatoi haken), unless employers have offered long-term employment contract - Government announces to review implications of registered-type temp agency work and temp agency work in manufacturing within 3 years of execution of this act	- Partially fulfils election promise of the DPJ and two other parties to re-regulate temp agency sector in order to improve working conditions of temp-agency workers - Compromise with LDP, CGP and other parties who had blocked original bill in the UH, in particular the ban on temp agency work in manufacturing	**+ / C** (limits usage of temp agency work; not included in analysis)

Additional sources: Imai (2004, 2011), Weathers (2004), Hamaguchi (2004: 66-84), Yanigasawa (2008), Araki (1997, 1999, 2009).

11.5 Reforms of fixed-term and part-time employment

The following tables report all changes that have affected the nature of flexible labour contracts. In Germany fixed-term contracts and part-time work since 2000 are regulated in the same act (TzBfG), yet the latter has been mostly excluded from this overview as it has been interpreted mainly as a way of promoting (part-time) jobs particularly suitable for women. Regulation was intended to increase the opportunities for part-time work in order to meet in particular the demands of women with children. The *Teilzeitanspruch* introduced in the TzBfG in 2000 allows employees who have been employed longer than 6 months in firms with more than 12 employees to transform their full-time job into a part-time position. Employers may only object on economic grounds which it needs to prove to the courts. So far there is no obligation for employers to offer full-time positions to part-timers who want to work longer. The TzBfG only obliges employers to give part-timers priority when suitable full-time positions open up. Particularly noticeable is that the BeschFG of 1985 explicitly stated that collective agreements may deviate from the equal treatment clause even if that would result in worse working conditions for part-timers. This provision was abolished in the 2000 reform (mainly due to the fact that it was not enforceable at courts). Since then part-timers are to be treated equally although fringe benefits may be calculated on the basis of working time or pay (e.g. part-timers who work 50% of a full-time employee get 50% of the fringe benefits offered to permanent employees). Not included are the reforms of fixed-term and part-time employment in institutions of higher education and hospitals. In both cases fixed-term contracts were deregulated in order to allow research assistances

(*wissenschaftliche Mitarbeiter*) and medical personnel in training to receive employment contracts while pursuing a doctorate or other qualifications. The special conditions of these jobs make an evaluation with regard to a general re-orientation of regulation difficult and they were thus excluded.

Table C-6 **Legislative reforms of fixed-term employment in Germany, 1985-2012**

MM/ Year	Cabinet	Official title	English title	Description of changes	Intention/ push factor	Assessm.
04/ 1985	Kohl III	Beschäftigungsförde-rungsgesetz	Employment promotion act (*BeschFG*)	- Until 1995 fixed-term contracts of up to 18 months are permissible for new employees or those who have finished in-house vocational training - No restrictions for firms with 20 or fewer employees - Fixed-term contracts are not permissible if employees have been employed by the same employer and if the new job is closely related to a previous position - Part-time and fixed-term employees have to be treated equally to permanent full-time employees unless alternative regulations are set by collective agreements	- Facilitate the use of fixed-term contracts by setting universal standards for its use - Encourage creation of part-time jobs - Avoid lengthy pre-emptive reviews by courts on provisions for fixed-term contracts	**- / B** (facilitates use and regulation of fixed-term and part-time contracts)
07/ 1994	Kohl IV	Beschäftigungsförde-rungsgesetz	Employment promotion act (*BeschFG*)	- Extends the provisions of the 1985 *BeschFG* until 2000. Fixed-term contracts of up to 18 months are permissible for new employees or those who have finished in-house vocational training	- Maintain level of achieved flexibility for fixed-term employment	**X** (no qualitative change)
09/ 1996	Kohl V	Arbeitsrechtliches Gesetz zur Förderung von Wachstum und Beschäftigung	Reform of fixed-term employment (*BeschFG*)	- Contracts may now run up to 24 months and can be renewed three times within this period - No restrictions on fixed-term contracts for employees who are 60 years or older	- Increase level of employment by enhancing external flexibility through non-regular employment	**- / C** (facilitates use of fixed-term contracts)
12/ 2000	Schröder I	Arbeitsrechtliches Gesetz zur Förderung von Wachstum und Beschäftigung	Part-time work and fixed-term employment act (*TzBfG*)	- *TzBfG* replaces the *BeschFG* - relaxes and expands the "reasons" permissible for fixed-term employment to 8 - No restrictions on fixed-term contracts for employees who are 58 years or older - Renews provision originally valid only until - Part-time employment may no longer be treated differently to full-time jobs even if collective agreements entail such provisions	- Enhance labour market flexibility - Act also implements EU directive on part-time work and an international agreement on fixed-term employment (recommends concise rules) - no major impact on flexibility-related issues	**- / C** (facilitates use of fixed-term contracts) **+ / C** (limits flexibility of part-time work)
12/ 2002	Schröder II	Erstes Gesetz für moderne Dienstleistungen am Arbeitsmarkt	Reform of part-time work and fixed-term employment act (*TzBfG*)	- Restrictions on fixed-term contracts lifted on employees 52 years or older (limited until 2006)	- Promote labour market participation of elderly workers	**- / C** (facilitates use of fixed-term contracts)

