INDIVIDUALISATION AND PERSONAL OBLIGATIONS – SOCIAL POLICY, FAMILY POLICY, AND LAW REFORM IN GERMANY AND THE UK

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ABSTRACT

This article examines recent reform in law and social policy in Germany and the UK, identifying and comparing developments from a family and gender perspective. The utility of the concept of individualisation to understand the reforms is put under the spotlight by an analysis that explores the relationship between individualisation and institutions regulating personal obligations to care for and maintain others. The article offers a number of arguments around change. The first is that individualisation has to be understood in a complex way. It does not do away with obligations towards family members or partners but rather reforms them. Secondly, policy and legal changes in Germany and the UK indicate that there are different individualisation processes – individualisation as a worker (decoupling the abstract individual from care obligations and family bonds) and individualisation as a person within a family or partnership with obligations to care for or to support others. Thirdly, these two forms of individualisation are happening contemporaneously and interact. This interaction is mostly overlooked in social policy analysis.

INTRODUCTION

Individualisation is widely used in the analysis of contemporary social change. Sociological research shows that there are fundamental shifts underway and that a reorganisation of intimacy and familial roles and relationships is central to social transformation. It has been suggested that the trends lean in the direction of increasing individualisation whereby people become more independent and autonomous, of family bonds especially, and growing diversity of relationship practices (Beck and Beck-Gernsheim, 2002; Giddens, 1992). A key issue is how, and indeed if, the state links into this process. This question is important for several reasons. In the first instance, it serves to reveal some of the
origins of contemporary change, including change in the nature of state organisation itself. It is, secondly, revealing of the direction of change. While there is general acceptance that the male breadwinner model is the past that welfare states are moving away from, there is no agreement about the emerging model of family and gender relations that is taking its place.

Welfare states have long been important actors in social and family life. While they vary in the degree to which they focus explicitly on the family, states have typically sought to secure family functioning, reproduction, and care provision against destructive tendencies of the market (Daly, 2000). The growth and development of the welfare state itself could be seen as countering ‘pure’ individualisation processes – a function of state intervention epitomised historically, by such diverse measures as the ban on child labour, regulation of working time, the development of social security for workers, and the granting of entitlements to those who provide care. Family law is a complementary part of such state intervention, intended to institutionalise mutual obligations and rights within couples and between family members and to cover some risks of those who face disadvantages in earning an income (typically women) (Scheiwe, 2007). However, the institutions associated with family have undergone dramatic change since the 1970s, shifting from a hierarchical gendered order that was male-oriented and marriage-centred towards a formally gender-neutral model of parenthood and more choice and bargaining on the part of individual members of couples. At the same time, the (limited) deinstitutionalisation of marriage and the ban on discrimination against children born out of wedlock fuelled a process of decoupling marriage and parenthood. This process fits with the general thesis of individualisation in that it broadens exit options from marital bonds and erodes the distinction between the legitimate and illegitimate family. But as we shall show, it is not a singular process of erosion and disintegration – institutions that are meant to cover care-related risks and family bonds are not abolished but, rather, redesigned in a gender-neutral fashion. In the process, people are individualised but they are not freed from all obligations towards others. Institutions are not simply destroyed or abolished, but change – and continue to impose rules about who ought to do what, and who should maintain whom and care for others.

The details of change in law and social policy, which is far from being unilateral and coherent, are often downplayed as scholarship intones a message of erosion. We suggest that interrogating change in terms of individualisation and conceptualising individualisation vis-à-vis both individuals and institutional rearrangements of family solidarity and recognition of care enable us to better capture current developments. Institutions and legal regulation operate as a framework structuring opportunities and choices; but how institutions affect or limit processes
of individualisation and what the differences and contradictions within different social policy areas are is often neglected. Since gender relations are heavily affected by the interplay between employment and labour market regulation on the one hand and regulation of family relations and care obligations on the other hand, it is useful to interrogate the relation between individualisation processes and the shifting institutional basis of obligations to maintain and care for others.

The piece is organised into four main parts. The first considers how individualisation has been framed by the literature. The second sets out our approach to the concept. The third part analyses the changes underway in both national settings, outlining the main reforms and analysing their meanings. The fourth and concluding section draws out the implications of the findings especially with reference to updating thinking about how gender relations and family structures are being configured by current policy and legal developments.

1. CONCEPTUALISING INDIVIDUALISATION

Concepts of individualisation vary, depending on the definition used and the disciplinary context. Influential sociological theories (Beck, 1992; Beck and Beck-Gernsheim, 2002) depict a contemporary dynamic towards de-traditionalisation and individualisation, as a consequence of which pre-given life trajectories are declining in import and significance and individuals are forced to make their own choices and create their own biographies. The institutions of marriage and kinship are said to be weakened. Giddens (1991, 1992) claims a change from formal marriage towards a ‘pure relationship’ as an ideal type. While the increasing room for choice and the de-traditionalisation of some institutions has been generally accepted, these theories have been criticised as an unwarranted generalised abstraction from particular instances (Therborn, 2004). It has also been claimed that individualisation has happened within social bonds, rather than away from them (Duncan et al, 2003; Williams, 2004).

