

Facing the ‘dark side’ of deregulation? The politics of two-tier labour markets in Germany and Japan after the global financial crisis

Steffen Heinrich¹

Second thoughts about liberal labour market reform

For much of 2009 Germany and Japan appeared to be among the countries most severely affected by the global economic and financial crisis. Apart from a steep decline in quarterly growth rates, they also experienced dramatic employment adjustment processes unseen perhaps since the 1970s. A closer look reveals, however, that the increased unemployment risk in both countries so far has been shouldered almost exclusively by a distinct class of non-regular employees² who together account for over 30% of total salaried employment. By March 2009, for instance, more than a quarter of all temp agency workers in Germany and a similar number in Japan had been made redundant while the figures for regular employment appeared almost unscathed. The current crisis has noticeably elevated public interest in the alleged ‘dark side’ of deregulation, which includes the risk of a crowding out of regular by non-regular employment, a deterioration of working conditions in general and gaps in the systems of social protection for non-regular employees. German and Japanese media, for example, repeatedly reported on the social hardships faced by some of those who had recently been laid off, such as the realisation that many could not meet the eligibility requirements for unemployment benefits due to termed employment.

They have also questioned the wisdom of German and Japanese governments in the 1990s and early 2000s in gradually liberalising labour law so non-regular employment could expand to its present level. It is not surprising therefore that the ‘social costs’ of labour market deregulation featured prominently in the general election campaigns in Germany and Japan in late 2009. Yet, whether the present uneasiness with partially regulated labour markets and the strong campaign rhetoric will indeed translate into a re-regulation of labour markets looks anything but certain, not least due to the short time period that has passed since the new government coalitions have taken over.

In order to understand the long-term impact of the crisis it is therefore more sensible to look at the political dynamic of labour market reforms and then to see how this dynamic has changed due to the current crisis. This is what the chapter intends to do. For this purpose it will briefly recapitulate the process of labour law reform in Germany and Japan since the early 1990s and thereby focus on two factors that are likely to play a role relevant in labour market regulation in the current situation: partisan competition (which can be analysed to some degree thanks to almost simultaneous changes in government) and the institutional legacies of traditional German and Japanese employment systems (which appear rather similar when looking at the percentage of non-regular employment in both countries). In the final section it will then evaluate how the current crisis has changed the role and impact of these two factors and how this affects the potential re-regulation of labour markets.

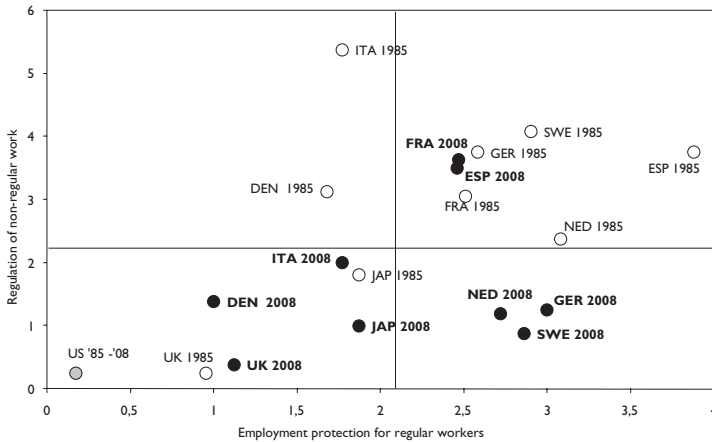
Patterns of two-tierism in German and Japanese labour markets

In neither Germany nor Japan are two-tier labour markets a new phenomenon solely to be associated with labour market reforms of the 1990s and 2000s. Indeed, nearly all industrialised labour markets, whether embedded in coordinated or liberal market economies, distinguish employees in one way or another, for instance between core and periphery, white and blue collar or *ippanshoku* and *sougoushoku*.³ And when looking at other advanced countries partial deregulation appears to be the norm rather than the exception (see Figure 7.1). Germany and Japan, however, do stand out in several respects. First, both have opted for ‘asymmetrical deregulation’ (Miura, 2001) or ‘semi-liberalisation’ of labour law that means that they have gradually deregulated non-regular employment such as temp agency work, fixed-term employment or part-time work (see Tables 7.1 and 7.2). Second,

