

Cornelius Grebe

Reconciliation Policy in Germany 1998–2008

Construing the 'Problem'
of the Incompatibility of Paid
Employment and Care Work

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VS RESEARCH

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1 Introduction

‘In all research, the choice of object is primary and decisive. This refers to the set of concepts which determines the delimitation among the totality of phenomena of those selected as objects of analysis’ (Topalov 1979: 446).

In this quote Topalov addresses the ‘fundamental illusion’ of empiricist research approaches: that objects of inquiry are self-evident givens. The rejection of this empiricist ‘illusion’ constitutes the foundation of this thesis. This thesis modifies a contextual social constructionist paradigm of inquiry and combines it with a feminist standpoint in the analysis of policies claimed to be aimed at reconciling paid employment and care work in Germany from 1998 to 2005.

1.1 Genesis of the study

The present study developed out of three interrelated strands of our intellectual curiosity which evolved, triggered by an engagement with a discipline unique to the UK in its approach, Social Policy. First, in what can be described as a fruitful intellectual adaptation process to a new discipline, an initial interest in welfare state transformation in Eastern Europe developed into a keen interest in family policies. Early on, this led to the idea of conducting a comparative study of family policies in Germany and the UK. A broad reading into family policies then led to the focussing of our interest on the question of the reconciliation of paid employment and care work. We can never be sure about what triggers our academic interests. However, it appears that our own experience of the differences between the UK and Germany in work-family reconciliation as well as of having been brought up by a full-time-employed mother worked as a catalyst. Further, in our political consciousness the German general elections of 1998 stood as a major turning point. Our whole conscious political socialisation took place during the chancellorship of Helmut Kohl. His conservative government was a given. When Kohl was voted out in 1998 and Schröder took over as leader of a red-green coalition it was experienced by many as momentous event and associated with high hopes for policy reform, particularly because the green party had been advocating gender equality stronger than any other party.

Second, from the beginning of the PhD programme a theoretical interest in epistemology led us to read into social constructionist epistemologies. Having been trained an Historian and Political Scientist in Germany we were not familiar with non-realist social science epistemologies. The German Political Science tradition – which, on a side note, includes social policy – has a very strong normative element and has thus been very sceptical towards social constructionism. This scepticism is reflected by the fact that up to and including Masters level we were never exposed to social constructionism even though the schools at Heidelberg and Hamburg universities are among the best in the country. Therefore, reading authors such as Berger and Luckmann (1967) and Spector and Kitsuse (1974) amounted to something close to an intellectual epiphany. It was clear that our study had to engage with social constructionist thinking about social problems and social policies.

Third, from early on in our research we had engaged with feminist theories and research epistemologies. After initial scepticism, it became clear to us that using alternative feminist approaches to Social Policy and using different points of view could contribute significantly to existing knowledge in the field.

From this point on we tried to bring together in one study our interest in reconciliation policy, social constructionism and feminism. In our search for the right methodological tools we surveyed the wide field of discourse analysis but in the end settled for Bacchi's (1999) 'what is the problem? represented to be' approach. This choice also profoundly influenced our research questions. At this point, the contours of the emerging study led us to dropping the intercountry comparison for practical reasons in favour of an in-depth study of Germany's reconciliation policy.

1.2 Research Questions

Reconciliation policy is a comparatively recent phenomenon (cf. Mazur 2002). In Germany, the launch of such a policy was first pledged during the 1998 general election campaign by the oppositional Social Democratic Party¹ (henceforth: SPD) and the Green Party² which went on to form a new government. In 1999, the coalition framed the incompatibility of paid employment and care work as a major policy 'problem', announcing a packet of reconciliation legislation in the action programme '*Frau und Beruf*'³; and in its second legislative period, it continued to pres-

¹ Sozialdemokratische Partei Deutschlands, German abbreviation: SPD.

² Bündnis 90/Die Grünen, German abbreviation: Die Grünen.

³ The title of the action programme can be translated as 'women and employment'.

ent reconciliation policy as one of their central reform projects (Bündnis 90/Die Grünen and Sozialdemokratische Partei Deutschlands 2002: 25). Between 1999 and 2005, reconciliation legislation was proposed and enacted in four areas highlighted in the 1999 action programme: anti-discrimination, childcare, parental leave, and working time.

In spite of its recent emergence, how care work and paid employment can be reconciled has in recent years become a prominent policy issue in Germany, the European Union, and beyond. Increasing national and international political discussion, legislation, and a rapidly growing body of academic research (cf. Arthur 2002; Amend-Wegmann 2003; Bird 2004; Lewis and Campbell 2007) all bear witness to the high profile nature of the issue.

However, although social constructionist approaches have increasingly been demonstrated to engender fascinating new insights in social policy research (cf. Atkinson 2002; Scourfield and Drakeford 2002; Jacobs and Manzi 2000), research into reconciliation policy is firmly based upon empiricist social problems theory, which conceptualises social problems as preexisting givens, external to the policy process.

Although, some scholars have shown sensitivity to the moulding and shaping of the policy concept of reconciliation, mostly on an EU level (cf. Duncan 2002; Hantrais 2000; Junter-Loiseau and Tobler 1999; Stratigaki 2004), their research remains based upon empiricist social problems theory. Individual studies have applied a social constructionist paradigm of inquiry, but concentrate either on individual meaning making (cf. Repo 2004; Salles 2002) or on general discourse rather than governmental claims in legislation about the ‘problem’ (cf. Runté and Mills 2004). There is no study on German or UK reconciliation policy which applies social constructionist social problems theory in order to fundamentally investigate what government policy construes the ‘problem’ of incompatibility to be.

Conceptualising policies as attempted ‘solutions’ to objectively existing social ‘problems’ external to the policy process, research based upon realist social problems theory understands reconciliation policies as political reaction to extensive social change in recent decades: the increased labour market participation of women, value change, increased divorce rates, and a change in family structure, to name but a few, are argued to have changed Western societies fundamentally, causing a new social ‘problem’, incompatibility of care work and paid employment.

Such an understanding of policy is based upon the empiricist ‘illusion’ criticised above by Topalov, and ignores insights from the sociology of knowledge (cf. Berger and Luckmann 1967) and social constructionist social problems theory building

upon it (cf. Spector and Kitsuse 1967). Drawing on, among others, Berger and Luckmann (1967) and Spector and Kitsuse (1974, 1977), strict constructionist approaches conceptualise social ‘problems’ not as objective conditions, but as a process in which claims are made about a condition, construing the ‘problem’ in the process of making claims about it.

The two opposing ontological and epistemological positions could be characterised in a simplified way as follows. While a strict social constructionist approach asserts no objective ‘problems’ exist outside discourse, realist approaches maintain the existence of a non-discursive, ‘real world out there’.

Building on recent contributions to social constructionist social problems theory (cf. Hacking 1999) and a growing body of feminist research into the construing of policy ‘problems’ concerning women (cf. Bacchi 1999 and 2004, Marshall 2000), this thesis begins from a contextual constructionist starting point, adopting a careful middle position. While the study does not deny that incompatibility, encountered as a phenomenon by women, is ‘real’, it converges with Hacking’s (1999) argument that it is ideas about incompatibility which are discursively construed, not the ‘object’ itself. However, at the same time the study holds that it is impossible to think about incompatibility independently of claims made about it – that is independent of problem representation (cf. Bacchi 1999). While acknowledging Hacking’s (1999) contribution, who distinguishes in his critique of social constructionism between objects and ideas about objects, this thesis also questions the universal validity of such a distinction. In some respects Hacking’s distinction it is problematic. In our case legislative texts, for instance, are both objects and ideas. On the one hand they are published material documents, which libraries make accessible in thick leather volumes. But, they consist of words which are part of discourses and which constitute discursive constructions of social problems, such as incompatibility. Therefore, we cannot look at incompatibility independently of its discursive constructions. The study conceptualises German policies claiming to be aimed at the reconciliation of care work and paid employment as discursive construing of the ‘problem’ of incompatibility rather than as ‘solutions’ to an external problem, as those policies, in the guise of proposed and enacted legislation, discursively shape the ideas about incompatibility by ‘pretending’ to be ‘solutions’ to the ‘problem’; framing it and making assumptions about it.

In order to analyse the construing through reconciliation policy of our understanding of the policy ‘problem’ of incompatibility, this thesis critically utilises Bacchi’s (1999) *‘What’s the problem (represented to be)? approach’*. Central to this approach is the notion that ‘how we perceive or think about something will affect what we think ought to be done about it’ (Bacchi 1999: 1).

Starting from the assumption that the ‘problem’ of incompatibility of paid employment and family care work cannot be accessed independently of representations of it, it is therefore these problem representations we have to turn to. The study will mainly ask questions about problem representations. The central aim of the study is to find out what exactly government policy construed the ‘problem’ of incompatibility of care work and paid employment to be. This is highly relevant because it makes visible the underlying assumptions and presuppositions upon which our understanding of the incompatibility ‘problem’ rests. In line with the thinking expressed in the above quote from Bacchi’s (1999), this is crucial because it affects what we think ought to be done about the ‘problem’ of incompatibility of paid employment and family care work. Further, it will demonstrate how proposed ‘solutions’ are affected by the existing understanding of the ‘problem’.

Finding out what incompatibility has been represented to be will be achieved by systematically taking apart problem representations of incompatibility in legislative texts. In order to do this, the study will apply the methodical framework developed by Bacchi (1999). Further, the study will contrast problem representations of the mainstream legislative discourse with previous problem representations in the same policy areas and with alternative feminist problem representations, thus doubly harnessing the power of comparison.

The focus on using policy and legislative texts is particularly supported by Atkinson (2000) and Marshall (2000). Both conceptualise and use legislative texts as prime sources for their analysis of social policies. The governmental discourse, which is manifest in legislative texts, can be seen as the discourse of power. Because of its privileged position in the public domain and immediate consequences it is arguably the most powerful discourse.

The main question of this thesis is, thus, about the construing of the incompatibility ‘problem’ in four policy areas represented to constitute reconciliation policy: What is the ‘problem’ of incompatibility of paid employment and care work represented to be in government reconciliation policy, more precisely in the discourse in reconciliation legislation from 1998 to 2005? The main question aims at uncovering what the ‘problem’ ‘addressed’ by reconciliation policy is represented to be. Proposing a ‘solution’ to incompatibility in the form reconciliation policy is understood as construing our understanding of the incompatibility ‘problem’ through a representation of it. And, because we ultimately have no access to the policy ‘problem’ independent of representations such as reconciliation policy, we have to turn our attention to representations.

The study will investigate the main question across four policy areas identified as the core of reconciliation policy. Taking its departure from the most recent policy

area, it will begin with anti-discrimination policy and move on to childcare policy, parental leave policy, and working time policy. The main question has to be broken down into several questions to be able to answer it. Therefore, the study investigates several important aspects of the construing of the incompatibility ‘problem’ as conceptualised by Bacchi (1999).

First, the study will ask what the four key policies have been represented to be about. This first step is based upon the notion that every ‘solution’, such as a new piece of legislation, is part of the representation of the policy ‘problem’ ‘addressed by it. As such, every ‘solution’ contains implicit assumptions about the nature of the ‘problem’ to be addressed by it. The first question therefore asks what the four key policies have historically been about in Germany and how their concern has changed over time. Here, particular emphasis is placed on the analysis of the policies of the conservative Kohl Government (1982–1998), which preceded Schröder’s red-green coalition. This is intended to provide a comparison of problem representations, which facilitates their analysis.

The second question is grounded in the notion propounded by Bacchi (1999) and others that all policy ‘solutions’ contain an implicit ‘diagnosis’ of the cause of the ‘problem’. Any rational proposition of measures to remedy a perceived ill is necessarily based upon, at least, implied notions about its root cause, otherwise it would not be rational. This question therefore is about what problem representations in the four policies which are part of reconciliation policy tell us about the assumed causes of the incompatibility ‘problem’: What is the cause of incompatibility represented to be in the respective social policies? Through this question, the study will try to make apparent some of the important implicit assumptions underlying problem representations. This step is of particular importance because it provides the study with important insights which it will draw on at various later points. From our feminist perspective an analysis of what is represented to be the cause of incompatibility is crucial because if the perception of the cause of incompatibility changes, policy ‘solutions’ are more likely to change also.

Drawing on Bacchi (1999), the study argues that the analysis of incompatibility of paid employment and family care work should focus on the likely effects of different problem representations. It assumes that competing representations in reconciliation policy can be assessed by their likely outcomes. The third question asks for these likely effects. It consists of three subquestions. First, the study will analyse how subjects and subjectivities are constituted through and within legislative reconciliation discourse. The fact that people, in our case mostly women, are constituted as policy ‘targets’ has consequences. How they are characterised as policy ‘targets’ is

likely to affect the way the ‘problem’ of incompatibility is perceived by them. Second, it will try to uncover the effects of limits imposed by discourse on what can be said. By addressing certain things but not others the legislative discourse implicitly configures what falls within it and what does not. It determines what belongs to the nexus of reconciliation and the associated policies and what falls outside. Thus, limits are imposed by discourse on what can be perceived as contributing to it. This is highly relevant because it limits possible other ‘solutions’. Third, the study will ask for the ‘lived effects’ of discourse. Here, the study asks for likely real effects of legislative discourse. This question is based upon the assumption that although policy ‘problems’ are socially construed in discourse, the discursively construed ‘problem’ is real in people’s perception. As part of these three questions, the study will also ask, what is likely to change in policy and society if incompatibility is construed in such a way, and what is likely to remain unchanged. Furthermore, it will ask who is likely to benefit most from particular problem representations.

Fourth, the study will deepen its analysis of the importance of what remains unexpressed in problem representations begun with the previous set of questions. One of the central tenets of social constructionism, emphasised our by method, is that what is not said – not part of problem representations (Bacchi 1999) – is as important as what is included (cf. Best 1995; Gergen 1999). The fourth question will therefore focus on this aspect of problem representations. In order to be able to see what is not there, the study will use feminist research applying feminist standpoint theory. Standpoint theory holds that because of their specific social location women can have a potentially superior access to certain knowledge, such as about the inequality of women, which is one of the overarching themes of this thesis. The fourth question is thus: what is omitted or left unproblematic in existing problem representations of the incompatibility ‘problem’? For example, what is assigned to the private sphere and therefore defined as not part of the ‘problem’?

Fifth, the study will continue to draw on feminist research into reconciliation policy and associated policies. Utilising feminist standpoint theory, the study will identify alternatives to the legislative reconciliation discourse. The study will introduce alternative, feminist representations of incompatibility, which are not part of the mainstream legislative discourse. It will analyse in a similar way to that chosen for legislative problem representations, asking for implicit assumptions about the concern and cause of incompatibility. Therefore, the fifth question will be: how do alternative, feminist representations construe the incompatibility ‘problem’ differently, and how would policy ‘responses’ be likely to differ if the ‘problem’ were represented accordingly?

Finally, the study will investigate how far the incompatibility ‘problem’ is represented to be an expression of the ‘problem’ of women’s inequality. As reconciliation is currently the most influential way in which equal opportunities issues are framed in German policy discourse (cf. RÜling et al. 2004: 11), how influential is women’s inequality in problem representations of incompatibility?