Individualisation has also been an important theme in gender-oriented analyses of welfare state change, especially in the work of Jane Lewis who charts the rise of an adult worker model across a range of European welfare states. She identifies a number of empirical features of the social policy template involved in the adult worker model (Lewis, 2001a). Distilling all of this down, it would appear that for Lewis there are three main indicators of a move to an adult worker model (especially in a UK context). Of significance, first is the impulse to encourage employment on the part of both parents, a widespread development in Europe (and a central goal at European Union (EU) level) as social policy develops a stronger ‘activation’ thrust. A second relevant direction of recent policy is ‘defamilisation’, essentially facilitating care
to take place outside of the family (especially the care of children). This tendency has been investigated by Leitner (2003) and Leitner et al (2008). It takes as its starting point care giving as a domain of human activity and as a societal task, questioning how the exigencies and relationships associated with the care of children (especially) are shaped by state policies. A third associated trend identified by Lewis as part of a move to an adult worker model is individualisation for social security purposes. The aspect of a person’s status that counts above all now is their relationship to the labour market whereas in the past family-related status, especially marital status, was much more dominant among the criteria governing entitlement to welfare state services and benefits. The demand for individualised social security claims as individual rights, rather than as derived rights depending on marriage to an insured person, was a prominent subject of legal and social policy debate during the 1990s (Brocas, 1988; ISSA, 1988; Meulders-Klein and Eekelaar, 1988; Sohrab, 1996) and a policy goal pursued by the EU.

In Lewis’s depiction of change, the individual is at the centre, with family as a backdrop to individual functioning. In her research on the regulation of intimate relationships and the changing marriage institution, she uses a concept of individualisation that is based on the assumption of economic independence of each individual, in essence economic self-sufficiency (Lewis, 2001b: 113, 193). Her focus is on the gap between the assumptions made by law and policy (the normative level) and the reality of people’s lives (the level of practice). She suggests that family law and social provision run ahead of social reality in that women and men are not fully individualised in the sense of being self-sufficient, yet legal and other provision treats them as if they were self-sufficient in the labour market and equal in decision making about divorce. Individualisation is understood as the assumption of self-provisioning and economic independence through employment – the adult worker model. Criticising the shortcomings of this approach, she advocates that policies need to be care-focused as well as employment-focused and address time, care services, cash for care for men and women, and move towards social citizenship. Therefore, Lewis claims that there is a role for collective provision and family policy (ibid: 193) as a superior means to more individualist mechanisms such as contract.

2. **INDIVIDUALISATION AND INSTITUTIONS AS THE BASIS OF PERSONAL OBLIGATIONS**

We are of the view that the concept of individualisation is underdeveloped. We suggest defining it in relation to the changing institutional basis of obligations between individuals in regard to the family and intimate relationships. Seen from this perspective, the process centres on the fate of the ‘cushioning effects’ traditionally
offered to people on the basis of their family status, whereby the state sought to mediate or moderate the extent to which individuals are dependent on the market or the family for resources, well-being, and financial security.

We conceptualise individualisation as a process of continuing separation of an individual from traditional and familial dependencies, whereby the links to status groups or communities lose importance for determining one’s decisions, status, and life chances. As part of this process, personal dependencies come to be replaced by dependencies on the market – a process that affects and changes family cohesion. Individualisation processes can be theorised also with regard to family law institutions (especially marriage and the linked concept of legitimacy) as affecting personal, family, and generational relationships. Collective, familial control over certain decisions of the individual is diminishing (marriage, job, and educational choices of grown-up children), exit options from marriage are extended through divorce law reforms, authority rights of the husband are reduced, and the equality principle requires bargaining and decision making between partners and favours choice instead of hierarchy based on status and gender. Specifying further, institutions (conceived as a central means of organising society and framing of opportunity structures) are individualised to the extent that legal regulation puts the individual as actor and as a bearer of rights and duties at the centre. But legal regulation is not uni-dimensional. Rather, it makes for different degrees of freedom and choice on the one hand and coercion and obligation on the other hand. Comparing the orientations of contract as against family law is instructive in regard to the tensions inherent in processes towards individualisation and counter tendencies.

Some obligations are stronger than others, and some can be excluded and dispensed with through contracts, while others are mandatory and coercive. How much leeway an individual has to opt out of institutional constraints or create individual solutions by agreement and free will varies considerably between, let us say, contract law and family law. Contractual freedom, the classical liberal approach driving individualisation processes, is a far-reaching means of individualisation: if marriage is simply a contract to be ended at free will, and if the legal consequences of divorce are left fully to the discretion of individuals, this is a high degree of deinstitutionalisation of the marriage institution once thought to be indissoluble. But setting economic obligations of post-divorce maintenance or making arrangements of pension splitting act to prolong the institution, albeit in a different guise. As compared with contract law, family law imposes much stronger obligations upon individuals’ decision making and puts stronger limits on individual freedom. Family law is in large part non-negotiable (the status as a parent cannot be determined or waived at will, the only exception
being adoption with its highly regulated procedural requirements). Support obligations impose restrictions upon individuals who cannot easily shed them. The paradox of the family as a system is – as Goode (2003: 17, 19) notes – that this set of most personal and individual relations and interactions is never left to happenstance or personal whim or to the free market and contract, but is held in place by strong social controls, walled in and buttressed by a legal structure. Individualisation processes at the level of family law mean that the family control system is weakened, eg, exit options from marriage are broadened through divorce law reforms and discrimination based on the marital status of children is banned from law, and status (based on marriage and the connected concept of legitimacy) loses importance for individual opportunity structures.