the traditional employment forms (often referred to as *seishain koyou* in Japanese and *Normalarbeitsverhältnis* in German) have shown a surprising resilience despite the jump in non-regular employment (see Figures 7.2 and 7.3) and despite the often alleged 'crumbling' of organised labour and capital.⁴ Third, this perseverance of traditional employment is usually credited to the similar dynamics of German and Japanese capitalisms (Thelen and Kume, 1999, 2003; Dore, 2000; Manow, 2001; Streeck, 2001; Vogel, 2003). Simplified, this strand of research argues that the traditional, highly regulated employment systems of Germany and Japan foster the long-term commitment of workers to their employers and offer German and Japanese firms a competitive edge over competitors that operate mainly in liberal market economies. As a consequence, it can be economically sensible for employers to support non-liberal institutions because it grants them economic benefits such as a highly skilled workforce or peaceful labour capital relations. In short, the varieties of capitalism (VOC) literature suggests that current labour market arrangements are still shaped by strong non-liberal institutions as all major parties should have an interest in maintaining the 'comparative institutional advantage' of 'regulated' regular employment. However, it runs into problems when trying to explain the massive expansion of non-regular work since the early 1990s, as this constitutes a significant deviation from the pattern just described. Similar problems afflict simplified models of partisan difference: Neither the German nor the Japanese process of deregulation can confirm assumptions that 'labour-friendly' governments are in general more sceptical towards labour market deregulation or that 'employer-friendly' governments are likely to embrace labour market liberalisation. In reality, Liberal Democratic Party (LDP)-led governments in Japan have maintained a comparatively 'labour-friendly' approach for much of the 1990s (Kume, 1998) and in Germany the centre-left coalition under Schröder enacted several liberal reforms it had strongly opposed when in opposition. Furthermore, almost all OECD (Organisation for Economic Co-operation and Development) countries show similar trajectories, although partisan constellations have varied widely (see Figure 7.1).

But why then have Germany and Japan developed their unique systems of two-tier labour markets? As has been pointed out before, the VOC literature offers a credible explanation for the resilience of the first tier of employment, which has been termed 'regular employment' here. It argues that the success of the German and Japanese economies depends to a large extent on their employment systems and industrial relations as they offer distinct advantages to firms, such as high internal

Figure 7.1: Labour market regulation in selected OECD countries since 1985



Source: Own compilation based on the OECD's employment protection legislation indicator (EPL) (OECD 2004; Venn 2009). Latest available data in bold. A higher value indicates a higher level of protection/regulation.

labour flexibility and consensual and comparatively peaceful industrial relations (Thelen, 1999, 2001). In the Japanese case lifelong employment almost became a synonym of Japanese capitalism. Although it would be misleading to portray all regular employment as stable 'lifelong employment',⁵ certain elements of long-term employment such as the prominence of corporate welfare, long job tenure and the age-related wage structures have been true for the majority of regular workers and even of some non-regular employees. In Germany, regular employment has been characterised by stable, comparatively comprehensive industrial relations that allowed the state to stay out of many regulatory areas because coverage of industrial relations was generally believed to be extensive and comparatively homogeneous. For instance, until recently Germany had no minimum wage legislation (although collective bargaining did set minimum standards for each industry, and it is still limited to selected industries). Although different in many respects, the German and Japanese variants of coordinated labour markets arguably offer similar advantages to employers, such as comparatively peaceful employer–employee relations and high functional flexibility (as German and Japanese employees are generally understood to be keen to acquire firm-specific skills, which could make them unattractive for other employers).⁶ However, this requires, the VOC school argues, that

employment is long-term, stable and secure so that workers do not fear making long-term commitments.⁷ In return employers can build up a loyal, productive and flexible workforce (that is, concerning functional and temporal issues). The argument that 'institutional complementarities' exist, such as between rigid employment protection legislation and firm-specific skill acquisition, appears quite credible when one looks at the relative stability of regular employment and its regulatory environment (Thelen and Kume, 1999; Hall and Soskice, 2001; Thelen, 2001; Hall and Gingerich, 2009). Yet, as has been pointed out before, the VOC school cannot really account for the expansion of non-regular employment, as it suggests that all main actors would have an interest in maintaining and fostering regular employment.

So how can the emergence or rather institutionalisation of the second tier, consisting of various forms of non-regular employment, be explained? Almost all scholars agree that the liberalisation of non-regular work has been a fundamental part of the strategy of governments to increase the external flexibility dimension of labour markets.⁸ The push for enhancing labour market flexibility is generally credited to changes in product markets, which have become more competitive and in which demand for manufactured goods and services fluctuates much more than in the past. Enhanced external flexibility enables firms to thrive in such unstable market conditions, for instance by hiring non-regular employees when demand is high without committing themselves to long-term employment or providing costly corporate welfare benefits. Also, deregulation of non-regular employment has been, in Germany in particular, depicted as a policy to fight unemployment as it lowers the threshold for entering the labour market for the long-term unemployed (Schmid, 2003). Sociologists like Kalleberg see a general tendency in western economies towards precarious work patterns that originated in the massive employment adjustment processes after the oil crises of the 1970s (Kalleberg, 2009). As a consequence, firms changed their personnel strategy and increasingly differentiated between core (who would receive corporate welfare and long-term employment) and non-core employees (without or with less welfare entitlements and substantially less employment security). Increasing international market competition, technological advancement and growing mobility of capital, which facilitates 'outsourcing' or 'off-shoring' of jobs, have reinforced this trend, Kalleberg believes. Deregulation could therefore be understood as a more or less inevitable recalibration of labour law to match a changing reality. Some political scientists and scholars of industrial relations, however, see evidence of a general 'crumbling' of

social partnership and institutionalised stable employer–labour union relationships in general. This strand of literature argues that the decreasing membership and organisational base of labour unions 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 deregulation (see, for example, Whittaker, 1998; Streeck and Hassel, 2003; Thelen and Kume, 2006). Labour market reforms, according to this view, partly mirror the demise of union strength and indicate a shift in the balance of power between employees and employers, to the advantage of the latter. It implies that unions just barely managed to protect their core constituency.

