

10-15-2006

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Responsibility and Work Opportunity Reconciliation Act  
(PRWORA) of 1996**

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**Recommended Citation**

Jennifer Allison, *Social Welfare Reform: An Analysis of Germany's Agenda 2010 Labor Market Reforms and the United States' Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) of 1996*, 26 J. Nat'l Ass'n Admin. L. Judiciary Iss. 2 (2006)

Available at: <https://digitalcommons.pepperdine.edu/naalj/vol26/iss2/6>

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# **Social Welfare Reform: An Analysis of Germany's *Agenda 2010* Labor Market Reforms and the United States' Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) of 1996**

**By Jennifer Allison\***

## **I. INTRODUCTION**

This comment presents a historical view of the social welfare systems in the United States and Germany. It then explains and analyzes recent large-scale reforms made to each country's social welfare system—the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) of 1996 in the United States, which profoundly impacted the availability of welfare benefits to poor Americans, and Germany's *Agenda 2010* campaign, which reformed Germany's system of providing benefits to the long-term unemployed.

Although this comment offers a rather clinical analysis of each of these reform movements, one important fact should not remain overlooked—each set of reforms had a profound impact on a large number of each country's most vulnerable citizens. People who heavily relied on government benefits were forced to make significant adjustments after these reforms were implemented, compounding whatever problems they had before that made it difficult to get and maintain a steady source of income.

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\* J.D. candidate, Pepperdine University School of Law, 2007. All Web links in this article are valid as of August 28, 2006. Except where indicated, German-to-English translations are my own and I assume full responsibility for any errors they contain. I am grateful for the guidance of Professor Gregory Ogden of Pepperdine Law School and Prof. Dr. Volker Behr of the Juristische Fakultät at the University of Augsburg in Germany. Special thanks to my husband Ali, without whose support my dream of attending law school would never have become a reality.

The politicians who enacted reforms in the United States and Germany had economic and political reasons for doing so, and the validity of those reasons should not be underestimated.<sup>1</sup> However, social welfare is not just a system of laws—it is a final lifeline for the most needy members of society. If lawmakers are not mindful of the real needs of people served by social welfare, then any reforms they make to the social welfare system can do no more than serve a narrow political or economic agenda, and will only end up hurting those the system aims to help.

Government establishment and maintenance of a social welfare system is not a new concept. This idea was extensively contemplated by the humanist scholars of the 16th century, including Spaniard Juan Luis Vives.<sup>2</sup> These Humanists helped to develop the notion that the government, for its own sake as well as for the sake of those it serves, must take care of its poor and do whatever possible to eliminate poverty. Vives wrote, “[t]remendous honor adheres in the state in which no beggar is seen” and “[g]reater peace will prevail where everyone is provided for.”<sup>3</sup>

Vives recognized that that the government must change and adapt its social welfare system: “[i]n a state, anything ravaged or ruined by time or fortune is renewed, such as walls, ditches, ramparts, streams, institutions, customs, laws themselves; so it would be equally reasonable to reform that method of poor relief which in various ways in the passage of time has become outmoded.”<sup>4</sup>

Throughout its history, Germany has provided generous benefits to its indigent, disabled, and unemployed populations through a federally-mandated social welfare system. However, over the last

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1 Peter E. Quint, *The Constitutional Guarantees of Social Welfare in the Process of German Unification*, 47 AM. J. COMP. L. 303 (1999).

2. See JUAN LUIS VIVES, ON ASSISTANCE TO THE POOR 3-10 (Alice Tobriner trans., 1999) (1971). Juan Luis Vives (1492-1540) was a Spanish contemporary of the Humanist scholar Sir Thomas More. *Id.* at 3, 15. A university professor in Spain, England, and France over the course of his life, he was active in matters of educational and welfare reform throughout Europe during the 16th century. See *id.* at 5.

3. *Id.* at 55.

4. *Id.* at 37. Interestingly, a critical element of Vives’ proposed system of poor-relief was that poor people should be required to work, and those that cannot find jobs on their own should be assisted in their job-seeking efforts by the government. *Id.* at 5.

two decades, the German economy has taken a sharp downturn. Accordingly, the German government has been forced to reexamine its policy of providing such generous social welfare benefits and to change its system.<sup>5</sup>

Germany is not the only country that has felt it necessary to reevaluate its social welfare policy. The United States, faced with growing discontent over what was seen as a rapidly expanding population of people who would rather live on welfare than work, implemented historic changes to the structure of its social welfare system in 1996.<sup>6</sup> These changes were chiefly targeted at single mothers with children—a segment of the population which, ironically, had long been considered to be highly deserving of social welfare assistance.<sup>7</sup>

## II. HISTORICAL BACKGROUND

### A. *History of Social Welfare in Germany*

The German government's social welfare system began when it was established by German Chancellor Otto von Bismarck in 1889.<sup>8</sup> The fact that Bismarck introduced this type of system at all was an affront to political conservatives in Germany at the time, prompting many of them to call the conservative chancellor a socialist.<sup>9</sup> Bismarck's program featured a mandatory insurance system, paid into by workers, employers, and the government, which initially

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5. See *infra* Part II-A.

6 United States Social Security Administration, Historical Background and Development of Social Security – Legislative Changes in 1996 & 1997, <http://www.ssa.gov/history/briefhistory3.html> (last visited October 16, 2006).

7. See *infra* Part II-B.

8. UNITED STATES SOCIAL SECURITY ADMINISTRATION, BRIEF HISTORY OF SOCIAL SECURITY—OTTO VON BISMARCK, <http://www.ssa.gov/history/ottob.html> [hereinafter USSSA—Bismarck]. At least one of the individual states (Prussia) that comprised Bismarck's unified Germany included a social welfare provision in its own general legislation. Peter E. Quint, *The Constitutional Guarantees of Social Welfare in the Process of German Unification*, 47 AM. J. COMP. L. 303 (1999). Specifically, the *Prussian Allgemeine Landrecht* (Prussian Comprehensive Law) of 1794 mandated not only that the state support the poor, but also that employers provide assistance to their ill employees. *Id.*

9. USSSA—Bismarck, *supra* note 8.

offered benefits only to those who were unable to work to support themselves because of age or disability.<sup>10</sup> It was later expanded to include programs for workers' compensation, as well as insurance programs for those who could not work due to illness and those who were otherwise unemployed.<sup>11</sup>

The Bismarckian social welfare administration model included not only the federal unemployment insurance system, but also a series of local agencies that distributed social welfare benefits to needy people who did not work or otherwise contribute to the federal insurance system (a "social net of last resort").<sup>12</sup>

Bismarck felt that his social welfare program was necessary to ensure that workers would continue to be productive, allowing the German economy to continue to thrive.<sup>13</sup> However, history has seen his true motives questioned. While some scholars view Bismarck's efforts as a tool to attack his political rivals,<sup>14</sup> others take a more cynical approach, believing Bismarck used welfare as a way for the government to control its citizens.<sup>15</sup> Still others, however, believe

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10. *Id.* Welfare advocates around the world, including those in the United States, paid close attention to how the German government under Bismarck and his predecessors established their social welfare systems, because they were "the most highly rationalized, structured...around actuarial calculations, compulsory participation, and contributions as the objective criterion for granting benefits." THEOREN SCHLABACH, *RATIONALITY & WELFARE: PUBLIC DISCUSSION OF POVERTY AND SOCIAL INSURANCE IN THE UNITED STATES 1875-1935* (1969) (internal publication of the Social Security Administration only available to the public online), <http://www.ssa.gov/history/reports/schlabach2.html>.

11. USSSA—Bismarck, *supra* note 8.

12. Hellmut Wollmann, *Die traditionelle deutsche Selbstverwaltung—ein Auslaufmodell? [Is Germany's Traditional Type of Local Self-Government Being Phased Out?]*, 41 DEUTSCHE ZEITSCHRIFT FÜR KOMMUNALWISSENSCHAFT [GERMAN JOURNAL FOR URBAN STUDIES] (2002), available at [http://www.difu.de/index.shtml?/publikationen/dfk/en/02\\_1/02\\_1\\_wollmann.shtml](http://www.difu.de/index.shtml?/publikationen/dfk/en/02_1/02_1_wollmann.shtml).

13. USSSA—Bismarck, *supra* note 8.

14. The Social Democrats were Bismarck's direct political rivals, and some view Bismarck's welfare policy as a means to thwart their efforts to gain control of the government in order to introduce a more extensive welfare system. See Quint, *supra* note 8, at 303. See also Deutsche Welle News Service, *German Welfare State at a Turning Point*, Deutsche Welle Report on Current Affairs (Aug. 15, 2004), <http://www.dw-world.de/dw/article/0,2144,1297218,00.html>.

15. Bismarck's efforts have also been viewed as an effort to "maintain the social unity by a system of mutual obligation between the State and its citizens" through "bring[ing] the industrial workers under the control of the State." Antony

the main focus should not be on Bismarck's motives, but on the system itself as an important means of advancing society as a whole.<sup>16</sup>

During World War I (1914-1918), the German government's social welfare system expanded greatly due to widespread poverty and hunger throughout the country.<sup>17</sup> It also had to be adapted to support not only injured soldiers, but the dependents of soldiers killed.<sup>18</sup>

At the end of World War I, Germany's Social Democrats took control of the government from Kaiser Wilhelm II. In creating the Weimar Constitution,<sup>19</sup> they established a rule of law that was more favorable to their political ideology than that established by the former government. Under the Weimar Constitution, the national government (*Reich*) reserved for itself the power to create welfare laws:<sup>20</sup> "to maintain good health and the ability to work, to protect motherhood, and to take precautions against the economic consequences of old age, weakness, and life changes, the national government will maintain a comprehensive insurance system that will feature substantive involvement of the insured."<sup>21</sup> This system

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Peter Mueller, *Bye-Bye Bismarck*, DAILY ARTICLE OF THE LUDWIG VON MISES INSTITUTE (Jul. 24, 2003), <http://www.mises.org/story/1275>.

16. American John Graham Brooks, who spent three years studying the German welfare system after graduating from Harvard Divinity School in 1875, expressed doubt that the primary benefit of social welfare was that it provided a mechanism for controlling the labor force. Schlabach, *supra* note 10. Instead, argued Brooks, social welfare is an institution of general social value because it leads to important and beneficial advances in industrial safety, health care, and social science scholarship. *Id.* Brooks believed that it was important for a society to implement a social welfare system because it is "obviously ethical" for a modern society to do so. *Id.* (quoting John Graham Brooks, *Compulsory Insurances in Germany: Including a Appendix Relating to Compulsory Insurance in Other Countries of Europe*, Fourth Special Report of the Commissioner of Labor 286, 288 (1895)).

17. DAVID F. CREW, *GERMANS ON WELFARE—FROM WEIMAR TO HITLER* 5 (1998).

18. *Id.*

19. *Die Verfassung des Deutschen Reichs vom 11. August 1919*.

20. "[D]as Reich [hat] die Gesetzgebung über ... die Wohlfahrtspflege[.]" ("The national government has the power to create welfare laws.") *Id.* at Art. 9.

21. "Zur Erhaltung der Gesundheit und Arbeitsfähigkeit, zum Schutz der Mutterschaft und zur Vorsorge gegen die wirtschaftlichen Folgen von Alter

would allow significantly more of the German population to benefit than did Bismarck's system, which focused primarily on workers. However, it turned out to be unsustainable after the Depression (and widespread unemployment) hit Germany in 1929.<sup>22</sup>

As Adolf Hitler's Nazi Party came to power in the 1930s, Germany's social welfare system was revived, but in a strange and disturbing way. In accordance with the Nazis' ideological beliefs, indigent people were considered to be "biologically inferior" and were denied welfare benefits on the basis that they could not "contribute to the economic and racial health of the nation."<sup>23</sup>

By the end of World War II, a defeated Germany had been left physically and morally shattered, facing the daunting task of rebuilding. One of the first things the Germans did to rebuild their country was to establish a new government. On May 23, 1949, the government of the Federal Republic of Germany (West Germany) ratified its Constitution, the *Grundgesetz für die Bundesrepublik Deutschland*.<sup>24</sup> The Constitution empowers the federal government to create federal laws,<sup>25</sup> including general social laws that establish a system of social welfare,<sup>26</sup> and labor laws that include provisions for social insurance and unemployment insurance.<sup>27</sup> The government used this power to create the Social Insurance Code (*Sozialgesetzbuch*).<sup>28</sup>

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*Schwäche und Wechselfällen des Lebens schafft das Reich ein umfassendes Versicherungswesen unter maßgebender Mitwirkung der Versicherten.*" *Id.* at Art. 161.