The changing moral and institutional basis of obligations has been discussed by Maclean and Eekelaar (1997) and by Eekelaar (2003). The latter’s conclusion is that the role of institutions is changing in so far as there is a tendency for individuals to negotiate rights and responsibilities more on a personal basis, without necessary reference to an institutional source; if people are only sharing a household, it becomes hard to see any institutional linkage at all. ‘Rights and duties appear to arise from a range of individual-specific factual situations’ (Eekelaar, 2003: 116). But one should take into account the fact that de-facto relationships can change into institutionalised and regulated relationships. Since cohabitation has legal consequences and is taken into account by law in different (and changing) ways, it is to a certain degree an institution. The process of upgrading children’s rights within the family against parental authority (Stoljar, 2007) can be interpreted as individualisation (as well as democratisation of the relationship among individuals within a family). The long-term process can be characterised as a weakening of the authority rights and social control exercised by the family, usually the husband and father, over other family members. However, children are not individualised in the sense that they are expected to be economically independent and self-sufficient. In fact, exactly the opposite is the case – children are obliged to undertake schooling and are freed from labour-market participation; they are economically dependent upon the family.

However, social control of the family does not crumble as individualisation proceeds. One could say that the form is shifting: internal patriarchal control is weakened, but external control of family functioning and behaviour of individual family members is even strengthened and reinforced (often in the name of the child’s best interest). Social control of the family is obviously not a new phenomenon, and state control of family functioning was part of the Poor Law as well as part of the rising welfare state and youth law. One could characterise change as a decrease of paternalistic family control of the individual
family member’s behaviour and an increase in public control of family functioning and child welfare.

We hypothesise therefore that there are different types of individualisation. First, there is a ‘pure individualisation’ whereby individuals face the market without any ‘cushioning’ – neither women nor men acquire any social rights by virtue of their family situation and there are no obligations attaching to family relations. This is an extreme position and it is far more likely that individualisation is not an absolute process. This lead us (as well as others, eg Knijn, 2003; Ostner, 2003) to work with an intermediate notion such as partial individualisation or qualified individualisation. One of the signature purposes of the present exercise is to put substance on the meaning of ‘partial individualisation’. In this guise social policy and law try to uphold family cohesion and social control of the family and impose binding personal obligations on individuals towards other family members or partners against the anomy brought about by the pull of the capitalist market economy and the push towards employment through welfare state and labour market reforms that take no account of gender or care obligations. These tensions, tendencies, and contradictions need to be analysed together and comprehensively.

Empirically, the focus of the article is on reforms that reorganise mutual dependencies associated with family obligations and care. For our empirical exploration, we compare Germany and the UK because they represent two of the most contrasting variants of family policy and law to be found in Europe, a liberal model on the one hand and a family-oriented model on the other. In the UK, social policy has tended to perceive the family as largely a private set of arrangements (ie, left to its own resources to secure income through the market) whereas German policy sought to actively support the male breadwinner family arrangement. Recent policy has begun ‘unfreezing’ these arrangements. As reform proceeds, one would expect that the liberal model would tend towards further individualisation whereas reform in family-oriented Germany would be slow to undo the dependence of women on marriage, the construction of men as distant, income-earning fathers, and the strong support of marriage.

On the basis of the above framework, we will pursue an analysis of changes in social policy and family law over the last two decades. We adopt a joint focus on law and social policy because both, together, are central to the regulation of relationships and interdependencies between individuals and at a more macro level. It is in their interaction that bonds and obligations are strengthened or loosened and the institutional basis of duties and rights shifted. Individual action occurs within an institutional set of arrangements that limits choices and imposes certain costs upon different options. Overall, the empirical focus of our analysis is on changes in childcare policy and provision,
taxation law and policy, family law, pensions, provision for parental leave, and other care giving-related measures.