In order to be able to understand problem representations better and to be able to take them apart, the method of choice has to incorporate a historical element. The study will try to describe the construing of the incompatibility ‘problem’ through problem representations over time. This comparative approach will help detect problem representations and help to see them more clearly. Foucault’s (1972) thinking about the historiography of systems of thought seems helpful here. He developed the method of genealogy to improve that of archaeology itself intended to compare discursive formations of different periods. The aim of genealogy is to demonstrate how a system of thought is the result of contingent historical events rather than the logical culmination of rational trends. It aims to show why one way of thinking replaced another. The aim of this thesis is different and humbler in that it uses a historical approach mainly to show how problem representations have changed over time and to bring problem representations into sharp relief for analysis. Therefore, the adequate method to begin analysis is a slimmed historical version of Bacchi’s *‘What is the problem (represented to be)? approach’* that owes to Foucault’s genealogy an awareness of the fallacy of assuming the rational evolution of policy discourses without being dependent upon Foucault’s argument or post-structuralism in general.

The analytical timeframe has to capture the development of the policies represented to be part of reconciliation policy in Germany to allow for such a comparison of problem representations. Analysis therefore takes its departure in postwar or even prewar social policy, depending on the traditions in the respective area of policy. Analysis of childcare policy begins in the 19th century while that of anti-discrimination policy begins after the Second World War. However, detailed analysis begins with the policies of the preceding Kohl Government. That is in the early 1980s.

Consistent with Bacchi’s approach, though adapting it to our different focus, the study will concentrate on proposed and particularly enacted legislation as the place to look for ‘constructions’ of social problems. Legislation is a particularly influential kind of claim about a social condition. It has been conceptualised as such and used in constructionist social policy research, such as Atkinson (2000) and Marshall (2000). Every piece of legislation, presented as a ‘solution’ to a social ‘problem’, contains a diagnosis of the respective ‘problem’. It contains implicit assumptions about what is part of the ‘problem’ and what is not, and about the causes of the ‘problem’. German

legislative texts are particularly well suited to this kind of analysis because they contain dedicated sections outlining the ‘problem’ addressed and the aims of the legislation. Bacchi refers to this way of framing, of construing a policy ‘problem’ in legislation problem representation.

In the following sections, three basic concepts of our research will be outlined: reconciliation policy, problem representation, and policy as discourse. In an academic field characterised by endemic terminological ambiguities, we deem this necessary. We do not claim, however, that the definitions provided here are universally valid, or even better than others. They are, however, appropriate for this particular piece of research.

1.3 Reconciliation policy

As indicated above, the term reconciliation policy is in need of some clarification. Interestingly – and providing further evidence for the construed nature of the incompatibility ‘problem’ – no internationally consistent name exists for policies claiming to address the issue of combining care work and paid employment. Even within the English-speaking world, different terms are used. In the United Kingdom and Ireland, they are usually called ‘work-life balance policies’, but sometimes also ‘reconciliation of work and family life policies’. The latter term is mostly used by academics in their research (cf. Mazur 2002). In Germany, respective policies are usually called ‘Politik zur Vereinbarkeit von Familie und Beruf’, which literally translates into ‘compatibility of family life and employment policy’. In recent times, however, the terminology seems to have undergone a change and policies are increasingly called ‘Politik zur Balance von Familie und Arbeitswelt’ which translates into ‘work-family life balance policies’. In this, ‘family life’ is represented to be care/domestic work (henceforth: care work). In the following, we will use the term ‘reconciliation policy’, although it has to be borne in mind that ‘Vereinbarkeit’ (lit. compatibility) has different connotations from ‘reconciliation’, lacking for instance its religious dimension.

1.4 Problem representations

The concept of problem representations is intrinsically tied to the constructionist epistemology and methodology in the social sciences. It has been developed in the

framework of constructionist research and epitomises a turn of focus from ‘objective problems’ to problematisations of issues, or claims about social conditions.

This study adopts Bacchi’s (1999) conceptualisation of problem representation. It is the central concept in her analysis of the ‘construction’ of the ‘problem’ of women’s inequality. Drawing on Fraser (1989) and Shapiro (1989), Bacchi conceptualises ‘problem representation’ in a debate about the shortcomings of previous realist and constructionist policy analysis. As objective ‘problems’ are not accessible separately from claims about them, they can no longer be the only focus of research. They are to be replaced by an analysis of subjective problematisations of social conditions. In her study, Bacchi thus argues for a constructionist refocusing of policy studies, away from ‘problems’ to interpretations or representations of problems:

‘Therefore, we need to shift our analysis from policies as attempted ‘solutions’ to ‘problems’, to policies as constituting competing interpretations or representations of political issues’ (Bacchi 1999: 2).

However, Bacchi also criticises strict constructionist approaches in the tradition of Spector and Kitsuse (1987) and locates herself in the contextual constructionist sphere with authors such as Best (1989). From a strict constructionist perspective, the consequence of the ‘constructed’ nature of social ‘problems’ is that research is limited to a description of competing claims. Therefore, Spector and Kitsuse (1987) argue that constructionists should refrain from making any assumptions about objective reality (cf. also Ibarra and Kitsuse 1993). Bacchi, in contrast to this strict constructionism, does not stop at describing problem representations. Her aim is to move on to the effects of representations on our thinking about issues. Bacchi’s goal is ‘to understand how policy decisions close off the space for normative debate because of the impression that indeed they are *solutions* to a problem (Bacchi 1999:20).’ She argues that one has to question the assumption that policies are ‘solutions’ to problems; challenging the notion prevalent in realist research that ‘problem’ identification or ‘problem’ definition on the one hand and ‘problem’ solution on the other are separate processes. Rather, everyone directly involved in the policy process is involved in representing a given issue as a policy ‘problem’ of a specific kind – in problem representation. Problem representations can, thus, be thought of as ‘constructions’ of problems. Using policy proposals, Bacchi argues that ‘every policy proposal contains within it an explicit or implicit diagnosis of the ‘problem’, which I call its representation’ (Bacchi 1999: 1). This inherent diagnosis contains analysis and judgement on two interrelated levels: Firstly, problem representations contain analysis and judgement on the concern of the policy proposal; on what is actually

represented to be the ‘problem’. Secondly, it contains analysis and judgement regarding the cause of the ‘problem’ (1999: 4).

Problem representation is a way to think about claims making in policy proposals, of conceptualising it. Problem representations can be thought of as construing social ‘problems’ by making implicit claims about their nature, concern, causes and effects.

At another point Bacchi disagrees with strict constructionism. She conceptualises problem representations as interventions that cause ‘real’ effects in the social world. Therefore, acknowledging that ‘all evidence is itself a construction’ (1999: 56), Bacchi makes assumptions about the social world, based upon evidence from it. Drawing on Best (1989), she argues that such evidence can to be used to describe, however imperfectly, the context of problem representation.

In Bacchi’s study, problem representation is both process and result: the act of representing a problem and the resulting particular representation. The focus on representations implies a focus on discourse, which Bacchi (1999: 2) uses in the sense of ‘the language, concepts and categories employed to frame an issue’.

1.5 Policy as discourse

The literature on the topic of discourse is vast. Discourse use has been inflationary since the ‘linguistic turn’ in the social sciences and humanities. The concept, however, has been conceptualised very differently. The aim here is to provide a conceptualisation of discourse which makes it possible to analyse policies as discourse, which is what a growing number of scholars aim to do (cf. Bacchi 1999; Ball 1990; Goodwin 1996; Marston 2000; Phillips 1996).

Many scholars who analyse policy as discourse draw on Foucault’s conceptualisation of discourse and apply it to policy. In his ‘Archaeology of Knowledge’, Foucault defines discourse as ‘practices that systematically form the objects of which they speak; they do not identify objects, they constitute them and in the practice of doing so conceal their own invention’ (1977: 12). Thus, discourse is more than language. It is practice and it has real effects. We can think of discourses as the frames within which we perceive issues or ways of seeing those (cf. Frank 1992).

Applying Foucault’s definition of discourse to policy, policy is viewed as the political practices that systematically form or construct policy (or social) problems. Policy does not simply identify objectively given phenomena but rather constitutes them in the first place, and by doing so it conceals this very fact. Foucault’s thinking

and post-structuralism are important sources for thinking about the closure exerted by language. In the study discourse is a useful concept in order to understand the way in which language, or broader, bodies of knowledge, define the terrain of incompatibility.

One of the challenges of the study, however, is to work with Foucault's definition of discourse while subscribing to a contextual constructionist position. Foucault (1977) holds that objects are formed through language in discourse. We cannot make statements about objects themselves because they have no independent existence. There is no outside to discourse and hence truth is purely contextual. Foucault has thus been criticised for a relativism bordering on nihilism. In contrast, the position of approaches belonging to the contextual constructionist nexus is that objects do exist outside discourse and that some access to truth is possible, albeit tentative and fallible. This thesis argues for Foucault's (1977) focus on discourse while it rejects his relativism, drawing on contextual constructionism as an alternative. It uses the concept of discourse in order to concentrate on the discursive construing of our understanding of the incompatibility 'problem and utilises feminist standpoint theory in order to make statements about incompatibility.

We are aware of the discussion concerning the question of the origins of discourse. The complex relationship between structure and agency in discourse still deserves much study. Ultimately, however, this thesis is interested in the effects of discourse rather than its origins. We will not go as far as to agree with Bacchi (1999) that the former question is more important than the latter. However, whether or not it is deemed to be more important, it is what this thesis investigates, and it can certainly be done on its own.

1.6 Structure of the study

Chapter Two reviews relevant literature and positions the study theoretically in the context of constructionist social problems theory on the one hand and feminist social policy research on the other. Locating the study within the tradition of contextual constructionism, the chapter identifies Atkinson (2000), Marshall (2000), Best (1989), and most of all Bacchi (1999) as important theoretical sources of the study. The chapter explores the relationship between social problems theory and feminist social policy research and between social constructionism and feminism. Further, the chapter introduces feminist contributions to the critique of gender equality policy in general and reconciliation policy in particular. This literature serves an impor-

tant purpose in the analysis in that it provides a critique of current policies, which implies a different perception of the respective policy ‘problem’ addressed. This difference will be employed to uncover existing problem representations. Feminist literature, in particular the research on individual aspects of reconciliation policy, also provides alternative representations of the incompatibility ‘problem’.

Chapter Three addresses epistemological and methodological questions. It aims to introduce the contextual constructionist paradigm of inquiry and its feminist perspective. The chapter addresses the tensions created by combining feminist standpoint epistemology with contextual constructionism and concludes that despite some difficulties their adoption is justified by the analytic dynamic created. The chapter further justifies the qualitative approach chosen and produces a critical description of research design and method. Finally, it provides a detailed reflective account of the process of data collection and data analysis.

Chapter Four serves as historical background to the main chapters. It provides an overview of the historical context of the emergence of the ‘problem’ of incompatibility of paid employment and care work. Comparing developments in West and East Germany, the chapter sketches the history of the ‘problems’ of mothers’ employment and women’s inequality, which were the antagonistic predecessors of the incompatibility ‘problem’. It further describes the emergence of the incompatibility ‘problem’ in the 1970s. The historical approach is necessary because previous problem representations affect later problem representations in reconciliation policy to date. New legislation refers to earlier legislation and policies thus ‘inheriting’ – even where it contradicts the previous legislation – parts of its underlying discourse.

Chapter five to eight deal with individual policy areas that have been represented to be part of reconciliation policy. The structure of chapters five to eight are identical. It follows from a systematic step-by-step application of Bacchi’s (1999) ‘*What is the problem (represented to be)? approach*’. The structure is designed to penetrate successive layers of problem representation. Each chapter begins with a historical section dealing with of the concern of the respective policy. Here, the study asks what the respective policy was represented to be about before 1998. The underlying theoretical notion is that every proposed ‘solution’ contains assumptions about the nature of the ‘problem’ addressed by the ‘solution’, an implicit ‘diagnosis’ of the ‘problem’. This section makes it possible to assess if and how problem representations have changed over time, thus also providing a comparison that serves as an analytical tool. Comparing different problem representations facilitates their analysis. Now, analysis turns to the years 1998 to 2005. The second section of each chapter subjects the policy in the respective area to the same analysis as that sketched above.

In the third section, the analysis moves on to the next layer of problem representations. Analysis is based upon the notion that ‘solutions’ in the form of legislation also contain implicit assumptions about the causes of the ‘problem’ legislated for. In this section, chapters five to eight will try to tease out these implicit assumptions.

The fourth section transcends the description and analysis of the nature of problem representations, attempting an assessment of changing and competing problem representations by their likely effects. One of the distinguishing features of the approach taken in the study lies in this section. Rather than asking ‘who makes the discourse?’ the study asks ‘what are the effects of the existing discourses?’ The section addresses three kinds of effects of problem representations, the constitution of subjects and subjectivities, the limits imposed on what can be said within discourse, and the likely ‘lived effects’ of discourse.

The fifth section of chapter five to eight turns its attention towards feminist critiques of reconciliation policy. Feminist research is utilised to identify what is not part of the discourse in reconciliation legislation. This is based upon the notion supported by postmodern scholars that what is not said is as important as what is said because it defines what is not part of a particular discourse. In section five, the study thus identifies omissions and blind spots in existing problem representations from a feminist perspective.

In the sixth section, each chapter turns its attention to problem representations beyond the mainstream, legislative discourse. It introduces marginalised feminist problem representations and asks if and how ‘solutions’ to the incompatibility ‘problem’ might differ if the ‘problem’ was thought about along different lines.

Chapter Five analyses German anti-discrimination policy. Beginning with a brief overview of the antecedents of anti-discrimination policy since the Second World War, detailed historical analysis of problem representations begins with the social policy reforms of the 1970s. The chapter analyses how the ‘problem’ of incompatibility of paid employment and care work is construed in anti-discrimination policy. The chapter asks questions about the concern of anti-discrimination policy – what anti-discrimination policy is represented to be about. It aims to reveal implicit assumptions and presuppositions in anti-discrimination legislation about the cause of the incompatibility ‘problem’. The chapter attempts to assess competing and changing problem representations by their likely effects, such as the constitution of subjects and subjectivities, on what cannot be thought about within present discourse, and the ‘lived effects’ of discourse. It uses feminist research to identify gaps and omissions in problem representations from a feminist perspective. And, it intro-

duces alternative feminist problem representations, asking how ‘solutions’ would differ if the ‘problem’ of incompatibility were thought about differently.

Chapter Six analyses childcare policy. Beginning with an overview of childcare policy since the 19th century, detailed analysis of problem representations begins with the 1960s. The chapter analyses how the ‘problem’ of incompatibility of paid employment and care work is construed in childcare policy. The chapter asks questions about the concern of childcare policy – what childcare policy is represented to be about. It aims to reveal implicit assumptions and presuppositions in childcare legislation about the cause of incompatibility. The chapter attempts to assess competing and changing problem representations by their likely effects, such as the constitution of subjects and subjectivities, on what cannot be thought about within present discourse, and the ‘lived effects’ of discourse. It utilises feminist research to identify gaps and omissions in problem representations from a feminist perspective. Finally, it introduces alternative feminist problem representations and asks how policy ‘solutions’ would differ if the ‘problem’ of incompatibility were thought about differently.

