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# Low Statism in Coordinated Market Economies: The Development of Job Security Regulations in Switzerland


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**Patrick Emmenegger**

## Abstract

Despite the prominent role of job security regulations in the “varieties of capitalism” literature and although Swiss law gives only limited protection to workers against dismissal, Switzerland is normally classified as a coordinated market economy. This apparent contradiction is often explained by emphasizing the trade-off between extensive job security regulations and generous unemployment insurance benefits. This explanation, however, is not convincing for the Swiss case, as the coverage of the unemployment insurance system was very low until the late 1970s. This article argues that low levels of job security regulations are the result of the weakness of the federal state, which attempted several times to enact restrictive job security regulations. Each attempt to enact job security regulations, however, has been blocked by an alliance of liberal-conservative political groupings and employers’ associations. The present article traces the historical development of job security regulations in Switzerland and reveals the political coalitions that successfully kept the federal state weak.

## Keywords

job security regulations, Switzerland, varieties of capitalism, social policy, political coalitions

## Introduction

The “varieties of capitalism” literature highlights job security regulations, understood as restrictions on hiring and firing, as an important constitutive element of coordinated market economies. Job security regulations are necessary in order to induce employees to invest in firm-specific skills (Estevez-Abe et al., 2001), which are an essential part of the comparative advantage of coordinated market economies. Although Switzerland is normally assigned to the “coordinated” camp (Hall and Soskice, 2001), Swiss labor law imposes few restrictions on hiring and firing (Armingeon and Emmenegger, 2007: 192). Most notably, in Switzerland worker shortcomings (in productivity or skills) or redundancy of the job are sufficient grounds for dismissal. Moreover, Swiss labor law

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does not recognize the principle of reinstatement (OECD, 2004: 110).<sup>1</sup> As Bertola et al. (1999) show, it is these dimensions of the “difficulty of dismissal” that constitute the major impediments to the employers’ right to “hire and fire.”

To explain this apparent discrepancy, scholars in the “varieties of capitalism” tradition point to a trade-off between the generosity of unemployment insurance and job security regulations in coordinated market economies (Iversen, 2005: 46–52). Generous unemployment benefits (“high unemployment protection”) are seen as a means whereby employees receive social protection while being nevertheless induced to invest in specific skills. Therefore, generous unemployment benefits become “functionally equivalent to the firm in a country with low unemployment and high employment protection” (Estevez-Abe et al., 2001: 163).

The present article argues that this explanation is not convincing for the Swiss case. In Switzerland, a public act on mandatory unemployment insurance for the entire working population was not passed until 1982. Six years earlier, and three years after the start of the first oil price crisis, only 20 percent of the working population were covered by unemployment insurance (Tschudi, 1996: 184).

Alternatively, it has been argued that the liberal features of the Swiss labor market could have the same sources of origin as the liberal features of the whole welfare state. In a ranking based on the years of introduction of major social policy acts in 23 OECD countries, Switzerland ranks 21 out of 23 (Obinger, 1998: 14). This backwardness is normally attributed to the interplay between political institutions, such as direct democracy and federalism, and to the political dominance of liberal-conservative parties (Immergut, 1992; Obinger, 1998). For instance, Switzerland has never been ruled by a left-wing government since its democratization in 1848. Moreover, Switzerland is characterized by a strong degree of federalism and direct democracy, paralleled only by the United States. Together, these two institutions have led to a policy deadlock. “While federalism has created new actors and actor constellations, direct democracy has provided opportunities for subordinate governments, vested interest groups and local social policy providers to defend their interests” (Obinger et al., 2005: 300). The interaction of right-wing dominance and institutional veto points proved disastrous for the early development of the Swiss welfare state.

This explanation, persuasive as it is with regard to the delayed development of social insurance systems, is inadequate in terms of explaining Swiss job security regulations. The inadequacy can be traced to three factors. First, in most Continental European managed capitalist countries, job security regulations have been introduced very early by law (Vogel-Polsky, 1986; Emmenegger, 2009). Early labor law was not the result of reform-minded progressive governments or the strength of the labor movement, but of the legitimization ambitions of the ruling elite (Alber, 1982). It was passed by bourgeois governments in order to undermine the momentum of the labor movement. In Switzerland, the first federal regulation of the labor market, the 1877 Factory Act, was developed by a right-wing government. Nevertheless, the act has been labeled as pioneering, especially with regard to the restriction of working hours to 11 per day (Tschudi, 1987: 11).

Second, labor law development has not been delayed by a lack of federal jurisdiction. The absence of the competence to rule at the federal level was very important in the field of social policy. For instance, in the domain of old age pensions the federal government was not allowed to draft a law until 1925, 77 years after the creation of the Swiss Federation. It then took the government another 22 years to enforce an act on old age pensions (Obinger et al., 2005: 278, 301). This trajectory did not occur for labor law. Already in 1874 the federal government was endowed with the right to regulate private contract law and factory working conditions by means of public law. In 1877 the parliament passed the Factory Act and in 1881 the Code of Obligations, which contains

the contract law. Today dismissals are regulated by the Code of Obligations. Consequently, extensive job security regulations would have been legally possible as early as 1874.