3. Trends and Processes in Social Policy and Law in Germany and the UK

A. The Abstract Individual as Worker – Mothers as Workers in the Market?

There is a general move in both welfare states towards ‘activation’ – social policies and employment-related provision are increasingly oriented to on the one hand limiting and on the other hand attaching greater conditionality to the provisions that exist for unemployed people. As part of but also in addition to it, there is a widespread tendency in both Germany and the UK to encourage mothers and especially lone mothers to be employed. Maternal employment is ‘incentivised’ by changes in benefit and taxation policy as well as by a strong growth in service provision substituting for mothers’ input into childcare. The activation thrust in policy turns the spotlight on the labour market engagement of all employable household members, especially if they are claiming benefits. In the UK, lone mothers were among the first groups targeted by New Labour’s activation policies under the New Deal for Lone Parents that was introduced in 1998. This has both enabling elements, such as information, advice, and some training opportunities and in-work financial support, as well as some more punitive elements (such as restrictions in benefits and sanctions for non-participation). From 2010, lone mothers in the UK will be expected to take up employment once their children reach the age of seven (reduced from 16 years in the New Labour reform process). Germany is even more oriented to employment on the part of lone mothers in that care for children is considered by social security to be an impediment to employment seeking by the unemployed mother only as long as the child is under three years of age (or if a person is severely in need of care that cannot be secured otherwise). For mothers of older children, employment offices now as compared with the past engage more in activities to bring them into, at the minimum, part-time jobs, which are often precarious (with a bias towards wives in households with a different ethnic origin who are more subject to activation than others). The reform of post-divorce maintenance regulation in 2007 points in a similar direction, reinforcing the expectation that a divorced mother should take up employment earlier than in the past (providing childcare facilities are available). This is in contrast to the former family law model that was more generous: part-time employment was expected when the child reached the age of eight and full-time when he/she was 15 years. However, reality differed always from this normative model, and lone mothers had higher employment participation rates than married mothers, since maintenance payments are too low to live on.
More indirect measures have also acted to strengthen the role of mothers as workers. Reforms of unemployment benefits have played a part here, especially in Germany. Those reforms in Germany, which came into effect in 2005, amalgamated the former second tier of unemployment assistance with the flat-rate benefits at the lower level of income support. This meant lower benefits, thus income losses, and stricter means-testing for many long-term unemployed beneficiaries and those cohabiting with them. These and other changes in benefit levels have quite a long reach. Lowering the levels of benefit for long-term unemployed persons acts to push mothers into employment so as to supplement household income, even though the additional earnings are low due to the low threshold of means-testing. This is especially the case since reforms in Germany in 2003 promoted the expansion of so-called ‘mini-jobs’ (precarious part-time employment with lower social security rights) and reduced the claims of (almost exclusively female) ‘returners to the job’ as well as cutting down reinsertion programs. The stronger means-testing of household income and the underlying assumption of mutual support (as a factual obligation, since non-married cohabitees do not have legal maintenance obligations) is a counter tendency to individualisation, since reliance on mutual financial solidarity is being imposed upon the household unit. However, this is typical for means-tested income support in general and is backed up by the argument that cohabiting persons should not be treated more favourably than married couples. Stronger privatisation of support obligations means stronger reliance on family solidarity or a partner. For low-income households, this means increased pressure on the partner to be gainfully employed or to work longer hours.

Tax changes have also been used to promote earning among household members, especially in the UK. The introduction of tax credits, to help with the costs of children and top up family income for those in paid work, has been a central element of New Labour’s strategy. Introduced in October 1999, they are now received by over five million families. They were designed especially to make employment more feasible and attractive for families and to assist families with the costs of child rearing. The Child Tax Credit and the Working Tax Credit, the latter including a childcare element for those using formal childcare, constitute a significant investment in increasing the income levels of families (especially those that are low-income) as well as enticing adults to combine paid work with care. A couple gains eligibility for the childcare tax credit, only when both parents work 16 hours or more a week. In comparison, tax law is not used in Germany to incentivise employment for employees.4

There are, however, limits to the tendency to push mothers into employment. In fact, the state’s attitude to mothers’ employment is particularised and differentiated, in both countries. The UK which has
hugely increased its financial support to families for the care giving of children is not incentivising employment for partnered mothers as strongly as a pure individualisation agenda would ordain (Campbell, 2008). In fact, certain aspects of the tax credits, especially the income disregards in the Working Tax Credit when it was first introduced, provide a disincentive for the second partner to seek employment. Moreover, the Child Tax Credit is paid to the main carer regardless of employment status and in comparison to the means-tested policy of the past represents a switch from paying the money to the man of the house to the care giver (ibid: 265). It is ‘workless households’ that have been identified as the problem, leading to intense efforts to mobilise the paid labour of men in the first instance and that of lone mothers in the second, while at the same time offering families with children greater financial support. In Germany, employment is ‘normalised’ as an option mainly for divorced mothers or unemployed mothers as lone mothers or when they live together with an unemployed person who is in receipt of benefits. Policy does not prioritise the employment of married mothers to the same extent as it does for mothers in these two other situations. Certainly, there are no direct measures (in the sense of social policy or tax provisions) that incentivise employment entry on the part of married mothers.

B. The Transformation of Fatherhood – Erosion of Split Parenting?

A second trend common to both Germany and the UK is towards affirming and extending the fatherhood role and status of men. This is to be seen in both law and social policy reform, although to a differential extent in each country.