The insider–outsider theory (Lindbeck and Snower, 2001, 2002) makes a different argument, as it emphasises the influence and power of insiders of a workforce. The mechanism through which the line of conflict between insiders and outsiders emerges is the difference in labour turnover costs that include, for instance, training. Workers with extensive training have a competitive edge over workers without, or with partial, training and can thus achieve better employment conditions. As unions are typically acting on behalf of long-term employees they have an interest in protecting their constituency against employers who would like to cut labour costs, but also against non-core workers who would like to enjoy similar levels of job security and pay.⁹ This can make it rational for unions to actively nurture an outsider worker group as they can be sure that this group will be the first to be affected by adjustment processes. However, when it comes to labour market reform, this approach often falls short because labour unions have often been among the fiercest opponents of deregulation of non-regular employment. Yet it highlights the fact that there may be a latent conflict between core and non-core employees (which arguably often, but not necessarily always, coincides with regular and non-regular employment). Indeed, some scholars such as King and Rueda (2008) see this conflict as the biggest ‘political challenge’ for governments and as a major influence factor for future labour market regulation.

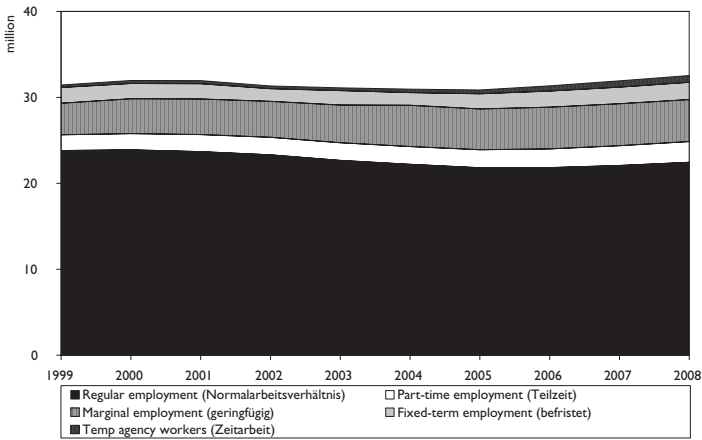
King and Rueda also criticise the standard VOC-based depiction of German and Japanese labour markets as relying mostly on highly skilled and well-protected personnel. Against the background of soaring numbers of non-regular or rather precarious employment they find that ‘Our understanding ... still reflects the now disappearing realities [of] the “golden age” of social democratic welfare’. This, they believe, obscures the fact that precarious employment ‘will politically test the foundations of the European coordinated market economy’ (2008, p 294)

because the new class of 'cheap labour'¹⁰ has distinct political interests compared to regularly unionised employed workers. This particularly puts under pressure those who traditionally position themselves as the main advocates of workers' rights and demands, such as social democratic parties and labour union federations. These groups find it increasingly difficult to unify the conflicting preferences of the two labour groups regarding, for example, employment protection or employment maintenance policies. Although King and Rueda's approach does not offer an explanation for the emergence of two-tier labour markets, it does provide an important perspective on the current dynamics of labour market regulation. However, 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, p 62). So the question here is whether the global economic and financial crisis has indeed intensified such a conflict so that it has become politically salient, say, in the general elections of 2009.

Based on the theoretical considerations just laid out, two hypotheses can be formulated with regard to the two main variables, institutional legacies of traditional employment systems and partisanship.

- (1) State regulation is shaped by two conflicting policy goals: the maintenance and support of regular employment (because of the 'comparative institutional advantage' it offers and because of the traditionally well represented interests of those regularly employed) and the wish to maintain or even increase the level of labour market flexibility that has been achieved by partial deregulation. As a consequence, governments will take very different regulatory approaches regarding the two tiers, regardless of the partisan make-up.
- (2) For the regulation of non-regular employment, partisanship will increasingly matter. Centre-left parties will increasingly feel threatened by the conflicting demands of workers in the two tiers and thus be comparatively more active in trying to improve social security, wage levels and working conditions for non-regular employees through labour law, because this way they avoid intervening too much in the first tier of regular employment and thus avoid direct confrontations between both worker groups. Centre-right parties on the other hand will above all try to maintain the level of flexibility (deregulation) that has been achieved and be generally less enthusiastic about setting standards through labour law.