12/ 2003	Schröder II	Gesetz zu Reformen am Arbeitsmarkt (Agenda 2010)	Reform of part-time work and fixed-term employment act (*TzBfG*)	- Newly established enterprises may offer fixed-term contracts for up to 4 years without restrictions	- Increase level of employment by enhancing external flexibility through non-regular employment	**- / C** (facilitates use of fixed-term contracts)
04/ 2007	Merkel I	Gesetz zur Verbesserung der Beschäftigungschancen älterer Menschen	Re-regulation of the *TzBfG*	- Workers who are 52 years or older and who have been unemployed for at least four months may be hired on fixed-term contracts for a maximum of 5 years - Re-establishes parts of the provision which were declared illegal by ECJ in 2005	- Response to rulings by ECJ and Federal Labour Court that declared several previous provisions on elderly workers illegal	**+ / C** (limits use of fixed-term contracts)

Additional sources: Waas (2007), Buschmann (2005).

In Japan legal definitions of non-regular work and those commonly used in corporate practice and media differ. For instance the law on the improvement of employment of part-time workers uses the term "短時間労働者" (*tanjikan roudou-sha*) which literally translates as "short time worker" but which covers jobs with reduced hours, fixed-term contracts as well as marginal jobs (i.e. low pay). The laws regulating employment contracts, however, usually concern all employment contracts and are thus part of "regular employment law". Yet, Japanese labour law has increasingly acknowledged the need for more direct regulation of work contracts, especially non-regular ones, so precently rovisions specifically targeting fixed-term employment have been included. Here, mostly these later provisions are included in the table with somee exceptions. In particular, the LCA of 2007 is significant because it also signals a shift in the balance of power between employees and employers on the question how working conditions can be changed. Although not strictly related to fixed-term employment, this new rule does have an impact on flexibility and for that reason was included. Apart from regulations concerning fixed-term contracts, there are also specific rules which apply only to temp agency workers (see previous sub-section). In the case of registered temp agency work, however, they may have an negative impact on workers contrary to the law's intention. In the case of temp agency workers the maximum length of fixed-term contracts may actually encourage agencies to employ workers analogue to assignments rather than offering them permanent contracts.

The 2003 reform of the LSL also deserves particular attention because it is difficult to code using the typology proposed here. In general fixed-term employment in Japan has been very flexible as contracts can be concluded without legal restrictions. All effective limitations essentially stemmed from case law and court

decisions. The 2003 reform in that sense changed little by expanding the period of fixed-term contracts universally to a maximum period of 3 years. On the other hand, the intention has been clearly to facilitate the usage of fixed-term employment contracts by scrapping most limitations that existed before. So the reform appears like a significant symbol of change because legislation for the first regulated what had only been regulated through non-legislative channels. For that reason it was rated a second order change, although in reality the impact of the regulation may have been moderate (the OECD's EPL indicator, for instance, rates it as essentially meaningless).