22. Crew, *supra* note 17, at 6.

23. *Id.*

24. *Grundgesetz für die Bundesrepublik Deutschland* (Constitution of the Federal Republic of Germany) (1949).

25. "Der Bund hat...das Gesetzgebungsrecht[.]" *Id.* at Art. 72 § 2.

26. "Die konkurrierende Gesetzgebung erstreckt sich auf folgende Gebiete: ...die öffentliche Fürsorge[.]" *Id.* at Art. 74 § 1(8).

27. "Die konkurrierende Gesetzgebung erstreckt sich auf folgende Gebiete: ...das Arbeitsrecht einschließlich...die Sozialversicherung einschließlich der Arbeitslosenversicherung[.]" *Id.* at Art. 74 § 1(12).

28. The Social Insurance Code (*Sozialgesetzbuch*) was created to establish a federal system of social welfare rights and benefits, including the right to receive social insurance (*Sozialversicherung*), social welfare (*Sozialhilfe*), and employment support (*Arbeitsförderung*), the latter of which includes monetary unemployment benefits (*Arbeitslosengeld*). *Sozialgesetzbuch I* [SGB I] [Social Insurance Code I]

Once the Constitution was in place, Germans set out to rebuild the rest of their country, enjoying incredible (indeed, “miraculous”) economic success during this process.<sup>29</sup> However, not all Germans were able to enjoy this success. Germans recognized that there was a significant need for a system of federal assistance that would allow retirees to share in the success of the country, rather than just manage to avoid poverty.<sup>30</sup> Accordingly, in 1957 Germany’s pension system changed to “pensions linked to past wages and increases in payout amounts coupled with rising wage levels.”<sup>31</sup>

Despite the availability of federal unemployment and pension-type benefits during this time, there were still many people who were falling through the cracks and living in poverty in Germany. Through its passage of the Federal Social Assistance Act (*Bundessozialhilfegesetz*) of 1961, the government established a federally-funded system of providing social welfare assistance to Germany’s poorest citizens. Under the Act, the government distributed enough money to these people to “guarantee [them] a civiliz[ed] minimum income.”<sup>32</sup>

In order to receive benefits under the Federal Social Assistance Act, the recipient must first have exhausted all other sources of

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Dec. 11, 1975, *Bundesgesetzblatt Teil I* [BGBl I] 3015, §§ 1, 4, 9, 19. See also *infra* note 136 and accompanying text.

29. See JOHN ARDAUGH, *GERMANY AND THE GERMANS* 104-05 (1995). Germany’s rebuilding of itself, after it was left devastated at the end of World War II, into “the free world’s third most powerful economy,” is widely referred to as a “miracle.” *Id.* at 104. Germany’s economy managed to grow an average of 8% throughout the decade of the 1950’s, even though it had few of its own natural resources. *Id.* at 104. Such success can also be attributed to other factors, including the emergence of a highly-skilled labor force (which was maintained throughout the post-war years through Germany’s well-developed technical apprenticeship system), among whose attributes were thoroughness and a high degree of discipline. *Id.* at 105-06.

30. Deutsche Welle News Service, *German Welfare State at a Turning Point*, Deutsche Welle Report on Current Affairs (Aug. 15, 2004), <http://www.dw-world.de/dw/article/0,2144,1297218,00.html>.

31. *Id.* The aim of the 1957 pension reforms was to “secure for the elderly an independent life at a financial level comparable to that which they enjoyed during working life.” LUTZ LEISERING & STEPHAN LEIBFRIED, *TIME AND POVERTY AND WESTERN WELFARE STATES—UNITED GERMANY IN PERSPECTIVE* 295 (John Veit-Wilson trans., 1995) [hereinafter *Leisering & Leibfried*].

32. Leisering & Leibfried, *supra* note 31, at 59.



assistance.<sup>33</sup> Benefits were distributed under two main principles—each recipient’s individual situation must be evaluated to determine the amount and type of benefits that would best provide for the person, and benefits should be distributed according to a plan that maximizes the recipient’s ability to eventually live without them.<sup>34</sup> However, the Act did not limit the amount of time a recipient could receive social welfare benefits. It simply stated that it was intended that recipients receive benefits “for a short period” without further defining that period.<sup>35</sup>

Despite the “miraculous” success Germany had in rebuilding its economy after the end of World War II, the country was not well-equipped to handle the blows to its economy that started in the 1970’s and continue to the present day.

Many factors have contributed to the economic challenges that Germany currently faces. Germany’s industrial model is greatly dependent on manufacturing high-quality consumer goods, which has allowed it in some limited areas to perform better than other countries.<sup>36</sup> However, in some ways, German industry has not been as technology-focused as other countries that have enjoyed more robust economies from the 1970s onward.<sup>37</sup>

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33. *Id.* at 60.

34. *Id.* at 60-61. The latter principle does not apply to certain groups, including “children, old people, those who are ill or disabled, and those who have responsibility for the care of children or other family members.” *Id.* at 61. In Germany, mothers of young children have been considered a legitimate segment of this population, since they are not expected to work “until the children no longer need care.” *Id.* This is in direct contrast to the United States, where it is not only socially acceptable, but expected, that poor single mothers work outside the home to support themselves, rather than relying on welfare benefits from the government. *See id.*

35. *Id.* at 61.

36. One of those areas is the German automotive industry, which has historically focused more on producing high-end (and high-priced) luxury cars than its counterparts in Japan and the United States. *See Ardaugh, supra* note 29, at 111.

37. Germany appears to have lagged behind countries like Japan in developing its high-tech industry throughout the 1970’s and into the 1980’s, despite the fact that there was such enormous worldwide demand for high-tech products during that time. *Id.* at 117-18. It is clear that development of technology exports was not a priority for German industry at this time: by 1995, “as manufacturers, German

German industry itself faces a unique problem—both the government and the labor unions wield a tremendous amount of control over German employers. German employees have historically been the fortunate beneficiaries of a cooperative relationship between labor and management,<sup>38</sup> which has made them some of the highest paid and most protected workers in the world.<sup>39</sup> Such legally-mandated favorable treatment of German employees does not make it easy to run a business in Germany. German companies that employ at least five people are required by law to establish a works council (*Betriebsrat*) if the employees request one.<sup>40</sup> This council wields significant power within the corporate infrastructure over many types of business decisions, including firing and laying off employees.<sup>41</sup> Without the council's approval, it can be

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firms' share of world high-technology markets ha[d] fallen since 1972 from 26 to 17 per cent, as the Japanese surged ahead." *Id.* at 118.

38. Germany's legal system includes an "extensive and precise" set of labor laws, and those governing such areas as job security and working conditions mainly favor the employee. *Id.* at 127. Under these laws, German companies must not only be good employers, but they must also maintain positive relationships with labor unions. *Id.* at 128. The "cooperative labor relations system" that was in place in West Germany after the war is widely credited for contributing to the country's "economic miracle" because it does not foster the type of adversarial relations between labor and management that can negatively effect a country's economic growth. Charles J. Hobson & James B. Dworkin, *West German Labor Unrest: Are Unions Losing Ground to Worker Councils?*, MONTHLY LAB. REV., Feb. 1986, at 46.

39. Even as recently as 2002, "Germany has some of the highest industrial wages...[and] the toughest job protection...in the industrial world." *Europe: Here are the Ideas. Now for Action?; German Labour-Market Reform*, THE ECONOMIST, Jun. 29, 2002, at 43 [hereinafter *The Economist—Here are the Ideas*].

40. BEAUFTRAGTE DER BUNDESREGIERUNG FÜR MIGRATION, FLÜCHTLINGE UND INTEGRATION [FEDERAL COMMISSIONER FOR MIGRATION, REFUGEES AND INTEGRATION], A MANUAL FOR GERMANY 117 (2nd ed. 2005) [hereinafter *BBMFI Manual*]. Members of this council are elected by the company's employees. *Id.*

41. A company must consult with its works council on a many corporate matters, including investing and financial planning, establishing worker safety programs, and implementing workforce reduction plans. *Id.* See also Ardaugh, *supra* note 29, at 130-31. It is in the area of workforce reduction that the council and corporate management are most often at odds. Ardaugh, *supra* note 29, at 131. Although management has the final decision as to whether to lay off or fire employees, it must present its plans and valid reasons for doing so to the council beforehand. *Id.*

difficult to for companies to terminate employees.<sup>42</sup>

Any labor relations difficulties faced by management of German companies are compounded by the legal protections for workers established under Germany's Protection Against Dismissal Act (*Kündigungsschutzgesetz*), which requires companies to offer, in writing, a "socially justified" reason for firing most types of employees.<sup>43</sup>

Labor relations policies such as these can make it difficult and prohibitively expensive to run a business in Germany. Accordingly, the German economy has had to pay a heavy price—not only has the profitability of its businesses suffered,<sup>44</sup> but some businesses have been forced to move their operations elsewhere.<sup>45</sup>

In addition to problems related to business, the German population has undergone a radical shift since the time plans for

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42. As the personnel manager of a Stuttgart factory put it, if the company proceeds with lay-offs or firings without the council's approval, "we usually find ourselves taken to court." *Id.*

43. BBMFI Manual, *supra* note 40, at 120. The Protection Against Dismissal Act's requirements apply to all employees who have worked for at least six months at a company that employs at least ten people. *Id.* A reason is "socially justified" if it is based on the "conduct or behavior of the employee or as a result of urgent operational requirements." *Id.*

44. In 1984, the Organization for Economic Cooperation and Development (OECD) reported that one of the three main problems facing the German economy was the "low profitability of [its] industrial firms." Ardaugh, *supra* note 29, at 117. In addition to labor relations issues, German employers have historically blamed difficulties they have in turning a profit on being required to pay a high level of social security and other taxes. *See id.*

45. Since Germany joined the European Union (EU), many German business owners have moved their operations out of Germany and into other EU countries. *See Catherine Miller, Eager Poles Find German Jobs*, BBC NEWS SERVICE, Jan. 9, 2006, <http://news.bbc.co.uk/1/hi/world/europe/4584616.stm>. One German laundry service, since relocating to Poland, can now operate twenty-four hours a day, seven days a week, because the Polish workers are willing to work longer hours and on holidays. *Id.* The manager of the laundry service claims that relocating his business was crucial for its survival, as "it would be incredibly hard to find workers like that in Germany." *Id.* Ironically, this laundry service's chief clientele is located in Germany—it launders sheets, towels, and robes for Berlin's high-end hotels. *Id.* Cheaper Polish labor is causing problems throughout the eastern portion of Germany. *Id.* In towns such as Frankfurt-an-der-Oder, where unemployment is more than 17%, many jobs in industries like carpentry are going to Polish workers, who will work for much less than their German counterparts. *Id.*

achieving the “economic miracle” were laid. These changes in the population structure have exacerbated Germany’s economic problems. Germany’s low birthrate<sup>46</sup> forces a dwindling workforce to pay into the social security coffers so that retired people can continue to get their benefits.