Chapter Seven analyses parental leave policy. Beginning with an overview of parental leave policy since the late 19th century, detailed analysis of problem representations begins with Nazi *Mutterschutz* legislation. The chapter analyses how the ‘problem’ of incompatibility of paid employment and care work is construed in parental leave policy. It asks questions about the changing concern of parental leave legislation – what parental leave is represented to be about. The chapter aims to reveal implicit assumptions and presuppositions in parental leave legislation about the cause of the incompatibility ‘problem’. It attempts to assess competing and changing problem representations in parental leave policy by their likely effects, such as the constitution of subjects and subjectivities, on what cannot be thought about within present discourse, and the ‘lived effects’ of discourse. The chapter utilises feminist research to identify gaps and omissions in problem representations from a feminist perspective. Finally, it introduces alternative feminist problem representations in parental leave policy and asks how policy ‘solutions’ would differ if the ‘problem’ of incompatibility were thought about differently.

Chapter Eight analyses working time policy. Beginning with an overview of working time policy since the 1960s, detailed analysis of problem representations begins in the 1970s. The chapter analyses how the ‘problem’ of incompatibility of paid employment and care work is construed in working time policy, concentrating on part-time employment policy. It asks questions about the changing concern of parental leave legislation – what parental leave is represented to be about. The chapter aims to reveal implicit assumptions and presuppositions in working time policy

about the causes of the incompatibility ‘problem’. It attempts to assess competing problem representations by their likely effects, such as the constitution of subjects and subjectivities, on what cannot be thought about within present discourse, and the ‘lived effects’ of discourse. The chapter utilises feminist research to identify gaps and omissions in problem representations from a feminist perspective. Finally, it introduces alternative feminist problem representations in working time policy, asking how policy ‘solutions’ would differ if the ‘problem’ of incompatibility were thought about differently.

Chapter Nine concludes the study. Drawing on the main analytical chapters five to eight, it pulls together the central findings of the study. It shows that problem representations have undergone a marked change since the 1970s. The chapter pulls together findings across the chapters, identifying change and continuity in problem representations, their likely effects and alternative problem representations. The chapter illustrates the contribution of the study to research on reconciliation policy, and it reflects on the methodological difficulties and advances associated with the chosen approach. Finally, the chapter identifies some areas for future research. It suggests that from the study research could move on to an internationally comparative study of reconciliation policy; a study of alternative problem representations; combining meta-level and micro-level analysis of the ‘lived effects’ of discourse; widening the data base through electronic text analysis; or a focus on structure and agency in discourse.

2 Theoretical positioning and literature review

In this chapter, we will outline the cognitive interests in this thesis. In order to do that, we will give an account of how existing research and theoretical contributions provide the basis for the research. Thus, we both position ourselves theoretically and identify how this study presents an original contribution to knowledge in the field of Social Policy.

Section 2.1 will describe the development of the constructionist paradigm of inquiry in social problems theory and discuss its rationale in social policy research. It will, thus, explain what such an approach can contribute to the analysis of Social Policy.

In chapter 2.2, we will present key feminist policy research that informs this study, thereby drawing on scholarship from the disciplines of Political Science and Social Policy alike. In particular, we shall concentrate on feminist analyses of gender equality policy and of ‘reconciliation of work and family life’ policy. This serves the purpose of introducing research that, due to its superior epistemological status, will constitute an important part of the evidence against which we will evaluate official problem representations in ‘reconciliation of work and family life’ policy. At the same time, it will be treated as construing the ‘problem’ of incompatibility itself.

From the joining of the two literatures will arise an original feminist post-structural research methodology, which will be introduced more systematically in the chapter on methodology and methods.

2.1 Social Constructionism and Social Policy

The crucial point of intersection between what is commonly called social constructionism and the academic study of social policy is the theory of social problems. It can be argued that social constructionism is the latest stage in the development of social problems theory.

It has been argued that Social Policy is not an academic discipline at all but that it is solely defined by what it studies (Spicker 1995). Although this assertion is put into question by the existence of a multitude of academic institutions dedicated to the

study of social policy with the respective chairs, journals, and courses, it captures the eclectic nature of Social Policy in regard to methods and methodology.

Despite the verdict for Social Policy in the UK and other Anglo-Saxon nations, in other national academic traditions social policy is not an academic discipline in its own right. In Germany, for instance, social policy is traditionally part of Political Science, in the sense of policy studies in the area of social policy. Further differences emerge on closer observation. In the UK and the Anglo-Saxon world generally, Social Policy is generally meant to be the study of the welfare state and its activities in the fields of health, education, housing, social security, and social work. In Germany, on the contrary, education is generally not perceived as part of social policy. Family policy, however, is.

Having emerged out of 19th and early 20th century Fabianism and social reform, UK Social Policy has traditionally been focused on application, problem solving and informing policymaking. This emphasis becomes clearly visible in the previous name for Social Policy: Social Administration.

The self-conception of the discipline is mirrored in Donnison's (1961, cited in Spicker 1995: 8) definition of Social Policy as 'an attempt to apply the social sciences (...) to the analysis and solution of a changing range of social problems'.

For want of a methodology of its own, Social Policy as the academic study of social problems draws on various disciplines' methods, such as sociology, politics, history, economics, psychology, and social work. This openness to the influences of other disciplines has invited the transfer of their theories and methods to Social Policy. It is through this position within the nexus of academic disciplines informing and influencing its methodology that social constructionism found its way into Social Policy research.

This, however, has not been without fierce resistance from the Social Policy establishment. Traditionally, Social Policy research in the UK, unsurprisingly, given its focus on creating applicable knowledge for social policymaking, took a realist or objectivist epistemological stance. This self-conception and institutionalisation of the discipline created a strong bias against social constructionist ideas.

In the following section, we will sketch out the development of social problems theory informing social policy research until the advent of social constructionism.

2.1.1 'Classical' social problems theory

In the course of the last 50 years social problems theory – largely the domain of sociology – has undergone considerable changes. Although, realist positions remained

influential long into the 1990s, other approaches also developed, containing the beginning of the end of the absolute dominance of the realist position. Tracing the emergence of these approaches is useful in order to understand where social constructionism came from.

There are several categorisations of theoretical approaches to social problems. Rubington and Weinberg (1995) differentiate between social pathology, social disorganisation, conflict theory, deviant behaviour, labelling theory, and critical perspective. These six theories correspond to Sullivan and Thompson's (1994) three categories: functionalism, conflict theory, and interactionism. Rainwater (1974) uses Rubington and Weinberg's categories (from an earlier edition of their book) and puts them in chronological order of their emergence. Rubington and Weinberg's first two categories, social pathology and social disorganisation, correspond to Sullivan and Thompson's functionalism. Both these approaches rest firmly on unquestioned realist ontology. Their enquiry into the social world is based on the respective epistemology and methodology. Thus, they rest on the normative-ontological assumption that social organisation is a positive pre-given fact. Departure from the assumed normality of this social organisation is what constitutes a social problem. However, social disruptions theory identifies individuals as the source of social problems, while the social pathology approach sees 'normlessness and cultural conflict' (Bacchi 1999: 51) at work.

The conflict theory, or value conflict theory, poses a challenge to social disorganisation and social pathology. The key texts of this theory are two articles by Fuller and Myers from 1941. Conflict theory emphasises that society is not an organic body afflicted by objective social problems but something made up of many different groups with different and conflicting interests. These conflicting interests can manifest themselves in phenomena that 'at least some people regard as undesirable' (Rainwater 1974: 5). Sullivan and Thompson identify Marx as the origin of this approach. Conflict theory marks the embryonic beginnings of social constructionism in so far as it suggests 'that what we perceive as social problems depends on how we see the world' (Bacchi 1999: 52).

The theory of deviant behaviour developed in American sociology from the 1940s. When Merton's anomie theory 'explaining rates of deviant behaviour' and Sutherland's differential association approach 'to how people learnt deviant behaviour' were merged into one overarching theoretical concept, deviant behaviour theory was born (cf. Rubington and Weinberg 1995: 134). Key features of this theory are the concepts of normality and normalisation. Integration into society, perceived as existing fact, is seen as positive and normal. If integration into society through socialisation fails, for example because of 'strains built into society, stemming from a

disjunction between what the culture offers as desirable and what the social structure actually makes available to all members' (Rainwater 1974: 6) or contact with deviant role models, deviant behaviour can be the outcome. Deviant behaviour, in turn, can cause social problems. Deviant behaviour theory, thus, shares the key idea of normality and the epistemological stance with the theories of social pathology and social disorganisation. As in these two theories, social problems are constituted in deviant behaviour theory by a departure from normality, which is epistemologically accessible to the researcher. On the other hand, deviant behaviour theory, with its focus on social interaction, contains another step in the direction of social constructionism: deviant behaviour theory emphasises the consequences of attributing the label 'deviants' to people in interaction. Therefore, reality is, at least partly, created or 'constructed' by social interaction.

Originating in Marxist tradition, the critical perspective on social problems emerged in the 1960s in Germany, the UK, and the United States as a reaction to the experience of societal change and crisis. Formulating a critique of capitalist society and culture, it identifies the exploitation of the working class as the cause of social problems. The specific 'form of social organisation that capitalist society produces causes a wide range of specific social problems' (Rubington and Weinberg 1995: 238). Although, offering a profound critique of the capitalist society, the critical perspective too, remains trapped in a realist ontology and epistemology.

With labelling theory we are reaching social constructionist ideas, which will be presented in the next section.

Though we have not nearly done justice to the above theories by introducing them only very briefly and therefore with distortions, one thing becomes clear. Although, social problems theory has experienced major development and refinement over the years, there are remarkable constants. Firstly, with the exception of labelling theory, all theoretical approaches to social problems rest on realist or objectivist ontological and epistemological assumptions. Secondly, the unifying factor of all the above approaches to the study of social problems is that they very much concentrate on maintaining social order (Bacchi 1999: 53).

Anglo-Saxon Social Policy has for most of its existence drawn mainly on the above approaches to social problems theory and shared their ontological and epistemological assumptions. By self-definition, it has, as an academic discipline concentrated on results and solutions. Core areas of Social Policy have been the evaluation of social policies and the drawing up of solutions for 'objective' social problems.

Social Policy shares the focus on solutions with the vast majority of policy studies. Given the purpose of this kind of research – to create applicable knowledge –

this is not in itself a bad thing. What is negative however is to exclude other approaches asking different questions by claiming they do not fit into the academic discipline. Bacchi (1999) argues that the dominant focus on solutions has to be overcome or at least complemented with a focus on representation.

Since the late 1990s, the theoretical inertia in Social Policy has increasingly been challenged by scholars, such as Vincent 1996, Goodie and Bagilhole 1998, Atkinson 2000, Twigg 1997 to name but a few, applying social constructionist ideas and methodologies to the study of social policy. The journal *Critical Social Policy* has been the most important outlet for these authors.

In the next section, we will outline the development of social constructionism and some of its critique to prepare the ground for an appraisal of its fruitfulness for Social Policy research in a review of important recent research.

2.1.2 *Social Constructionism*

It is sometimes argued (cf. Bacchi 1999) that the earliest variant of social constructionism is labelling theory or as Rubington and Weinberg (1995) call it ‘the interactionist perspective’, because it developed out of the application of symbolic interactionism to the study of social problems. Based on Mead and Schutz’s philosophical work, Lemert (1951) and Becker (1963) formulate a challenge to deviant behaviour theory. Accordingly, labelling theory is first and foremost concerned with deviance. It examines how and by which processes deviance is socially defined in interaction. In doing so, labelling theory reverses the argument of deviant behaviour theory: someone’s being different has not caused society to regard him as deviant so much as labelling has made him be different (Nettler 1995). Or in the words of Becker: ‘deviant behavior is behavior that people so label’ (1963: 9).

Thus, regarding social problems, labelling theory turns its attention from the objective conditions to the subjective definitions of social problems. However, labelling theory implicitly stays within the analytical framework of thinking about social problems as consisting of objective conditions and subjective definitions. When labelling theory asks ‘whether society reacts to objective conditions or to its own definition of deviance’ (Nettler 1995), it firstly assumes that there is an objective vantage point from which to judge that and, secondly, that there is such a thing as an objective condition.

Thus, although labelling theory entails a refocussing of social problems studies and the beginnings of a departure from a strictly realist view of social problems, the real turning point is the formulation of social constructionism. This revolutionarily new ap-

proach emerged in the 1970s in the course of the post-structuralist reorientation of social sciences. Through their common interest in social problems theory, social constructionism and Social Policy would eventually meet, much to the benefit of the latter.

The beginnings of social constructionism in sociology lie in the subdiscipline of the sociology of knowledge. Here, Berger and Luckmann's *The Social Construction of Reality* (1966) is generally considered the text that laid the foundations for social constructionism as a momentous sociological approach.

Berger and Luckmann suggest the refocusing of the sociology of knowledge. Rather than being concerned with the creation of scientific knowledge, they argue it should be concerned with everyday knowledge about the world. In their study, they draw on developments in 19th century German thought, particularly on Marx, Nietzsche and German historicism (particularly Dilthey) and also on another sociological subdiscipline, symbolic interactionism as formulated by Mead (1934). From Marx, they adopt the idea that one's perception of the world depends on one's place in it and on the social context. From German historicism comes the idea that would lead to accusations of relativism, the idea that 'no historical situation could be understood except in its own terms' (1966: 19).

Berger and Luckmann share the fundamental assumption of symbolic interactionism, namely that 'as people we construct our own and each other's identities through our everyday encounters with each other in social interaction' (Burr 2003²: 13). Applying these ideas and insights to the sociology of knowledge, Berger and Luckmann directly challenge the realist ontology and epistemology forming the basis of social science research by postulating that reality and knowledge are not universal facts but socially relative and contextually specific 'constructions'. Berger and Luckmann state emphatically that 'the sociology of knowledge is concerned with the analysis of the social construction of reality' (1966: 15).

Reality and knowledge are thus phenomena created and sustained by human beings together through social practices. Language plays a crucial role in these social practices. By a circular process of externalisation, objectification and internalisation, the social world is 'constructed' through language and social practices and at the same time experienced as if natural and fixed.

Due to the nature of their study, being a contribution to the theory of sociology, Berger and Luckmann did not contribute directly to the theory of social problems. However, the implications of their study for social science research are dramatic. The constructionist ontology and epistemology implicit in Berger and Luckmann's study question the whole project of mainstream social science research. If reality is not something given that can be discovered (if imperfectly) but a construction, the

focus of research has to switch from the former to the latter: from reality to the construction of reality.

The credit of bringing social constructionism to social problems theory has widely been given to Spector and Kitsuse (Bacchi 1999, Miller and Holstein 1993, Rubington and Weinberg 1995). In a series of joint articles in *Social Problems* (Kitsuse and Spector 1973, 1975; Spector and Kitsuse 1974), they suggested a radically new theory of social problems. In 1977 they expanded on their earlier argument in their book *Constructing Social Problems*. The articles and the book have been judged to 'mark the birth of the social constructionist perspective' (Rubington and Weinberg 1995: 290). The influence of social constructionism in the study of social problems has been enormous, as has the controversy triggered by it. Holstein and Miller characterise the social constructionist approach established by Spector and Kitsuse as the 'most controversial – if not the most influential – development in social problems theory in the past twenty-five years' (1993: 5).

In their concern to establish a (new) theory of social problems, Spector and Kitsuse challenged prevailing structural functionalist theories in the field which rested on the premise that social problems were objective facts, social conditions existing independently of people's perception and interpretation of them (Miller and Holstein 1993: 7). They admit their argument was partly a reaction to the functional theory of social problems and also an 'extension and elaboration of the value-conflict writings' (Spector and Kitsuse 1977: 73), particularly of Fuller and Myers (1971).