Table C-7 **Legislative reforms of fixed-term employment in Japan, 1985-2012**

MM/ Year	Cabinet	Official title	English title (act concerned)	Description of changes	Intention/ push factor	Assessm.
06/ 1993	Miyazawa	短時間労働者の雇用管理の改善等に関する法律案 [Tanjinkan roudou-sha no koyou kanri no kaizentou ni kan suru houritsuan]	Introduction of the law concerning the improvement of employment management of part-time workers (126-76)	- The law "encourages" employers with more than 10 employees to designate an ombudsman specifically for part-time workers - Provides a legal basis for the MoL to issue and enforce guidelines on the treatment of part-time workers although the law itself foresees no penalties in cases of non-compliance - Establishes a part-time centre which is supposed to support part-time workers as well as employers in assuring equal working conditions - Details on how equal treatment will be enforced depends mostly on guidelines issued by the MOL	- Changes initiated by a miniterial study group entrusted with the task to study necessary improvements for part-time workers - First legal acknowledgement of the fact that part-time workers (workers not working full hours) face specific disadvantages (follows non-binding guidelines issued by the MoL in 1989)	**+ / C** (tightens regulations on working conditions and treatment of non-regular workers although it entails no penalties)
09/ 1998	Obuchi	労働基準法の一部を改正する法律案 [Roudou kijun-hou no ichibu wo kaisei suru houritsuan]	Reform of the Labour Standards Act (142-112)	- Fixed-term contracts may run up to 3 years (up from 1 year) if worker posseses specific skills necessary to complete a project and who has not been working for the employer before - 3 year contracts can also be concluded with workers who are older than 60 years - Fixed-term contracts may run up to 3 years without restrictions - Law defines professions for which fixed-term contracts can be concluded	- Improve employment prospects of elderly workers - Enable employers to retain employees with specific skills for more than 1 year - Scope of reform limited due to strong resistance by unions	**- / C** (minor relaxation of rules)

07/ 2003	Koizumi I	労働基準法の一部を改正する法律案 [Roudou kijun-hou no ichibu wo kaisei suru houritsuan]	Reform of the Labour Standards Act (156-104)	- All fixed-term contracts regardless of skill-level may run up to 3 years without restrictions (i.e. workers do not have to be new hires and successive 3 year contracts are possible henceforth) - Employees may cancel long contracts after 1 year without having to provide a reason while employers need to provide explicit reason for dismissal in line with dismissal regulation set by LSL - Contracts with workers 60 years and older and for experienced or skilled workers may run up to 5 years	- In line with Koizumi's deregulation policy platform - Reaction to criticism that limitations on 3 year rule only for newly hired employees was too restrictive	**- / B** (relaxes restrictions on fixed-term empl.)
06/ 2007	Abe	短時間労働者の雇用管理の改善等に関する法律の一部を改正する法律案 [Tanjinkan roudou-sha no koyou kanri no kaizentou ni kan suru houritsu no ichibu wo kaisei suru houritsuan]	Partial ammendment to the law concerning the improvement of employment management of part-time workers (166-72)	- Specifies the conditions of equal treatment of "part-time" workers and regular workers by formulating criteria for judging "equality" of jobs - Employers are encouraged to offer full-time regular jobs	- Reaction to growing criticism of treatment of non-regular workers and inadequate provisions in existing law - To battle negative social consequences of previous deregulation	**+ / C** (limits flexibility of fixed-term employment contracts)
12/ 2007	Fukuda	労働契約法案 [Roudou keiyaku houan]	Introduction of the labour contract act (166-128)	- Regulates the relationship between employment contract and work rules; henceforth, working conditions can be adjusted unilaterally by employer if modifications are "reasonable" - Employers should avoid unnecessary renewals of fixed-term contracts by deliberately choosing short terms - Employers are obliged to take social situation of employee into account	- Enshrines ruling of the Supreme Court which allowed unilateral adjustments of working conditions through changes of work rules provided they are “reasonable” - Reaction to rising number of individual labour disputes	**+ / C** (limits flexibility of fixed-term contracts) **- / C** (working conditions can be adjusted more flexibly than in the past)

Additional sources: Yamakawa (2009), Takeuchi-Okuno (2010), Araki (2009).

11.6 Working time regulation

Working time regulation and “guidance” especially through the ministerial bureaucracy has been much more common in Japan than in Germany. Moreover, Japanese legislation in this area recently has been more strongly influenced by US-regulations which is apparent, for instance, in the naming of bills, such as the White Collar Exemption Bill. However, the most striking reform of working time legislation in Japan, the gradual reduction of working time, began in the 1980s and stretched well into the early 2000s. This long legislative process can be regarded as the most visible case of “Japanese-style” corporatism. Although many domestic observers are highly critical of its achievements and point out that in terms of work-life balance this has hardly improved the situation neither for male nor for female employees, the Japanese way of working hour reduction illustrates the traditionally limited role of

legislative measures in Japanese labour policy-making. Apart from reforms related to working time reduction, this section lists only legislation which has a clear connection to issues of temporal flexibility. This includes unsuccessful bills only if they are indicative of larger changes and stood a realistic chance of becoming law.