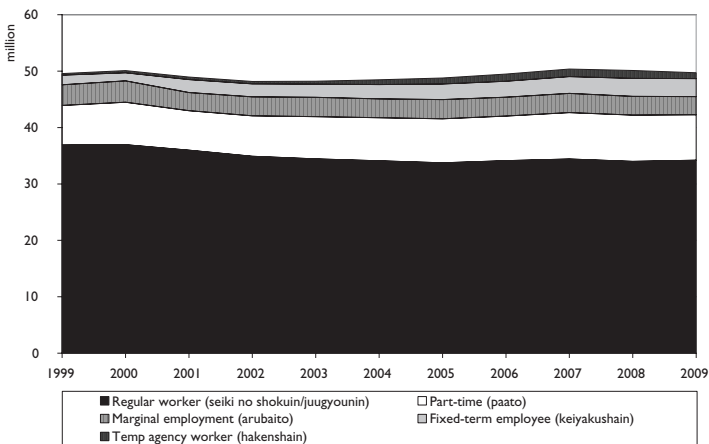
Figure 7.2: Regular and non-regular employment in Germany



Note: Respondents were asked to characterise their mode of employment and could name several characteristics. The data were adjusted for overlaps using data from 2007 wave, so only part-time workers with non-fixed-term contracts were coded part-timers, only temp agency workers with non-termed contracts as temp agency workers, all others fell under the fixed-term employment category. Marginal employment includes only those who hold no other job.

Source: Own calculations based on panel data from the ‘Mikrozensus’.

Figure 7.3: Regular and non-regular employment in Japan



Source: Own calculations based on panel data from Labour Force Survey (Roudou ryoku chousa). Respondents were asked to identify the title of their job (as the employer calls it). The data also included a category for other non-regular employment (around 2% of all employees in 2005), which was not included.

Table 7.1: Patterns of regular and non-regular employment in Germany

	Regular (Normalarbeits- verhältnis)	Part-time (Teilzeit)	Temp agency (Zeitarbeit)	Contract (Befristet)	Marginal (geringfügig)
Regulation	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 standardisation	High within business sectors	High within business sectors	Low compared to regular workers	Varying	Set by social security law (400€ max)
Social and employment protection	High legal hurdles against dismissals Unemployment benefits up to 24 months	High legal hurdles against dismissals Unemployment benefits up to 24 months	Covered but not eligible if consecutive employment < 1 year	Covered but not eligible if consecutive employment < 1 year	Not covered
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%)	86% female 60% are between 35 and 55 years	70% male More than 50% are 35 or younger	53% male About 60% are younger than 35	77% female About 50% are between 35 and 55 years of age

Source: Compiled by author. Profile data from Mikrozensus (Statistisches Bundesamt, 2008).

Table 7.2: Patterns of regular and non-regular employment in Japan

	Regular (<i>seishain</i>)	Part-time (<i>parto</i>)	Temp agency (<i>haken</i>)	Contract (<i>keiyaku</i>)	Marginal (<i>arubaito</i>)
Regulation	Firm- and industry-level bargaining Labour law	Firm-level bargaining Labour law	Labour law Firm-level bargaining	Labour law	Labour law
Wage standardisation	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 and employment 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)	Entitled to unemployment benefits after 6 months (up to 12 months)	Entitled to unemployment benefits after 6 months (up to 12 months)	Entitled to unemployment benefits after 6 months (up to 12 months)
Corporate welfare	Usually firm-specific and non-transferable, can include pension, healthcare, housing	Limited compared to <i>seishain</i> Varying according to firm	Some but usually limited compared to <i>seishain</i> of contracting company	Limited compared to <i>seishain</i>	None
Profile	Predominantly male (70%)	89% female More than 70% are 35 or older	67% female Almost 50% are between 25 and 34 years of age	52% male 50% are between 25-34 and 55-64	51% female Over 80% are younger than 34

Source: Compiled by author: Profile data from the Labour Force Survey 2004 (roundouryoku chousa) (Ministry of Health, 2004).

From de- to re-regulation?

Apart from different partisan preferences, some scholars have suggested that coordinated market economies are characterised by particular decision-making processes that are usually consensus seeking and foster a close relationship between firms, labour unions and the government (see, for example, Regini, 2003). Since there are many 'institutional complementarities', the incentive to jointly discuss measures and legislation should be strong. This should also be true for Japan even though it has famously been described as 'corporatism without labour' (Pempel and Tsunekawa, 1979). Japanese decision-making processes regarding labour legislation have in fact known several corporatist institutions or similar bodies of tripartite consultation and coordination since the 1970s. Most of these survived even the bubble economy and the more 'neoliberal' era of the 1990s (see especially Kume, 1998; Miura, 2002a). In particular, the generally moderate private sector labour unions played an important role in labour policy formulation and even possessed an implicit veto right on labour policy. Until the late 1990s, even LDP-governments would go to great lengths to secure the consent of unions when proposing new legislation. The quasi-veto power of unions resided with the so-called *shingikai*,¹¹ semi-official institutions in which the main interest groups, academic advisers and ministry officials would discuss new legislative proposals. Proposals had to be agreed on by all participants otherwise they would not be forwarded to the cabinet or parliament.