Finally, arguments based on the partisan composition of parliament and government cannot explain why the federal government was much more disposed toward expanding job security regulations than was the parliament, as is shown below. During the greater part of the period under investigation, the federal government and both chambers of the parliament have been dominated by the same political forces: the liberal-conservative Radical movement and, after 1918, the Catholic Conservatives (Linder, 1999: 39, 93, 221). Nevertheless, several attempts by the government to extend job security regulations have been opposed by parliament, despite identical majorities.<sup>2</sup>

In the following paragraphs, I argue that the exclusive focus on federalism, direct democracy, and right-wing dominance clouds the role of another crucial factor, the low level of statism in the Swiss political system and its political underpinnings. The definition of statism employed in the following is based on Colin Crouch's concept of "political space." Political space designates the "range of issues over which general, universal decisions are made within a given political unit, particularly decisions which are seen by political actors to affect overall social order" (Crouch, 1993: 297). Crouch starts from the assumption that there are a number of vital functions within liberal capitalist economies that need to be carried out. If these functions are not performed by the state, other groups within civil society will take them over. This understanding of statism goes beyond simple dichotomies between strong and weak states (Baldwin, 2005) as it does not address the question of whether the state performs assigned tasks effectively. Swiss statism can be described as being based on "public-private partnerships and the implementation of state tasks by organized interests" (Leimgruber, 2008: 285). This Swiss "style of statism" (Baldwin, 2005) can be characterized as a case of low statism due to the virtual absence of a state (Crouch, 1993: 309) in the 19th century, which was the result of the state's inability to effectively monopolize the political space due to inter-cultural conflicts.

Once the political space has been filled and some actors have achieved a position of influence, these actors use their position to consolidate their hold on a particular political space (Pierson, 2004: 72). As a consequence, initial developments become lasting ones. However, state structure and capacity are not set in stone. Rather, they are subject to continual negotiation between the main political forces. As I demonstrate below, until World War I the weakness of the Swiss federal state was the result of a compromise between the different wings within the Radical movement. After the introduction of proportional representation in 1918, the result of a joint popular initiative by the Social Democrats and the Catholic Conservatives, the Radical movement lost its majority in parliament. However, the radicalization of the Social Democrats at the beginning of the 20th century alienated the Catholic Conservatives and led to a coalition between the Radical movement and Catholic Conservatives against the Social Democrats (Luebbert, 1991). As a result, Swiss policy-making continued to be dominated by two parties fundamentally opposed to the centralization of state activities. The coalition between the Radical movement and the Catholic Conservatives dictates Swiss policy-making until today.

Furthermore, the Radical movements' strategy to co-opt the labor movement, by organizing part of the labor force and enacting reformist legislation in the 19th century, had a profound effect on the future development of the labor movement. As argued by Luebbert (1991: 8–9), the possibility of pursuing their ambitions through alliances with the hegemonic liberals ("lib-labism") induced the labor movement to invest too few resources in the organization of the working class. This decision came to haunt them in the early 20th century as its radicalization had left them without their historic middle-class allies and effective organizations of their own. Moreover, the Swiss labor

movement was enfeebled by internal divisions between social democratic and Catholic trade unions as well as supporters of statist and corporatist solutions (Parri, 1987b). As a result, the political left was unable to increase the powers of the federal state.

Finally, the fact that the powerful employers' associations were ardent opponents of high levels of state intervention and labor law (Leimgruber, 2008; Neidhart, 1970) also helps to explain the low level of statism in Switzerland. Here, it is important to note that the power resources of the employers' associations were themselves the result of the weakness of the federal state. As argued by Crouch (1993: 70):

Swiss capitalists were in many respects in a class of their own, since the organizational deficiencies of the Swiss state required business groups to take on a number of public administrative functions normally carried on by state agencies. In exchange for these functions, the state would subsidize their organizations. As a result, the Swiss business sector had national organizations from a very early stage.

Due to their important role as implementers of state policies and their organizational capabilities, employers' associations soon became important veto players in the Swiss policy-making process.

The weakness of the Swiss state hampered the development of labor law and increased the sway of those organized interests, which were fundamentally opposed to federal labor law. As a result, Switzerland remains characterized by low levels of job security regulations, despite the considerable efforts made to extend them. I demonstrate this by tracing the development of the Code of Obligations and the Labor Act, the two fundamental sources of labor law in Switzerland. Additionally, I address the question of why the Swiss labor force did not revolt against the lack of labor market regulation by describing the specific features of the postwar Swiss model and its consequences for workers' attitudes. I argue that the Swiss economic model offers "functional equivalents" to the male core labor force. As a result, radical demands by the trade unions were never supported.

## **Why Does Switzerland Have Low Statism?**

The origins of low statism in Switzerland can be understood only if the historical development of the Swiss state is taken into account. At the time of the Vienna Congress, Switzerland was made up of a loose confederation of 25 independent cantons, each of which considered itself a sovereign state. The cantons agreed to collaborate against external threats, but there was neither a parliament nor an executive body, only a Conference of Delegates.

In the course of the 1848 wave of democratization, an old conflict between the Catholic Conservatives and the Radical movement re-emerged. The Radical movement denied the Catholic minority the social privileges of their church and demanded public control of all authorities (Linder, 1994: 6). In a defensive move, the Catholic cantons signed a separate treaty in 1845, left the Conference of Delegates in 1847, and tried to obtain help from powerful Catholic neighboring states. This resulted in a short civil war which was easily won by the more industrialized Protestant cantons. The Radical movement drafted a constitutional framework for a nation-state, which was submitted to a popular vote and enacted in 1848. Thus, the Swiss state was forced upon the Catholic minority. Successful nation-building, however, has to take the interests of minorities into account. As a consequence, the victorious Radical movement opted for a middle path between a confederation and a unitary system (Linder, 1994: 38–9). The constitution of 1848 gave only limited rights to the federal government. Most competences were left to the cantons and the communes. Importantly, the federal government had no jurisdiction in the field of social policy and labor law (Tschudi, 1987: 9).<sup>3</sup>

The Radical movement had a tight grip on power. From 1848 to 1891 the federal government was exclusively composed of members of this movement. However, the Radical movement was, in fact, a very heterogeneous group, held together only by their anti-Catholicism (Gruner, 1977: 73–102). Three different branches have to be differentiated within the Radical movement, which often co-existed within one canton. The *Liberals* supported a free market economy and were critical of state intervention. The French-speaking Liberals, in particular, were opposed to a centralization of state activities. The *Radicals* were the largest faction within the Radical movement and supported the federal state. Finally, the *Democrats* formed the social wing of the Radical movement and demanded central state intervention in the area of social policy. The Radical movement ranged from the Manchester Liberals in the heavily industrialized northeastern region of Switzerland to the Grütliverein, which collaborated with the trade unions (Luebbert, 1991: 51).