In family law, the parenting role of fathers is being reframed, for both fathers after divorce and non-married fathers. Joint parental responsibility after divorce is the rule now in nearly all Western European countries. Fathers who are not married to the mother can now obtain parental responsibility, albeit that this is easier under English law than it is in Germany. It is more difficult in Germany because a non-married mother still enjoys a strong veto against paternity recognition and against joint custody, and the latter cannot be reversed in court proceedings (a gender arrangement that is now unique to Germany). English law is more gender neutral, and parental responsibility can be granted by courts on application, even to a person engaged in care other than the mother or father. This trend towards extending the fatherhood role and status of men is realised also by the general emphasis on joint parental responsibility of both parents even after divorce or separation and the equal treatment of children born in or out of marriage.

Men’s fatherhood roles have become in both countries a subject of increasing interest on the part of social policy makers. There is a shift towards a normative model of ‘shared parenting’ and stronger
involvement for fathers as carers. The main expression of this is the introduction of paternity leaves for fathers and/or measures to enable and encourage the participation of fathers in parental leave. This has been a major social policy development right across Europe. However, in comparison to Scandinavia, both of the countries under study here have been much more equivocal about recognising fathers as care givers.

The UK introduced paid paternity leave in 2002. The leave is of short duration – 2 weeks – and paid at a flat rate (some £120 a week). While the rate of payment is the same as that of maternity leave – surface gender neutrality – it is not gender neutral in effect in that given typically higher male wage rates the low replacement rate compromises men’s choice to take the leave. Germany has no explicit paternity leave. But there is since 1986 a gender-neutral ‘parental leave’ that is open to both mothers and fathers. This was introduced as a substitute for a 6-month maternity leave that had been challenged in the courts as detrimental to the principle of equal treatment of men and women (Fuchsloch and Scheiwe, 2007). But the fact that the leave was paid at a flat rate made it much more attractive for mothers than fathers. Financial incentives for fathers to take up a share of parental leave were introduced in 2007: in this reform, the parental leave allowance was prolonged from 12 to 14 months if ‘the other partner’ takes up at least 2 months within the first 14 months of the new-born child’s life, otherwise these 2 months are lost to the family. Another way in which the leave was altered to increase fathers’ incentive to become directly involved in caring for their new children was by transforming it from a means-tested flat-rate payment to a benefit with wage replacement of roughly 67% of former net income up to a maximum of €1,800 a month.

These changes have some individualising tendencies. In Germany, the traditional gendered structure of maternity rights has been changed to a gender-neutral provision that both employed parents can take up equally. However, these are care-related rights that decommodify a parent for a certain time. Therefore, one could even deem them a form of familisation at least for the father, adding a new dimension to the role of fathers (that formerly tended to be limited to wage earning). The UK has chosen to significantly increase paid maternity leave (to 39 weeks, making it the EU country with longest paid maternity leave) instead of either extending paid paternity leave or introducing paid parental leave (Lewis and Campbell, 2007). It therefore has extended the maternalist elements and has turned its face away from individualisation in this regard anyway.

C. The Institution of Marriage – Pure Decline?

There is a longer-term trend (visible since the 1970s) to deinstitutionalise marriage and dissociate marriage and parenthood. Among relevant changes here have been the easier dissolution of marriage through
divorce law reform in the 1970s and the ban on discrimination against children born out of wedlock (that also reduced the stigmatisation of unwed mothers and unmarried cohabitation). This ‘deinstitutionalisation of marriage’ (Glendon, 1989) increased exit options for both women and men, but the alteration of the ‘guilt principle’ into the ‘clean-break’ principle improved the possibility mainly for women to receive post-divorce maintenance or the family home after divorce. This is a clear move towards individualisation, visible in increasing divorce and remarriage rates, growing non-marital cohabitation and of children born out of wedlock. The weakening of marriage as a social and legal institution through divorce law fuelled the individualisation process for women, although not in a unilateral direction.

One contradictory tendency is for the institution of marriage to be strengthened in some countries alongside the tendency to dissociate parenthood and marriage and to shift the basis of claims towards parenthood (Willekens, 1998). There are a number of moves in this direction. For one, inheritance claims of a surviving spouse have been upgraded vis-à-vis the claims of children, even in England with its individualistic inheritance law tradition. In addition, survivor pensions are in both countries still based on marriage. Marriage, then, continues to have the function of providing some security and resources, independently of whether the spouse spent time caring for children or not. The introduction of the sharing of pension credits on divorce in England in 1996 (in Germany in 1977) is another example of a policy that tries to ensure that marriage continues to assume some social security functions even when it has broken down.

This is not an artefact of the past: new claims based on marriage have been introduced in Germany, such as cost-free co-insurance of a spouse with low earnings under the Pflegeversicherung (the care insurance) in 1996. This new branch of social insurance is based on obligatory contributions as a percentage of personal earnings, but a spouse with no or low earnings does not have to pay a minimum contribution (as under statutory health insurance). This was introduced despite the argument that cost-free insurance should be decoupled from marital status and be linked to other criteria. Germany remains distinctive for the continuing importance attributed to marriage as a status in granting access to various advantages under social security and tax law and in drawing a strict separating line between heterosexual marriage and same-sex registered partnership. Overall, for both countries though, some of the marriage-related features of the ‘male breadwinner model’ remain in place.