Due to the relative resilience of corporatist and tripartite coordination in Germany, Japan and other countries some scholars expected labour market reforms would therefore lead to a restoration of corporatist policy making, so that, on the one hand, the continuity of the 'comparative institutional advantage' of traditional employment systems could be ensured, but also, on the other hand, much needed structural reforms could be implemented (Rhodes, 1997). However, when one looks at the reform processes in terms of non-regular employment in Germany and Japan since the early 1990s, the picture looks significantly more complicated. In Japan, the LDP-led governments began ignoring the established *shingikai* after 1998 by setting up new cabinet-level advisory councils (the so-called deregulation commissions) that for the most part consisted of business-friendly academia and ministry officials. The commissions were asked to draw up proposals for the deregulation of markets, among them labour markets, and pass these on directly to the cabinet for approval. Neither the labour unions nor the bodies of

coordination between ministry bureaucracy and firms played a decisive role in this period. Only in the autumn of 2007, when the opposition won a majority in the upper house, was this system abandoned due to the opposition's veto power. During the period of non-coordination, however, some major reforms of non-regular employment were implemented such as several revisions of the Temp Agency Act (*roudou-sha haken hou*) and the Labour Standards Law (*roudou kijun hou*).

The German coordination processes essentially took a similar turn, although tripartite coordination on labour legislation has been much less formal than in Japan. Under the conservative governments of the 1980s the trend seemed to favour an end to policy coordination altogether. Much like the LDP-government in Japan after 1998, the German government tried to implement liberal labour market reforms by appointing a cabinet-level committee. However, all of its proposals eventually failed due to strong opposition from the unions and the social democratic opposition in the second chamber (*Bundesrat*). The late 1990s then did actually see a revival of national-level corporatism, as had been predicted by Rhodes and others, yet the 'alliances for jobs', as they are typically referred to, accomplished little in terms of policy. The coordinative process came to an end in 2002 when the Schröder government set up a commission to make proposals for labour market reform. Although the commission's most important goal was to propose measures to fight structural unemployment in Germany and it produced little in terms of deregulation of non-regular employment (see, for example, Schmid, 2003), its convention signalled a change in the way labour market policies were decided. Indirectly, the commission's work contributed to the reform of the Temp Agency Law (*Arbeitnehmerüberlassungsgesetz*) that effectively meant a comprehensive liberalisation of temp agency work. In sum, the reform process of the 1990s and early 2000s, which could be described here only very briefly, does not confirm the view of a strong relationship between coordinated capitalism and policy making. Instead of mutual coordination, industrial partners and governments appeared to act increasingly independently of each other. Regulation of regular and non-regular employment therefore seems to follow different regulatory dynamics. After the crisis of October 2008 the pattern of two-tierism re-appeared. German and Japanese governments acted quickly to stabilise regular employment (most notably by facilitating work sharing schemes/subsidies for firms to cut working hours instead of reducing their workforce), yet the measures for non-regular employees were limited to more basic issues, such as lowering the eligibility criteria for unemployment benefits,

introducing a minimum wage for temp agency workers (in Germany the work sharing scheme was expanded to temp agency workers in the summer of 2009) and expanding training measures (see Table 7.3). Overall, however, Germany and Japan seemed to follow the path of employment stabilisation at all costs which has been visible since the 1970s (Miura, 2002b).¹² That means government policy in the period of the crisis prompted different reactions depending on the tier, with preferential treatment of regular employment.

When one also takes into account developments on the level of industrial relations and the possibility of a conflict between regular and non-regular workers, the picture becomes yet a little more complicated. Judging only from media reports since the crisis, the deterioration of working conditions seems to have progressed quickly due to the expansion of non-regular work. However, before the crisis there had been signs that industrial relations and companies made efforts to balance the relationship between regular and non-regular workers. In Germany, one such example can be seen at BMW. In February 2008 the company had announced it would lay off more than 5,000 temp agency workers. This was an unprecedented announcement that received wide public attention because BMW was still highly profitable at that time and enjoyed a near spotless reputation as a social-minded employer. Although BMW's management emphasised that all temp agency workers would remain employed by their agencies, it declared only a few weeks later that it would voluntarily pay its temp agency workers from now on the same standard wage as its regular employees, with the exception of bonuses. BMW, like some other car manufacturers before it, thus tried to prove to the public how much they cared about temp agency workers, but perhaps also to avoid problems arising from the increasingly controversial relationship between temps and regular workers (*Süddeutsche Zeitung*, 4 March 2008).¹³ In Japan, signs of a gradual change became visible in the changing human resources policies of some firms in retailing and finance (Heinrich and Kohlbacher, 2008). The firms effectively abolished the separation between *ippanshoku* and *sougoushoku* careers and also between core and non-core employees. This was to make it easier for non-regular staff to switch to regular employment and to abolish unequal treatment of employees. Clearly both examples have to be assessed with caution, as it is anything but clear whether these instances of change will develop into a major trend that can extend to all firms in the respective industries and employers in other businesses.¹⁴ Nevertheless, they show that developments on the level of industrial relations and firm policy can play an important role

for the regulatory situation of non-regular workers, because industrial relations in Germany and Japan may increasingly (co-)determine their actual working conditions.