The heterogeneity of the Radical movement was of tremendous importance for policy-making in Switzerland at that time. With the federal government exclusively composed of members of the Radical movement, government proposals might be opposed by parts of the Radical movement itself. Furthermore, the Catholic Conservative opposition often found an interested partner in the French-speaking Liberals in their efforts to create an even more decentralized political system (Gruner, 1977: 103–25; Neidhart, 1970: 74). As a result, the process of endowing the federal state with more rights and resources proved to be extremely difficult. Switzerland became a paradigmatic case of low statism.

The weakness of the federal state had important consequences for the political development of Switzerland. One was policy pre-emption at the cantonal, communal, and firm level. The introduction of the Factory Act in 1877 at the federal level was preceded by similar acts in Argovia, Glarus, both Basles, and Schaffhausen (Gruner and Wiedmer, 1987: 447). These acts could serve as inspiration for federal acts. However, more often cantonal, communal, and occupational programs and acts pre-empted federal policy-making (Obinger et al., 2005: 272–9). The cantons and communes defended their competencies to rule in these areas against federal efforts, while the entrepreneurs and workers were afraid that governmental intervention might endanger their occupational social policy programs and that the taxes might double. In the words of Crouch (1993: 297), the political space was already filled, and the weak federal administration lacked the resources to force its will upon its opponents.

The French-speaking Liberals, the Catholic Conservatives, and the cantons succeeded in keeping the federal state weak (Obinger et al., 2005: 300–2). The federal state was unable to extend its sphere of influence in the years after the democratization in 1848, lacking the necessary resources. As a result, the federal state had to rely on organizational interests to take over some activities in exchange for subsidies (Linder, 1983: 263–8; Neidhart, 1970: 40–56). This offer was addressed mostly to business and farmers' associations but also to the trade unions. The early inclusion of interest organizations in public policy-making had tremendous consequences for the development of the Swiss political system. Not only did it provide an incentive for the associations to organize and moderate their demands, but it also led to a division of tasks and to the particular Swiss public-private mix. As a result, the Swiss political system is characterized by a "strong inter-penetration of state and organized economy, [in which] the former, owing to its weakness, cannot do without the quasi-political functions performed by the latter" (Parri, 1987a: 73).

Economic developments made necessary a revision of the federal constitution. As a consequence, the Radical movement decided to endow the federal state with more rights and competences. However, the proposal, mainly of Radical origin, went too far and was opposed by the French-speaking Liberals and the Catholic Conservatives and was subsequently rejected in a popular vote in 1872 (Neidhart, 1970: 60). The second, diminished version, the result of a compromise



between the Radicals and the French-speaking Liberals, was finally enacted in 1874. Apart from the additional competences for the federal state, the new federal constitution also introduced the so-called optional referendum. This instrument allows the voting population to overturn most parliamentary acts. The authors of the constitutional draft incorporated this instrument, a constraint on federal policy-making, in order to counterbalance the enlargement of the federal jurisdiction (Neidhart, 1970: 58).

While the constitution was enacted against the will of the Catholic minority (Linder, 1999: 38), the optional referendum soon emerged as a powerful instrument in their hands. However, the Catholic Conservatives were not the only ones to start utilizing the opportunities offered by the optional referendum. The French-speaking Liberals and the farmers were also very critical of state intervention and regularly employed the optional referendum (Neidhart, 1970: 65–70). Together with one of these groups, the Catholic Conservatives were often strong enough to reject governmental proposals. The Radical movement responded to this new challenge by co-opting the Catholic Conservatives, i.e. by incorporating the Catholic Conservatives into the policy-making process and by sharing political power (Bolliger and Zürcher, 2004).

The Swiss political system at that time was thus characterized by (1) a weak federal administration and influential business associations, (2) strong cantons and communes that pre-empted federal policy-making, and (3) a policy deadlock due to political forces such as the French-speaking Liberals and the Catholic Conservatives, who were hostile to a further centralization of policy-making. The first steps in the development of Swiss labor law took place in this political environment. The democratic wing of the Radical movement and the Grütliverein successfully pushed for the consideration of social and labor policy in the new constitution of 1874. The new constitution endowed the federal government with the right to enact restrictions on working time and child labor as well as occupational safety and health regulations (Tschudi, 1987: 9). However, the federal jurisdiction was restricted to *factories*, an important constraint since at that time only 29 percent of the working population were employed in factories (Gruner and Wiedmer, 1987: 454).

In 1875 the federal government developed a first draft of the Factory Act. In the spring of 1877 the act was accepted by a large majority in the parliament.<sup>4</sup> Although the act did not include any restrictions on the employers' right to hire and fire at will, the employers' associations considered the act to be too far-reaching and challenged the act, demanding a popular vote in 1877 (Neidhart, 1970: 96–103).

Due to the Catholic Conservative opposition policy, the Factory Act was not the only act subject to a popular vote in October 1877. However, unlike the two other acts,<sup>5</sup> the Factory Act was not rejected. The Catholic Conservatives did not oppose the Factory Act, which is rather puzzling because they normally opposed everything that came from the Radical majority within the Federal Assembly (Neidhart, 1970: 65–77). Consequently, the Catholic Conservative support could be interpreted as a result of Catholic social doctrines and of Catholic approval of legislation in the field of labor law (Esping-Andersen, 1996). However, this is not a very convincing explanation. The federal Factory Act was preceded by several cantonal factory acts. Considering the Catholic Conservatives' strong preference for decentralized solutions and subsidiarity (Weber, 1989), Esping-Andersen's thesis cannot explain why they would have preferred a federal solution.