In their argument, Spector and Kitsuse defy the objectivist assumption implicit in structural functionalist approaches, namely that the researcher has access somehow to the objective status of social conditions. Moreover, they deny the very possibility of objective knowledge about social conditions. Instead they argue, basing their argument on social constructionist ontology and epistemology, that social problems are not objective conditions existing in society but social **activities** of members of society:

'Thus, we define social problems as the activities of individuals or groups making assertions of grievances and claims with respect to some putative conditions' (Spector and Kitsuse 1977: 75).

Thus, by 'placing *linguistic* activities at the centre of the social problems process' (Holstein 2005: 443), Spector and Kitsuse undermined the whole of the existing social problems literature.

As indicated in the above paragraph on Berger and Luckmann (1966), Spector and Kitsuse (1977) come to the conclusion that the focus of analysis has to shift from particular conditions to the process of claims-making. According to them, the task

for sociologists of social problems should, therefore, be accounting for the claims-making process, not evaluating the claims:

‘The central problem for a theory of social problems is to account for the emergence, nature, and maintenance of claims-making and responding activities’ (Spector and Kitsuse 1977: 76).

To be successful in that and to avoid the permanent danger of falling back into objectivistic assumptions, Spector and Kitsuse argue that the researcher has to suspend all assertions on the conditions, on the ‘objective basis of the claim’ (1977: 78). Not even their very existence should be assumed.

Not surprisingly, Spector and Kitsuse’s strict subjectivist argument has drawn sharp critique from the realist perspective in sociology. For scholars of social policies, interested in amelioration of very real social conditions, Spector and Kitsuse’s thesis is unacceptable. After all, their fundamental challenge of structural functionalist approaches to social problems amounts to nothing less than a negation of the idea of social problems studies in the service of social amelioration. Spector and Kitsuse have it that we cannot gain objective knowledge about social conditions or ‘social problems’. In light of that assumption evaluative studies of social policies can easily be seen as mistaken or even pointless.

The most common critique of social constructionism from a Social Policy perspective is normative and objectivist, and largely based on the abovementioned self-conception of the discipline. It cannot, therefore, be refuted, because what scholars define as the aim of their discipline is not intrinsic to any logic of the discipline itself but a normative statement.⁴ It goes like this: There are ‘real’ problems out there in society and social constructionists’ focus on claims-making ignores this fact and therefore fails to address the more important issue. Generally speaking, social constructionists do not deny that they do not address the ‘real’ problems because no-one can have access to them. Further, they argue that the traditional way of studying social problems has failed so far to deliver a convincing theory of social problems. Moreover, they claim that we only recognise social problems as real because someone has made a successful claim to that effect (cf. Best 1995: 343). We do not think this debate is particularly fruitful here because it is fundamentally about what Social Policy should research into. Therefore, we would like to draw attention here to two more interesting strands of criticism. They apply not only to Spector and Kitsuse’s argument, but to social constructionism in general.

⁴ Cf. Max Weber (1919) *Wissenschaft als Beruf [academia as a vocation]*, München and Leipzig: Duncker & Humblot.

The first criticism, as expressed by Hacking (1999), comes from a philosophy of science point of view and concerns epistemological and terminological questions. Hacking's critique, developed out of a philosophical analysis of the constructionist epistemology, is substantial and constructive and will inform the study in several ways. Hacking (1999: 51) argues that many social constructionist scholars confuse in their argument four entities: concepts or ideas; practices; bodies of knowledge, and individuals themselves. Further, in constructionist studies three distinguishable kinds of things are claimed to be socially 'constructed': objects, ideas, and elevator words (truth, reality). It is often not clear which of these is addressed in a social constructionist argument. Therefore, Hacking argues it is crucial to differentiate between objects and ideas. He holds that only concepts or ideas about objects or phenomena are really socially constructed (Hacking 1999: 10), whereby, on a side note, the adverb 'socially' appears to him as obsolete and the verb 'construct' inappropriate. While Hacking's argument serves as an immensely helpful reminder to proceed carefully in a constructionist argument, this thesis questions his strict distinction of objects and ideas. Hacking overlooks that things can be both objects and ideas at the same time, such as the legislative texts mentioned above.

Additionally, Hacking criticises that often scholars fail to notice that their argument about construction is inconsistent. Sometimes, they focus on the process of construction (Hacking prefers *construing* for that) and sometimes on the results of that process. Therefore, it is necessary to differentiate between process and product in social constructionist arguments:

'Process and product are both part of arguments about construction. The constructionist argues that the product is not inevitable by showing how it came into being (...) and noting the purely contingent historical determinants of that process' (Hacking 1999: 38).

For Hacking, social construction as a process in time is better described as moulding and shaping ideas and concepts about objects and phenomena. This thesis accommodates Hacking's critique by making it clear that what we perceive as construed are **ideas** about the phenomenon of incompatibility. Also, referring to our own analysis, the study will use the verb 'construe' throughout to indicate that we are analysing the moulding and shaping of ideas and not the 'construction' of objects.

A social constructionist argument should be clear about how concepts and ideas are moulded or construed in time. However, it should not be forgotten that those construed meanings can have very real effects, for instance on the constitution of policy subjects (cf. Bacchi 1999).

The second strand of critique is a direct response to Spector and Kitsuse and their disciples. It comes from a subjectivist point of view itself and criticises Spector and Kitsuse for not abiding by their own standards. Woolgar and Pawluch (1985) assert that social constructionist arguments in spite of their anti-objectivist stance are based on hidden objective assumptions:

‘The successful [social constructionist] social problems explanation depends on making problematic the truth status of certain states of affairs selected for analysis and explanation, while backgrounding or minimizing the possibility that the same problems apply to assumptions upon which the analysis depends’ (Woolgar and Pawluch 1985: 216).

Social constructionist studies stress the subjectivity of claims-making about an issue. Thereby, they implicitly resort to knowledge about the real (or objective) nature of the phenomenon as a basis against which claims are assessed. According to Woolgar and Pawluch’s argument therefore, absolute impartiality to claims is impossible. Ibarra and Kitsuse (1993) have in turn tried to refute this argument.

This point leaves us with the question of the desirability and possibility of avoiding any judgements about the validity of claims. We agree with Woolgar and Pawluch that total impartiality is impossible to maintain. Moreover, we will argue that it is also undesirable for the kind of research intended here. The stance this thesis takes is that because impartiality is beyond the possibilities of social constructionist research, the most it can aspire to is to contrast the ‘discourse of power’ which is the dominant legislative discourse in reconciliation policy with competing but marginal feminist voices. By adopting a feminist standpoint, the study hopes to gain a position from which to contrast and evaluate problem representations with counter-claims based upon a potentially superior access to knowledge in this particular case. Although this approach does not fulfil the criterion of impartiality, by associating the argument at critical point with the discourse of the marginalised the study can hope to generate interesting new insights into the incompatibility ‘problem’. The study’s emphasis on speculating about likely effects of problem representations in particular opens up fascinating opportunities for comparison without making judgments about the validity of claims. We will take up this point again later.

From critique to praise: Spector and Kitsuse’s contribution to the sociology of social problems has rightly been called a milestone of social science research. It has triggered a very lively theoretical debate. The substantial literature that has drawn on their contribution is evidence for the lasting and major influence of their theory.

From Spector and Kitsuse, the constructionist approach to the analysis of social problems has diversified quickly (Miller and Holstein 1993) and a plethora of different approaches within constructionism have developed:

‘Its attention spread to the myriad interpretive activities involved in articulating social problems categories or collective representations with lived, in-process aspects of everyday reality to produce recognizable instances of social problems’ (Holstein 2005: 443).

Current social constructionist approaches (even if we take only those studying Social Policy) differ substantially in epistemology, methodology, scope and focus. The respective research interest and research questions are manifold. It is impossible and unnecessary here to do justice to the complexity of the field, attempting to describe all its different approaches. However, some kind of overview is helpful for theoretical positioning.

However, first we should remind ourselves what justifies the use of the generic term ‘social constructionism’ in spite of the variation. What unites social constructionist approaches and legitimises the usage of this generic term are the following assumptions, the essentials of any constructionist argument (cf. Gergen 1985, Burr 2003²). Firstly, as we have seen above, social constructionism takes a critical stance towards taken-for-granted knowledge. It challenges objectivist and empiricist assumptions about the possibility of deriving objective knowledge from the observation of the social world. Our categories of analysis and of perception are questioned. Social constructionists argue that these categories do not necessarily refer to any ‘real’ phenomena, however natural they appear to be (Burr 2003). Secondly, scholars affiliated with social constructionism argue that knowledge is not universal but culturally and historically specific. Our ways of knowing are not necessarily any better than someone else’s. Thirdly, knowledge is sustained by social processes. Our ways of understanding are not derived from insight into how the world really is, but they are ‘constructed’ between human beings in social interaction:

‘It is through the daily interactions between people in the course of social life that our versions of knowledge become fabricated’ (Burr 2003: 4).

For this reason, language stands at the centre of attention, as it is the most important means of human interaction.

Fourthly and finally, social constructionists hold that because our knowledge about the social world, ‘constructed’ through language in human interaction, informs our actions – sustaining some while excluding others – knowledge and social action are inextricably linked. This idea is often expressed by claiming that ‘language is action’.

Let us turn our attention now to the abovementioned variation within social constructionism. There are different ways of categorising social constructionist approaches. Best (1995) identifies in his categorisation ‘strict constructionism’ and ‘debunking’ as the extreme ends of the theoretical continuum.

Spector and Kitsuse's contributions are the classical example of a strictly constructionist perspective. As we have seen above, Spector and Kitsuse argue that the scholar of social problems should make no assertions at all about the truth of the claims. All that can therefore be examined are contesting claims about social conditions. According to this thesis, the researcher has no objective or elevated position in society; and therefore traditional research results are – from this perspective – just another claim. Thus, the strictly constructionist perspective is very much limited to the description of claims. Moreover, as Woolgar and Pawluch have argued, it is not possible at all to maintain a strictly constructionist perspective without making any assumptions about the nature of social reality.

The other extreme is what Best calls the 'debunking' perspective. Its main concern is the exposure of 'false' claims about social conditions. Such false claims are then labelled as 'socially constructed', ignoring that 'all claims (...) and all other human knowledge are socially constructed' (Best 1995: 344). As Best notices, this perspective can be criticised for not being constructionist at all but depending on objectivist assumptions. In order to debunk some constructions as a distortion of reality, assumptions about reality have to be made. In other words, some claims are taken at face value while others are dismissed. The 'debunking' perspective, finally, follows the path of traditional sociology insofar as it is primarily interested in the nature of social conditions, not in claims-making (cf. Best 1995: 344). In its prime interest in social conditions, it shows striking (if mostly unconscious) epistemological similarities with traditional Social Policy research, often driven by honourable aims such as the empowerment of marginal groups.

Most constructionist studies however, take a theoretical middle ground. Best calls this group contextual constructionism. In contextual constructionism (cf. Blumer 1971; Gusfield 1985), the focus is on claims-making. However, contrary to strict constructionists, contextual constructionists hold that claims can and should be evaluated against evidence. They acknowledge that any kind of evidence (statistics, reports) is in itself a claim, but that does not mean it is necessarily false. Contextual constructionists argue that, based on evidence, some assumptions can be made about the social world. As scholars, we can have some knowledge of it (however imperfect), bearing in mind that our assumptions then, in turn, also become claims. Without an evaluation of claims, they remain detached from the world to which they refer. Evaluating them helps to put them into context. Strict constructionists not surprisingly disagree and dismiss contextual constructionism as adopting an objectivist epistemological stance.

Alongside the strict constructionism versus 'debunking' categorisation, there are other ways of making some sense of the multitude of social constructionist studies.

As we have seen, social constructionism is very interested in language. It holds that the social world is 'constructed' in and through language. Therefore, language stands at the centre of attention. The research interest and focus however can be very different. A second way of categorising social constructionist approaches is, thus, by their research interest and focus (Burr 2003). Linked with this is how they theorise language and on which level they examine it.

Mainly, we can differentiate between studies interested in and focussing on ideology and those interested in and focussing on discourse.⁵

Approaches examining ideology assume that language more or less directly reflects social identity and interests whereas approaches examining discourse hold 'that social identity and social interests are, at least partly, formed by language' (Clarke and Cochrane 1998: 4). It is easily recognisable that underlying this division is the age-old structure-agency problem. Who constructs social reality? Do agents shape language and therefore our perception of the social world or is language the structure that determines what agents can think and express? If so, what shapes language? Foucault's (1972) 'classical' answer, that power shapes discourse, that there cannot be an 'outside' of discourse has been of major influence here, although it has rightly been criticised for losing sight of agency.

Social constructionists analysing ideology generally take the position that agents can significantly shape discourse while those interested in discourse tend to stress the difficulty or even impossibility of thinking outside the discourse. Regarding the questions 'Who makes the discourse?', access to discourse has been identified as a major power resource.

Chilton and Schäffer's (1997) political discourse analysis, an example from the ideology perspective, focuses on the strategic function of language in politics. In detailed studies of important individual texts, pragmatics, semantics and syntax are examined to identify the ideological position of speaker/author and the linguistic strategies applied to convince the audience. This approach draws strongly on modern linguistics and critical theory. Scholars, such as van Dijk (cf. 1989, 1995, 1997) and Fairclough (cf. 1985, 1989), who have taken up Foucault's interest in power, used his ideas to develop their conceptualisation of language. Chilton and Schäffer (1997) combine an interest in linguistics and power relations in language with the classical Political Science interest in ideology.

⁵ The term 'discourse' is defined and operationalised very differently. We will come back to this issue later.

The above decisions about research interest and focus (ideology or discourse) are linked to the question on which level language is examined, a micro or a macro level. The analysis can be carried out on a micro (individual texts), a macro (bodies of knowledge or policy discourses) or on a meso level between those extremes. While often ideology as analysed on meso and macro levels, in Social Policy recently an interest in ideology has sometimes lead to micro-level studies⁶, drawing on linguistic research with an emphasis on agency. These studies of an individual text or a small number of texts provide fascinating insights into hidden ideological assumptions of politicians or other important individual or collective actors such as journalists (cf. Hastings 1998; Marston 2000). However, what these studies fail to address is how language representing a system of knowledge influences what can be thought. Language as structure falls out of the picture.

A focus on discourse, on the other hand, while often associated with micro-level studies, has recently led to macro-level Social Policy studies. Some draw on Foucault (1972, 1977) and apply his method of genealogy (cf. Bacchi 1999, 2004). Others, such as Atkinson (2000), draw on discourse analysis in the linguistic tradition, such as Van Dijk's and Fairclough's work.

Here however, agency to a large extent disappears. Burr (2003: 23) identifies this problem and accordingly argues the 'death of the subject' in that kind of research. Burr concludes her critique of micro and macro approaches by pointing to the theoretical shortcomings of both regarding the origin of discourse:

'Micro and macro forms of social constructionism run into problems because they have not adequately theorised the relationship between the individual and society' (Burr 2003: 181–182).