The assessment of German working time legislation includes solely reforms which have a clear impact on temporal flexibility. Excluded were related provisions such as those on shop opening hours (which are no longer part of national policy-making since the first reform of the Federal system, the *Föderalismusreform I,* in 2006). Other reforms such as the 2002 ruling on stand-by duty by the European Court of Justice are included only to illustrate the pressure for change in the context of the *Agenda 2010* reforms. The most important law, the *Arbeitszeitgesetz* (ArbZG or working time act) has been frequently changed due to EU-directives requiring multiple minor adjustments for specific occupations (the Juris G database lists 10 amendments since 1990). Of these only those were included which fulfil the stated criteria.

Table C-8 **Major working time legislation in Germany, 1985-2012**

MM/ Year	Cabinet	Official title	English title	Description of changes	Intention/ push factor	Assessm.
06/ 1994	Kohl IV	Gesetz zur Vereinheitlichung und Flexibilisierung des Arbeitszeitrechts	Introduction of unified and flexible working time act (*ArbZG*)	- Abolishes limitations on overtime work; before 1994 individual work hour limit was set at 10 hours a day and only in exceptional circumstances; overtime could be averaged out within 2 weeks - Works councils and collective agreements may negotiate alternative provisions	- Implementation of EU directive - Enhance flexibility of working time to support employment	**- / C** (enhances working time flexibility)
04/ 1998	Kohl V	Gesetz zur sozialrechtlichen Absicherung flexibler Arbeitszeitregelungen	Change in the Social Security Code (*Sozialgesetzbuch SGB*)	- Changes legal framework to facilitate corporate pacts on flexible working time provisions	- Related to agreements reached in the *Bündnis für Arbeit und Wettbewerbsfähigkeit* under Kohl	**- / C** (facilitates flexible working time arrang.)
12/ 2003	Schröder II	Gesetz zu Reformen am Arbeitsmarkt (Agenda 2010)	Reform of working time act (*ArbZG*)	- In some cases working hours may be extended beyond 8h/day without granting extra days off - Employers have to make sure this does not impact health - Stand-by duty has to be considered working time	- Ruling by the European Court of Justice on the treatment of stand-by duty	**X** (neutral in terms of temporal flexibility)

12/ 2008	Merkel I	Gesetz zur Verbesserung der Rahmenbe-dingungen für die Absicherung flexibler Arbeitszeitregelungen und zur Änderung anderer Gesetze	Change in the Social Security Code (*Sozialgesetzbuch SGB*)	- Reform of 1998 reform - Strengthens working time accounts against insolvency risk by introducing detailed provisions for protection against insolvency	- To mitigate financial risks created by 1998 reform	**X** (neutral in terms of temporal flexibility)

Additional sources: Tüselmann (1996).

Table C-9 Major working time legislation in Japan, 1985-2012

MM/ Year	Cabinet	Official title	English title	Description of changes	Intention/ push factor	Assessm.
09/ 1986	Nakasone III	労働基準法の一部を改正する法律案 [Roudou kihon-hou no ichibu wo kaisei suru houritsuan]	Bill for partial revision of the Labour Standard Act (LSL, 108-99)	- Establishes in principle the 40h work week but foresees flexible adaptation - Increases the number of days of paid vacation - Introduces discretionary work system for professional occupations whose working hours cannot be standardised	- Stimulate domestic demand through reducing work hours - Normalisation of working hours in line with other industrialised countries (long-term goal of 1.800 hours per year) - Reduce working hours to improve situation of workers	**+ / C** (minor limitiation of working time flexibility) **- / C** (discret. work system enhances flexibility for some occup.)
07/ 1992	Miyazawa	労働時間の短縮の促進に関する臨時措置法案 [Roudou jikan no tanshuku no sokushin ni kan suru rinji sochi houan]	Act to implement temporary measures to reduce working hours (123-90)	- Firms can establish labour-management commission with the legal power to implement shorter working hours when all members agree	- Part of government efforts to encourage reduction of working hours	**X** (no clear impact on temporal flexibility)
07/ 1993	Miyazawa	労働基準法及び労働時間の短縮の促進に関する臨時措置法の一部を改正する法律案 [Roudou kijun hou oyobi roudou jikan no tanshuku no sokushin ni kan suru rinji sochi hou no ichibu wo kaisei suru houritsu-an]	Bill to partially amend the Labour Standars Act and act to implement reduction of working hours (LSL, 126-79)	- Establishes a statuory 40h work week for all industries and firms to be adopted by April 1994 - SMEs to comply by March 1997 and may take advantage of flexible 40-44 working hour scheme - Several industries are exempted (set by Central Labour Standards Council); about half of employees can continue under 46h week - Overtime pay premiums are to be set at between 25-50% of normal hourly wage (law itself sets minimum at 25%) depending on Central Labour Standards Commission - Annual holidays to be granted if employee has been with a firm 6 months (12) - Discretionary work system expanded to new occupations	- Part of long-going government efforts to reduce working hours while limiting burden on employers by allowing flexible adaptation - Reform of discretionary work system response to widespread criticism that regulations on discretionary work systems were too lax and deprived many workers of their entitlement to overtime pay	**+ / C** (limits temporal flexibility but high number of exceptions reduce scope)