Neidhart (1970: 70) concludes that the Catholic Conservative support for the governmental proposal was a tactical maneuver. The Factory Act, of Radical origin, was most heavily opposed by the business associations and their allies, the liberal wing of the Radical movement. At the same time, the Factory Act targeted the factories, which were located mostly in the industrialized Protestant cantons and not in the predominantly rural Catholic cantons. Thus, the main cleavage

was situated within the Radical movement. The Catholic Conservatives could not win much by opposing the Factory Act. However, a rejection of all three acts might have triggered a backlash by the still powerful Radicals. As a consequence, the Catholic Conservatives decided to oppose only the two acts they considered to be a threat to their own autonomy.

The revised constitution of 1874 also endowed the federal government with the power to develop a Code of Obligations that would regulate private contract law, including the employment contract. However, while the Factory Act was progressive at that time, the content of the Code of Obligations was rather modest. The code included no job security regulations. In fact, Article 346 of the Code of Obligations stated that the working relationships could be dissolved at any time for important reasons (Tschudi, 1987: 25). As a consequence, neither the Factory Act nor the Code of Obligations included any restrictions on the employers' right to hire and fire at will.

## **A New Political Actor: The Emergence of the Labor Movement**

In the course of the 19th century, a new political actor entered the scene and would become the driving force for the development of job security regulations. As elsewhere in Europe, industrialization led to the development of a labor movement. In 1880 the Swiss Trade Union Federation and in 1888 the Social Democratic Party were established (Linder, 1999: 79, 109). However, social democracy and the trade union movement were in a difficult position from the outset. There were two main reasons for this. First, the decentralized economic system of Switzerland made the development of a powerful labor movement difficult (Parri, 1987a: 76). Second, when the labor movement entered the political arena, the political system was still dominated by the conflict between the Radical movement and the Catholic Conservatives. Both movements covered a broad spectrum of voters, held together largely by their anti-Catholicism and Catholicism, respectively. The Radical movement was a major hindrance for early trade union development (Linder, 1983: 272; Luebbert, 1991: 7). Established in the industrialized Protestant cantons, the Radical movement was well prepared for the appearance of independent working-class parties. The movement was very inclusive and represented more than business interests; some factions also fought for better working conditions and social reforms. The most important group was the Grütliverein. This group, affiliated to the Radical movement, remained the largest workers' movement until 1900 (Luebbert, 1991: 51).

However, some factions of the Radical movement, and to a lesser extent the Catholic Conservatives, were willing to cooperate with the emerging labor movement. As a result, worker activists confronted a choice:

They could pursue their ambitions through alliances with liberals or through comprehensive, coherent organization of the working class. In practice, because comprehensive, coherent organization was a slow, arduous, and tedious strategy, it was never preferred if hegemonic alliances were available. (Luebbert, 1991: 8–9)

Switzerland is a paradigmatic case of what Luebbert called "Lib-Labism": dominant liberal movements co-opt the labor movement and thereby keep it weak. By offering themselves as an ally and by enacting reformist legislation, the Radical movement weakened the trade unions' incentives to organize and centralize.

The Swiss labor movement was further weakened by internal divisions. In the field of social and labor market policy, the Social Democratic Party was pushing for statist solutions and statutory



legislation. In contrast, the (socialist) Swiss Trade Union Federation and the Catholic trade unions preferred unilateral trade union regulations and collective agreements (Trampusch, 2008: 68–9). This preference for non-statist solutions was due mostly to the trade unions' interest in providing selective benefits for their members and creating incentives to join their organizations. These differences often led to tensions. For instance, the Swiss Trade Union Federation was unwilling to cooperate formally with the Social Democratic Party until 1908 (Luebbert, 1991: 51).

Nevertheless, some improvements in the area of job security regulations can be observed after the turn of the century. In 1908 the federal jurisdiction with regard to working conditions and child labor was extended to non-industrialized enterprises (Tschudi, 1987: 40). Three years later, job security regulations were addressed for the first time in a revision of the Code of Obligations. Two new articles are particularly noteworthy. Art. 319 introduced a distinction between labor contracts, a specific exchange of money for effort, and permanent employment relationships. Art. 348 regulated the length of period of notice in cases of dismissal. Employees who had been working for more than one year for the same employer had to be informed about their dismissals at least two months in advance (Tschudi, 1987: 26–8). Finally, the revised Factory Act of 1914 included the first restrictions of the employers' right to hire and fire at will. Art. 23 stated that employment contracts may not be terminated in two cases: first, during the first four weeks of a worker's inability to work through no fault of his or her own, and second, during mandatory military service (Tschudi, 1987: 36).

The labor movement's failure to bring about significant improvements in working conditions and the deterioration of the living conditions during World War I led to a radicalization of the labor movement (Neidhart, 1970: 185–9, 222; Obinger et al., 2005: 271–2). In 1918 workers' dissatisfaction erupted in a general strike. They demanded a proportional electoral system, a reduction of the weekly working hours to 48, and the introduction of a public old age pension system. The government rejected these demands under threat of force, but when the labor movement abandoned the strike, the federal government started negotiations for the implementation of the trade unions' demands (Parri, 1987b: 40–1). Thus, instead of ignoring the workers' requests after the end of the general strike, the bourgeois parties decided to accommodate their demands.

In the late 19th century the farmers, the Catholic Conservatives, and the progressive wing of the Radical movement had occasionally collaborated with the labor movement against big business and the Liberals to push through reformist legislation such as the Factory Act. However, the radicalization of the labor movement at the beginning of the 20th century scared away the potential alliance partners. The Catholic Conservatives and the farmers turned to the Radical movement and formed a "bourgeois" coalition against the socialist challenge (Luebbert, 1991: 8–9; Obinger, 2009: 190–1). The Social Democrats, who were in a minority position, found themselves deprived of allies. The situation was similar in the corporatist arena, where the powerful employers' associations were not willing to engage in encompassing collective agreements with the trade unions.