The theoretical problem sketched out here is fascinating. However, in this study, we will not dive deeper into the debate on who makes discourse, because in the limited space of the study there are more important issues to analyse. Therefore, discourse is only addressed where absolutely necessary, for instance where policy is conceptualised as discourse. The study focuses on the analysis of existing problem representations. It pays attention to the discursive construing of 'problems' within policy proposals, but does not investigate the question of agency in depth. In order to answer the specific questions the study poses, a theoretical exploration of the concept of discourse beyond a working definition is not necessary. In this approach the study fol-

⁶ However, the transfer of methodical knowledge from corpus linguistics could change this. Electronic text analysis is capable of thoroughly examining very large bodies of language (cf. Hardt-Mautner 1995).

lows Bacchi (1999) who demonstrates that an exploration of the question who makes discourse is not a prerequisite of applying her method successfully and with interesting new findings. Basing the argument on Bacchi, it suffices for the study to acknowledge that discourses have real effects and consequences, regardless of their precise origins. The study will concentrate on unpicking problem representations in reconciliation policy and on speculating about their likely effects. It will not explore the concept of discourse beyond what is necessary. The study may thus fail to address a number of points, but the chosen approach will enable the study to concentrate on the research questions.

Another issue is linked with this one. Arguably the 'lived effects' of problem representations cannot be understood while avoiding the above theoretical debates. While qualifications have to be made as to the extent of a possible understanding of 'lived effects', this thesis holds that some speculations about 'lived effects' can be made on the basis of a working definition of discourse. Bacchi (1999) demonstrates that statements can be made about the 'lived effects' of problem representations without engaging in theoretical debates on structure and agency in discourse. Further, the exploration of the likely 'lived effects' of problem representations is only one among a number of other aspects. While it contributes to a more comprehensive appreciation of the effects of problem representations and the construing of the incompatibility 'problem' in general, the main argument of the study is not dependent upon this particular aspect. Therefore, for its specific purposes the study does not have to explore the issue of structure and agency in discourse further at this point.

Originating from sociology, it took some time for social constructionism to infiltrate social policy studies. Twenty years after the publication of Spector and Kituse's book, Hillyard and Watson (1996) diagnosed a 'general reluctance by the social policy community of scholars to acquaint themselves with the tidal wave of postmodern thinking' (321). This statement holds true for social constructionism. Although in the 1990s, social constructionism has even become a dominant theoretical perspective in major sociological journals such as *Social Problems* (cf. Brekhus et al. 2001), its reception in Social Policy has been far more hesitant.

In the British flagship of Social Policy journals, the *Journal of Social Policy*, the first ever article on postmodernism and social policy research only appeared in 1994. Arguing from the normative position sketched out above, (Taylor-Gooby 1994) defended the traditional understanding of the academic study of social policy as applied discipline against the postmodern challenge. Citing Bauman (1987), he illustrates that for traditional social policy research the problem of postmodernist approaches lies in postmodernist ontology:

‘The typical modern view of the world is one of an essentially orderly totality’, whereas [a] postmodern view of the world is (...) one of an unlimited number of models of orders (...) upheld by the habits and beliefs of ‘a community of meanings’ and admitting of no other tests of legitimacy’ (Bauman 1987: 3–4, cit. by Taylor-Gooby 1994: 387).

Notwithstanding fundamental normative-ontological critique, social constructionism has had lasting influence on theory and practice in Social Policy and has generated a large body of research. This research is, however, not yet mainstream and can mainly be found in journals such as *Critical Social Policy*. In the following section, we will outline how social constructionist ideas have been taken up fruitfully in Social Policy and how social constructionist ideas (from Social Policy and beyond) inform my research.

2.1.3 *Social constructionist social policy analysis*

Although we will argue here for a constructionist approach to Social Policy research, we do not hold that the advent of social constructionism has rendered the traditional approaches obsolete. Rather, there has been a bifurcation in the directions of research, leading to realist and constructionist research approaches being pursued in parallel. The discipline can only benefit from that development.

As indicated above, the hostility towards postmodern ideas is primarily grounded in self-conception of Social Policy as an applied academic discipline and in an anxiousness to protect its boundaries. However, notwithstanding widespread rejection, Social Policy research has drawn on social constructionist ideas in many different ways (Hastings 1998: 192).

A number of recent studies show how research informed by social constructionism can revitalise Social Policy research by asking new questions and overcoming intellectually obsolete subject boundaries (cf. Goodie and Bagilhole 1998; Moss et al. 2000; Scourfield and Drakeford 2002; Twigg 1997; Vincent 1996; Windebank 1999). Housing and gender policies stand at the centre of attention of social constructionist studies.

In her analysis of urban policy in Scotland, Hastings (1998) develops an interesting discursive approach to Social Policy Analysis drawing on linguistic research on the one hand and social constructionist studies on the other. Her aim is to understand in an integrated analysis of the ‘linguistic practices and broader social processes (191)’, how ‘systems of belief or discourses underpinning the policy process’ work (209). Particularly, she argues for a detailed text analysis on the level of grammar, lexis and narrative to ‘reveal how discourses are reproduced and sustained in policy

documents' (209). In her argument, Hastings draws on Foucault on the one hand, whose understanding of language as an expression of power relations she dismisses, and linguists such as Fairclough and van Dijk.

Hastings' analysis shows how important systems of belief or discourses are in underpinning and structuring the policy process and 'how discourses are reproduced and sustained in policy documents' (Hastings 1998: 209). Therefore, her study provides a very good basis for scrutinising and challenging dominant discourses in policy. However, it fails to address the consequences of what falls out of the picture in representations, and of what is not addressed. Moreover, the focus on only one policy document is very limited. It is hardly adequate to answer questions about the relations between linguistic details and broader social structures.

Atkinson's (2002) analysis of the 'construction' of our understanding of urban problems in the official discourse of the British Government (1968–1998) is an important reference for this thesis. Not only does Atkinson take an ontological middle-position, which acknowledges that our ideas about social 'problems' are construed discursively, but he also looks at government policy as the prime location for this process.

In one of the relatively few social constructionist studies of German Social Policy, Epstein (2000) takes a similar position to Hastings, working closely on the textual level to uncover social constructions of masculinity and femininity in gender equality policy texts. Epstein draws on policy documents and official news releases on the one hand comparing them with newspaper reports on the other. She can show how even the language of gender equality legislation is dominated by traditional notions of femininity and masculinity, which is even more surprising as the respective ministry's self-conception was decidedly feminist.

Marston (2000), drawing on Hastings (1998), uses Critical Discourse Analysis in Fairclough's and van Dijk's (cf. 1998) tradition to examine the discursive construction of a policy problem and power relations within the housing policy community in Queensland, Australia. Marston examines the functions and effects of competing discourses with a particular focus on how they legitimise policy interventions. He rightly argues 'that positivist approaches to policy analysis have failed to address the way in which policy language constructs welfare identities [and] legitimises policy interventions (...)' (Marston 2000: 249). Here, Marston particularly points out the importance examining silences in texts.

Marshall (2000) examines gender equality policy in Australia from an expressly feminist point of view. In her analysis of discourse, she draws on Ball (1990) and applies policy discourse analysis to analyse activists' and bureaucrats' politicking for

gender policy. Marshall's focus is on identifying ideological politics in gender equality policies. Here, Marshall is particularly concerned with giving voice to the 'counter-narratives from the margins' (129), because 'women and women's issues are kept out of public discourse' (128).

Little constructionist analysis of the discursive construing of the incompatibility 'problem' exists, and none of it refers to Germany. However, what little literature exists will inform this thesis throughout.

Repo (2004) analyses how mothers discursively construe the 'problem' of combining 'work and family' in the UK and Finland. This research provides an interesting perspective, which can be used to inform the analysis of the 'lived effects' of discourse, bearing in mind that the German government policy discourse might be different.

Runté and Mills (2004) analyse the wider societal discourse about the 'problem' of reconciling 'work and family'. They argue that the discourse construes the workplace and home as antagonistic spheres with a different intrinsic logic: efficiency and speed-up in the workplace, and emotionality and relief from work in the home. Runté and Mills (2004) argue that the discourse of 'work-family conflict' instead of unravelling the 'problem' privileges the dominance of themes of use-time and speed in the 'private' sphere.

All the above authors stress the importance of examining problematisations and representations rather than problems:

'Problematizing the way policy issues are discursively framed and represented in social policy debates is the starting point for this type of analysis' (Marston 2000: 371).

Concentrating the analysis on problematisations rather than problems is crucial to providing a new perspective to social policy analysis. New questions have to be asked to challenge traditional wisdom in the field. For too long, the assumption of objectivity in social policy studies was taken for granted. It has to be analysed, therefore, how social policies are not 'answers' to 'objective problems' but discourse constructing 'problems' through problem representations. We cannot separate problems from their representations.

Also, we have seen that what is represented as a problem is as important as what is not represented as problematic. The most stringent methodological consequences of this discovery are drawn by Bacchi (1999). Like the above authors, she may be classified as a contextual constructionist and she also shares the feminist research interest with Epstein (2000) and Marshall (2000). In 'Women, Policy and Politics', political scientist Carol Lee Bacchi (1999) developed further a contextual constructionist approach into a new method. Her 'What's the problem (represented to be)?'

approach is geared to examine more systematically and vigorously problematisations in social policy.

Bacchi starts by describing the claims made in policy discourse in the tradition of strict constructionism: 'what is the problem of (domestic violence, abortion, etc.) represented to be either in a specific policy debate or in a specific policy proposal? (1999: 12)'. Then, she moves on to the underlying presuppositions and assumptions of this particular representation. In the third step, she asks about the effects of particular representations: 'how are subjects constituted within it? What is likely to change? and what is likely to stay the same' (1999: 13)? And, who benefits from this representation? Deepening the analysis, she then asks what is left unproblematic in the representations? And 'how would policy 'responses' differ if the 'problem' were thought about or represented differently' (1999: 13)?

One disclaimer has to be made, however. Bacchi's method does not allow for addressing the question of where discourses come from. It does not allow for an analysis of the problem of structure and agency in regard to discourse. Applying her method, we will not be able to answer questions about the extent to which individuals can shape discourse. Questions of power and agency in discourse will remain beyond the scope of the study. However, as the study is primarily interested in the constructing through government policy in the form of legislation of the 'problem' of incompatibility, it is *per se* concerned with the most influential discourse. Due to the *de facto* consequences of legislation, it can uncontroversially be identified as the 'discourse of power'. Duncan and Edwards (1999) have convincingly argued that institutional and social structures can render some discourses more influential than others; and government discourse in legislation is probably the most powerful.

However, for an analysis of the problematisations in a policy area, Bacchi's approach is superior to other constructionist approaches. Firstly, it takes a pragmatic contextual stance that enables us to evaluate critically against evidence the claims made in discourse, bearing in mind that our findings are claims themselves. This way, we can avoid being trapped in language. Secondly, by dismissing the question of 'who makes the discourse?' we can avoid theoretical debates and concentrate on the real or lived-in effects of problem representations. Thirdly, by using genealogy as a starting point in the analysis of policy documents we can gain a better idea of the development of problem representations than by micro-level text analysis. Therefore, in this study of reconciliation policy in Germany we will apply Bacchi's 'What's the problem?' approach. Notwithstanding other approaches and methodologies, it is an excellent first step in the critical analysis of a policy area, laying the foundations for further research.

2.2 Feminist social policy analysis

This section introduces the background of feminist research, which will provide counter-claims about the incompatibility ‘problem’. While the study asserts that in this particular case feminist research is potentially of superior epistemological value, its findings are nonetheless treated as claims, or problem representations, and not as fact.

‘Reconciliation policy is not the same as social policy’ (Mazur 2002: 104). Nonetheless, feminist critiques of the welfare state and its social policies are highly relevant for this study. Reconciliation policy is represented to be constituted by policies that are, in large part, subject to social policy research: family policy, childcare policy, parental leave policy, taxation, and lone-mothers policy.

Since the advent of ‘second wave’ feminism in the 1960s, feminist social sciences research has flourished and branched out in such a way that even the expert in the field can find it difficult to gain an overview. Feminists operate with different, sometimes competing theoretical assumptions, thereby arguing for very different positions. It has become common practice to distinguish at least three competing normative-ontological positions: liberal, socialist and radical feminism (cf. Williams 1989). More recently, postmodern feminism has emerged as a fourth (cf. Mottier 2004).

Feminist analyses of social policy mirror the multifaceted nature of feminist scholarship. They ask different questions, start from different normative-ontological positions, draw on different epistemologies, and apply various methodologies and methods (cf. Hawkesworth 1994). A substantial literature on methodological questions bears witness to the diversity and vitality of feminist scholarship (cf. Letherby 2003, Oakley 1998, Ramazanoğlu 2002).

Arguably, what makes research feminist is a focus on and concern for women, a wish to better understand their position and subordinated position in society, often – intellectually supporting political activism – with a view to initiate change in favour of women. Feminism as intellectual and academic endeavour is not separable from feminism as a social and political movement based on demands for social justice. Indeed, the political thrust for the advancement of women is an essential part of feminism.

In practice, two alternative approaches are being followed in feminist policy studies. The first, tying in with the above definition, aims to include women into analysis where they have been left out by mainstream research. This approach (cf. Orloff 1993) aims to incorporate gender into mainstream theoretical frameworks.

However, others (cf. Hawkesworth 1994: 105) argue that focusing on women where they have been left out of analysis is not sufficient, because that way the ‘methodological biases of traditional social science’ are replicated. Many feminists (cf. Lewis and Ostner 1994; Sainsbury 1994; Pascall 1997) agree that feminism has to formulate new frameworks. Thereby it can challenge implicit as well as explicit androcentric assumptions, and scrutinise carefully methodologies and methods. The next section looks at these feminist critiques of mainstream policy studies in more detail.

2.2.1 *Critiques of mainstream policy analysis*

The focus of feminist research interest shifted from the law and anti-discrimination to areas where the gender bias is less openly visible. Parallel to the successive elimination of legal discrimination against women in many Western democracies the 1970s feminist studies increasingly examined other domains, such as social policy, equal opportunities and violence (Hawkesworth 1994: 98–99). At the same time, there has been a notable tendency to move from criticisms of existing or proposed policies to devising alternatives.

Feminist social policy analysis argues that ‘it is impossible to understand the welfare state without understanding how it deals with women’ (Pascall 1986: 1). Due to this research the significance of the gendered nature of contemporary welfare states has become widely accepted (Pascall 1997).

Feminist policy studies have challenged traditional approaches and thus greatly contributed to a more accurate picture of governments’ policies in different domains, notably social policy, by exposing the androcentric bias implicit in traditional methodologies, methods, theories and, thus, research findings.

Feminist scholars have argued that even supposedly gender-neutral measures can be gendered, privileging men over women (cf. Charles 2000; Harding 1996; Pini 2002; Ruling et al. 2004).⁷ Moreover, they tried to demonstrate that not only individual policy measures and instruments, but also the entire area of social policy, is gendered (cf. Fraser 1989; Lewis 1992, 1993; Sainsbury 1994; Sapiro 1986; Pascall 1987). This way, feminists have exposed the gender-blindness of traditional (male) policy research, which has never questioned the alleged gender-neutrality of social policies.