However, there is also some erosion of this model, especially in Germany. A reform undertaken there in 2007 weakened post-divorce maintenance claims of the ex-wife and upgraded child support claims over spousal post-divorce maintenance. Effectively, it created a new
ranking of persons entitled to maintenance, with children first, caring parents (married or not) second, and ex-wives not caring for a child third (with the exception of divorcees from a long-duration marriage who were moved up to the second rank). The intention was to strengthen Eigenverantwortung, the self-reliance of an individual to provide for herself through employment after divorce, and to reduce child poverty by upgrading child support claims in cases of scarce resources. Children were perceived as more needy than the ex-wife and a caring parent; this reinforces the individualisation process for divorcees who are expected to rely on means-tested benefits or maintain themselves through employment when means are scarce. Reforms shortening the duration of maintenance – reducing the mother’s claim against the father for full maintenance for a child by five years (from a former age threshold of eight years to three years) – also push in the same direction. A further significant change in German family law is that the duration for which lone mothers can claim maintenance from the fathers of their children was made equal to that of divorced mothers. This is another step to downgrade marriage.

The underlying trend in both countries, then, is to upgrade claims based on parenthood and parenting vis-à-vis those based on marriage. It is difficult to see this process as ‘pure individualisation’, however. On the one hand, it contributes towards pushing divorced mothers into employment more than was required under earlier divorce law but, on the other, it strengthens the child’s maintenance claims against fathers when resources are scarce and shifts support obligations from the public to the private purse, while the costs of supporting a divorcee with insufficient means are shifted on to the public purse. Children are ranked as more ‘dependent’ than ex-wives and obtain a stronger claim under family law to be supported.

While there is a move away from a tax privileging of marriage and a tendency to grant non-married couples similar rights and responsibilities to those of married couples in the UK, benefits and advantages linked to marriage are still very strong in Germany under both tax and social security law. Access to marriage is still barred for same-sex couples, and the institution of registered partnership is interpreted as a separate ‘aliud’ by the Federal Constitutional Court. Of the two countries then, marriage retains more of its traditional character in Germany and in this Germany conforms to expectations.

D. Changes in Coordination between State, Market, and Individuals – Parenthood and Care Obligations Instead of Marriage as the Linkage?

Under the male breadwinner/homemaker model, the spheres of employment and the family were linked in both a hierarchical and gendered fashion. The relations were hierarchical in a number of respects: women were subordinated given the husband’s rights of
authority, children were subordinated under paternal power and the husband’s authority, and non-married mothers and ‘illegitimate’ children were discriminated against. Within this asymmetrical and hierarchical construction, marriage as an institution was a central link – social policy provided social security benefits for the ‘dependants’ of an employed married man, and exclusion of (married) women from certain labour market areas was legitimised with the argument that they were already provided for through marriage. Unwed mothers and their children were among the main losers, since the state was very reluctant to provide them with social security benefits or claims under family law. These institutional features have been changed profoundly, especially in the 1970s. Gender neutrality of formal rules and institutions was implemented gradually, although at a different pace in different subsystems (family law, labour market regulation, and social security). Gender-neutral individuals can choose formally equal but nonetheless gendered roles. Hence, individualisation while representing more choice and room for manoeuvre is located within broader structures and institutional settings (such as family, parenthood, and kinship with connected rights and obligations) that continue to impose obligations.

The weakening of marriage as a social and legal institution through divorce law fuelled the individualisation process for women, although not in a unilateral direction. This process together with the ban on discrimination against children born out of wedlock strengthened the dissociation of marriage and parenthood. Substituting for marriage as the coordinating institution, parenthood is increasingly the institutional link for social policies that seek to temper individualisation processes. This change from marriage to parenthood as the state’s preferred vehicle of support and control involves a challenge to both the gendered and hierarchicalised order. However, since roles are gender-neutral in family law and decision-making about the division of labour is left to individuals, coordination processes are more complicated than in the former hierarchical order. Coordination of different spheres and of numerous policy objectives is a challenge for social policy making also, and often gender issues are subordinated – women disappear within the family, and the compatibility of employment and care is designed as a female project rather than as a programme treating equally individuals with care obligations. This resituates hierarchies in a formally gender-neutral fashion.

E. Changing Functions – Shifting Care from the Family?

In both countries, the paradigm of home care for children seems to be shifting to broader provision of child care and a changing partnership between parental and public provision.
In the UK, there have been several initiatives to restructure public child care and better share the care of children with the family. Children aged three and four have been given a guarantee of access to nursery education in schools (although on a part-time basis). Employed parents of children aged 0–5 years have access to nurseries outside the school system, and fees are subsidised by child care tax credits. In effect, some £21 billion has been invested in childcare and early years’ services since 1997. Extension of childcare is, moreover, a goal that has been sustained over the course of New Labour’s 13-year (thus far) tenure of government. Following the first ever National Childcare Strategy, published in 1998, the government issued a revised 10-year childcare strategy for England in 2004 (HM Treasury, 2004). Successive New Labour governments have overseen a wide-ranging programme of provision and reform, which attends *inter alia* to matters of supply, affordability, quality, governance, and diversity of provider. This has led to a doubling of the stock of childcare places in the period since 1997. Expansion notwithstanding, current provision falls short of demand – there was one registered childcare place for every three children under eight years in 2007 (HM Government, 2007). The goal or target is by 2010 for all children aged 3–14 years to be able to benefit from provision between 8 am and 6 pm each weekday.