All this happened against the background of World War I, the Russian Revolution, and the seizure of power by the National Socialists in Germany. Shortly after World War I and the Russian Revolution, the Social Democrats introduced into their party program a paragraph supporting the "dictatorship of the proletariat," which was not removed until 1935 (Parri, 1987b: 41). In 1933 fascist organizations became active in Switzerland (Linder, 1999: 296), while groups within the Catholic Conservatives started to promote the establishment of self-governing professional associations as a replacement for the capitalist economy (Weber, 1989). In addition to these developments, the unemployment rate reached a new high in 1936 (Obinger et al., 2005: 284).

In this tense atmosphere, a breakthrough occurred when the powerful Swiss Metalworkers' and Watchmakers' Union and the employers' association concluded the so-called "Peace Agreement." Due to the economic crisis, the federal government imposed a price freeze to combat inflation and threatened to bring in mandatory wage arbitration to enhance Switzerland's export competitiveness. To avoid further governmental interventions, the employers were now willing to accept the trade unions as an equal partner on questions of labor market and social policy (Katzenstein, 1985: 146–7). The "Peace Agreement" of 1937 served as a model for the whole economy. However, this agreement should not be seen solely as a reaction to the governmental threat to intervene in labor market relations. It was also an expression of conscious efforts to dampen social conflicts and maintain social cohesion in difficult times, as well as to keep the economy competitive (Armingeon, 1994: 35; Tschudi, 1996: 184). The polarized ideological climate and the economic problems of the 1930s forced political moderation on the labor movement and induced the non-socialist parties and the employers to co-opt the Social Democrats and the trade unions (Crouch, 1993: 146). The political counterpart to the corporatist "Peace Agreement" was the revision of the economic articles of the constitution, which took place in 1947. This revision sanctioned the constitutional right of the interest organizations to be incorporated into public decision-making and implementation (Parri, 1987a: 75).

The empowering of the trade unions in the corporatist arena was paralleled by the inclusion of the Social Democrats in the political arena. As the Social Democrats became the strongest party in the National Council in 1931, the bourgeois parties decided to integrate the Social Democrats into the public policy-making process. This strategy had already proved its worth 40 years earlier, when the Radical movement co-opted the Catholic Conservatives by offering them a seat on the Federal Council. After the Social Democrats had revised their political program (removal of the paragraph on the dictatorship of the proletariat and acceptance of national defense), the first Social Democrat was elected to the Federal Council (Linder, 1983: 274). However, the co-optation of the labor movement should not hide the fact that the employers' associations and the bourgeois parties remained much more powerful. The bourgeois parties controlled a clear majority in the parliament and the government, while the employers' associations dominated the corporatist arena (Crouch, 1993: 70).

The labor movement soon came to notice this unequal distribution of power resources. Despite having become part of federal policy-making, the labor movement was not able to accomplish significant improvements in the area of job security regulations. Only two notable changes can be observed in this period. First, the revision of the economic articles of the federal constitution in 1947 extended the federal jurisdiction with regard to working conditions and child labor to all dependent employees. Second, the protection against dismissal during military service was improved several times in the period 1940 to 1949, and in 1962 was extended to dismissal during compulsory community service (Tschudi, 1987: 55, 65). In contrast, the preparations for the revision and extension of the Factory Act to all dependent employees advanced only very slowly (Berenstein and Mahon, 2001: 39).

## **Big Efforts for Small Results: the Revisions of the Factory Act and the Code of Obligations**

The period between World War II and the first oil price crisis in 1973 was characterized by a booming economy and very low unemployment rates. The superb economic performance was the result of a coherent political-economic model based on two compromises between the country's most important political and social forces:

The first pact, between labor and capital, was based on labor's acceptance of peaceful industrial relations, in exchange for high salaries and relatively generous occupational social protection. The second compromise, between export-oriented business and domestic producers, rested on a combination of economic openness, essential for a successful export sector, and tolerance for non-competitive arrangements in the internal market, which benefited domestic producers. (Bonoli and Mach, 2000: 132)

Switzerland, like all small states, is dependent on world markets to export and import goods. As a result, protectionism in the export sectors is not a viable option. Instead, small states have to adapt to changing international markets. According to Katzenstein (1985), small states are very successful in adjusting to transformations of the economic environment because of a carefully calibrated compensation strategy. To prevent political eruptions due to economic changes imposed by world markets and to forestall calls for a more protectionist economic policy, the Swiss economic model compensated those societal groups that could not directly profit from the economic success of the export sector. In Switzerland this has been done by ensuring full employment and high wages for the core labor force, along with non-competitive arrangements in the domestic market.

It is no coincidence that Bonoli and Mach's (2000) brief description of the postwar Swiss model does not mention the state. After World War II, the interest associations increasingly dominated economic and social policy-making (Kriesi, 1980; Linder, 1983). There are many reasons for this (Armingeon, 2002: 729–30). First, the Swiss Federation is heavily dependent on information and expert knowledge provided by the interest associations and often relies on these organizations to carry out policies. Second, direct democracy and the constitutional requirement that interest organizations have to be heard in the political decision-making process ensure their participation in economic and social policy-making. According to Kriesi (1980: 689–92), this results in a division of labor, in which the interest organizations shape the content of federal policy-making, especially in the area of economic and social policy, while the federal government mediates between the different interest organizations. Third, the close relationship between some interest associations and parts of the federal administration further strengthens the incorporation of these organizations. Hotz (1979: 379) describes this as a "colonization" of some sectors of the public administration by organized interests. Finally, the federal state simply lacks the resources to impact the Swiss economy. For example, among OECD countries Switzerland faces the highest number of institutional obstacles to an effective business-cycle policy (Armingeon and Emmenegger, 2007: 182).