09/ 1998	Hashimoto II	労働基準法の一部を改正する法律案 [Roudou kihon-hou no ichibu wo kaisei suru houritsuan]	Introduction of the discretionary work system through a reform of the LSL (142-112)	- Expands the discretionary work system which allows flexible working time if labour management committee unamously agrees with adopting the system - Add second type of discretionary work system for workers in planning and related duties which significantly expands the number of eligible workers - Limits the maximum number of days for overtime work	- Establishes discretionary work system based on proposal originally developed by Keidanren to enhance temporal flexibility; due to wide-spread resistance by unions and opposition law requires establishment of labour management committees	**- / C** (facilitates usage of flexible working time schemes) **+ / C** (limits scope of overtime work)
03/ 2001	Mori II	労働時間の短縮の促進に関する臨時措置法の一部を改正する法律案 [Roudou jikan no tanshuku no sokushin ni kan suru rinji sochi ho uno ichibu wo kaisei suru houritsuan]	Bill to partially revise the act on temporary measures to implement a reduction in working hours (151-25)	- Special measures introduced in 1997 act to be extended by 5 years	- Extension recommended by the Central Labour Standard Commission as percentage of non-compliance still large but official goal of 1.800 annual work hours almost accomplished	**X** (no clear impact on temporal flexibility)
07/ 2003	Koizumi I	労働基準法の一部を改正する法律案 [Roudou kijun-hou no ichibu wo kaisei suru houritsuan]	Reform of the Labour Standards Act (156-104)	- Relaxes requirements for establishing discretionary work system: 80% approval instead unanimous consent required in designated labour-management committee - Discretionary work no longer restricted to corporate headquarters	- Part of the comprehensive deregulation programme of the Koizumi administration - Implements recommendations of expert Council for Regulatory Reform	**- / C** (facilitates usage of flexible working time schemes)
(bill abandoned in 01/2007)	Abe	労働時間規制除外制 / ホワイトカラーエグゼンプション制度 [Roudou jikan kisei jougai-sei / howaito karaa eguzenpushyon seido]	White collar exemption (n/a)	- Clarifies the conditions under which overtime pay obligation is exempted (similar to US regulation of the same name)	- Part of PM Abe's "labour big bang" reform package, simplifying labour law to abolish labour market rigidities (costs and ambiguities)	**X** (- / B; large formal change although impact on corporate practices would have been small)
12/ 2008	Aso	労働基準法の一部を改正する法律案 [Roudou kihon-hou no ichibu wo kaisei suru houritsuan]	Partial revision of the Labour Standard Act (LSL; 166-89)	- Overtime work of 60 hours and more has to be compensated with additional 50% of regular pay	- Reaction to opposition to White Collar Exemption Bill which foresaw a general exemption of overtime pay for white collar employees - Bill regulates extreme overtime work and reflects consensus between business and labour	**+ / C** (overtime is regulated and made more costly for employers)

Additional sources: Araki (1996), Imai (2011), Yanagisawa (2008), MHLW at http://www.mhlw.go.jp/topics/0102/tp0209-3.html (access August 2012).