In Germany, following the Day-Care Expansion Act, which entered into force in early 2005, municipalities are required to provide day care for all those children under the age of three whose parents work or are enrolled in education and training. The aim is to provide 230,000 additional places for the under-threes by 2010. One-third of the extra places are to be provided by registered childminders in private households. In a second stage, based on a compromise between the political parties of the Grand Coalition government in Spring 2007, publicly financed/subsidised care for children under the age of three years will be implemented so as to fully meet the demand by 2013, at which time the government will also introduce an individual entitlement to childcare for every child aged one year and above. However, there is a serious shortage of supply. Although the number of children aged three years to school age attending kindergarten has increased considerably since 1991, when a right to a kindergarten place was introduced by law, and now ranges between 90.5% in western Germany and 100% in the east, there are other indications of slow development. All-day places offering lunch are rare in many parts of the country, accounting for only 23.6% of all places for children aged three to school age in the western Länder (but for 98% in the east). Kindergarten frequently ends around noon without providing a meal. The situation for under-threes is particularly poor; places are available for 2.4% of this age group in the western Länder (but for 37% in eastern Germany).
Hence, moves to relieve the family and parents of childcare have to be set in the double context of, first, the fact that in both countries any guarantees given about childcare outside the home are impeded by shortages in supply and, second, other changes or emphases in policy have the effect of confirming the family as the appropriate provider of childcare, although not the sole one. The increased emphasis on reconciliation of work and family life is very significant in the latter regard. This has legitimated some recognition of family-related exigencies, modifying employment-based rights and responsibilities, especially in the UK where family-based claims had less legitimacy historically. ‘Reconciliation’ has had a number of expressions in policy but arguably the major one has been in employment leaves. There has been a significant extension of leave programmes in the UK and their refocusing (in terms of income replacement and shorter duration of the allowance) in Germany.

In the UK, the amount of paid maternity leave has been extended (to 39 weeks from 14), and it is planned to extend it further to 1 year by the end of the current parliament. The leave has also been made more generous (doubling in value in 10 years) and part of it is now transferable from mothers to fathers. Another innovation for the UK has been the introduction of a right to request flexible working for parents of young and disabled children. While this is at the discretion of employers, the fact that workers are given a right to request the leave is far from trivial given the otherwise strong voluntarist tradition in UK industrial relations (Lewis and Campbell, 2007: 374). Notably, the UK has not gone the way of other countries in introducing paid parental leave.

While maternity leave has remained unchanged in Germany, reform of parental leave since 2000 represented a move towards a model of equal sharing of employment and parenting between parents. The partnership model allows both parents the possibility of reducing their working time contemporaneously. A reform in 2006 under the Christian Democrat–Social Democrat Great Coalition altered the cash component of the parental leave from a low-level and means-tested flat rate benefit to a wage-related income replacement benefit, while the length of benefit payment was shortened from 24 to 12 or 14 months with the purpose of shortening mothers’ employment interruptions. These changes together with the introduction of two months reserved for the other parent/father were designed to incentivise employment for women and a more caring fatherhood for men.

There is no singular interpretation of ‘leaves from employment’ – they tend to have a number of objectives: to better support workers with their family obligations, to encourage employment for mothers and involvement in family life for fathers, and on a broader level to effect a better balance between work and family life. While leaves generally
tend to recognise and give value to the exigency of care giving, long leaves tend to discourage re-entry to the labour market. The thrust of the reform in Germany is in the direction of greater individualisation of women (in the sense of encouraging maternal employment) as well as encouraging shared parenting for young children as exemplified by some moves to increase fathers’ involvement as care givers. The changes made in the UK – essentially limited to lengthening the period of maternity leave – tend in the opposite direction, endorsing mothers as primary care givers and hence continuing the gendered underpinnings of caring.

4. CONCLUDING INSIGHTS

The evidence reviewed in this article is convincing that the main direction of reform in both countries is towards treating people (and women especially) as individuals and creating families in which both parents are employed. However, this is not a unidimensional movement and a dichotomised way of thinking misunderstands what is happening. It seems to us that public provision and legal regulation today are correcting for the pure individualisation of market forces (that pay no heed to family situation or care obligations). In a way, this is what the state has always done but it is doing so today with different means and with different effects. The changes are effected mainly through four means: alteration of models of parenting in family law and social law, granting some general rights around care, a (limited) recognition of employees as having care obligations and concern with the compatibility of employment and family as spheres of life (the ‘reconciliation’ rubric), and expansion of child-oriented care and educational services outside the family. In terms of impact, the social policy and family law reforms in both Germany and the UK, while they tend generally in the direction of individualisation, also tend to confirm some relations and activities as family based and as sources of family obligation. This leads us to conclude that the thrust of reform is towards processes of qualified or partial individualisation. In particular, there are measures and reforms that construct mothers not as pure ‘market-facing individuals’ but rather as (female) potential workers with care responsibilities. The effects for men are somewhat similar if in a different direction in that since the 1970s male workers have lost some social security benefits or supplements as married earners but they have acquired family responsibilities as fathers or caring parents.