⁷ *Be it the introduction of ‘no-fault’ divorce settlements in the USA, the ‘Ehegattensplitting’ in the German tax system, or the 2002 German parental leave act.*

Sapiro (1986) argues that the fundamental structure of social policy, its two tiers of social insurance and social benefits, operate on a gendered basis, thereby concealing this very fact. She argues that social insurance schemes, which are usually linked to full-time paid employment, have historically privileged men as they are more likely to be in full-time employment, thus reinforcing their autonomy and self-reliance. Social welfare benefits, on the contrary, which are based on proven need, have contributed to constructing their predominantly female recipients as dependents, thus reinforcing the subordination of women. Sapiro's argument was taken up by Fraser (1989) who holds that the first tier constructs recipients as individuals entitled by status to cash benefits. Second-tier benefits, on the contrary, construct recipients as dependent members of a household and subject them to a degrading application procedure and surveillance.

In contrast, research focusing on the quality of social rights has asserted that reality is more complex. It holds that the factors determining the outcome of social policies are the principles of entitlement; it depends on them, whether existing gender relations and roles are reinforced or transformed (Sainsbury 1999).

An important development in this context is the incorporation of the concept of gender into comparative studies of social citizenship (cf. O'Connor 1996, Pascall 2005).

Crucially, feminist scholarship has contended that the basic assumptions underlying research, and the theories and models adopted in describing, analysing and explaining the policy process are not objective, but gendered themselves. Stivers (1993) criticises research and practice in public administration for systemically reinforcing women's subordinate position by distributing resources on a gendered basis, privileging men over women.

Brown (1988) and Bologh (1990) argue that the rational actor models applied both in studies of policy formation and in policymaking are gendered themselves. Rational actor models work on the basis of maximising strategies, assuming an instrumental conception of reason, by some thought to be inherently male (cf. Tronto 1993), which reinforces the subordination of women and other social groups.

The organisational process model, holding that policies are shaped in a pluralistic yet standardised process involving several agencies, has also been attacked. In this model there is no place for gender, but as the organisational structures of agencies are themselves gendered, it is exposed as gendered itself (Hawkesworth 1994).

Connecting the above feminist critiques of mainstream policy studies with social constructionist ideas, Bacchi (1999) asserts that not only are the traditional models gendered, but also presuppose an objectivist epistemological stance by focusing only

on problem solution. In her critique of mainstream studies, Bacchi takes up Dudley and Vidovich's (1995) categorisation, distinguishing three analytic models used in the explanation of policymaking: the rational comprehensive model; the politically rational model; and the public choice model. In regard to the other models mentioned above, the rational comprehensive model approximately corresponds to the rational actor model and the politically rational model to the organisational process model.

To overcome the objectivist bias both in feminism and policy studies, Bacchi (1999) argues for the adoption of a social constructionist approach in the analysis of policy. The aim, however, is not to replace other approaches but to complement them, to prepare the ground for them through systematic scrutiny of the construction of policy problems. Therefore, focus of this kind of policy study has to be on problem representation instead of problem solution. This applies to Social Policy research, too.

The above point aside, feminist critique of mainstream policy studies laid the foundations for the development of a refined feminist theory of the welfare state. Pascall (1986, 1997²), Dale and Foster (1986), and Ungerson (1985, 1997²) play an important role in this development. Comparative studies of welfare states and regimes have followed, demonstrating the diversity in social policy outcomes (cf. Leira 1992, Lewis 1992, Sainsbury 1996). Accompanying the development of feminist theory and comparative research, interesting analyses have been produced by feminist scholars of the individual branches of welfare, the social policies for health, housing, education, social security and social services. The next section will introduce realist and postmodern feminist critiques of the welfare state.

2.2.2 *Feminist critiques of social policy*

There is little feminist literature on reconciliation policy in general and very little on German reconciliation policy. However, individual policies that have been represented as part of reconciliation policy have been analysed in feminist social policy research. At the same time, a detailed overview of all policy fields seems impractical. Therefore, this literature review provides a general overview of the field of feminist social policy analysis, serving as a basis upon which the individual analytical chapters can draw. In addition these will then also draw on narrower research in the respective area.

Despite considerable difference in opinion, most feminist scholars are supportive of the welfare state institution in principle. Feminist critique is directed, however, to

its current organisation. It is concerned with the interplay of three overlapping areas of welfare provision: the state, the labour market, and the family (Sainsbury 1999).

The normative-ontological and epistemological diversity of feminist scholarship mentioned above is increasingly mirrored in feminist welfare state research, although there is still an overwhelming prevalence of empiricist research epistemologies.

Analogous to feminist research in general, three normative-ontological approaches to the feminist study of the welfare state are customarily distinguished: liberal feminism, radical feminism and socialist feminism (cf. Dale and Foster 1986; Pascall 1997; Williams 1989). Since the mid-1990s, postmodern feminism and post-structural feminism have emerged alongside the above approaches. They indicate a general tendency from universal generalisations about the oppression of women to a focus on the multiplicity of women's experience (Mottier 2004). As the other approaches, they are internally heterogeneous and linked to other approaches in manifold ways, particularly to socialist feminism. At the same time, postfeminism has emerged arguing that feminism has made itself redundant by achieving its aims. However, as research shows the persistence of women's inequality on many levels, feminism is hardly obsolete.

Liberal and socialist approaches often adopt empiricist epistemologies; radical approaches also make use of standpoint theory; and postmodern and post-structural approaches (unsurprisingly) mostly rest on the respective epistemologies. Those four approaches to the welfare state need to be examined more closely.

Liberal feminism

Liberal feminists argue that some social policies – and the way they are administered – of the contemporary welfare state discriminate against women and fail to alleviate, or sometimes even cause, gender inequality. They hold that the existing oppression of women is mainly caused by irrational prejudice, stereotyping, and obsolete ideas about women that have shaped policies and administration. Thus, they assign the causes of oppression, to a large degree, to the sphere of ideas rather than to material conditions. This idealist view is criticised by socialist and radical feminism for neglecting structural factors. Liberal feminism, indeed, stops short of criticising 'the structures of the labour market, the family, education system and welfare state' (Williams 1989: 47) as institutionally oppressing women.

Liberal feminism generally denies the importance of differences between women and men; and where they are evident, as in childbearing, it turns to the state for creating conditions under which this difference does not penalise women. Liberal femi-

nism accepts the distinction of a public and a private sphere and concentrates on the public sphere of life (work, politics) rather than on the private (family, home).

Moreover, liberal feminism aims at the integration of women into the labour market as a means by which women work their way out of oppression. The nature of the labour market and paid work remains, however, taken for granted. Radical feminists therefore, criticise this stance for advising women to uncritically adopt male values. Often liberal feminism also fails to differentiate between different groups of women and is, consequentially, criticised for neglecting race and class by black and socialist feminists respectively.

In accordance with its perception of the nature of the oppression of women, liberal feminism criticises legislation for sex-bias; exposes sexism in the administration and provision of social services; and liberal feminist activists lobby for new (e.g. anti-discriminatory) legislation enabling women to make full use of their constitutional rights. Operating on this basis, liberal feminism does not aim at fundamental changes in the nexus of work, family, and social policies of the welfare state.

Radical feminism

Whereas liberal feminism denies the importance of differences between women and men, radical feminism rests on the very assumption of fundamental biological and psychological differences between the sexes (Dale and Foster 1986). Firestone (1979) argues that women's biological role as child bearers determines their inferior position in society. Eventually, the only remedy to this natural disadvantage would be society taking over responsibility for reproduction. Other authors stress that the superior physical strength of men enabled them to dominate women (Dale and Foster 1986).

Radical feminism theorises women and men as antagonistic groups or even social classes (cf. Delphy 1984) whose relationship is characterised by the domination of women by men in an institutionalised social system (patriarchy) (Dale and Foster 1986). Although, patriarchy is defined differently by radical feminists, as 'male power and control over women's sexuality' (Williams 1989: 52) or women's reproductive capacity, it, in most cases refers to systems of sexual oppression of women. The concept of women's oppressed sexuality stands at the centre of attention of radical feminism and, thus, provides the base for further argument. Male violence is theorised as violence against all women, reinforcing male dominance (Dale and Foster 1986). Firestone (1979) argues that patriarchy, resting on the sexual oppression of women, creates the conditions for other forms of oppression.

From this perspective, social policies targeting women – devised and administered almost exclusively by men – are part of the patriarchal system oppressing women. Housing policy and social security policy, for example, through eligibility criteria coerce women into the norm of heterosexual relationships and marriage. They cause and enforce female dependency on men and their disadvantaged position. Therefore, radical feminists attack with differing vehemence the welfare state and individual social policies as instruments of the male domination of women.

Regarding the critique of the welfare state, one crucial point has to be kept in mind. In contrast to liberal feminism, the aim of much radical feminist theory is not so much gender equality but a straightforward rejection of men, allegedly male values and institutions created by men (Williams 1989). Some radical feminists have, therefore, argued for a radical political or even political *and* personal separation of women from men (Dale and Foster 1986).

Critics of the radical feminist position have pointed to its ‘false universalism’, neglecting differences between women, race, and class. Further, the concept of patriarchy has been rightly criticised as ahistorical (Williams 1989: 54). Moreover, many definitions of patriarchy fail to acknowledge the distinction between (biological) sex and (social) gender, thus falling behind established knowledge. Rowbotham (1981) takes up this argument and rejects the ‘biological-determinist’ nature of radical feminist arguments.

Reacting to such critique, one could reply that there are radical feminists who avoid biological determinism, such as Delphy (1984). Moreover, radical feminist thought is far more varied and complex than could be done justice to here.

However, the relevance of radical feminism lies not so much in its well-balanced contribution to the theory of the welfare state but in exposing and challenging taken for granted patriarchal assumptions and in challenging the public/private distinction, politicising issues that are generally assigned to the private sphere. Radical feminism not only challenged male power but also firmly established the idea that power relations between women and men need to be investigated.

Socialist feminism

Socialist feminist critique of the welfare state is characterised, despite remarkable internal variation, by a common emphasis of the central role the capitalist economic system plays in the oppression of women. The significance of socialist feminism lies in theorising the relationship between the capitalist economic system, patriarchy, and the welfare state. Socialist feminism helps in perceiving the interconnectedness

of the public sphere of production and the private sphere of reproduction. Socialist feminism provides a powerful theoretical basis supporting activists' demands for a fundamental reorganisation of the current social and economic system (Williams 1989).

In contrast to radical feminists, socialist feminists generally reject the idea that biological differences are at the root of women's oppression. Moreover, it keeps the category of women, sharing some basic features of life, while being able to recognize their diversity. Gillian Pascall sums up those basic similarities: 'unpaid family work, low pay, and a small fraction of power in public and private life' (Pascall 1997: 22).

Subjecting Marxist thought to a fundamental critique, feminist scholars drew attention to the fact that orthodox Marxist theory ignored gender relations and, thus, provided no analysis of the family. As the family's function in society and economy was taken for granted, there was no place for a critique of women's role in it.

Early contributions identified the capitalist economic system as the main cause of women's disadvantaged position (McIntosh 1978). This thesis has been challenged, however, by feminists arguing that patriarchy and capitalism both played an important role in the oppression of women (Pascall 1986, Walby 1986). Yet, socialist feminists differ in how they theorise the relationship between capitalism and patriarchy.

This debate on the relationship between capitalism and patriarchy has important implications in regard to the critique of the welfare state. Williams (1989) identifies two strands of thinking. McIntosh (1978) argues that social policies only indirectly reproduce the conditions of the oppression of women by maintaining the 'male breadwinner' model in which women are financially dependent on their husbands. The welfare state does that because this particular family model is the most beneficial to the capitalist economic system. Pascall (1986), on the other hand, stressed that although the welfare state's development had to be analysed in terms of its accommodation of the capitalist system's needs, it did so in a characteristically patriarchal fashion. Hartmann (1981) argues that capitalism and patriarchy are two separate but linked systems, which in their interaction determine women's subordinate position. Walby (1986), applying a more pluralist notion of the state's activity, holds that the state can represent patriarchal interests independently of capitalist interests.

A more positive picture of the welfare state is painted by Scandinavian feminists. Dahlerup (1987) and Siim (1988) challenge the perception of the welfare state as patriarchal instrument, arguing that the Scandinavian welfare states have a positive effect on women, lessening their financial dependency on men.

Feminist authors not only questioned the purely negative perception of the state, but also its conceptualisation as a monolithic actor. Socialist feminist tradition with its emphasis on social justice also inspired a variety of comparative research into the diversity of welfare state policy outcomes for women (cf. Leira 1992; Lewis 1993; Sainsbury 1994).

Postmodern and post-structuralist feminism

Postmodern feminists have criticised the concept of gender for being essentialist and reductive. They hold that the concept, based on the dichotomy of masculine/ feminine, has to be overcome as an analytical perspective by a multitude of perspectives, making possible a differentiated appraisal of the multitude of unifying and divisive factors in the life of women and men. Therefore, they reject the category of 'women' as an inappropriate generalisation and celebrate the diversity of women instead, arguing for a politics of difference (Butler 1990).

Post-structural feminists have taken up the critique of realist research assumptions. Influenced by Foucault, they have brought to the analysis of the welfare state an interest in discourse and, thus, in language. Bacchi (1999) has shown the advantages of understanding policy as discourse. Post-structural feminists have argued that gender differences have to be understood as discursive constructions. Some (cf. Butler 1990; Haraway 1991; Epstein 2000) have shown that the feminine has been 'constructed' as the 'other', as departure from the masculine norm constituting society. In their research, they have argued for a historic and linguistic broadening of inquiry.

Postmodern feminism is controversial within feminist theory. It has been criticised for fragmenting women into uncountable subgroups and denying the specificity of women's experiences (Fitzpatrick 2001). Further, postmodern and post-structural feminism have been attacked for undermining the possibility for collective political action through their relativism and by reducing real struggles to philosophical language games. The most powerful critique of post-structuralist feminism is that it remains trapped in language. If the world 'is no more than the production of meaning through discursive interaction' (Fitzpatrick 2005), no real problems at all exist outside language. Among the competing claims to knowledge, thus, the oppression of women evaporates with all other social ills.

However, most feminists are 'affirmative' postmodernists (for the distinction cf. Rosenau 1992), who remain committed to their emancipatory goals while acknowledging that 'claiming some undistorted access to knowledge' is problematic (Bacchi 1999: 43).

The merit of this version of post-structuralist feminism lies in its potential to narrow the chasm between realist and poststructuralist epistemologies and research approaches.

2.2.3 *Feminist critiques of gender equality policy*

Here we will briefly map out the field of feminist research into gender equality policy, because the ‘problem’ of incompatibility of paid employment and care work has sporadically been represented as a gender equality ‘problem’, and reconciliation policy, thus, as gender equality policy.

Gender equality policy is not identical to social policy, but it has a large area of overlap. Yet, gender equality policy covers a broader area than social policy. Moreover, feminist critiques of the welfare state have served as a basis from which feminists have set out to develop alternative models for welfare aimed at enhancing gender equality. Often they incorporate policies that are not traditionally thought of as social policies.

Classical social policies such as childcare, parental leave, education, social security, and social benefits policies are employed in the name of gender equality, although in different ways and to different degrees. Adding to that is legislation regarding anti-discrimination, equal opportunities, sexual harassment, domestic violence, and abortion. How gender equality policy is framed, that is, what is part of it and what not, varies profoundly between and within different national contexts. This relates back to the argument about problem representations: which issues and policy areas are conceptualised as part of gender equality policy depends crucially on what the problem of gender inequality is perceived to be, or, in other words, on what gender equality is. This observation regards the practice of policymaking as well as scholarship. Bacchi (1999), Charles (2000), Mazur (2002), and Pascall and Lewis (2004) all conceptualise gender equality policy differently. We will come back to this problem at the end of this section.