11.7 Legislative changes affecting the locus of regulation

In contrast to the other legislative areas mentioned so far, the following assessment also concerns laws that are not primarily connected to labour market regulation, such as the 2004 bankruptcy law in Japan or the revision of the Japanese corporate governance act. Both acts, at least formally, strengthened the position of labour in mergers, spin-offs and other forms of corporate re-structuring. In Germany the same observation can be made with regard to the legal construct of European listed firm (SE). This overview, however, is limited to those instances where the balance between regulation from legal sources and industrial relations has been affected or explicitly confirmed through a legislative change. Changes not directly related to labour market regulation have been included when they indicate a long-term tendency in the relationship between legal and non-legal regulation. Due to the high number of relevant acts this overview is selective (e.g. it excludes "deregulation" of fixed-term and temp agency work) but comprehensive enough to illustrate all relevant long-term regulation trends. Goal is to assess the extent to which the state has taken over from other LoRs as regulator of work. This could happen, for example, if reforms lead to a comprehensive deregulation, decreasing the role of non-legislative sources of regulation.

Table C-10 **Legislation affecting the locus of regulation in Germany, 1952-2010**

MM/ Year	Cabinet	Official title	English title	Description of changes	Intention/ push factor	Assessm.
01/ 1952	Adenauer I	Gesetz über die Festsetzung von Mindestarbeits-bedingungen	Introduction of the act for implementing minimum working conditions (*MiArbG*)	- Allows to set minimum working conditions instead of collective bargaining if in an industry no unions and employer associations exist or bargaining results in "severe social disruptions"	- Provide government with instrument to ensure adequate working conditions	**X**
01/ 1972	Brandt I	Einführung des Betriebsverfassungsge-setzes	Introduction of the works constitution act (*BetrVG*)	- Institutionalises co-determination and the right of works councils to being consulted on personnel affairs Codifies and institutionalises co-determination on all corporate levels	- Expand provisions of co-determination in the coal, iron and steel industries to all industries - Institutionalise cooperation between employees and employers	**+ / C** (boosts corporate decision-making bodies)
05/ 1976	Schmidt I	Gesetz über die Mitbestimmung der Arbeitnehmer	Introduction of the co-determination act (*MitbestG*)	- Expands obligation for establishing institutions of co-determination to all firms with more than 2000 employees	- Expansion of co-determination in line with 1972 reform - "Democratise" corporate decision-making practices	**+ / B** (boosts corporate decision-making bodies)

12/ 1988	Kohl III	Gesetz zur Änderung des Betriebsverfassungsgesetzes, über Sprecherausschüsse der leitenden Angestellten und zur Sicherung der Montan-Mitbestimmung (BetrVGÄnd/SprAuG)	Reform of co-determination (*BetrVG*)	- Facilitates representation of smaller unions in works council meetings - Middle managers can form "Sprecherausschüsse" which may be established without consent of employer or works councils	- Reform initiated by liberal wing with the goal to weaken unions and power of works councils - Actual scope of reform very limited	**- / C** (weakens influence of works councils)
07/ 1994	Kohl IV	Gesetz zur Vereinheitlichung und Flexibilisierung des Arbeitszeitrechts	Act to unify and simplify working time regulation (*ArbZG*)	- Works councils and collective bargaining partners may settle on alternative provisions about extra hours and averaging-out period	- Strengthens industrial relations as a source of alternative regulation - more efficient and flexible regulation	**+ / C** (IR gains relevance over law)
02/ 1996	Kohl V	Einführung des Arbeitnehmerentsende-gesetzes	Worker deployment act (*AEntG*)	- Foreign employers active on German construction sites must follow stipulations of German collective agreements for the construction industry - Collective agreement must entail provisions on minimum wage and working conditions - Agreements are declared binding for the whole industry by the Federal Ministry of Labour	- Avoid social hardships caused by foreign-subcontractors in the construction industry (must adhere to provisions of German collective agreements that have been declared binding for all firms and employees in the industry)	**- / C** (boosts state role in IR)
04/ 1998	Kohl V	Gesetz zur sozialrechtlichen Absicherung flexibler Arbeitszeitregelungen	Change in the Social Security Code (*Sozialgesetzbuch SGB*)	- Changes social security provisions to facilitate corporate pacts on flexible working time provisions Social security protection is relaxed so workers on reduced hours maintain level of social security, provided that a written agreement exists	- Related to agreements reached in the *Bündnis für Arbeit* under Kohl	**+ / C** (supports non-state regulation)
12/ 2000	Schröder I	Arbeitsrechtliches Gesetz zur Förderung von Wachstum und Beschäftigung	Part-time and fixed-term employment act (*TzBfG*)	- Limits the possibilities of collective agreements to treat fixed-term and part-time employees differently vis-á-vis full-time permanent employees (article which allows collective agreements to set alternative provisions is scrapped)	- Enhance labour market flexibility by facilitating use of fixed-term employment - Act also implements EU directive on part-time work and an international agreement on fixed-term employment (recommends concise rules) which however have no major impact on flexibility-related issues	**- / C** (boosts state role in regulating working conditions)
07/ 2001	Schröder I	Reformgesetz zur Betriebsverfassung	Reform of co-determination (*BetrVG*)	- Facilitates the establishment of works councils in firms with up to 50 employees (under specific conditions also in firms up to 100 employees) - Employees who initiate a works council election enjoy special protection against dismissals - Works councils obliged by law to support employment stability (increases their role in negotiations but follows largely established practice) - Employers have to respond to works councils suggestions	- Maintain and strengthen German system of co-determination - Modernise modes of works council election - Acknowledge the growing role of works councils in bargaining	**+ / C** (boosts codetermination)