Finally, how likely is it that re-regulation will become a salient topic for partisan competition? Looking solely at Germany and Japan, the picture looks mixed. While in Japan the Democratic Party of Japan (*Minshu-tou*, DPJ) landed a historic electoral victory in August 2009 with a campaign that emphasised the growing social hardships experienced by non-regular workers, the campaign of the Free Democrats (FDP) and the Christian Democrats (CDU/CSU) in Germany up to the September 2009 election referred to non-regular employment only occasionally and usually in the context of improving the employment prospects of young employees (of whom almost half hold non-regular jobs at least initially). In fact, among the first measures the new coalition partners in Germany agreed on was a partial reform of fixed-term employment.¹⁵ But even in Japan, political measures so far have been constrained to limited state interventions in the form of active and passive labour market measures. Here, however, the exceptional political situation has to be taken into account because 2009 saw only the second genuine change in government in Japan since 1955. Whether this will also lead to a shift in policy is still uncertain, however, due to the heterogeneous make-up of the DPJ.¹⁶ Judging solely from policy proposals, however, a move towards re-regulation looks somewhat more likely in Japan. This is most evident in the fact that the new government is considering outlawing temp agency work in manufacturing. If such legislation was passed, this would indicate a clear departure from the politics of partial deregulation, and it would also show that partisan differences regarding labour market policies do actually matter (see Table 7.3). The change in tone is also evidenced by the fact that the government has invited different social groups to discuss and influence labour legislation. And although the DPJ did not give in to the Social Democratic Party's (*Shamin-tou*, SDP) demand to be awarded the Ministry of Health, Labour and Welfare (MHLW), it did appoint Makoto Yuasa, a well-known activist for public welfare for homeless people,¹⁷ to a new government task force which is to find measures that help to improve employment prospects and security.

In Germany the picture looks more complicated. Because the Social Democratic Party (SPD) has been involved in some major deregulation itself, the obvious opponent of deregulation cannot fill this role convincingly at the moment. This could be taken over by the Left Party, which has been an avid critic of the social democratic reform agenda, but its chances to form a government on the national level are as slim as

those of the Japan Communist Party that has been in opposition since the 1950s (*Kyousan-to*, JCP). In recent interview outings and discussions, some SPD leaders have voiced regrets concerning the labour market reform under the second Schröder cabinet, yet the majority of statements point to 'technical insufficiencies' rather than to a general uneasiness with deregulation. Currently, it is mainly the labour union associations that campaign for changes, for example for an 'equal pay' clause which would require firms to pay temp agency workers the same wage as their core workers. The left-of-centre parties, however, have so far shown little enthusiasm for such demands.

In summary, there is little evidence for a major policy shift or a 'reconnection' or 're-synchronisation' of industrial relations and labour market legislation as in the 1970s. At least for the moment, most indicators suggest a continuation of two-tierism in Germany and Japan.

What comes after partial deregulation?

In 2001 Hall and Soskice argued that 'Financial deregulation could be the string that unravels coordinated market economies' so it 'may become more difficult for firms to offer long-term employment' (2001, p 64). Even if the current economic crisis might have more to do with a sudden reduction of exports than with financial deregulation in Germany and Japan itself, the concept of deregulation seems to have lost, at least for the moment, much of its appeal. Yet, would it be reasonable to expect a backlash in the form of re-regulation? Even though one must be cautious, the answer is probably 'no', at least in terms of labour market regulation. While the global economic crisis may be the first major challenge to the newly semi-liberal labour markets, it is unlikely that it alone will initiate a major policy shift. Comparing the measures that have been implemented under the old governments with the measures that have been proposed by the new administrations in Germany and Japan (Table 7.3) shows that the partisan difference is not so big (yet). Of course, much depends on how the economic crisis will unfold from now and how well firms will recover. At the time of writing there were still contradictory signals, with some labour experts still worried that the real test of the current employment systems would not materialise before 2011. If this were true, the political pressure for policy shifts could increase further. On the other hand, rapidly declining unemployment could take out some of the political pressure.

Table 7.3: State and non-state responses to the global economic crisis (October 2009)

	Japan	Germany
Active labour market policies	New training measures announced to take effect in 2010 (old and new government)	Additional training for workers in work-sharing schemes (old government)
Social security and employment maintenance	Expansion of work sharing schemes (<i>waaku sheringu</i>) Bill to expand unemployment insurance to non-regular workers was passed in June 2009 (old government)	Massive expansion of work sharing schemes (<i>Kurzarbeit</i>), also for temp agencies (old and new governments)
Employment trends	Few dismissals of regular workers Higher dismissal rate of non-regular workers (esp. temp agency workers)	Few dismissals of regular workers Higher dismissal rate of non-regular workers (esp. temp agency workers)
Wages	Dramatic decrease in bonuses Wage hikes are suspended or postponed Higher minimum wages (new government)	Some firms suspend wage hikes, renegotiate collective agreements Income decrease due to work sharing schemes Minimum wage for temp agency workers (old government)
Regulation	Temp agency work in manufacturing to be abolished (proposal by new government still under discussion in early 2010)	Reform of termed-employment (proposal by new government) Freezing of current minimum wage levels, expansion of minimum wage legislation to new industries stopped (new government)

Source: Compilation based on media reports, documents provided by the Federal Agency for Employment in Germany and the Ministry of Health, Labour and Welfare (MHLW) in Japan. See also note 12.