In this economic model, the labor movement has always been in a minority position. Neither in the political nor in the corporatist arena was the labor movement able to match the power of the bourgeois parties or of the employers' and farmers' associations (Kriesi, 1980: 693–7). One reason for this weakness is the lack of a "red-black" coalition (Obinger, 2009: 179). Unlike the Netherlands, also classified as a liberal corporatist country by Katzenstein (1985), Switzerland never experienced a prolonged coalition between the Social Democrats and the Christian Democrats. The Catholic Conservatives always had a strong preference for decentralized solutions (Gruner, 1977: 117–19; Weber, 1989: 64), which did not harmonize with the statist preferences of the Social Democrats.

These power asymmetries, the weakness of the federal state, and the exceptional economic performance had important implications for the development of job security regulations. For most Western industrialized countries, the period between World War II and the first oil price crisis was critical for the development of job security regulations. This is also true for Switzerland. In 1922 the Federal Assembly voted to extend the Factory Act of 1914 to non-industrialized enterprises. The preparations started in 1931 and the first draft law was presented in 1935. However, most interest organizations rejected the government proposal, which they considered too state-centered

(Arnold, 1970: 138–9). Due to the negative feedback in the pre-parliamentary consultation, the federal government decided to postpone the revision of the Factory Act (Tschudi, 1987: 55).

The attempt to extend the Factory Act to non-industrialized enterprises was resumed in 1943 at the request of the Federal Assembly. This time, the federal government assigned an expert commission the task of developing a draft law (Tschudi, 1987: 55). In 1945 a proposal was sent to the interest associations and the cantonal governments for a first evaluation. This progressive draft law included several restrictions on the employers' right to hire and fire and was rejected by the business organizations. The regulation of dismissals in case of personal hardship proved to be especially controversial (Hohler, 1981: 21–2; Neidhart, 1970: 322–3). The discussions were further delayed due to a constitutional amendment. The revision of the economic articles of the federal constitution in 1947 extended the federal jurisdiction over working conditions to all employees. As a result, the federal government decided to extend the Factory Act to all labor market participants (Tschudi, 1987: 55).

The new draft law of 1950 took into account both the negative feedback in the pre-parliamentary consultation and the extension of the federal jurisdiction. The expert commission decided to drop the controversial hardship clause and proposed including in the Code of Obligations a stipulation on restrictions of dismissals on insufficient objective grounds (Hohler, 1981: 22). Nevertheless, the new draft law was unacceptable to the business associations. The federal government then decided to postpone indefinitely the preparation of the Labor Act (Neidhart, 1970: 327).

Thirty years after the initial decision to regulate the working conditions in non-industrialized enterprises, no draft law had been submitted to the Federal Assembly. In this situation, the federal government decided to drop completely the controversial job security regulations and to incorporate them in the revision of the Code of Obligations, the preparation of which began in 1963 (Arnold, 1970: 152).<sup>6</sup> The Labor Act regulated only working hours, occupational health and safety, and child and female labor (Tschudi, 1987: 59). The new draft law, presented in 1957, was widely accepted in the pre-parliamentary consultation and submitted to the Federal Assembly in 1960. In the parliamentary discussion of the Labor Act, the left-wing parties criticized the draft law for not being progressive enough, while some right-wing MPs considered the draft law to be too restrictive. However, no major modifications resulted from the discussions and in 1964 the Federal Assembly passed the Labor Act (Emmenegger, 2009: 220).

The first draft of the revision of the Code of Obligations, presented in 1963, incorporated restrictions on dismissals on insufficient objective grounds. In the preliminary consultations, however, these clauses were heavily opposed by business associations. They threatened to demand an optional referendum if the clause were not removed (Arnold, 1970: 159; Hohler, 1981: 23; Rüeegg, 1981: 36). Although the representatives of the labor movement considered this clause to constitute the core of the revision (Arnold, 1970: 153), the federal government decided to drop it. Moreover, the government now argued that no further restrictions on dismissals without sufficient objective grounds were needed. They referred to the lack of court decisions on this issue and to the fact that no such restrictions had been incorporated in collective agreements so far (Arnold, 1970: 159; Hohler, 1981: 22–3). However, this line of reasoning is problematic. First, the absence of these restrictions in collective agreements was largely the result of the superior power resources of the employers' associations. Second, court decisions were complicated by the fact that Art. 2 of the Civil Code (good faith), interdicting abuses of right, was not applicable to employment contracts (Arnold, 1970: 128–9, 160–2).

In the end, the revision of the Code of Obligations did not bring about any major changes (Tschudi, 1987: 69). The most important modification was the abolition of the distinction between different categories of workers. Instead, all employees are endowed with the same rights. According

to Art. 336, an employee may not be dismissed (1) while carrying out their mandatory military and civil service, (2) during the first four weeks (eight weeks after one year of employment) of an employee's incapacity to work due to illness or accident which is not the employee's own fault, and (3) in the four weeks before and four weeks after giving birth to a child (Hohler, 1981: 25). Furthermore, the revision of the Code of Obligations introduced severance payments for employees aged over 50 and with more than 20 years of service, and notice periods dependent on tenure (Tschudi, 1987: 68–9).

The lack of progress is explained first by the fact that the introduction of further job security regulations was opposed by the business associations and the bourgeois parties. The federal government clearly intended to restrict dismissals in both the Labor Act and the Code of Obligations. In both cases, however, the employers' associations and the bourgeois parties made clear that they would not support the draft law. The threat to demand an optional referendum proved to be sufficient in both cases. As a consequence, the federal government decided to drop the most progressive elements.

Second, the revision of the Code of Obligations took place against the background of a booming economy. After many years of full employment, the federal government acted as if the workers' state of dependency had disappeared (Berenstein and Mahon, 2001: 57). It is important to note that this attitude was widespread (Hohler, 1981: 36). This also explains why the revision of the Code of Obligations restricted employees' right to leave. The federal government argued that the employers needed to be protected from the bargaining power of the trade unions (Tschudi, 1987: 68).