03/ 2002	Schröder I	Gesetz zur Vereinfachung der Wahl der Arbeitnehmer-vertreter in den Aufsichtsrat	Reform of co-determination (*BetrVG*)	- Facilitates the election of employee representatives to corporate supervisory boards (*Aufsichtsräte*)	- Simplify election of worker representative to corporate supervisory boards	**X** (no major impact)
12/ 2002	Schröder II	Erstes Gesetz für moderne Dienstleistungen (Hartz I)	Reform of the worker assignment act (*AÜG*)	- Deregulates temp agency work and establishes equal treatment clause which can be circumvented if temp agency firms establish own collective agreements	- Encourage autonomous IR regulation instead of state-centred regulation (result of inter-party compromise)	**+ / C** (IR gains relevance over law)
11/ 2004	Schröder II	Zweites Gesetz zur Vereinfachung der Wahl der Arbeitnehmer-vertreter in den Aufsichtsrat	Reform of co-determination (*BetrVG*)	- In addition to 2002 reform - Changes minor regulation that have proved costly or problematic in corporate practice	- Seeks to facilitate and unify legislation spread over *BetrVG* and previous reform of *MitbestG*	**X** (no major impact)
04/ 2009	Merkel I	Erstes Gesetz zur Änderung des Gesetzes über die Festsetzung von Mindestarbeitsbe-dingungen	Reform of the act for implementing minimum working conditions (*MiArbG*)	- Seeks to reinvigorate the *MiArbBG* of 1952 - Changes create commission in charge of setting minimum working conditions: Ministry equal partner to labour unions and employers - Expands influence of the Federal Ministry of Labour on appointing members - Allows to use the act for setting minimum wages to regulate working conditions through legislation	- Compromise between CDU/CSU and SPD on state's ability to enforce minimum wages and working conditions	**- / C** (boosts state role in IR)

Additional sources: Wood (1997), Hassel (2006).

Table C-11 Legislation affecting the locus of regulation in Japan, 1986-2010

MM/ Year	Cabinet	Official title	English title	Description of changes	Intention/ push factor	Assessm.
09/ 1986	Nakasone III	労働基準法の一部を改正する法律案 [Roudou kihon-hou no ichibu wo kaisei suru houritsuan]	Partial revision of the Labour Standard Act (108-99)	- Establishes in principle the 40h work week but foresees flexible adaptation	- Stimulate domestic demand through reducing work hours - Reduction of working hours in line with other industrialised countries (long-term goal of 1.800 hours)	**- / C** (expands state-centred regulation of working hours)
06/ 1988	Takeshita	労働組合法等の一部を改正する法律案 [roudou kumiai-hou tou no ichibu wo kaisei suru houritsu-an]	Partial amendment of the Trade Union Act (TUA, 112-82)	- Regulates central overview of labour relations committees - Number of members set at 13 - Equal representation of business and labour side	- Improve the settlement of labour disputes - Confirms the role of social partners in mediating conflicts	**+ / C** (expands role of non-legal regulation)
07/ 1992	Miyazawa	労働時間の短縮の促進に関する臨時措置法案 [Roudou jikan no tanshuku no sokushin ni kan suru rinji sochi houan]	Act to implement temporary measures to reduce working hours (123-90)	- Firms can establish labour-management commission with the legal power to implement shorter working hours when all members agree	- Part of government efforts to encourage reduction of working hours	**+ / C** (boosts role of corporate decision making bodies)