Germany attempted to alleviate economic problems caused by the low birthrate by bringing in guest workers (*Gastarbeiter*) from some of Europe’s poorer countries.<sup>47</sup> The guest worker program, while providing a needed low-skilled labor force, caused its share of burdens on the German economy.<sup>48</sup>

Guest workers have provided only some of Germany’s foreign population. Recognizing that Germany had relatively liberal political asylum laws, asylum seekers (*Asylanten*) from throughout the world flocked there.<sup>49</sup> Every asylum seeker was entitled under German law to receive government-funded accommodation while their asylum cases were under review.<sup>50</sup> In addition, since Germany is a member

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46. In the mid-1970’s and beyond, the birth rate in West Germany was one of the lowest in the world. Ardaugh, *supra* note 29, at 200. The decline of the birth rate of the 1970’s made itself felt as early as 1990—while there were 1 million 16-year-old Germans in 1982, there were only 650,000 in 1990. *Id.* at 134. Germany continues to have a “dramatically low birthrate.” In 2006 it was measured at 8.5 births per 1,000 inhabitants, which is one of the lowest rates in all of Europe. Stefan Theil, *No Kids, No Good*, NEWSWEEK (INTERNATIONAL EDITION), Apr. 10-17, 2006, at 8.

47. *Id.* at 273. Guest workers immigrated to Germany, mainly from Turkey and other poor southern European countries, at the request of the German government. *Id.* The *Gastarbeiter* program ended up bringing over four million immigrants to Germany. *Id.* at 274.

48. While guest workers were often welcomed on their arrival in Germany because of the desperate shortage of workers in local labor markets, animosity between the guest workers and the local German citizens often grew due to cultural and religious differences. *Id.* at 276-82. When the German economy took a downturn in the 1980’s, causing increased unemployment, German resentment of the continued presence of guest workers still living and working in Germany grew, even though the guest workers often took low-wage menial jobs that the Germans did not want. *Id.* at 284.

49. *Id.* at 290. These asylum seekers started showing up in Germany in the 1980’s, citing the need for political asylum due to persecution in their home countries (which were typically in the third world or Eastern Europe). *Id.*

50. *Id.* Under Germany’s liberal political asylum laws, German border guards could not turn people away if they claimed to be seeking asylum. *Id.* This remained the policy even as it became clear, as more and more asylum seekers

of the European Union,<sup>51</sup> citizens of any other European Union country are free to travel to Germany and seek work there without acquiring permission to do so from German immigration authorities.<sup>52</sup>

Despite the large number of foreigners coming to Germany and seeking either work, social benefits, or both, undoubtedly the largest burden on the German economy in the late twentieth century came as East and West Germany reunified. Since the Berlin Wall fell in 1989, the reunification process has placed a tremendous strain on Germany.

In West Germany, they had to deal with yet another influx of immigrants: ethnic Germans from the former East Germany and elsewhere in Eastern Europe.<sup>53</sup> Although these immigrants came

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came to Germany (99,650 in 1986, up from 74,000 in 1985), that many were seeking better economic fortunes for themselves rather than protection from persecution at home. *Id.* at 290-91. Asylum seekers lived in government-run camps or hostels while waiting (sometimes as long as three years) for their asylum cases to be heard. *Id.* at 291. While in Germany, asylum seekers can receive a relatively small amount of social welfare benefits through the system established in 1993 under the Asylum Seekers Benefit Law (*Asylbewerberleistungsgesetz*). Leisering & Leibfried, *supra* note 31, at 30, 32, 62.

51. Treaty on European Union, 1992 O.J. (C 191). Germany was one of the original countries to join the European Union when it signed the Treaty on European Union in 1992. *Id.* This treaty was amended in 1997 by the Treaty of Amsterdam, which promoted further unity between the EU member states, stressing the importance of maintaining a “high level of employment” throughout the entire EU by “creation of an area without internal frontiers[.]” Treaty of Amsterdam Amending the Treaty on European Union, the Treaties Establishing the European Communities, and Related Acts, art. 1 § 5, 1997 O.J. (C 340). In 2004, this “area” was expanded to include 10 new member states, most of which are former Communist states in Eastern Europe. EUROPEAN COMMISSION DIRECTORATE-GENERAL FOR PRESS AND COMMUNICATION, KEY FACTS AND FIGURES ABOUT EUROPE AND THE EUROPEANS 4 (2005), [http://europa.eu.int/comm/publications/booklets/eu\\_glance/51/en.pdf](http://europa.eu.int/comm/publications/booklets/eu_glance/51/en.pdf). A detailed discussion of the effects of EU laws on Germany’s employment and social welfare laws and policies is beyond the scope of this comment.

52. BBMF Manual, *supra* note 40, at 95. Although citizens of other European Union countries are free to come to Germany and look for work, they are not eligible to receive any form of unemployment or other social assistance from the German government while doing so. *Id.*

53. German law permits ethnic Germans to return to Germany and settle there. Leisering & Leibfried, *supra* note 31, at 69.

seeking work, many of them ended up relying on social welfare services when they were unable to find steady jobs.<sup>54</sup>

These new immigrants were not the only drain on the former West Germany's economy. In the years directly following the reunification, the former West collectively transferred approximately 150 billion Deutschmarks per year to former East German states.<sup>55</sup> Although this direct transfer program ended in 1995,<sup>56</sup> that was not the end of federal subsidies to the former East. Currently, those subsidies are funded by the proceeds of a "solidarity tax" surcharge on all federal taxpayers.<sup>57</sup> This means that at least until the year 2019,<sup>58</sup> taxpayer funds originating in the former West will continue to be funneled directly into the former East, rather than being used to help build local economies.<sup>59</sup>

Despite such extensive financial support from the federal government since reunification,<sup>60</sup> the former East Germany's economy has suffered greatly. Among the problems it continues to

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54. This placed a tremendous burden on West Germany's social welfare systems; for example, 46% of applicants for welfare benefits in the city of Bremen (in the former West) did so because they were recent immigrants in need of assistance. *Id.* at 71.

55. Arthur B. Gunlicks, *German Federalism and Recent Reform Efforts*, 6 GERMAN L.J. 1288 (2005).

56. *Id.*

57. *Id.* The German government passed the Solidarity Pact I in 1995, which levied a 7.5% federal solidarity tax surcharge against all German citizens and corporations. *Id.* The rate was reduced to 5.5% in 1998, at which it still currently stands. *Id.*

58. Since it became clear that the former East would still have funding needs after the Solidarity Pact I was set to expire in 2005, the government passed Solidarity Pact II, which extended the federal subsidy payment program until 2019. *Id.* at 1288-89.

59. This federal subsidy program is widely criticized for what is seen as a profound lack of success, resulting in rising unemployment figures in the former East and taxes in the former West, without producing substantial economic growth for the country as a whole. See Robert J. Barro, *South Korea: How to Keep the Miracle Going*, BUS. WK. 28, June 9, 2003, available at [http://www.businessweek.com/magazine/content/03\\_23/b3836031\\_mz007.htm](http://www.businessweek.com/magazine/content/03_23/b3836031_mz007.htm).

60. By 2005, it was estimated that the cost of rebuilding the former East Germany had, up to that point, totaled €1.25 trillion. Tim Weber, *Waiting for the East to Flourish*, BBC NEWS, Sept. 9, 2005, <http://news.bbc.co.uk/go/pr/fr/-/1/hi/business/4225346.stm>.

face are extremely high unemployment<sup>61</sup> and a mass westward exodus of its young and highly-educated citizens.<sup>62</sup> However, perhaps what cripples most states, cities and towns in the former East is the general belief that the subsidies will end and the money will run out before enough infrastructure changes can be made to make those areas viable in a modern capitalist society.<sup>63</sup>

All of these factors together create a situation ripe for change. Facing his country's severe economic and unemployment problems, German Chancellor Gerhard Schroeder and his economic advisors embarked on an ambitious plan, "*Agenda 2010*," that implemented sweeping labor law reforms.<sup>64</sup> Many Germans found these reforms drastic and unwelcome, not only because they changed how unemployment benefits would be administered, but also because they

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61. In 2005, unemployment statistics painted a bleak picture in the former East: 18.6% unemployment across the entire region, reaching as high as 25% in some areas. *Id.* Some citizens of the former East Germany, because of the difficulty of finding jobs there, end up seeking their fortunes far from home. *Id.* One of the more creative of these individuals is Gunter Völker, a former soldier in the German army who recently opened a German restaurant in the Kurdish region of Iraq. *Ein "Deutscher Hof" im Irak (A "German Restaurant" in Iraq)*, AUGSBURGER ALLGEMEINE ZEITUNG, Apr. 22, 2006, at 9. Völker, who is originally from the former East German state of Thüringen, cites two reasons for doing this: that living in Germany no longer suits him, and that in his home in the former East there are "more Hartz IV recipients than job openings." ("...mehr Harz-IV-Emphanger als offene Stellen.") *Id.* Hartz-IV benefits are those the German government pays to the long-term unemployed. *See infra* Part III-B.

62. Stefan Berg et al., *The Price of Failed Reunification*, DER SPIEGEL (Christopher Sultan trans., Sept. 5, 2005), <http://service.spiegel.de/cache/international/spiegel/0,1518,373639,00.html>. This is clear in places like Weisswasser, a city in the former East German state of Saxony, whose population since reunification has dwindled down to mostly elderly residents. *Id.* For Weisswasser, this means that "[t]he only businesses that have a future...are nursing homes." *Id.*

63. *Id.* For example, the state of Brandenburg in the former East currently receives, on a per capita basis, 40% more federal funding than its western neighbor, Schleswig-Holstein. *Id.* Despite their desperate need to fund their modernization projects, state officials in Brandenburg and elsewhere in the former East are very aware that their problems will be compounded if they do not save some of the subsidy money before the subsidy program ends in 2019. *See id.*

64. *See generally* PRESS INFORMATION OFFICE OF THE FEDERAL GOVERNMENT OF GERMANY, *AGENDA 2010 QUESTIONS AND ANSWERS* (English ed. 2004) (Feb. 2004), [http://www.german-embassy.org.uk/Agenda\\_2010\\_brochureengl.pdf](http://www.german-embassy.org.uk/Agenda_2010_brochureengl.pdf) [hereinafter *Agenda 2010 Questions and Answers*].

significantly lowered the amount of benefits that the long-term unemployed were eligible to receive.<sup>65</sup>

### *B. History of Social Welfare in the United States*

In the United States in the late 1800's, social welfare benefits were not provided by the government, but by private charities.<sup>66</sup> These charities operated on the idea that only those who truly could not work were deserving of receiving charitable assistance.<sup>67</sup> Those who were truly poor but did not want to be chastised for being lazy often avoided seeking assistance from these private charities, opting instead to go to soup kitchens and to use YMCA dinner tickets.<sup>68</sup>

During this time, charities believed that categorizing the needy was the first step in determining how best to help them.<sup>69</sup> However, such categorization probably created more problems than it solved, as it often reflected subjective moral judgments about them, rather than objective criteria.<sup>70</sup> In fact, arbitrary categorization was one of the

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65. *Infra* note 183 and accompanying text.

66. Schlachach, *supra* note 10. The government did not have a wide-reaching system in place for providing assistance the poor despite the fact that unemployment was practically a national crisis in 1877 (numbering as high as 20% of the workforce). *Id.* However, some poor people managed to receive some assistance from public poor law officials. *Id.* In addition, some states were starting to establish ways to assist poor citizens. *Id.*

67. *Id.* One of the largest charitable organizations in the country at the time would only help people who could prove they could not work due to illness or some other legitimate reason, and would not help those they believed could work but were too lazy to do so. *Id.* Disdain for "able-bodied adult paupers" ran rampant during this time—even the President of the New York Board of Charities described them as "the most limpsy, hopelessly inert, and utterly good-for-nothing objects in the world[.]" *Id.* (quoting William P. Letchworth, *President's Address*, NCCC [National Conference of Charities and Correction] Proceedings (1884)).