The above qualifications notwithstanding, the formulation and institutionalisation of gender equality policies has been hailed as one of the major achievements of second-wave feminism. Without feminist activists, politicians and scholars pressuring and lobbying it would not have emerged as a policy area in its own right in many countries since the mid-1970s. However, the politics of gender equality policy are complex. Charles (2000: 95–96) argues that the role of the women’s movement in the formulation of equal pay legislation in the United States and the UK was negligible in the mid 1970s, whereas in the area of anti-sex discrimination legislation, it was central.

Shortly after the institutionalisation of gender equality policies, feminist studies, which analyse them have increasingly emerged, claiming that gender equality policies themselves can be gendered (cf. Hawkesworth 1994). In this body of research there are two different foci: on a theoretical level studies analyse the (often implicit) aims of gender equality policies (Fraser 1997), whereas others evaluate the practical outcome of policies for women (Gardiner 1997, for Germany: Cordes 1996, Klenner 2002). This distinction applies to the analysis of both existing policies and policy proposals. Epistemologically, two distinct kinds of research exist in parallel: studies resting in positivist/realist assumptions and studies resting on social constructionist foundations.

Although, generally feminists are in favour of gender equality policies because at the very least they are perceived to be limiting the damage (Epstein 2000), important distinctions have to be made. Pragmatic critique is associated with liberal feminism and politics of gradual change. It is often voiced through detailed analyses of individual policies and their outcome. This way it can be established if particular gender equality policies improve the position of women. Outcome orientated studies tend to take a pragmatic stance. Fundamental critique is associated with radical and socialist feminism. If gender equality policy fails to address the gendered division of labour, it does not bring economic independence and, therefore, does not initiate fundamental change. This critique shows how gender equality policy fails to achieve its proclaimed aim by testing it against normative criteria. Theoretical studies often take this more radical stance.

Nancy Fraser (1997) shares the belief that the welfare state upholds an unequal gender order, which has to be overcome to be replaced with a gender order based on gender equality. She conceptualises gender equality as consisting of seven necessary and essential principles: antipoverty, anti-exploitation, income equality, leisure-time equality, equality of respect, anti-marginalisation, and anti-androcentrism.

Fraser criticises both currently available abstract models implicitly underlying feminist conceptions of gender equality policy, the 'Universal Breadwinner' model and the 'Caregiver Parity' model. She argues that both will not be able to bring about full gender equality, overcoming the current gender division of labour.

The former, 'implicit in the political practice of most U.S. feminists and liberals' (Fraser 1997: 43), aims at promoting women's activity in paid employment. Fraser holds that this is based on a notion of equality that takes the male as the norm, thus disadvantaging women and imposing unrealistic standards on women and men. Women are required to act like men in the labour market.

The 'Caregiver Parity' model, in contrast, aims at supporting women in their roles as caregivers. This model, 'implicit in the current political practice of most Western European feminists and social democrats' (Fraser 1997: 43) is thus based

on the notion of the difference between women and men. Fraser criticises that this model rests on biological determinist assumptions and therefore reinforces gender stereotypes and confines women within their existing roles. Gender roles are left unchallenged and unchanged.

On the basis of her critique, Fraser develops a new model for gender equality policy, the 'Universal Caregiver' model. This model makes women's complex life patterns, rather than men's, the norm for everyone, thereby challenging the conceptualisation of breadwinning and caregiving as opposing roles. According to this model, which could be made possible by a flexible system of parental leave and financial support for carers, both women and men combine paid employment with caring responsibilities. The aim is to 'dismantle the gendered opposition between breadwinning and caregiving' (Fraser 1997: 61), and ultimately the fundamental restructuring of the institution of gender.

Lewis (1992), Sainsbury (1994), Bussemaker (1997), and Lewis and Pascall (2004) provide studies linking equality policy analysis with feminist analyses of welfare state regimes with the aim of improving understanding of cross-country differences in gender equality. They criticise Esping-Andersen's (1990) typology of welfare states as gender-blind. Lewis (1992) suggests an alternative typology based on the gendered division of labour, taking into account unpaid labour neglected in previous classifications. She differentiates between 'strong', 'moderate' and 'weak male breadwinner' states or 'dual breadwinner states'.

On the basis of Lewis' and Sainsbury's analysis, Gardiner (1997) develops a classification of states by gender equality policy. In her comparative study of Western and Southern European states, Germany before 1998 scores moderate, earning an 'intermediate' in the equality rating (Gardiner 1997: 13). Gardiner's classification is based on the theoretical arguments guiding gender equality policy, on the input side of policy. She conceptualises political ideology, philosophical preferences regarding equality, and religion as key factors influencing gender equality policy. Thereby, she emphasises the contentious nature of the equality concept, ranging from equality of opportunity to equality of outcome.

O'Connor (1993) points at gender differences in social citizenship rights. She argues that a three-tiered system of access to social rights exists. At the bottom are the female clients of welfare and social assistance, which are granted benefits on the basis of needs, generally understood as household needs. The second tier is made up of dependent family members, whose eligibility for social security depends on contributions of spouses in paid employment. Finally, there is the highest tier with individual entitlements to benefits based on (full-time) paid employment.

Pascall and Lewis (2004) argue that although women's increased labour market participation has undermined the assumptions on which the male breadwinner model rests, the individualisation of welfare responsibilities has in fact worsened the situation for caregivers. In this context, they explore two feminist alternatives to the male breadwinner model that are currently being pursued: the liberal model concentrating on women's right to gender equality at work but largely leaving childcare outside public responsibility, pursued by US and partly British feminists, and the Dutch 'combination scenario', aiming at the sharing of unpaid care work by women and men, thereby increasing the share of men's care work. Put to the test in the five interconnected spheres Pascall and Lewis (2004) identify as the key elements of gender regimes: paid work, care work, income, time and voice, they come to the conclusion that both models have major flaws. The liberal model does not address women's income and time poverty and leaves the gendered division of labour intact, thus allowing gender inequality, and allows poor childcare provision to persist (377–378).

The Dutch model, although scoring better, does not address how responsibilities are to be distributed in society as well as within households. Moreover, like Fraser's 'universal caregiver' model, it leaves too much responsibility with the households and civic society rather than with the governments and the state. Pascall and Lewis therefore argue for an 'inclusive citizenship version' of the dual earner-dual carer model, establishing rights for the support of care work by the state. This, they argue, could create the policy environment encouraging gender equality in all dimensions: paid work, care work, time, and voice (Pascall and Lewis 2004: 389).

For the German case, Klement and Rudolph (2003) argue that gender equality policy has failed to address the gendered division of labour. After unification in 1990, the gender regime of the German Democratic Republic (GDR) underwent fundamental change. The socialist 'dual worker model' (Pascall and Lewis 2004) was characterised by high full-time employment of women due to 'a combination of social and legal provisions supporting women's labour market participation, and legal equalities in marriage and divorce, with extreme domestic inequalities (Pascall and Lewis 2004)'. Pascall and Lewis (2004) argue the 'total merging' of the dual worker model into the Western German male breadwinner model in the years after 1990.

Klement and Rudolph (2003) argue that the gendered division of labour in Germany, characterised as a country with a strong male breadwinner model, is, as in other countries, supported by social policy. Moreover, German social and fiscal policies reinforce the dependency of women on their partners, at least for those doing unpaid care work. This is mainly because eligibility for social security benefits is tied very strongly to (full-time) paid employment. Klement and Rudolph (2003) identify three

key areas of social and fiscal policy responsible for this: care for dependent family members, tax policy, and pension policy. Childcare provision is underdeveloped in Germany, leaving it largely as the responsibility of the family, i.e. mainly to women. Although there is recent legislation guaranteeing kindergarten places for over 3 year olds, there are large gaps in provision. For children of school age (school ends at 1–2 pm), there are few after-school clubs. Provisions for the care of elderly dependents also disadvantage women. Although compulsory long-term care insurance was introduced in 1996, it was done with the explicit aim of introducing incentives to provide care within the family at home. As this care work is carried out predominantly by women (daughters, wives, stepdaughters), it prevents them from pursuing a full-time professional career, thereby making them dependent on their spouses. The German tax system, in which husband and wife each pay income tax on half of their combined incomes (Ehegattensplitting), also provides a strong incentive for the partner earning less (mostly the wife) to take over a full-time carer role. The bigger the gap in income, the stronger that incentive, because after tax little remains of the lower wage. Finally, pensions are tied to very long full-time employment. Only 45 years of constant full-time employment guarantees the maximum pension. For women with their fragmented employment history, often including part-time work, this poses a major risk of poverty and makes them more dependent on their husbands.

Often, gender equality policy has been overridden and its achievements thwarted by other interests, such as in a relief of the strain on the labour market (in the face of record unemployment), and in financial relief of the welfare state (Klement and Rudolph: 2003: 25).

On the basis of the above critique, Klement and Rudolph recommend aiming at Fraser's (1997) 'universal caregiver' model in Germany, redistributing employment and work between women and men.

Pinl (2003) argues that in Germany, the male breadwinner model has survived social and economic change almost unscathed, due to the structure of the German welfare state supporting it. Gender equality policy has not only failed to address the gendered division of labour, it has also often reinforced gender roles. For example, mothers were encouraged to take typing courses or enrol on special cooking courses for working women by the Federal Employment Office (Arbeitsamt) in the 1980s.

2.2.4 Social constructionist critique of gender equality policy

As we have shown above, most feminist critique of gender equality policy is implicitly but firmly based on realist epistemological assumptions. Indeed, the position

feminists take towards social constructionism varies considerably. Given the variety of feminist approaches this is hardly surprising. Some feminist scholars are critical, others view it favourably, and others are largely indifferent. Empiricist feminists are often dismissive of constructionism because of its ontological and epistemological assumptions while some postmodernist feminists embrace social constructionism for the same reason. The positions feminists take mirror parallel concerns about social constructionism from other contexts; they are normative, ontological, epistemological and strategic. One of the important reasons for the careful or dismissive perception of social constructionism is normative-strategic: Some feminists are concerned that social constructionist research, rightly emphasising its own 'constructed' nature, undermines the 'rhetorical impact' (Kitzinger 2000: 451) of feminist arguments and thus weakens its political thrust and, thus, feminist activism (Bacchi 1999: 63). However, there exists a considerable area of overlap between feminist and social constructionist research agendas. Bacchi (1999: 63) argues that constructionism should be the 'natural home' for feminists because it shares two assumptions of feminism: that our comments on and claims about the world we are living in are influenced by who we are, and secondly that claims about how the world is entail political stakes. Notwithstanding the commonalities, there are major feminist controversies around social 'construction' and the category of gender. Some of the contentious issues are about which social practices 'construct' gender, what social 'construction' is, and what being of a certain gender amounts to. Ultimately, the latter question is about essentialism. The key point discussed is the extent to which is gender essentialised or not. To what extent do gendered individuals possess some essential properties by virtue of which they are either women or men?

Some feminists, particularly those favouring realist and empiricist approaches, argue that women, as a result of oppressive cultural practices and expectations, share some essential properties, characteristic features, conditions, or experiences that make them women, although these are potentially changeable (cf. Haslanger 1995). However, some feminists conceptualising gender as socially 'constructed' also incorporate essentialist assumptions. Millet (1995) argues that gender differences are the result of differential socialisation: of differential treatment of women and men. Gender is, thus, the sum of parents, peers, and the society's notions of what is appropriate to each gender. Criticising the socialisation approach, Chodorow (1995) holds that gender is a matter of having feminine and masculine personalities that develop in early infancy as reaction to prevalent parenting practices. MacKinnon (1989) holds that the meaning of gender is 'constructed' by the sexual objectification of women for the pleasure of men. All three studies contain assump-

tions about criteria which all women share and by which all women differ from all men.

Other feminists subscribe to criticisms of essentialism, such as Spelman's (1990). Spelman's influential critique of essentialism in 'Inessential Woman' rendered assumptions of definitive features of 'womanness' something of an anathema (cf. Mikkola 2006). Spelman (1990) argues against what she perceives as the fundamental flaw of essentialism: to assume gender can be understood independently of other factors. She holds that gender is never 'constructed' independently of race, class, ethnicity and nationality; it is inseparable from these factors. The diversity of women's social locations and experiences denies the assumption of shared criteria of 'womanness'. Mikkola (2006) attacks Spelman's argument, which favours gender nominalism, and argues that women's diversity can be accommodated within gender realism, although it complicates analysis.

Butler (1993) rejects the sex/gender distinction arguing that there are no such essential properties and that gender is an illusion sustained by prevalent power structures. Butler argues that both are socially 'constructed': bodies perceived as the material basis on which gender is 'constructed' are themselves 'constructed' as if they provide such material foundations.

Surveying the argument, Wylie (2003) argues that it is common ground for social constructionism to reject essentialism. Generally, this may be true, but the degree to which it is being rejected differs. Certainly, what different constructionist theories have in common is a tendency to emphasise the social 'construction' of gender over an essentialised understanding of this category. Gender is understood as 'constructed' and thus, at least in principle, contingent. Constructionist approaches often attempt to undermine the essentialisation of gender, although they might unknowingly contain essentialist assumptions themselves.

Epstein (2000) examines the gender equality policy discourse in the German state (Bundesland) of Lower Saxony (Niedersachsen). She works on the textual level, analysing how policy discourse in newspapers and ministerial press releases constructs and reinforces gender roles. Epstein shows that gender equality policy is represented as a compensatory strategy aimed at alleviating the disadvantages of women. The focus is almost exclusively on women, whose position is to be improved. However, it does not become clear what exactly constitutes their disadvantaged position. The assigning of aspects of life to the public or private sphere respectively is not addressed, thus the private does not get politicised. The main topic of the examined texts is the integration of women into the labour market by quotas and more flexible working arrangements. It remains unclear what concrete benefit this

strategy has for women. Men as a group feature only in the margins. They are not identified as a group with vested interests, but provide the implicit and unquestioned normative model for women's behaviour. Epstein argues that this discursive construction of gender equality policy originates from and at the same time constructs and reinforces traditional patriarchal gender roles (2000:139): the dichotomy of genders in which women are assigned to the private sphere, the naturalisation of the category 'men', and the production of a hierarchical gender relationship. Even texts produced by the state Ministry for Women, try only very tentatively and insufficiently to transform these gender roles. Although, in a few instances they criticise the traditional and hierarchical gender roles, they fall back to the traditional gender categories: women define the aims of gender equality policy, but gender equality policy aims at a 'public' sphere that is linguistically (in German grammar) and socially associated with 'men'. Individual female advocates of gender equality policy make the case of women addressing the public sphere of political institutions in which 'men' are in the driving seat. This discursively privileges men over women, the public sphere over the private.