07/ 1993	Miyazawa	労働基準法及び労働時間の短縮の促進に関する臨時措置法の一部を改正する法律案 [Roudou kijun hou oyobi roudou jikan no tanshuku no sokushin ni kan suru rinji sochi hou no ichibu wo kaisei suru houritsu-an]	Bill to partially amend the Labour Standars Act and act to implement reduction of working hours (LSL, 126-79)	- LSL sets tighter limits for lengths of working week, annual paid leave and overtime pay - Adaptation is flexible and exceptions allow many employers to circumvent rules - To compensate restrictions to some extent discretionary work system is relaxed	- Part of ongoing government efforts to reduce working hours while preserving institutions of temporal flexibility	**- / C** (boosts role of labour law)
09/ 1998	Obuchi	労働基準法の一部を改正する法律案 [Roudou kijun.hou no ichibu wo kaisei suru houritsuan]	Introduction of the discretionary work system through a reform of the LSL (142-112)	- Expands the discretionary work system which allows flexible working time if labour management committee unanimously agrees with adopting the system - Firms need to establish bipartite decision-making bodies before they can utilise flexible working time system	- Initially to enhance working time flexibility as proposed by Keidanren - compromise between labour, business, government and opposition leads to strengthening of corporate decision-making	**+ / C** (boosts role of corporate decision making bodies)
05/ 2000	Mori I	会社の分割に伴う労働契約の承継等に関する法律案 [Kaishai no bunkatsu ni tomonau roudoukeiyaku no soukei tou ni kan suru houritsuan]	Law concerning the succession of labour contracts, upon the re-organisation of a company (147-103)	- Corporate re-organisations have to follow a specific mechanism for ensuring working conditions and collective agreements are not changed to the disadvantage of workers - Grants employees limited rights to object to involuntary transfers to corporate spin-off	- Corporate re-organisations were effectively un-regulated before act - Intended to improve the bargaining position of workers by defining concise criteria how working conditions can be changed	**- / C** (boosts state role in regulation)
07/ 2001	Koizumi I	個別労働関係紛争の解決の促進に関する法律 [Kobetsu roudou kankei funsou no kaiketsu no sokushin ni kann suru houritsu]	Act on promoting the resolution of individual labour-related disputes (151-112)	- Institutionalises dualised structure of regulation by emphasising collective dispute resolution and individual dispute settlement as equal means for settlement of labour disputes	- Part of legislative efforts to establish more effective labour tribunal system which can deal effectively with individual labour issues	**- / C** (boosts state role in regulation of working conditions)
11/ 2004	Koizumi II	労働組合法の一部を改正する法律案 [Roudou kumiai-hou no ichibu wo kaisei suru houritsuan]	Partial amendment of the Trade Union Act (TUA, 159-140)	- Shortens length of procedures to ensure settlements can be reached within a reasonable time frame - Central Labour Commission strengthened so it can review more cases and produce binding rulings	- Part of legislative efforts to establish more effective labour tribunal system which can deal effectively with individual labour issues	**+ / C** (boosts role of de-centralised regulation)
11/ 2007	Fukuda	最低賃金法の一部を改正する法律案 [Saitei chingin-hou no ichibu wo kaisei suru houritsuan]	Bill to partially amend the Minimum Wage Act (MWA, 166-129)	- Introduces new provision that Minimum Works Councils should take into consideration the level of public assistance when deciding on minimum wages - Penalty for violation of minimum wages is raised considerably - Introduces specific minimum wages for fixed-term employees in some industries	- Improve system of minimum wages to battle poverty	**- / C** (boost state-role in regulation of working conditions)

12/ 2007	Fukuda	労働契約法案 [Roudou keiyaku houan]	Introduction of the labour contract act (166-128)	- Regulates the relationship between employment contract and work rules when working conditions are modified by employer - Employers should avoid unnecessary renewals of fixed-term contracts by deliberately choosing short terms - Employers are obliged to take social situation of employee into account - Establishes minimum criteria for conclusion of (non-regular) individual employment contracts	- Part of a package to improve the working conditions of non-regular workers and to clarify critical issues in legal practice of labour law, esp. relationship between work rules and contracts - Reaction to rising number of individual labour disputes and inadequacy of collective bargaining for working conditions of non-regular workers	**- / C** (fixates collective bargaining as main regulatory source for regular work) **+ / C** (Establishes minimum criteria for individual labour contracts)

Additional sources: Araki (2005).

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