Regarding the question as to what policies are likely in terms of ‘political feasibility’ and institutional consistency, the evidence points to a continuity of ‘two-tierism’, except for some minor legal changes to expand the coverage of basic social insurance to non-regular employees. It is noteworthy that the fear of negative trends for regular employment is neither new nor special to the current situation. As Ono observes, it ‘is a recurring theme which has evolved over the post-war period

in response to fluctuations in the business cycle, not only during the slump years but also during the growth years' (2007, p 3). A similar conclusion can be drawn for Germany, where discussions on the end of the *Normalarbeitsverhältnis* go back to the 1970s (most prominently Mückenberger, 1985). Yet there are two things that are unique to partial deregulation. First, the fact that it is now an easily identifiable group that suffers from unemployment. Second, that regular employment has proven to be so resilient despite the dramatic fall in demand due to the crisis. This can partly be attributed to the massive expansion of work sharing schemes in Germany and Japan, but probably also to the expansion of non-regular work in the 1990s and early 2000s which may have effectively reduced the pressure for dismissals of regular workers after October 2008.

Yet, it should also be kept in mind that the dynamics of non-regular employment are heterogeneous. The different modes of non-regular employment serve different purposes and also differ in their importance for the labour market as a whole. While, for instance, part-time work seems less problematic in Germany because only a comparatively small number of part-timers actually seek full-time employment, this mode of employment is more controversial in Japan, where it is often argued that part-time work is the only work educated women can find after graduation or when returning after child-rearing. The employment forms that most explicitly show signs of precarious and insecure employment are temp agency work and fixed-term employment, and these two forms of employment have thus received most of the recent criticism because many see them as a potential rival to regular employment. More difficult to assess is marginal employment (which in Germany means jobs that pay a maximum of €400 a month [about £358] whereas in Japan *arubaito* are jobs to supplement regular jobs or household work with a minimum wage of ¥717 per hour [in Tokyo; equals about £5]). The number of marginal workers seems dramatic in both Germany and Japan and it is difficult to predict how this kind of employment will develop further, for example, whether it will (or already has) become a permanent mode of employment. So far, many labour market experts see low pay jobs as a solution for unemployment because they make it easier for unemployed or inexperienced workers to enter the labour market. On the other hand, many seem to get stuck in marginal employment. In Japan, workers that rely solely on such work, such as Freeters (a combination of the English word 'free' and the German word for worker, *Arbeiter*) and NEETs (not in education, employment or training) have been in the public spotlight for years. In

Germany, the so-called 'generation internship' (university students who cannot find regular jobs after graduation and instead opt for internships) may be a comparable group. This topic, however, clearly deserves more scholarly attention.

In general comparative terms, it seems as if the lasting functionality of traditional forms of regular employment in Germany and Japan is a blessing and a curse at the same time. It is a blessing because it apparently enables Germany and Japan to limit the overall effect of the current crisis on employment at least this far (see, for example, *The Economist*, 5 November 2009), and to limit non-regular and perhaps even precarious work to an extent. It is a curse because it seems to bar governments from effectively regulating labour markets and adjusting systems of social protection, for instance in the sense of 'flexicurity' which would mean comparable levels of job security and social protection for all workers regardless of their mode of employment (see, for example, Nollert, 2006) for the price of less employment protection overall, which could increase chances for non-regulars to become regular workers. Some of the more pressing social problems, such as low wage levels for unskilled and young workers and limited employment prospects for women (who make up more than 60% of all non-regular employment), may only be addressed with more government interventions, for instance in the form of more ambitious minimum wages or better childcare facilities (Germany and Japan are clearly behind other countries in this aspect). So far, however, German and Japanese governments have left most regulatory answers to the crisis to collective bargaining and have usually intervened only to the benefit of regular employment, by expanding employment maintenance measures, very much as the first hypothesis suggested. It is thus probable that industrial relations will continue to set the pace for non-regular employment as well, even if the decline of organised capital and labour and institutionalised coordinated policy making continues.

Partisanship should not be disregarded as an important influence, however, because there are some differences in the policy positions between the old and the current governments in Germany (see Table 7.3). To a certain degree, the second hypothesis can thus be confirmed as well. However, it could be argued that the latent conflict between insiders and outsiders has not surfaced yet and much of its future significance may hang on how the economic situation will develop from now on. If, however, the economic crisis were to worsen or continue in 2010, the new Japanese government looks more likely to deviate from partial deregulation than the conservative-liberal government in Germany. For the time being, however, scholars interested in the current political

dynamics of labour market regulation should focus on changes in industrial relations rather than on legislation.