Finally, the trade unions did not campaign hard for further regulations in the Code of Obligations (Berenstein and Mahon, 2001: 40–1) because of their general preference for collective regulations instead of statist solutions (Parri, 1987b: 46; Trampusch, 2008: 68–9). However, this strategy was often unsuccessful. For instance, Hohler (1981: 76–89) shows that in 1980, 53.5 percent of all multi-employer collective agreements did not diverge from the stipulations in the Code of Obligations. In the other cases, the clauses largely restricted the employer's right to dismiss the worker due to membership in a trade union or during longer periods in case of illness, accident, or pregnancy. Similarly, Fluder (1991: 352–3) shows that in 1988 the collective agreements in the metal, machine, clock, and watch industries did not diverge from the Code of Obligations with regard to job security regulations.<sup>7</sup>

## **Protection for the Core Male Labor Force: the Political Responses to the First Oil Price Crisis**

Despite expectations to the contrary, “Les Trentes Glorieuses” were not there to stay. On October 17 1973 the members of the Organization of Arab Petroleum Exporting Countries decided to cease exporting oil to countries that supported Israel in the Yom Kippur War. This had tremendous consequences for the world market price of oil and for the oil-importing countries. The shortage of oil led to a price shock. As a result, the oil-importing countries experienced simultaneous inflation and recession. In Switzerland, GDP growth decelerated in 1974 and reached a record low in 1975, while the employment rate decreased by 4.8 percent in 1975 and 2.8 percent in 1976 (Flückiger, 1998: 371, 381).

Instantly, several members of parliament started to demand better protection against dismissals (Emmenegger, 2009: 223). In 1975 the Swiss Trade Union Federation and the Social Democratic Party published a joint program for the stimulation of the economy. Among other things, they demanded a reduction in working time from 46 to 40 hours a week and better protection against



dismissals (Parri, 1987b: 48). The federal government did not reject the joint program from the outset. However, the employers were very critical and opposed both the working time reduction and the proposed job security regulations. As a consequence, the federal government ended up reducing working time from 46 to 45 hours a week but did not legislate in the area of job security regulations (Parri, 1987b: 48).

One might have expected the labor movement to revolt against such passivity in times of crisis. However, this was not the case because large segments of the labor force were not affected by the crisis owing to the peculiar character of the Swiss labor market. The presence of numerous foreign workers holding temporary work permits allowed the federal government to manage the supply of labor in the aftermath of the price shock (Schmidt, 1985). The number of foreign workers in Switzerland dropped from just under 900,000 in 1973 to 650,000 in 1977. This reduction in the labor force was accomplished by simply not prolonging the work permits of foreign workers. Similarly, the employment rate of women dropped from 54.1 percent in 1973 to 50.8 percent in 1977 (Bonoli and Mach, 2000: 139). However, most of them did not (or could not) apply for unemployment compensation. This considerable reduction in the labor supply explains why the unemployment rate never exceeded 1 percent in the 1970s and 1980s (Obinger et al., 2005: 284).

Second, the federal government was not so inactive after all. At the beginning of the first oil price crisis, only 20 percent of the working population were covered by unemployment insurance. When it became clear that the first oil price crisis would last longer than expected, the federal government hastily prepared a constitutional amendment that extended the federal jurisdiction in the area of unemployment insurance. The amendment was accepted in a popular vote in 1976 and enacted in the form of an interim arrangement in October 1976 and permanently in 1982 (Tschudi, 1996: 184). With net income replacement rates of between 70 and 80 percent, average production workers were well protected against income loss in case of dismissal (Scruggs, 2004). As a result, the core male labor force was hardly affected by the first oil price crisis (Emmenegger, 2008: 108).

The trade unions continued to demand further restrictions on employers' power of dismissal. In 1981 the Christian Democratic Trade Union Federation submitted a popular initiative demanding the following: (1) dismissed employees can demand to be informed about the grounds for their dismissal; (2) regulation of collective dismissals; (3) the possibility of challenging a dismissal for being based on insufficient objective grounds; (4) postponement of dismissals in cases of hardship due to the personal situation of the employee; and (5) further restrictions on dismissals during sickness, accident, and pregnancy (Official Bulletin of the National Council, 1985: 1087).

The popular initiative was opposed by the federal government and the preparatory commissions of both federal chambers (Emmenegger, 2009: 225). However, the federal government acknowledged the necessity of reform and proposed a modest revision of the Code of Obligations. The government was supported by the preparatory commission of the National Council, but the preparatory commission of the Council of States opposed the government proposal. After lengthy discussions, the two chambers agreed on an even more modest version of the governmental proposal. The resulting counter-proposal to the popular initiative suggested introducing the provision that a dismissed employee can demand to be informed about the reasons for dismissal, compensation payments in cases of dismissal for insufficient objective grounds (misuse of rights), and an extension of the period during which an employee may not be dismissed due to sickness, accident, or pregnancy. In return, the Christian Democratic Trade Union Federation decided to withdraw the popular initiative and the counter-proposal was enacted (APS, 1988: 191–2). As a result, 15 years of campaigning for more job security regulations resulted in a very modest revision of the Code of Obligations.<sup>8</sup>



## Conclusion

According to the “varieties of capitalism” literature, extensive job security regulations are a constitutive element of coordinated market economies. Although Switzerland is normally assigned to the “coordinated” camp, it is characterized by few restrictions on hiring and firing. The delayed development of the Swiss social protection system is normally attributed to the high number of institutional veto points and the strength of the liberal-conservative parties. While I do not want to question these accounts of policy-making in Switzerland, this article highlights the importance of an additional factor: the weakness of the federal state.

Although Switzerland is a labor law pioneer, the interaction between a weak federal state, numerous institutional veto points, and a liberal-conservative political majority critical of centralization prevented the further development of job security regulations. Each time the federal government suggested reinforcing restrictions on dismissals, an alliance of liberal-conservative politicians and employers’ associations threatened to defeat the government proposals. Unable to impose its will on the employers’ associations, the weak federal government gave in to the forces of opposition and the reforms were either abandoned or diluted. As a result, Switzerland is still characterized by low levels of job security regulations today, despite the considerable efforts made to extend them.