To generalise more broadly, individualisation processes have limits and have not gone as far as individualisation theorists’ claim. Change has not eroded institutions designed to regulate personal status and family bonds and mutual obligations and rights among kin, within parent–child relationships, and within married or cohabiting couples.
Rather than being destroyed or eroded, such institutions have been changed and adapted. The institutional basis of obligations and claims was either abolished, shifted, or recreated. We suggest that these processes be thought of as ‘repositioning’. We suggest also that there is a double repositioning going on: individuals are being repositioned vis-à-vis family, state, and market and family-related functions and agency are being repositioned vis-à-vis those of the state and market. Some individualisation processes have taken place (limiting parental authority and deinstitutionalising marriage), but there have been counter-tendencies in the direction of recognising care provision in what seems to be a continuous round of reforms. Familisation/defamilisation does not capture adequately the set of changes involved because it has limitations in countenancing that change in the family itself is an integral part of the process.

Why the complexity? Care in our view is critical in putting a break on processes towards individualisation. In the process of moving towards gender equality as a goal, societies have discovered the fine balance in providing for care. There are real limits to commodifying it, for a host of reasons – economic costs, moral convictions, individual preferences, social sustainability – and stripping the family of one of its core functions would have negative repercussions for social integration and for demography and social reproduction more generally. Another factor is the relative failure of the market to give people secure and adequate livelihoods. We speak here of poverty and especially of the high risk of poverty experienced by women (and children) when they live apart from a male income. One salutary lesson from the movement of women into the labour market in ever greater numbers has been their inability to secure incomes capable of supporting households of their own. So for these and other reasons, what we are witnessing now is the working out of a compromise that has resulted in what we characterise as a qualified form of individualisation, in other words: ‘labour market-oriented individualisation with some recognition of care’. The models guiding employment and social security policy, those guiding income support policies and finally those underlying family policies and family law are diverse, but interacting. In addition, there is not just one normative family model, as was the case for the dominant ‘male breadwinner model’ (when the illegitimate family was not supported but ignored), and social policy has to grapple with different family types. The policy goal to foster family functioning and cohesion against disruptive tendencies of the market and individualisation processes cannot be subsumed simply under the logic of an adult worker model but stands on its own. Gender as a cross-cutting dimension is affected by employment-related policies as well as by care and family-related policies, and impregnated by their interaction, contradictions, and time lags. This leads us to suggest that we are still a considerable way from an adult worker model in both Germany and the UK.
It will be obvious, then, that we see strong similarities in the reforms being undertaken in Germany and the UK. Mothers in both countries are being encouraged into the labour market, there is greater support of families with children, parenthood is being upgraded vis-à-vis marriage as a basis of rights and responsibilities, and there is growth in both care and child-focused policies. There are limits to the convergence however. In the UK, significant gender-specific differences remain with mothers and fathers still treated differently, whereas Germany has prosecuted a stronger move to gender neutrality. The greater attachment to gender in the UK we attribute to liberal proclivities – gender neutral measures entail greater intervention in the market and are more costly (e.g., public resources have to compensate fathers for earnings foregone while they are on parental leave, childcare has to be provided outside the home). Hence, some maternalist elements remain, and are even being strengthened, in the UK. It is as if both countries are trying to ‘modernise’ their provisions in a fashion that draws on long-standing principles and values while instituting some profound changes.

NOTES

1 This process has been described by many authors; for the literature on change in family law, see Glendon (1989, 2007); Willekens and Scheiwe (2003); and others.
2 See Sachße and Tennstedt (1982) for an account of the historical development of family law and youth welfare law in Germany.
3 Betzelt (2008: 4) quotes this result from empirical research. Further empirical research results on the gender impact of activation policies and of unemployment benefit reforms still have to be published.
4 There is no tax credit for child care, but only a limited possibility of deducting childcare expenses from taxable income if both parents are employed. This cannot be considered an incentive to be employed. From 1984 to 2000, this option was open only to employed lone parents. Between 2000 and 2006 all parents – employed or not – caring at home for a child or incurring expenditure on child care could deduct a lump sum for care and educational needs. Home-based care for children by a non-employed parent was deductible on the same terms as childcare expenses of both employed parents. Since 2006, the allowances for the latter are more generous. However, low-income families get little out of this tax advantage and for them and lone mothers a reduction of fees for public child care would be of much greater value than tax deduction of childcare expenses. For details, see Scheiwe (in press).
5 Sweden is the only country where they have been decoupled from marriage; they have been substituted by an individualised means-tested pension.
6 Figures relate to the situation on 31 December 2002 (as a percentage of all children of the age group) and are drawn from Deutsches Jugendinstitut (2005).

REFERENCES

INDIVIDUALISATION AND PERSONAL OBLIGATIONS