Notes

- ¹ Research associate at the Institute of Political Science, University of Heidelberg, Germany and since 2010 research associate at the Institute of East Asian Studies (IN-EAST), University of Duisburg-Essen. A previous version of this chapter was presented at the East Asian Social Policy (EASP) Conference 'Global Economic Crisis and Welfare Restructuring in East and West', 4-5 July 2009, Sheffield.
- ² There are many different definitions in the literature for non-regular employment. Here regular employment stands for salaried, full-time, non-fixed-term employment while non-regular employment stands for all forms of salaried employment that differs from this pattern in one or more aspects.
- ³ *Ippanshoku* describes careers in lower management, *sougoushoku* careers in higher-middle and top-level management. Usually the career path is determined at the recruitment stage.
- ⁴ The quality of continuity and change in modern labour markets is a highly relevant question itself, as a comment by Peter Cappelli shows: 'While I have yet to meet a manager who believes that this change has not stood his or her world on its head, I meet plenty of labour economists ... who are not sure what exactly has happened' (quote taken from Kalleberg, 2009, p 6).
- ⁵ On the question of how to define and measure lifetime employment, see Ono (2007).
- ⁶ Labour market flexibility is usually divided into numerical (ease with which the workforce can be reduced), functional (ease with which workers can be assigned to new tasks), temporal (working hours) and wage flexibility. Another possibility is to differentiate between internal and external flexibility. The former describes all elements of labour flexibility that can be achieved inside a firm, and the latter measures outside of a firm, such as outsourcing or hiring of non-regular workers.
- ⁷ It should also be pointed out that the traditional employment systems in Germany and Japan differ regarding the role of corporate and state welfare. Japanese workers are overall much more dependent on corporate welfare even for housing, and until recently had to give up almost all of their entitlements to corporate schemes when leaving their employer. In Germany, state-run social security is in this sense more comprehensive and flexible as it generally does not penalise job

change. However, it differentiates between worker groups, so regular unionised workers on average enjoy higher benefits.

- ⁸ External labour flexibility includes all modes of flexibility that happen outside the immediate realm of the firm. For instance, low employment protection would imply high external flexibility in the sense of high numerical flexibility (Atkinson, 1985).
- ⁹ Labour turnover costs vary depending on the status of a worker. Lindbeck and Snower (2001, 2002) divide workers into three groups: insiders with high labour turnover costs, outsiders with low labour turnover costs, and entrants who may reach insider status in the course of their career but have not done so yet.
- ¹⁰ Instead of differentiating between regular and non-regular workers, King and Rueda identify a new class of 'cheap labour' that includes many who, in Figures 7.2 and 7.3, would fall under the regular employment category. Workers inside the 'cheap labour' group all lack adequate representation in industrial relations, social protection and adequate pay. King and Rueda also show that this group holds political views markedly different from workers with more favourable working conditions, especially regarding employment protection legislation and welfare policy. Häusermann and Schwander (2009) make a similar argument but they say that work biographies matter more than the current mode of employment.
- ¹¹ *Shingikai* can be described as semi-official and semi-formal bodies in the Japanese policy-making system that incorporate members of all groups concerned by the laws discussed. Although most of them are informal, many *shingikai* have been in place for decades (under different names) and even publish records of their proceedings. See Schwartz (1998).
- ¹² A detailed overview on measures implemented until July 2009 (under the old LDP-led government) can be found at www.mhlw.go.jp/english/policy/affairs/dl/02.pdf. See also the September 2009 issue of *Social Science Japan Newsletter*, University of Tokyo (<http://newslet.iss.u-tokyo.ac.jp/ssj41/index.html>).
- ¹³ Although the 'equal work equal pay' principle is embedded in German labour law, collective bargaining for temporary agency workers (*Tarifverträge für Zeitarbeit*) allows firms to pay temp agency workers less because the wages in the temp agency industry are usually lower than in other industries.
- ¹⁴ On the other hand, Charles Weathers, an expert on Japanese industrial relations, argues that this was just an over-reported anomaly. In

- fact, non-regular employment would 'continue to replace regular employment' (see <http://nbrforums.nbr.org/foraui/list.aspx?LID=5>).
- ¹⁵ The coalition agreement of the new German government foresees legislation to facilitate fixed-term contracts for employees who have been employed by a firm before (*sachgrundlose Befristung*).
- ¹⁶ In the current cabinet, for instance, over a third of DPJ ministers have a background in the labour movement, but there are almost as many former LDP members in key cabinet positions who generally hold more industry-friendly positions.
- ¹⁷ Yuasa had been one of the organisers of a 'tent city' in a park close to the central government agencies. Many of its temporary inhabitants were former non-regular workers who had lost company housing together with their job. Although Yuasa resigned in March 2010, he stated that he would continue to cooperate with the government on a case-by-case basis.

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