68. Schlachach, *supra* note 10. YMCA dinner tickets were typically bought by wealthy people to give to poor people. *Id.*

69. *Id.*

70. *Id.* The Charity Organization Society (COS), which was imported from England and operated in 52 cities by the late 1880's, established four working categories of indigent people: those deserving "permanent relief," those deserving "temporary relief because of sickness, death, accident, and such causes," those who were employable and only needed jobs, and those undeserving of any relief at all. *Id.*



main difficulties faced by charities across the nation as they attempted to establish a centralized and efficient system of distributing assistance to the poor.<sup>71</sup>

People who received charitable assistance were directly supported by charity volunteers, who paid “friendly visits” on the poor.<sup>72</sup> These volunteers used their personal judgment to determine the true level of neediness, which further exacerbated any problems caused by arbitrary categorization.<sup>73</sup>

Toward the end of the 19th century, some of the individual states began to contemplate providing certain types of social assistance.<sup>74</sup> In 1911, valid laws establishing mothers’ pensions<sup>75</sup> and workmen’s compensation were passed in some states.<sup>76</sup> By then the federal

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71. *Id.* Arbitrary categorization, because it lacked distinct criteria for determining whether or not to give assistance to people, undermined the efforts of individual charities across the nation to establish a streamlined, organized system of providing financial help. *Id.* Private charities had a hard time achieving their other goals as well, such as establishing a practical plan of helping people become self-sufficient, rather than indefinitely dependent on charitable assistance. *Id.*

72. *Id.*

73. *Id.* “Friendly visit” volunteers are considered to be the original version of the modern case worker. *Id.* These volunteers got to know the people they visited on a personal level, and used that knowledge, rather than a distinct set of organizational rules, to determine the level of need. *Id.* Eventually, private charities determined that the “relational approach” to social welfare, in which need is determined through establishing relationships with the poor, was certainly no worse an approach to delivering social welfare benefits than “surrounding [a poor person] with a set of thoroughly dependable, well-engineered, protective welfare institutions[.]” *Id.*

74. *Id.* New York led the way, passing a bill that would provide state benefits to some parents in 1897. *Id.* The bill was vetoed so that law never took effect. *Id.* Other states apparently tried to pass workman’s compensation laws, which ended up being “either dead letters, or, in the opinion of the courts, unconstitutional.” *Id.*

75. Financial assistance to single mothers reflected society’s desire to provide a “safety net for children of widows.” See Elizabeth C. Hair et al., *How Do Maternal Risk Factors Affect Children in Low-Income Families? Further Evidence of Two-Generational Implications*, in *THE TRANSITION FROM WELFARE TO WORK: PROCESSES, CHALLENGES, AND OUTCOMES* 66 (Sharon Telleen & Judith V. Sayad eds., 2002). Of course, as more never-married mothers filled the welfare rolls, many critics of the welfare system called for reforms that would encourage these mothers to work outside the home to earn an income rather than depend on welfare benefits. *Id.*

76. Schlabach, *supra* note 10.

government already had a workmen's compensation law for federal employees, which was passed in 1908.<sup>77</sup>

In 1934 President Franklin D. Roosevelt, in response to the Great Depression, announced his intention to establish a federal social security system.<sup>78</sup> This system would be designed to protect the economic security of people who, as was the current trend, gave up their family farms and moved to cities to seek out industrial jobs.<sup>79</sup> Based on the recommendations of an executive committee formed to study this problem,<sup>80</sup> the Social Security Act<sup>81</sup> was created, which was passed by both houses of Congress and signed into law by President Roosevelt on August 14, 1935.<sup>82</sup>

Administration of programs under the Social Security Act was originally charged to the Social Security Board, which was transferred to the Federal Security Agency in 1939.<sup>83</sup> In 1953, the federal government created the Department of Health, Education, and Welfare, which replaced the Federal Security Agency.<sup>84</sup>

The Social Security Act has been amended many times throughout its history to meet the changing needs of the country. The original Social Security Act provided benefits to retired workers, as well as elderly and blind people with financial need.<sup>85</sup> In 1939, it was amended to include additional categories of recipients

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77. *Id.* Workman's compensation laws were seen as a critical response to the increasing industrialization of American industry that was taking place in the early 20th century, because a systematic and organized method of responding to accidents and compensating their victims was needed. *See id.*

78. UNITED STATES SOCIAL SECURITY ADMINISTRATION, SOCIAL SECURITY—A BRIEF HISTORY 2 (Aug. 2005), <http://www.ssa.gov/history/pdf/2005pamphlet.pdf> [hereinafter *USSSA—Brief History Pamphlet*].

79. *Id.*

80. This committee was known as the Committee on Economic Security, which included several officers in the President's executive cabinet. *Id.* at 2-3.

81. Social Security Act of 1935, 49 Stat. 620 (codified as amended at 42 U.S.C. § 405 (2005)).

82. USSSA—Brief History Pamphlet, *supra* note 78, at 3.

83. *Id.* at 21.

84. *Id.*

85. *Id.* at 3, 12.

(dependents and survivors).<sup>86</sup> In 1956 the Act was changed to authorize payments of disability benefits.<sup>87</sup> By 1969, it became clear to President Nixon that the way benefits were paid out to the elderly, the blind, and the disabled (the welfare system's three "adult categories") needed to change.<sup>88</sup> Up to that point, state and local governments, supported by federal funding, administered programs providing aid to those recipients, creating a system of widely varying payment amounts from state to state.<sup>89</sup> In order to "bring reason, order, and purpose into a tangle of overlapping programs," President Nixon created the federal Supplemental Security Income (SSI) program in 1972.<sup>90</sup>

The Social Security Act has also frequently been amended to address economic concerns about the program. For example, in response to the suggestions from the executively-appointed Greenspan Commission, in 1983 President Ronald Reagan amended the Social Security Act to make Social Security benefits subject to federal taxation, along with raising the retirement age.<sup>91</sup>

Administrative restructuring has also continued throughout the Social Security Act's history. In 1980, the Department of Health, Education and Welfare became the Department of Health and Human Services, which was responsible for administering all Social Security Act programs until the mid-1990's.<sup>92</sup> In 1995, the federal government established a separate agency, the Social Security Administration,<sup>93</sup> which assumed primary responsibility for the administration of the following Social Security Act programs: Social Security ("old-age" pensions), survivors benefits, disability benefits,

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86. *Id.* at 6. The spouse and minor children of a retired worker were eligible for dependents benefits, while in the event of a worker's premature death the worker's family received survivors benefits. *Id.*

87. *Id.* at 9. Under the 1956 amendments, disabled workers between the ages of fifty and sixty-five gained benefits eligibility, as did adult children who were disabled. *Id.* at 9. Benefits eligibility was later expanded to include all disabled workers, regardless of their age. *Id.*

88. USSSA—Brief History Pamphlet, *supra* note 78, at 12.

89. *Id.*

90. *Id.*

91. *Id.* at 13.

92. *Id.* at 22.

93. *Id.* at 23.

and SSI.<sup>94</sup> The Department of Health and Human Services remained responsible for administering benefits related to public welfare.

Federal agencies do not pay welfare benefits directly to individuals. Instead, Title 42 of the Social Security Act authorizes the federal government to give money to the states, which the states can use to establish their own social welfare services.<sup>95</sup> Since neither the federal government nor the states themselves are under a constitutional mandate to provide welfare benefits,<sup>96</sup> the states have a large degree of flexibility and autonomy in establishing social welfare programs—not only in determining the types and amounts of benefits to provide, but also in establishing eligibility limits.<sup>97</sup>

### III. RECENT LARGE-SCALE SOCIAL WELFARE SYSTEM REFORMS IN THE UNITED STATES AND GERMANY

The welfare reforms passed by the United States' federal government in 1996 provide more strict guidelines for how the states can distribute federal money to people as social welfare benefits.<sup>98</sup>

Although these reforms appear to be dissimilar to those implemented by the German government in 2005 that affected long-term unemployment benefits,<sup>99</sup> the governments of both countries shared a common goal when they implemented their respective reforms. By drastically reducing people's eligibility for social assistance, they hoped to get those people off the public assistance rolls and back to work as quickly as possible.

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94. Social Security Independence and Program Improvement Act of 1994, 103 P.L. 296 (codified as 42 U.S.C. § 901 (2005)).

95. 42 U.S.C. § 1397 (2005). States are to use these funds to meet certain goals, including fostering achievement of economic self-sufficiency among indigent people, eliminating abuse of children and vulnerable adults, replacing institutional care with home-based care where appropriate, and providing services to those people who require institutional care. *Id.* at (1)-(5). *See also id.* at § 1397a(2).

96. *See Lavine v. Milne*, 424 U.S. 577, 585 (1976).

97. *See id.* *But see Smith v. Reynolds*, 277 F. Supp. 65, 67 (E.D. Pa. 1967) (ruling that if the state decides to provide public welfare benefits, "it cannot arbitrarily exclude a segment of the resident population from their enjoyment").

98. *See infra* Part III-A.

99. *See infra* Part III-B.

*A. Welfare Reform in the United States—  
The 1996 Personal Responsibility and Work Opportunity  
Reconciliation Act (PRWORA)*

During the 1992 Presidential campaign, Democratic candidate Bill Clinton pledged to “end welfare as we know it.”<sup>100</sup> The 1996 Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA), was the culmination of a joint effort between President Clinton and the Republican-controlled Congress.<sup>101</sup> After Clinton vetoed the first two bills Congress sent,<sup>102</sup> he signed Congress’ third version of the PRWORA into law,<sup>103</sup> declaring, “[w]e are taking an historic chance to make welfare what it was meant to be: a second chance, not a way of life.”<sup>104</sup>

The PRWORA replaced Aid to Families with Dependent Children (AFDC), a 60-year-old federal program that provided

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100. WELFARE REFORM 7 (Charles P. Cozic ed., Greenhaven Press 1997).

101. See Press Conference by President Bill Clinton upon the signing of PRWORA into law (July 31, 1996), in WELFARE REFORM 40-44 (Charles P. Cozic ed., 1997) [hereinafter *Clinton's PRWORA Press Conference*].

102. Hugh Heclo, *The Politics of Welfare Reform*, in THE NEW WORLD OF WELFARE 193 (2001). In vetoing these two bills, President Clinton focused specifically on their unacceptable elements, portraying them as a Republican attack on the social safety net for middle America. *Id.* This forced the Republican-controlled Congress to concede in some areas to get the bill signed. *Id.* at 193-94. The Republicans did so because they had their own campaign promises to keep—under the “Contract With America,” a campaign tool the Republican Party used to gain control of Congress, Republicans promised a drastic overhaul to the welfare system. See *id.* at 190-91.

103. *Id.* at 194. During his bill-signing press conference, President Clinton stated that “[s]ome parts of this bill go too far” and indicated that he was “determined to see them corrected.” Clinton’s PRWORA Press Conference, *supra* note 101, at 43. The President regretted cuts to “excess shelter reduction,” which provided additional food stamps to poor working families who faced high housing costs. *Id.* He was also “deeply disappointed” that Congress insisted on including a provision that denied certain types of medical and other help to legal immigrants. *Id.*

104. Welfare Reform, *supra* note 100, at 7. At his July 31, 1996 press conference, President Clinton explained his intentions for the reforms: “[The welfare system] should be about moving people from welfare to work. It should give people the child care and the health care they need to move from welfare to work without hurting their children.” Clinton’s PRWORA Press Conference, *supra* note 101, at 41.

assistance to needy individuals and families, with Temporary Assistance to Needy Families (TANF),<sup>105</sup> a program that provided block grants that states could use to establish and run welfare-to-work programs to help people achieve self-sufficiency rather than continued indefinite reliance on welfare benefits.<sup>106</sup>

The PRWORA establishes certain regulations for state programs supported by TANF grants, including time limits for receipt of welfare benefits<sup>107</sup> and requirements associated with moving recipients from welfare to work.<sup>108</sup> It also establishes penalties for those states whose programs fail to meet federal requirements.<sup>109</sup>

The stated purpose of the PRWORA, however, is not to set forth a mandatory welfare program design for all the states to follow, but to give the states flexibility in determining how to operate their welfare programs in accordance with the federal government's goals.<sup>110</sup> Accordingly, states have some autonomy under the

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105. 64 Fed. Reg. 17720 (Apr. 12, 1999).

106. Specific goals were to get more welfare recipients into the labor force by setting up TANF-funded programs to help them get and keep jobs. Sharon Telleen, *Challenges to Welfare Reform*, in *THE TRANSITION FROM WELFARE TO WORK: PROCESSES, CHALLENGES, AND OUTCOMES 1* (Sharon Telleen & Judith V. Sayad eds., 2002). Legislators reasoned that this would lower the number of welfare case loads and the rate of poverty among families and children. *Id.* Unfortunately, the latter goal was often not met because many of the jobs available to former welfare recipients did not pay enough to lift them out of poverty. *Id.* at 3.