The weakness of the federal state can be traced back to 19th-century politics. In those years, Switzerland was characterized by a conflict between the liberal Radical movement and the Catholic Conservatives. The latter initially opposed the federal state and, after their defeat in a short civil war, hindered any further centralization of policy-making and political competences. Lacking resources, the federal state turned to interest organizations to perform public tasks. The weak labor movement that came into existence in the late 19th century was split over the question of state intervention. While the Social Democratic Party supported statist solutions, the Swiss Trade Union Federation preferred corporatist agreements.

State structure and capacity are not set in stone. As this analysis highlights, political coalitions play a fundamental role in the development of state–society relationships. After the Radical movement had lost its majority in the parliament, Switzerland did not experience the emergence of a “red–black” coalition, as the Netherlands did. Instead, the Catholic Conservatives, alienated by the radicalization of the Social Democrats, joined the Radical movement to form an “anti-socialist” coalition. This left the “statist” Social Democrats with no political partner, while two parties critical of the centralization of policy-making continued to dominate Swiss politics.

As has been shown by several influential studies (e.g. Immergut, 1992; Obinger, 1998), the weakness of the federal state was further aggravated by federalism, which strengthens local autonomy, and by direct democracy, which constitutes an important institutional veto point and fortifies any political force opposed to further centralization. This resulted in a political situation in which a very weak federal state was unable to impose further restrictions on dismissals against the will of the employers’ associations and allied political parties. Similarly, the weak labor movement was never able to achieve comprehensive job security regulations by means of collective agreements. As a result, Swiss law and collective agreements offer workers only limited protection against dismissal.

This account raises the question of why Switzerland experienced an impressive expansion of social spending in recent years (Armingeon, 2001), while job security regulations remain limited. While a detailed discussion of these developments remains outside the scope of this article, I would like to point to the role of several factors that led to an increase in social spending at the

end of the 20th century while leaving labor law unaffected. First, historical accounts of the development of the Swiss welfare state have commonly neglected the important role of private social benefits, thereby underestimating the true level of social spending in Switzerland. Once private social benefits are taken into account, Switzerland loses much of its status as an exceptional case (Kriesi, 1999). Moreover, as demonstrated by Leimgruber (2008), the peculiar public–private mix of the Swiss welfare state can itself be traced back to the particular Swiss “style of statism.” Second, as shown by Armingeon (2001), Switzerland was a late-comer in terms of the implementation of social insurance systems but not in terms of generosity. Once these social insurance programs had matured, social spending increased considerably. Finally, the commonly used indicator of the generosity of welfare states, social expenditure as a percentage of GDP, overestimates the expansion of the Swiss welfare state, because Switzerland suffered from below-average economic growth following the 1973 oil price crisis. Using the average of OECD countries’ economic growth rates, Armingeon (2005: 144) shows that the increase in social expenditure as a percentage of GDP in the period 1980 to 2001 would have declined by almost 50 percent, had Switzerland experienced the same level of economic growth as the other OECD member states.

The present analysis highlights the role of statism, which has often been neglected in the “varieties of capitalism” literature. Statism used to be an important factor in descriptions of conservative-corporatist welfare state regimes (e.g. Briggs, 1961; Esping-Andersen, 1990). However, the focus of this literature on interest organizations (e.g. Hall and Soskice, 2001) and the common perception of a rollback of state regulation have led to a disregard of the state’s role in production and welfare regimes in contemporary research. My analysis shows that the state still plays an important role in social policy-making, especially in the area of regulatory social policy. In fact, the low level of statism is what sets Switzerland most clearly apart from all other conservative-corporatist welfare state regimes (Esping-Andersen 1990: 70).

Moreover, this article emphasizes the ahistorical bias of much of the recent “varieties of capitalism” literature. Although authors in this tradition sometimes explicitly argue that they do not study “origins” (e.g. Estevez-Abe et al., 2001: 147), their argumentation nevertheless often assumes a causal relationship between institutions and the development of coordinated market economies (Pierson, 2004: 107). As the present analysis shows, there is no trade-off between low levels of employment protection and high levels of unemployment protection in Switzerland. Rather, low levels of job security regulations are the result of the Swiss “style of statism.”

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### Notes

1. Except for dismissals due to gender.
2. The Swiss government is not dependent on a majority in parliament. The government is elected for four years by the parliament and cannot be voted out of office during this period (Linder, 1999: 194).
3. The Radicals, despite supporting the creation of a federal state, were also critical of the centralization of public authority and state intervention (Bütschi and Cattacin (1993).

4. The Factory Act restricted the working day to 11 hours (9 hours on Saturdays and days before public holidays), prohibited child labor until the age of 14, regulated female labor, and outlined minimum requirements with regard to occupational health and safety (Tschudi, 1987: 10–13).
5. A new tax on men who were not liable for military service and a new liberal voting regime that endangered the minorities' grip on political power in their cantonal strongholds (Neidhart, 1970: 68–70).
6. This decision is important because the application of public law, such as the Labor Act, is under the control of the state and any breaches are subject to penal sanctions. In contrast, civil (private) law, such as the Code of Obligations, regulates relations between individuals. Public authorities do not intervene to ensure the application of the legislation (Berenstein and Mahon, 2001: 54–6).
7. Note that the incorporation of a reference to the Code of Obligations into collective agreements allows the trade unions to bring action before the courts on behalf of dismissed employees.
8. The 1988 reform was the last major reform of job security regulations in Switzerland. Two subsequent acts, the 1993 Act on Collective Dismissals and Transfers of the Employment Relationship and the 1995 Act on Equality between Women and Men, although important, did not fundamentally change the level of job security regulations.

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