107. The state is required to adhere to certain primary welfare-to-work standards, including the restriction that TANF funds cannot be used to give welfare recipients cash benefits for more than five years. 42 U.S.C. § 608(a)(7)(A) (2005). However, the state can reduce the five-year limit if it wishes to do so. *Id.* States are still allowed to provide certain types of support to citizens whose TANF benefits expire. Specifically, the state may provide vouchers for certain state social welfare services funded by separate non-TANF federal block grants. *Id.* at § 1397(a)(f).

108. Each state must implement a welfare-to-work plan in which welfare recipients, in order to ensure continued receipt of benefits, are required to work after a maximum of two years on the welfare rolls. *Id.* at § 602(a)(1)(A)(ii). A recipient is considered to be working if he or she is engaged in "work activities" for a certain number of hours per week. *Id.* at § 607(c)(1)(A).

109. Failure to ensure that welfare recipients are either working in traditional jobs or participating in work-related activities within the prescribed time periods results in the state accruing financial penalties. *See id.* at §609.

110. *Id.* at § 601(a). Each state's program must be designed to meet the following four goals:

PRWORA to determine how to run their TANF programs, such as an option to exempt a certain percentage of its welfare recipients from TANF work requirements.<sup>111</sup> This autonomy is not unlimited, however. For example, states cannot develop programs that provide more strict limits on recipients of welfare benefits than those outlined in the federal regulations.<sup>112</sup>

The federal agency responsible for overseeing the TANF program is the Office of Family Assistance (OFA), a subdivision of the Administration for Children and Families (AFC), which operates under the Department of Health and Human Services.<sup>113</sup> Operation of the OFA is part of the ACF's responsibility to administer federal programs that "promote the economic and social well-being of

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- (1) provide assistance to needy families so that children may be cared for in their own homes or in the homes of relatives;
  - (2) end the dependence of needy parents on government benefits by promoting job preparation, work, and marriage;
  - (3) prevent and reduce the incidence of out-of-wedlock pregnancies and establish annual numerical goals for preventing and reducing the incidence of these pregnancies; and
  - (4) encourage the formation and maintenance of two-parent families.

*Id.* at § 601(a)(1)-(4). See also Vicki Lens, *Bureaucratic Disentitlement after Welfare Reform: Are Fair Hearings the Cure?*, 12 GEO. J. ON POVERTY L. & POL'Y 13, 24 (2005).

111. The PRWORA included a sliding scale that outlined participation requirements in TANF programs. 42 U.S.C. § 607(a)-(b) (2005). Specifically, it mandated that, by 2002, at least fifty percent of all families that received welfare benefits participate in a TANF welfare-to-work program (ninety percent of two-parent families). *Id.* This regulation provides states with flexibility to exempt certain recipients from the TANF work requirements without risking losing their federal grant money.

112. See *Comacho v. Texas Workforce Comm'n*, 408 F.3d 229 (5th Cir. 2005). Texas state law required welfare recipients to adhere to what it called "TANF Core activities," under which fell "job search and job readiness assistance" activities. *Id.* at 233. These included not selling, using or possessing illicit drugs, along with ensuring that their kids not only attend school regularly, but also get regular medical checkups, dental checkups, and immunizations. *Id.* at 234. A federal appeals court ruled that, while Texas did have some flexibility under the statute to define "work activities," its definition could not extend beyond the scope of the PRWORA, and that its TANF program could not use such infractions alone to deny benefits to welfare recipients. See *id.* at 236-37.

113. See 67 Fed. Reg. 67198 (Nov. 4, 2002).

families, children, individuals, and communities.”<sup>114</sup> TANF Administrators, who are ACF employees, are responsible for facilitating grants of TANF funds to states and ensuring that they are used in accordance with federal guidelines.<sup>115</sup>

Just because a state creates a program that adheres to TANF guidelines does not automatically mean that it is providing optimal assistance to those who need it. These programs are mainly tasked with getting people off welfare and back to work, the difficulty of which can be exacerbated by the fact that most of the people on welfare are single mothers<sup>116</sup> who lack sufficient education and skills to become successful in the job market.<sup>117</sup> These women face additional obstacles to supporting themselves and their children through full-time work, including difficulties in finding reliable child care, substance abuse and other health problems, a lack of reliable transportation, and few jobs for which they are qualified that pay much more than minimum wage.<sup>118</sup>

Because of such problems, social welfare agencies face an uphill battle in implementing successful TANF programs. The PRWORA requires that programs funded by TANF grants initially evaluate the skills of the welfare recipient, then create a personal responsibility plan outlining the services the person will need (education, training, and job placement) to move them off welfare and into the workforce.<sup>119</sup>

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114. OFFICE OF PUBLIC AFFAIRS, ADMINISTRATION FOR CHILDREN AND FAMILIES, DEPARTMENT OF HEALTH AND HUMAN SERVICES, FACT SHEET (Sept. 2004), [http://www.acf.hhs.gov/opa/fact\\_sheets/acf\\_factsheet.html](http://www.acf.hhs.gov/opa/fact_sheets/acf_factsheet.html).

115. Lucia Rojas Smith et al., *Welfare Reform and Women's Health: Challenges and Opportunities to Advance the Public Response to the Health Needs of Poor Women Through Monitoring and Collaboration*, in *THE TRANSITION FROM WELFARE TO WORK: PROCESSES, CHALLENGES, AND OUTCOMES* 133 (Sharon Telleen & Judith V. Sayad eds., 2002).

116. See Sharon Telleen & Steven Andes, *The Social Ecology of the Transition to Work*, in *THE TRANSITION FROM WELFARE TO WORK: PROCESSES, CHALLENGES, AND OUTCOMES* 14 (Sharon Telleen & Judith V. Sayad eds., 2002).

117. See *id.* at 23.

118. See ALVIN L. SCHORR, *WELFARE REFORM—FAILURES & REMEDIES* 31-32 (2001).

119. Irene Banias, *The Effects of Welfare-to-Work Legislation on Children and Mothers: A Legal Overview*, in *THE TRANSITION FROM WELFARE TO WORK:*



Agencies that operate welfare-to-work programs have used varying approaches to the challenges presented by TANF regulations and their clients. A common approach is to provide a brief training program that focuses primarily on teaching participants the skills required to do a specific job.<sup>120</sup> This approach meets the goal of quick entry into the workforce, but it is not necessarily effective in the long term, because even if the participants have learned the basic skills they need to do the job, they are often completely ill-equipped to retain those positions.<sup>121</sup> Specifically, they are often so unprepared to deal with the ancillary challenges of entering the workforce, their caseworkers must continue to provide long-term case management support,<sup>122</sup> which often makes client job retention a caseworker's most daunting challenge.<sup>123</sup>

Based on these factors, it seems clear that a TANF welfare-to-work program probably cannot be successful if it only provides a short job training course. Former welfare recipients appear to require continued support from caseworkers, an expensive and time-consuming proposition that involves a high level of commitment from agencies that run TANF programs.

Some early critics of the PRWORA believed that those who created the reforms did not take these challenges into account, complaining that any reforms mandating welfare-to-work programs and time limits on the receipt of benefits could not be successful because of the limited employability of former welfare recipients.<sup>124</sup>

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PROCESSES, CHALLENGES, AND OUTCOMES 10 (Sharon Telleen & Judith V. Sayad eds., 2002).

120. See Joseph R. Ferrari, et al., *Providing Financial Empowerment to Mothers on Welfare: Pilot Evaluations of a Hospitality Training Program*, in THE TRANSITION FROM WELFARE TO WORK: PROCESSES, CHALLENGES, AND OUTCOMES 97 (Sharon Telleen & Judith V. Sayad eds., 2002).

121. See Telleen & Andes, *supra* note 116, at 25, 34.

122. *Id.* at 28. Such challenges are mainly related to adjusting to basic aspects of life as a working person, including being supervised and evaluated by others, ensuring proper care of the person's family, and dealing with any mental or physical health problems that affect the person's ability to do the job effectively. See *id.* at 25, 34.

123. *Id.* at 25.

124. The Women's Alliance warned that "[w]elfare reform without job creation is just putting women and children in back alleys to die[.]" because restricting how long they can receive benefits will eventually force ineligible

Welfare and women's rights activists also complained that welfare reforms based on the Personal Responsibility Act<sup>125</sup> were not only paternalistic, but also cruel to the vast number of women who depended on the existing system for their survival.<sup>126</sup> The reforms' cruelty and misguidedness were common complaints from those who were unhappy about them.<sup>127</sup>

Still other critics focused on the effects of the reforms on women's rights, claiming that reforming welfare in such a way that prevents welfare recipients who have additional children from receiving additional benefits (known as a "family cap" policy) is a violation of women's reproductive rights<sup>128</sup> that may be

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recipients into a job market that is already saturated with unemployed people. Women's Alliance, *End Poverty as We Know It (Not Welfare!)*, RESIST (May/Jun. 1994), reprinted as *Welfare Reform Is a Mistake in WELFARE REFORM* 27-34 (Charles P. Cozic ed., 1997). Professor of Social Work Mimi Abramovitz had a problem with placing time limits on benefits eligibility as a method to motivate welfare recipients to work, since recipients often cannot get a job due to "lack of education and skills, illness, disability, or emotional problems." See Mimi Abramovitz, *Welfare and Women's Lives*, DEMOCRATIC LEFT (May/Jun. 1995), reprinted as *Welfare Reform Violates Women's Rights in WELFARE REFORM* 36 (Charles P. Cozic ed., 1997). The former Dean of New York University's School of Social Work, Alvin Schorr, saw similar problems—many welfare recipients, due to not finishing high school, having learning disabilities, or being illiterate, are not sufficiently educated to qualify for anything beyond "lower-tier" and "poorly paid" jobs. Schorr, *supra* note 118, at 31. Such recipients, according to Schorr, may have further trouble getting or keeping jobs due to a lack of reliable transportation or personal health problems. *Id.* at 32.

125. The Personal Responsibility Act outlined welfare reforms recommended by Republican Party in its 1994 Congressional campaign tool, the Contract With America. See *supra* note 102.

126. Welfare-rights activist Betty Reid Mandell believed that welfare reform effectively "[took] away the economic life-line of poor women and children" and would only serve to "make their lives vastly more miserable than they already are...." Betty Reid Mandell, *Shredding the Safety Net*, NEW POLITICS (Summer 1995), reprinted as *Poor Women and Children Need Welfare in WELFARE REFORM* 10, 12 (Charles P. Cozic ed., 1997).

127. Dean Schorr summed up TANF as follows: "TANF is a mean program, mean in design and meanly administered. It spreads pain and mischief and it will not achieve any decent national purpose at a reasonable social cost." Schorr, *supra* note 118, at x, 45.

128. The former co-chair of the Women's Committee of 100 (an advocacy group opposing punitive welfare reforms), believes that a "family cap" policy, which states can use to limit TANF benefits paid to support a child born to a

unconstitutional.<sup>129</sup>

While some believe that such reforms go too far, others feel they do not do enough to fix the system's inherent problems. A common argument from these critics is that the reforms do not do enough to end illegitimacy by encouraging marriage and the establishment of two-parent families.<sup>130</sup> While these critics do not always display the kindest sense of the true nature and needs of people on welfare,<sup>131</sup>

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welfare mother, "impairs reproductive rights because it punishes and deters a recipient's choice to complete a pregnancy." Gwendolyn Mink, *Violating Women: Rights Abuses in the Welfare Police State*, 577 ANNALS AM. ACAD. POL. & SOC. SCI. 79, 85-86 (2001). It has been suggested that legislators, based on their understanding of poor women's typical reproductive choices, consider "family cap" laws necessary because they punish poor women who "make reproductive decisions in an entrepreneurial profit-seeking manner." Anna Marie Smith, *The Sexual Regulation Dimension of Contemporary Welfare Law: A Fifty State Overview*, 8 MICH. J. GENDER & L. 121, 174 (2002).

129. Implementing a family cap policy may be unconstitutional because it "intrudes on poor mothers' fundamental constitutional rights to make decisions concerning intimate family matters, such as when to bear children." Susan L. Thomas, *"Ending Welfare as We Know It," or Farewell to the Rights of Women on Welfare? A Constitutional and Human Rights Analysis of the Personal Responsibility Act*, 78 U. DET. MERCY L. REV. 179, 195 (2001).

130. Conservatives complained that the problem with the Clinton Administration's original welfare reform proposal was that it failed to deal with illegitimacy. See Robert Rector, WELFARE REFORM, ISSUES '96: THE CANDIDATES BRIEFING BOOK (The Heritage Foundation, 1996), reprinted as *Welfare Reform is Necessary*, in WELFARE REFORM 45-46 (Charles P. Cozic ed., 1997). Specifically, Clinton's proposal did not "address persistent problems of additional out-of-wedlock births among women" currently on welfare. *Id.* at 46. According to Rector, the pre-reform welfare system had the opposite effect; by giving single mothers money and not requiring them to work, it effectively "block[ed] the formation of intact two-parent families." *Id.* at 61.

131. Some conservative critics have clear contempt for welfare recipients and the system itself: "[t]he actual number of individuals languishing our welfare rolls as squalid dependents...[is] nearly 20 million souls in all," basically amounting to "human wreckage." Karl Zinsmeister, *Chance of a Lifetime*, AMERICAN ENTERPRISE (Jan./Feb. 1995), reprinted as *Welfare Reform Should Emphasize Family Unity*, in WELFARE REFORM 81-82 (Charles P. Cozic ed., 1997). Zinsmeister's solution to this problem was to establish "cultural and economic encouragements to keep parents together in peaceful, intact homes." *Id.* at 84. However, Zinsmeister undermines his own argument by citing the following statistics: 40% of welfare mothers are "serious drug abusers," many of whom are "miserably educated" and have "deep emotional problems" and "few basic disciplines." *Id.* at 83.

there is historical<sup>132</sup> and statistical<sup>133</sup> support for their belief that families headed by single mothers have a higher likelihood of being forced to rely on social welfare benefits.

There are still other critics who wonder why we even have a welfare system at all, and believe that rather than trying to reform it through programs like TANF, it should just be eliminated instead.<sup>134</sup>

Making reforms to a social welfare system is a sensitive, difficult, and politically-charged task for any government to undertake, as evidenced by the strong and sometimes emotional reactions to the passage of PRWORA in 1996. Regardless of how people felt about them, however, the PRWORA and its system of TANF grants became, and still is, the mechanism by which federal money was distributed as welfare benefits to needy Americans.

*B. Welfare Reform In Germany—  
The Agenda 2010 Labor Market Reforms*

Beginning in 2003, German Chancellor Gerhard Schröder and the German government began implementing a series of labor market reforms that were primarily intended to eliminate problems associated with the country's high unemployment rate. These reforms had a profound impact on one element of Germany's social

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132. Schlabach, *supra* note 10. A study conducted on recipients of social welfare assistance from private charities in 1906 and 1907 showed that one-third of the families included children being raised by a single mother. *Id.* Of course, widowhood was much more prevalent at that time than either divorce or single motherhood. *Id.*

133. A U.S. Census Bureau report outlining changes in the poverty rate between 1996 and 1999 indicated that people in a family headed by a single female were more likely to be under the poverty line than those in families headed by a married couple. JOHN ICELAND, U.S. CENSUS BUREAU, DYNAMICS OF ECONOMIC WELL-BEING: POVERTY 1996-1999 3 (Jul. 2003), *available at* <http://www.census.gov/prod/2003pubs/p70-91.pdf>.

134. Michael Tanner, Director for Health and Welfare Studies for the Cato Institute, concludes that we must "recognize that welfare cannot be reformed. It should be ended. There may be relatively little that can be done for people already on welfare. The key issue is to avoid bringing more people into the cycle of welfare, ...[which can only be done by] abolish[ing the] programs." Michael Tanner, *Ending Welfare as We Know It*, USA TODAY MAGAZINE (Mar. 1995), *reprinted as Welfare Should be Eliminated*, in WELFARE REFORM 92-93 (Charles P. Cozic ed., 1997).

welfare system—the payment of benefits to the long-term unemployed.

Until January 1, 2005,<sup>135</sup> Germany's social welfare insurance system featured three separate types of benefits: unemployment insurance (*Arbeitslosengeld*), assistance to the unemployed (*Arbeitslosenhilfe*), and social welfare (*Sozialhilfe*).<sup>136</sup>

German *Arbeitslosengeld* (literally translated, “unemployment money”) is similar to the unemployment insurance provided by the Social Security Administration in the United States. In Germany, employers and employees pay into the *Arbeitslosengeld* system, which then pays out benefits to workers when they become unemployed.<sup>137</sup> The length of time that an unemployed worker can receive *Arbeitslosengeld* varies, depending on how long the worker has been eligible to work, and can last from six to thirty-two months.<sup>138</sup> Payment amounts under the *Arbeitslosengeld* system vary from 60% to 67% of the wages earned in the previous job.<sup>139</sup>

Unlike *Arbeitslosengeld*, the German system of providing extended and indefinite financial assistance to the unemployed, *Arbeitslosenhilfe*, was funded by federal tax money. Under this program, the German government provided *Arbeitslosenhilfe* payments, valued at 53% to 57% of the previous income, to the long-

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135. The labor market reforms that changed the social welfare benefit payment system, recommended by the Hartz Commission, went into effect on January 1, 2005. See *infra* note 175 and accompanying text.

136. ARD News Service, *Arbeitsmarktreform [Labor Market Reform]*, ARD-MITTASGMAGAZINE SPECIAL REPORT (Aug. 5, 2004), available at <http://www.br-online.de/politik-wirtschaft/mittagsmagazin/dynamisch/specials/Arbeitslosenhilfereform/Arbeitslosenhilfereform.htm> [hereinafter *ARD*].

137. *Id.*

138. *Id.* The original *Arbeitslosengeld* (federal unemployment insurance system) was not affected by the *Agenda 2010* labor market reforms, except that benefits paid out under it are now called *Arbeitslosengeld I*. *Id.* German workers who become unemployed are still entitled to receive *Arbeitslosengeld I* payments depending on how long they were employed and whether they contributed to the federal social security system. BBMFI Manual, *supra* note 40, at 123, 129. The *Agenda 2010* reforms affect the benefits an unemployed person can receive after the expiration of his or her eligibility to receive *Arbeitslosengeld I* payments. See *infra* note 176 and accompanying text.

139. ARD, *supra* note 136.

term unemployed whose eligibility for *Arbeitslosengeld* payments had expired.<sup>140</sup>

The Employment Offices of Germany's Federal Employment Agency (*Arbeitsämter der Bundesanstalt für Arbeit*) were responsible for paying out both *Arbeitslosengeld* and *Arbeitslosenhilfe* benefits to the unemployed people.<sup>141</sup> Workers in these offices spent a lot of time calculating *Arbeitslosenhilfe* benefits for the long-term unemployed (because they were based on certain percentages of the former income), leaving them less time to help these people find jobs.<sup>142</sup>

The federal government knew that paying out *Arbeitslosenhilfe* benefits to the long-term unemployed was causing an unbearable financial strain on the country, and it realized that *Arbeitslosenhilfe* benefits were so generous that those who were receiving them lacked motivation to give them up to take lower-paying jobs.<sup>143</sup> It concluded, therefore, that the current system of indefinite and generous *Arbeitslosenhilfe* benefits was unsustainable.

In coming up with a solution to this problem, government officials reasoned that consolidating the benefits available to the long-term unemployed into a single (lower) monthly payment would not only motivate those who could work to find a job, but would also increase federal and municipal monetary resources that could be used to expand and improve job programs.<sup>144</sup> Accordingly, it decided to create a new system of benefits for the long-term unemployed, which would be based on the current system of social welfare benefits, which were calculated differently.

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140. *Id.* Under the *Agenda 2010* reforms, the *Arbeitslosenhilfe* program has been eliminated, and the long-term unemployed now receive *Arbeitslosengeld II*, which consists of a fixed-term monthly amount, rather than a percentage of the former income. See *infra* note 176 and accompanying text.

141. ARD, *supra* note 136.

142. See *The Economist*—Here are the Ideas, *supra* note 39, at 43.

143. See *id.*

144. This type of “downward ladder” policy reflects the theory of social risk management that advocates, rather than the eliminating all poverty through an indefinite and generous system of government handouts, viewing some types of poverty as socially acceptable because those who face it will be scared enough of it to figure out a way to work. See Leisering & Leibfried, *supra* note 31, at 34.

People who were *unable* to work due to health problems were entitled to receive *Sozialhilfe* (social welfare) benefits.<sup>145</sup> The *Sozialhilfe* system was administered not by the federal government, but by local municipal governments,<sup>146</sup> which were free to adjust the flat-rate payment according to the recipient's potential income, the value of the assets owned by the recipient and his or her spouse or partner, and the number of family members in the household.<sup>147</sup>

The federal government determined that it would pay long-term unemployment benefits, but that they would resemble *Sozialhilfe* (a flat-rate payment that could be adjusted based on the availability of other resources to the recipient).<sup>148</sup> This idea became one of the main elements of the *Agenda 2010* labor market reforms.<sup>149</sup> Starting in January 2003, the German government began implementing a series of laws recommended by the Hartz Commission,<sup>150</sup> whose chief aim was to provide a regulatory structure for those reforms.<sup>151</sup>

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145. ARD, *supra* note 136.

146. The federal government, in an effort to limit the amount of benefits it paid out under its unemployment benefits programs (and balance the social welfare burdens borne by the federal and state governments), often tried to transfer recipients of *Arbeitslosenhilfe* to the local governments' *Sozialhilfe* rolls. Leisering & Leibfried, *supra* note 31, at 32.

147. ARD, *supra* note 136.

148. See The Economist—Here are the Ideas, *supra* note 39, at 43.

149. *Agenda 2010* represents a broad package of reforms implemented by the German government which are intended to restore Germany's economy to its former position as one of the world's top economies by the year 2010. *Agenda 2010 Questions and Answers*, *supra* note 64, at 4. While reforming the system of benefits for the long-term unemployed is a critical element, it is just one part of this package of reforms, which also includes substantial federal tax cuts, along with changes to the administrative infrastructure of federal employment agencies and a program of incentives for people who choose to start their own businesses. *Id.*

150. The Hartz Commission, created by the German government, was comprised of government-appointed labor market experts and led by Dr. Peter Hartz, who was at the time the Director of Human Resources for the German automobile manufacturer Volkswagen AG. See *Agenda 2010 Questions and Answers*, *supra* note 64, at 20. Dr. Hartz resigned from Volkswagen AG on July 8, 2005 after being accused of wrongdoing in a corporate corruption and sexual misconduct scandal. Luke Harding, *Schröder Adviser Resigns from VW in Sex Scandal*, THE GUARDIAN (U.K.) (Jul. 9, 2005), <http://www.guardian.co.uk/germany/article/0,2763,1524805,00.html>.

151. *Agenda 2010 Questions and Answers*, *supra* note 64, at 20.

The Hartz Commission came up with four separate laws: Hartz I and II reformed certain regulatory aspects of the job market, Hartz I and III changed the administrative structure of the country's federal employment agencies, and Hartz IV introduced a new calculation method for federal unemployment benefits paid to the long-term unemployed.

Hartz I came into effect on January 1, 2003.<sup>152</sup> It reformed the job placement activities of government-run employment agencies, requiring each to set up a separate Personnel Service Agencies (*Personal-Service-Agentur*).<sup>153</sup> Each Personal Service Agency would be responsible for "employ[ing] people who are out of work" and placing them in temporary positions with outside companies.<sup>154</sup> Under the law, the goal of Personal Service Agencies is not providing companies with temporary workers, but providing temporary workers with the opportunity to pursue permanent employment with the companies in which they are placed ("*vermittlungorientierte Leiharbeit*," or "temporary work oriented toward job placement").<sup>155</sup> The law further mandates that Personal Service Agency clients ("employees") be provided with vocational training opportunities if temporary jobs with companies are not available.<sup>156</sup>

Hartz I also created a federal program that provided financial support to unemployed people who establish their own small businesses.<sup>157</sup> The program provides non-taxable monthly subsidies to each small business owner until his or her business achieves a

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152. BRUNO KALTENBORN ET AL., HARTZ-EVALUIERUNG: AUSGANGSLAGE, ERSTER ZWISCHENBERICHT [HARTZ-EVALUATION: INITIAL POSITION, FIRST INTERIM REPORT] 12 (Dec. 2004), available at <http://www.bmas.bund.de/BMAS/Redaktion/Pdf/Publikationen/hartz-evaluierung-ausgangslage,property=pdf,bereich=bmas,sprache=de,rwb=true.pdf>. Kaltenborn led a Berlin-based research team that was commissioned by Germany's Federal Ministry for Economy and Employment (*Bundesministerium für Wirtschaft und Arbeit*) to conduct a study on the Hartz reforms and their effects. *Id.* at 1, 9-10.

153. *Id.* at 12.

154. Agenda 2010 Questions and Answers, *supra* note 64, at 12.

155. *See id.* *See also* Kaltenborn, *supra* note 152, at 29.

156. Agenda 2010 Questions and Answers, *supra* note 64, at 12.

157. *Id.* The program came to be known as the "*Ich-AG*" program, which translates to "Me, Inc." in American English. *See id.*



€25,000 annual profit.<sup>158</sup> Many Germans took advantage of this program—in September 2004 alone, 164,000 people created their own companies.<sup>159</sup>

Hartz II, which went into effect on April 1, 2003, expanded the government's existing "Mini-Job" program ("*Geringfügige Beschäftigung*").<sup>160</sup> Under the new law, for jobs paying €400 or less per month,<sup>161</sup> the employee is not required to pay taxes on his or her wages, even if the mini-job represents a second job for someone who is already working full-time elsewhere.<sup>162</sup> This program provides important benefits to employers to encourage creation of these jobs. First, employers are only required to pay 25% of the employee's wages into the federal social security system.<sup>163</sup> The job creation process is also drastically simplified: employers have greater flexibility in establishing working hours and can take advantage of a "straightforward administrative reporting process" when registering these jobs with the federal government.<sup>164</sup>

Hartz III reformed the administrative infrastructure of the federal agencies that provide social welfare and unemployment assistance and benefits. On January 1, 2004, what been known as the Federal Labor Office (*Arbeitsamt*) became the Federal Job Agency (*Agentur für Arbeit*).<sup>165</sup> According to the Hartz Commission's reasoning, this oversized and ineffective agency needed to be overhauled because it

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158. *Id.* Participants receive €600 a month for the first year running the business, €360 for the second year, and €240 for the third year. *Id.* The federal Employment Agency is responsible for paying out these grants. *Id.*

159. Kaltenborn, *supra* note 152, at 29.

160. *Id.* at 12. See also DEUTSCHE BUNDESBANK [FEDERAL BANK OF GERMANY], MONTHLY REPORT (Feb. 2005), [http://www.bundesbank.de/download/volkswirtschaft/mba/2005/200502mba\\_en\\_economic.pdf](http://www.bundesbank.de/download/volkswirtschaft/mba/2005/200502mba_en_economic.pdf) [hereinafter *Bundesbank February 2005 Report*].

161. This represents an increase from the previous maximum allowable amount, €325 per month. Bundesbank February 2005 Report, *supra* note 160, at 38.

162. *Id.*

163. *Id.*

164. *Id.*

165. Drittes Gesetz für Moderne Dienstleistung am Arbeitsmarkt [Third Law for Modern Service to the Labor Market] (Hartz III) Art. 1 § 5(a) (2003).

was at least partially responsible for Germany's labor market and unemployment problems.<sup>166</sup>

Under Hartz III, each local Job Agency<sup>167</sup> includes both a social services office and an unemployment office, the combination of which in a single location is intended to streamline the bureaucratic process involved in providing services<sup>168</sup> to companies seeking to hire workers and to the public at large.<sup>169</sup> Since social welfare and unemployment offices had been separate in the past, combining them to create a single agency presented unique problems. Each agency type inherently focuses on different client needs and goals, which affects how data is collected from clients, how it is electronically stored and accessed, and how it is used by agency employees to provide optimal assistance to clients.<sup>170</sup>

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166. See *Europe: A Plan to Put Germans Back Into Jobs; Germany's Labour-Market Reforms*, THE ECONOMIST, Aug. 24, 2002 at 33 [hereinafter *The Economist—Germans Back Into Jobs*]. At the time the Hartz Commission conducted its investigation, this agency employed at least 90,000 people and had a budget of €54 million per year. *Id.* The agency was also providing greatly inflated figures regarding its success in placing people in jobs. Where it claimed a 60% placement rate, the Hartz Commission discovered it was really closer to 20%. The Economist—Here are the Ideas, *supra* note 39, at 33.

167. A local Job Agency is also known as an "Agentur für Arbeit," or colloquially in German as a "Jobcenter." See Sigrid Weise, *Die Hartz-Reformen III und IV—"Fördern und Fordern,"* DIE ZEIT ONLINE DOSSIER (Oct. 23, 2003), [http://www.zeit.de/2003/44/Hartz\\_Kasten?page=all](http://www.zeit.de/2003/44/Hartz_Kasten?page=all).

168. *Id.* Under the pre-Hartz III system, those offices were in separate locations and did not readily communicate with each other, creating a complicated bureaucratic process for those unemployed people who sought benefits. See *id.*

169. BBMFI Manual, *supra* note 40, at 113. Each job center is responsible for placing employees in employment and apprenticeship positions as well as providing practical advice and job training. *Id.* Anyone is eligible to utilize the services of a government job center, regardless of whether he or she has made payments into the federal social security system. *Id.*

170. See *Hartz and Minds*, THE ECONOMIST, Jan. 1, 2005 at 26. Merging these two agencies caused a kind of culture clash. While social welfare agencies focus on paying benefits, unemployment agencies focus on helping clients find work. *Id.* It causes further problems when so many clients with so many different needs are placed together into one system and the agency is forced to follow regulations that focus on getting as many of them working as possible. See *id.* Clients had to fill out lengthy questionnaires, the data from which the agencies needed to determine which types of benefits those clients were eligible for under the new system. *Id.* Accordingly, a new computer system had to be created that could handle such a large amount of data, the implementation of which was problematic and included

However, proponents of Hartz III focused not on the challenge of creating the combined-agency system, but on the system's post-combination benefits. Operating under its new key concept, "Job Placement Instead of Administration" ("*Vermitteln statt Verwalten*"),<sup>171</sup> the main goal of the newly-combined agencies is to provide much more efficient service to unemployed clients, including shorter waiting times, faster response to basic client requests, expansion of the services available over the telephone, and fewer cases per case manager.<sup>172</sup> This new system allows case managers to have increased contact with their unemployed clients, allowing them to more easily determine their clients' skills, strengths, and weaknesses. This better allows case managers to facilitate more effective job placement for both job seekers and the employers themselves.<sup>173</sup>

Hartz III was a necessary preparatory precursor to Hartz IV, which went into effect on January 1, 2005. Hartz IV established a new benefit payment system for those people who it considers to be the long-term unemployed—people who are (1) between the ages of fifteen and sixty-five, (2) capable of being employed, (3) in need of assistance, and (4) living in Germany.<sup>174</sup>

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numerous system crashes because there was no time to test it properly and because the central server could not handle the high volume of data entry and access. *See id.*

171. BUNDESMINISTERIUM FÜR WIRTSCHAFT UND ARBEIT [FEDERAL MINISTRY FOR ECONOMICS AND EMPLOYMENT], HARTZ IV—MENSCHEN IN ARBEIT BRINGEN [HARTZ IV—GETTING PEOPLE WORKING] 30 (June 2005) [hereinafter *BMWA—Hartz IV*].

172. Marc Beise, *Hartz Lexicon—Hartz III*, SÜDDEUTSCHEZEITUNG ONLINE (Aug. 14, 2004), <http://www.sueddeutsche.de/jobkarriere/erfolgsgeld/schwerpunkt/495/37458/1/index.html/wirtschaft/artikel/177/37140/article.html>. *See also* Weise, *supra* note 167; BMWA—Hartz IV, *supra* note 171, at 33-34. Hartz III reduced the number of cases each case manager is responsible for from up to 800 to only seventy-five. *Id.* It also provided financial incentives for case managers who were effective in helping people find jobs. The Economist—Germans Back Into Jobs, *supra* note 166, at 33.

173. *See also* BMWA—Hartz IV, *supra* note 171, at 33-34.

174. Sozialgesetzbuch [SGB] Zweites Buch [II] – Grundsicherung für Arbeitsuchende [Social Insurance Code II – Unemployment Insurance] Dec. 24, 2003, § 7, ¶ 1. "Capable of being employed" ("*erwerbsfähig*") means that the person is not unable to work for the foreseeable future because of illness or

Under the Hartz IV regulations, during the initial period of unemployment, the person receives unemployment insurance payments (*Arbeitslosengeld I*), which are similar to unemployment insurance payments known as *Arbeitslosengeld* under the previous system.<sup>175</sup> However, after this period has passed, those who are still without work instead receive a single monthly payment, known as “Unemployment Money II” (*Arbeitslosengeld II*), rather than any combination of benefits available under the old system.<sup>176</sup>

Hartz IV does not eliminate social welfare benefits (*Sozialhilfe*)—it only limits their availability to people who cannot hold a job due to age or disability and makes them unavailable to the long-term unemployed.

The monthly benefit paid to *Arbeitslosengeld II* recipients is the same fixed monthly amount that *Sozialhilfe* recipients receive: Germans who live in the former West Germany receive €345 per month, while those in the former East Germany receive €331 per month.<sup>177</sup> In addition, recipients are also legally entitled to receive enough money to cover “reasonable” (“*angemessen*”) heating costs and rent.<sup>178</sup>

Since the main principle of Hartz IV is “sanction and support” (“*Fordern und Fördern*”),<sup>179</sup> Hartz IV includes strict regulations that

disability, and can generally work for at least three hours per day. *Id.* § 8 ¶ 1. “In need of assistance” (“*hilfebedürftig*”) describes people who, by their own means alone, cannot sufficiently support themselves and their dependents, and who cannot receive financial assistance from other sources. *Id.* § 9 ¶ 1.

175. See *supra* note 137 and accompanying text. To qualify for *Arbeitslosengeld I* after the Hartz IV reforms, the unemployed person must have been working for at least twelve months during the three years prior to the loss of employment, and must have made contributions into the federal social security system. BBMF Manual, *supra* note 40, at 123, 129. Failing to register with the local employment agency (*Agentur für Arbeit*) after becoming unemployed may cause a forfeiture of benefits. *Id.*

176. See *supra* note 145 and accompanying text.

177. Sozialgesetzbuch [SGB] Zweites Buch [II] – Grundsicherung für Arbeitsuchende [Social Insurance Code II – Unemployment Insurance] Dec. 24, 2003, § 20, ¶ 2.

178. *Id.* § 22, ¶ 1.

179. See BMWA—Hartz IV, *supra* note 171, at 26. “Sanction and support” is a very important concept of the Hartz reforms because it meets two main goals—making sure that unemployed people have not only more opportunities, but also more responsibility. *Id.*

reduce the level of benefits *Arbeitslosengeld II* recipients are eligible to receive if they do not accept the support they are offered. For example, if a recipient of *Arbeitslosengeld II* refuses to accept a “reasonable” (*zumutbar*) employment position (including a mini-job<sup>180</sup>), then the person’s benefits are reduced by 30%.<sup>181</sup>

Hartz IV is also intended to foster a shift from reliance on the state to reliance on one’s personal support network. Accordingly, the income of the recipient’s spouse is considered in determining the amount of *Arbeitslosengeld II* benefits for which the unemployed person qualifies.<sup>182</sup>

Reaction to the Hartz reforms, and in particular to the creation of the *Arbeitslosengeld II* payments scheme, has been widely negative.<sup>183</sup> Many Germans took pride in the fact that their social welfare system provided such generous benefits to those people who were unlucky enough to find themselves unemployed,<sup>184</sup> and have found it difficult to see those benefits reduced so drastically, knowing that so many people would struggle just to get by.<sup>185</sup> Particularly in

180. See *supra* note 160 and accompanying text.

181. Sozialgesetzbuch [SGB] Zweites Buch [II] – Grundsicherung für Arbeitsuchende [Social Insurance Code II – Unemployment Insurance] Dec. 24, 2003, § 31, ¶ 1. See also Weise, *supra* note 167.

182. Weise, *supra* note 167.

183. See generally Tim Weber, *German Unemployment Weighs on Voters*, BBC NEWS ONLINE, Sept. 16, 2005, <http://news.bbc.co.uk/1/hi/business/4248034.stm>.

184. Studies have shown that Europeans generally believe that people are poor because they are unfortunate victims of society-wide problems, and are therefore deserving of social assistance. See Alberto Alesina et al., *Why Doesn't The U.S. Have A European-Style Welfare State?* 34 (Harvard Institute for Economic Research, Discussion Paper No. 1933, Nov. 2001), available at <http://post.economics.harvard.edu/hier/2001papers/HIER1933.pdf>.

185. Social Science students at Humboldt University in Berlin conducted an experiment to see what it was like to live on just €345 per month, the *Arbeitslosengeld II* benefit paid to the long term unemployed under Hartz IV. See Nicola Holzapfel, *Die Hartz-IV-Simulanten [The Hartz IV Simulators]*, SÜDDEUTSCHE ZEITUNG ONLINE (Dec. 9, 2005), <http://www.sueddeutsche.de/jkl4/jobkarriere/berufstudium/artikel/901/65836/>. The students found that they had little, if any, money left at the end of the month. *Id.* They had difficulties covering the cost of public transportation, and found that they did not have enough money to buy winter clothes or to join their friends for social outings. *Id.* By the end of the experiment, the students had a keen

East Germany, where under Communism the government ensured that everyone had a job, dismay over the reduced benefits is combined with anger that the government is not doing more to ensure that there are enough jobs available for everyone to earn a living.<sup>186</sup>

Economists have also taken a dim view of the reforms. A number of Germany's leading economic think tanks collaborated to conduct a study on the Hartz reforms, producing a report that totaled over 1,000 pages.<sup>187</sup> The study did find that certain elements of the Hartz reforms were successful, such as the "*Ich-AG*" small business subsidy program,<sup>188</sup> which was seen as a positive way to help people avoid returning to the welfare rolls.<sup>189</sup> The expansion of the mini-job program<sup>190</sup> was given mixed marks in the report. While it boosted job creation, significant doubts were raised as to whether the program was meeting its goal of integrating the unemployed into the regular workforce, since it appeared that mini-jobs rarely become permanent.<sup>191</sup> Other aspects of the reforms failed to meet expectations altogether, such as the Personal Service Agencies,<sup>192</sup> which were found to add, on average, an additional month to the duration of one's unemployment status.<sup>193</sup>

The Hartz reforms had a critical impact on the September 2005 Parliamentary elections in Germany. Chancellor Schröder's Social Democrat Party (SPD) lost their Parliamentary majority, forcing

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understanding of just how much an *Arbeitslosengeld II* recipient had to struggle just to make ends meet every month. *See id.*

186. *See It's Those People, All Over Again*, THE ECONOMIST 29, Aug. 14, 2004. This dissatisfaction manifested itself in numerous public protests against the Hartz reforms that took place throughout eastern Germany during the summer of 2004. *See id.* *See also* Hardy Graupner, *East Germans Vent Anger at Social Cuts*, DEUTSCHE WELLE NEWS SERVICE (August 10, 2004), <http://www.dw-world.de/dw/article/0,,1294031,00.html>.

187. Olaf Storbeck & Klaus Stratmann, *Die Hartz-Reformen Verpuffen* [*The Hartz Reforms Fall Flat*], HANDELSBLATT ONLINE (Dec. 27, 2005), <http://www.handelsblatt.com/pshb?fn=tt&sfn=go&id=1161953>.

188. *See supra* note 157 and accompanying text.

189. Storbeck & Stratmann, *supra* note 187.

190. *See supra* note 160 and accompanying text.

191. Storbeck & Stratmann, *supra* note 187.

192. *See supra* note 153 and accompanying text.

193. Storbeck & Stratmann, *supra* note 187.

Chancellor Schröder out of office.<sup>194</sup> He was replaced by Angela Merkel, a member of the “center-right” Christian Democratic Union (CDU), who leads a parliamentary “Grand Coalition” between the Christian Democrats and the Social Democrats.<sup>195</sup>

It is not clear what the future holds for these reforms now that their chief champion, Schröder, is no longer in charge of the federal government. What is clear, however, is that Chancellor Merkel has inherited two large problems: not only mass unemployment itself, but also everyday Germans’ general dissatisfaction with the government’s efforts in dealing with it.<sup>196</sup>

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194. When Schröder was elected German chancellor in 1998, he told the electorate that if a Schröder-led government could not reduce the number of unemployed Germans to below 3.5 million, then the German people had no business re-electing it. *Exit Schröder, Enter Merkel?*, THE ECONOMIST, May 26, 2005. Unfortunately, he did not introduce the first of the Hartz labor market reforms until 2003, and by the time the election was held in 2005 there were still around five million unemployed in Germany. *Id.* German voters apparently took him at his word, handing a defeat (albeit an extremely narrow one) to Schröder’s Social Democrat party in the 2005 Parliamentary elections, giving a very slight Parliamentary majority to the opposition Christian Democrats. *See German Politics—A Difficult Pairing, an Uncertain Outcome*, THE ECONOMIST 51, Oct. 15, 2005.

195. *German Politics—One Last Shot*, THE ECONOMIST 53, Nov. 17 2005. This coalition represents “the first left-right alliance in 36 years.” *Id.* Chancellor Merkel has high hopes for this coalition, seeing it as a “full marriage” (“*erfüllte Eheleben*”) that, in her view, will be able to work together to successfully reform health insurance, the tax code, and the labor market. Lorenz Wolf-Doettinchem, *Der Aufschwung Kommt [The Upswing is Coming]*, STERN, Mar. 30, 2006, at 42.

196. Despite these problems, Germans seem willing to give Chancellor Merkel a fair chance—during her first few months in office, Chancellor Merkel earned high approval ratings from the German public (although during that time she dealt primarily with international affairs issues). Andrew Purvis, *Land of Smiles*, TIME (INTERNATIONAL EDITION), Apr. 10, 2006, at 28. Her style of governing, in contrast with that of her predecessor, has won her points among the German public. She is viewed as an analytical leader who shuns the spotlight and insists on open channels of communication with her staff members and fellow politicians. *Id.* at 30. It is clear that she will need the approval that she has earned from her fellow citizens, as she soon will have to deal with the more difficult (and urgent) issues facing the country, such as implementing health care and labor reforms. *See id.* at 28, 30.

III. COMPARATIVE ANALYSIS—PRWORA V. *AGENDA 2010*

Although Germany and the United States had completely different reasons for reforming their social welfare systems (Germany's was based more on economics,<sup>197</sup> whereas in the United States it was in response to social and political issues<sup>198</sup>), in the end they shared a common goal: both countries wanted to get as many people who could work as possible into the workforce and off public assistance, and both countries sought to do so by reducing the amount of social welfare benefits to which those people are entitled. In both Germany and the United States, social welfare reform was used as a means to fix significant problems related to failed social and economic policies, thereby placing the brunt of the burden of repairing these failures on society's neediest citizens.

Any society-wide success related to reforms such as these would undoubtedly come with a price: a permanent poverty class comprised of those who could not adjust to the changes.<sup>199</sup> While the existence of such a class might be more acceptable in the United States than in Germany,<sup>200</sup> the fact remains that, in such a system, there will probably always be have-nots.

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197. See *supra* note 64 and accompanying text.

198. See *Part III-A*.

199. See Leisering & Leibfried, *supra* note 31, at 34. Limiting the amount of benefits that can be received or the length of time a person is eligible to receive them creates a fear of poverty that may encourage someone to get it together and find a job. See *id.* However, the consequence of poverty is always real, making poverty a useful element of the system or a "normali[z]ed social condition." *Id.* at 34, 48.

200. The whole idea of a permanent poverty class may be more acceptable in the United States than in Germany because it has been shown that attitudes toward the poor differ between the United States and Europe. See Alesina, *supra* note 184, at 34-38. While Europeans generally believe that the poor are unlucky, Americans in general feel that anyone can work their way out of poverty and those who have not done so are lazy. *Id.* at 34. It is believed that the American sentiment is influenced by factors such as the importance of hard work in American society. See *id.* at 34. Racism may also play a role: in certain segments of society, the idea that racial minorities are taking disproportionate advantage of social welfare benefits has led to a favorable view of reducing social welfare programs. See *id.* at 39.



Both countries had sustained social welfare systems for decades, expanding and adapting them with the changing times,<sup>201</sup> and both countries obviously put a lot of work and thought into their respective reforms. However, it seems clear that, in both Germany and the United States, government leaders were looking at social welfare reforms as a mechanism to quickly fix other types of problems that had been evolving over many years, and that they did not necessarily come up with a holistic solution that went far enough toward eliminating those problems at their roots. Specifically, it seems that both countries missed a golden opportunity to reduce the potential that its citizens would wind up jobless and impoverished, because neither set of reforms included significant changes to the current education system.<sup>202</sup> The money saved by cutting social welfare benefits is certainly well-spent if it provides more effective employment services. However, people who depend on social welfare benefits to survive are often those who lack sufficient education to find a decent job. Had some of that money been used to improve schools and services for young people, it would have gone a long way toward ensuring that future generations would see fewer people relying on public assistance, out of work, and living in poverty.

Germany can certainly benefit from examining the experience in the United States. It has been shown that people who are used to living on government benefits have a hard time adjusting to life as a working person, and that they will need continuous support.<sup>203</sup> It is

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201. See Parts II-A and II-B.

202. While the lack of equal educational opportunities exist in both countries, this problem is more pronounced in Germany. Germany's education system features a three-track system, in which it is determined at a young age what type of high school the student will attend—a university-prep high school (a *Gymnasium*, from which a student receives an *Abitur* certificate), a high school that offers training for skilled laborers (*Realschule*), or a high school that only offers a basic completion certificate (*Hauptschule*). See Ardaugh, *supra* note 29, at 237. There is significant social divisiveness within this system, which has more recently manifested itself in the fact that many children of immigrants end up in the lowest-level *Hauptschule*, which is seen to lead to nothing but a bleak future of poverty and joblessness. Katrin Benhold, *In Germany, Immigrants Face a Tough Road*, INTERNATIONAL HERALD TRIBUNE ONLINE (Dec. 25, 2005), <http://www.ihl.com/articles/2005/12/25/news/islam8.php>. In fact one Turkish *Hauptschule* student summed up his future in two words: “Hartz IV.” *Id.*

203. See *supra* note 122 and accompanying text.

encouraging that one of the main goals in the Hartz III reforms was to reduce the number of cases per caseworker in the unemployment offices, and that caseworkers receive financial incentives for helping people find work.<sup>204</sup> However, there should also be some type of system that rewards the hard work involved in helping clients keep their jobs, which experienced caseworkers in the United States consider to be an exceedingly difficult task.<sup>205</sup>

#### IV. CONCLUSION

Overall, it cannot be a bad thing to pursue a goal of moving people off public assistance and into the workforce. However, if there are no jobs to move them into, or if the jobs don't pay enough to raise them out of poverty, welfare-to-work reforms might do more harm than good to society's most vulnerable citizens.

In reforming social welfare programs, it is important for the government to be mindful of the reason those programs are there in the first place: to provide assistance to some for the benefit of society as a whole.

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204. *See supra* note 171.

205. *See supra* note 123 and accompanying text.