Bacchi (1999, 2004) launches a fundamental attack on the way gender equality polices have framed the problem of women's inequality, thereby not sparing feminist activism and scholarship. She even argues that the noticeable 'swing to the right' in some countries has its grounds in 'the very terms of analysis shaping many of the issues where feminists won concessions (Bacchi 1999: 204).' Bacchi deconstructs the problem representations in gender equality policy proposals, looking at the areas of pay equity, discrimination, education, childcare, abortion, domestic violence, and sexual harassment. Her epistemological assumption is that it is impossible to look at any social problem independently of how it is represented in (policy) discourse. She does not deny that women are disadvantaged and oppressed, but holds that interpretations of problems are not outside or prior to policy proposals. More adequately, one has to think about them as having in-built problem representations:

'That is, whatever is proposed creates in its formulation the shape of the problem addressed' (Bacchi 1999: 66).

Bacchi argues that we have to examine these representations prior to anything else, because if they fail to represent what constitutes the problem of women's inequality, little can be expected in the line of change. It follows, that policy 'responses' have to be understood as integral part of the discursive construction of social 'problems'. In this argument, Bacchi proves herself a contextual constructionist. She does not stay on the level of language and representations, but uses evidence, such as social policy

and feminist research to evaluate representations against. However, true to a constructionist stance, she is acutely aware that her analysis is also part of the same discourse. Bacchi comes to the conclusion that ‘the kind of problem women’s inequality has been represented to be is inadequate and short sighted’ (Bacchi 1999: 206). Across all the seven areas of gender equality policy, the responsibility for change is assigned to the individual (woman), the social structures and processes upholding women’s inequality remaining unaddressed in discourse: equal opportunities demand women to acquire the skills needed to join the labour market. Childcare creates the opportunity for women to take up work like men. Education prepares women for employment on male terms. Abortion policies (particularly in the US) force the individual women to plead her case. ‘Domestic violence’ assigns the phenomenon to the private sphere, depoliticising it. Sexual harassment constructs the problem as ‘bad behavior of few deviant men’ (Bacchi 1999: 203) rather than symptomatic of gender roles.

All these constructions are highly problematic because they leave virtually no room for fundamental, structural change. For reconciliation policy, the framing of women’s inequality as an equal opportunities problem (that is, concerning above all access to the labour market) in gender equality policies of many Western governments is particularly momentous. Bacchi exposes that the underlying assumption of this is that paid employment is all that women (and men) needed to be free. This ignores the exploitation of employed people and the significance of people’s non-working lives (Bacchi 1999: 202). Also, it neglects all the other aspects contributing to women’s oppression. If reconciliation is ‘constructed’ as an answer to a ‘labour market problem’, it is unlikely to address those other aspects.

2.2.5 *Feminist critiques of ‘reconciliation’ policy*

Feminists conceptualise reconciliation policy as a complex and difficult area to study, due to its transversal nature:

‘It is often embedded in highly complex welfare or legal reforms and intersects with employment policy, family policy, and a range of other social policies’ (Mazur and Zwingel 2003: 371).

Feminist critiques of reconciliation policies are overwhelmingly based on implicit realist assumptions, evaluating current or proposed policies. Social constructionist analyses of reconciliation policy are still few and far between. Where there are attempts (cf. Repo 2004), they tend to focus on the micro level of making sense of

everyday experiences, or on the level of general societal discourse (cf. Runté and Mills 2004), not on government policy.

Similar to gender equality policy, the terms, content and the desirable aims of reconciliation policy are highly contested in policymaking and scholarship (cf. Lohkamp-Himmighofen and Dienel 2000).

Mazur (2002: 3) theorises reconciliation policy normatively as a subsector of feminist policy, formulated in the postindustrial democracies of the West. Accordingly, she defines reconciliation policy as normative state interventions in the interest of women:

‘Reconciliation policy covers government action that explicitly addresses the relationship between work and family to improve women’s situation through reconciling family and work’ (Mazur 2005: 102).

Thus, in Mazur’s conceptualisation, the *conditio sine qua non* for reconciliation policy is its feminist nature, which means in her argument that its primary aim is the promotion of women’s economic independence. However, even within the above definition, different approaches to reconciliation policy are possible. Drawing on Heitlinger’s (1993) typology of women’s policy, Mazur identifies three feminist models of reconciliation policy. The first is based on the ‘traditional’ division of labour, reinforcing women’s role as carers and housekeepers while attempting to alleviate their economic dependency from their husbands through social security benefits. The second approach starts from the assumption that the dominant division of labour compels women into the caretaker role. It aims at providing equal opportunities for women to enter the labour market, for instance by providing childcare or parental leave legislation. This approach does not, however, fundamentally challenge traditional gender roles in the work/family nexus. (Mazur 2005: 104). Gelb and Palley (1982, 1987) criticise the above approaches leaving the traditional roles of women and men in family and society unchallenged and argue for a radical ‘gender role change’. This third approach aims at fundamentally redefining gender roles, ‘it shifts its focus from women as the prime target of reconciliation policy to both men and women, and encourages men to take equal responsibility in household and family work’ (Mazur and Zwingel 2003: 371).

Duncan (2002) explores the emergence out of themes of economic competition, democratisation, and protecting gender contracts of policy discourses on reconciling work and family life in the EU context. He shares with both Threfall (2000) and Mazur (2002) an optimistic view of reconciliation policy, defining it as ‘implying a redistribution of work and status between women and men’, thus changing the gen-

der contract (2002: 307). They argue that it has the potential to influence national gender contracts by bringing the issue of care centre stage.

Duncan argues that the concept of reconciliation was developed within sections of the EU commission in the late 1980s to address 'economic problems resulting from the second demographic transition and globalisation' coinciding with a recession. It became seen as a way to tackle problems caused by ageing and low fertility and of creating a flexible labour force. The backdrop, however, was an increasing awareness of the limited scope of equal opportunities for gender equality. Duncan holds that the gender discourse, fostered by the accession of Sweden and Finland in 1995, managed to link to the EU commission's agenda, using it for its own means.

In the basis of their comparative study of parental leave policies, Lohkamp-Himmighofen and Dienel (2000) identify six models of reconciliation policy in Europe. They form a continuum, ranging from the 'egalitarian model' of the Nordic countries, over the 'labour market orientated model' of Belgium and France; the 'liberal labour market orientation model' of Ireland and the UK; the continental 'three phase model'; to the 'family based model' of Mediterranean countries; and the 'socialist model' of Eastern Europe. Lohkamp-Himmighofen and Dienel hold that reconciliation policies are situated at the junction of employment and family policy, and that they, thus, 'may be designed to achieve very different, often conflicting policy objectives (2000: 66).'

Rüling et al. (2004: 11) argue that reconciliation policy only deserves its name if it leads to more 'gender democracy' (Geschlechterdemokratie), that is, if it supports a dual-earner-dual-carer model. This stance is also taken by Pfau-Effinger (2000). In her comparative study of the development of gendered policies in Europe, Hantrais (2000) postulates a shift in the EU from women's policies aiming at equal pay (in the 1970s) to gender policy aiming at reconciliation of employment and family life. She argues that the history of gendered policies needs to be studied in the context of European integration and enlargement. Hantrais is mainly interested in the changing policy process, but she can also show that there is 'considerable variation from one country to another in the outcomes of EU reconciliation policies' (2000: 25, emphasis added). This variation, she holds, is mainly due to different policy priorities and dissent among EU member states on the right approach. EU policies were, therefore 'watered down' to the lowest common denominator. In effect, this led to considerable leeway in implementation and hence to national reconciliation policies that contradict the initial aim, the reduction of 'socially constructed inequalities at work and in the home' (2000: 2). Governments' reconciliation policies, she argues, are not only a reaction to feminists' (social justice) arguments, but also to labour market problems

(such as unemployment and creating a flexible work force), an attempt to reducing welfare dependency, and to tackling the problems associated with family breakdown. Thus, Hantrais (2000) argues that reconciliation policies can have ‘perverse effects’.

Positive action measures can contribute to reiterating women’s difference and justifying their concentration in low status and part-time work. Further, equality measures can lead to the female labour force being polarised into ‘full-time, well-qualified, well paid, versus, part-time, casualized, flexible’ women (2000:26). And finally, families can be polarised into ‘dual-earner, single-earner and no-earner households’ (2000:26).

Stratigaki (2004) presents an analysis of how the concept of reconciliation changed its meaning in the context of EU policy discourse. She argues that the concept was originally introduced to encourage gender equality in the labour market, a feminist concept aiming at the sharing of family responsibilities between women and men. Later, its meaning shifted, under the influence of the EU’s preoccupation with employment policy to a market-orientated objective, meaning the encouraging of flexible forms of employment. In the course of this process, the concept, thus, lost its feminist potential. The concept was co-opted by economic and employment policy discourse and thereby corrupted. In effect, it does not address the gender relations within the family and the gendered division of labour any more. Its potential for ‘advancing feminist goals of sharing both labour and decision making more equally between women and men’ is thwarted (Stratigaki 2004: 51).’ Stratigaki’s analysis is very useful in showing the changing meaning that reconciliation has had in the EU policy discourse. It remains to be investigated, how far the change of meaning of reconciliation applies to Germany. Lewis (1992) and Lewis and Ostner (1995) have argued that German policy has tried to keep EU gender equality policy compatible with its own gender policy regime.

Stratigaki’s thesis that reconciliation only became widely used after its meaning had changed to a limited market-orientated concept has to be investigated in the German context. However, two things are problematic: Firstly, the concept of cooptation implies that concepts belong to someone, that they are the intellectual property of particular groups. We object to this implication and thus prefer the framework of problem representation to cooptation. Rather than stating that reconciliation as a concepts with feminist potential was co-opted, we would argue that the problem reconciliation was represented to address has changed in dominant policy discourse. Secondly, linked to the first point, Stratigaki conceptualises the initial feminist understanding of reconciliation as the original from which the later market-orientated is a departure. This in effect means that the feminist conceptualisation of reconcilia-

tion is left outside the discourse, and is not an integral part of it. Although we agree to most of Stratigaki's findings, we find that her way of presenting them blurs the more important problem: what is the problem of the incompatibility of paid employment on the one hand, and care work on the other hand, represented to be in government discourse? By framing the issue as cooptation of a concept Stratigaki remains caught up in a realist research epistemology. She misses the point that reconciliation has been presented as a 'solution' to fundamentally different problems. Further, thus, she fails to see that in policymaking, presenting something as a 'solution' is an important part of construing a problem.

Junter-Loiseau and Tobler (1999) examine the notion of reconciliation, which they perceive as 'the dominant formula in the present discourse on the compatibility of family and employment' (342). Their argument links well with this thesis' interest in problem representation as it problematises the way the problem of women's inequality is framed by the notion of reconciliation. Junter-Loiseau and Tobler argue that the way reconciliation is conceptualised in the context of the European Union as a legal and political concept is highly problematic because it neglects the gendered division of labour. Therefore, increasingly the discourse on reconciliation fails to address the issue of gender equality. Drawing on their earlier research (Junter-Loiseau 1995; Tobler 1995), Junter-Loiseau and Tobler (1999) criticise the dominant understanding of reconciliation for resulting in policy measures tending to primarily address women and mothers, although the notion of reconciliation theoretically encompasses women and men equally. Moreover, the static nature of the dominant conceptualisation of reconciliation threatens to 'maintain and reinforce' exactly those social injustices that it claims to address: the unequal distribution of time and of work, the barriers blocking women's careers, the perception of child care as women's work, and the trapping of women in and the 'gratuitous dimension' of care work (Junter-Loiseau and Tobler 1999: 369).

Gornick and Myers (2003) assert that the 'problem' of incompatibility consists in parents being caught between traditional concepts of women as 'natural' caregivers and new demographic, economic, and social realities. They identify the unequal gendered division of labour as the primary cause of the 'problem'.

In the light of these findings, they support alternative approaches to reconciliation brought forward by feminist scholars, such as new concepts of rights and duties (particularly men's right to care), new time policies, a reconceptualisation of work, and a new gender contract.

It has been argued that the centreright coalition government of Christian Democrats and Liberals (1982–1997) pursued a gender policy based on the 'equality of dif-

ference', reinforcing the male breadwinner model and the full-time woman caregiver, the 'Hausfrau' (Ostner and Lewis 1995; Opielka 2002). Thereby, arguably the German Government's policies effectively counteracted 'both national and EU equal employment rules and measures' (Ostner and Lewis 1995: 186).

Bird (2003) and Gottschall and Bird (2003) analyse longitudinal empirical data (covering the period from 1960 to 1997) on the working patterns of German women entitled to different forms of maternity or family leave. They hold that there has been a trend to standardisation of the life course of women in respect to the way they reconcile paid work and family work: the way women have reconciled both spheres is by leaving employment after childbirth and returning to the labour market after some time spent at home as full-time carers. This life pattern, Gottschall and Bird argue, was prescribed for women by legislation and backed up by the normative expectations of their social environment. The introduction and increase in the length of maternal leave have, in effect, reinforced the gendered division of labour, although institutionalised leave was supposed to be gender-neutral. Gottschall and Bird do not analyse data for the red-green government (after 1997), but they are highly sceptical of the potential for change of the new parental leave (Elternzeit) in 2001 because the fundamental social and legal structures have not been affected by it, and it provides no incentives particularly for men to take it. Further, the newly introduced right to part-time work for parents is likely to be taken up predominantly by women, given the gender pay gap and women's tendency to work part-time after the initial maternal leave. It thus conveys the message that working fewer hours is what mothers should be doing (Gottschall and Bird 2003).

Rüling et al. (2004) and Vogt and Zwingel (2004) explicitly examine the achievements of the red-green coalition government's reconciliation policy. Rüling et al. (2004) argue that it was based primarily on integration of women into the labour market through improvements in childcare provision. Subsidiary campaigns aimed at encouraging more fathers to do care work were low-key (Opielka 2002). Rüling et al. (2004) argue that in reconciliation policy, true 'gender democracy' was not politically desired. Crucially, reconciliation has been conceptualised in the nexus of the problem of declining birth rates. They further hold that the male breadwinner model dominated family policy and, thus, reconciliation policy. Although the red-green government introduced parental leave in 2001, the benefits are too low for both parents to take it. Given the existing gender pay gap, it is, thus, still overwhelmingly women who interrupt paid employment.

Vogt and Zwingel (2004: 473) argue that German reconciliation policy showed 'shifting intentions'. Focusing on reconciliation policy at a firm level, they contra-

dict RÜling et al. (2004) and argue that after West German reconciliation policy rewarded care work, there is recent evidence that German reconciliation policy might follow Mazur's (2002) third model of reconciliation policy aiming at transforming the gendered division of family care work.

RÜling et al. (2004) hold that democratic and equal reconciliation solutions between men and women are possible with the German structures. However, they are highly individualised and flexible, the flexibility leading to insufficient job and financial security and social protection. They conclude that the viability of reconciliation depends on the provision of adequate structures by the state. In their opinion, the most important are the right to flexible working arrangements, particularly part-time work that pays sufficiently to support the employee, and comprehensive and inexpensive public childcare for all age groups. As social security benefits are strongly linked to paid employment, they also argue that part-time work should entitle employees to social security.

Amend-Wegmann (2003) analyses German reconciliation policy on the level of federal state, *Länder*, local councils, and companies. In addition to providing a valuable account of the development of reconciliation policy, she conceptualises incompatibility using economic theories of familial behaviour and labour market theories, and concludes with suggestions for a reform of the wage-earner society. In her analysis of federal reconciliation policy, Amend-Wegmann (2003) looks at parental leave, childcare, reintegration into employment, and pension policy.

2.3 Conclusion

The purpose of this section is to provide a brief account of how this thesis draws from the strands elaborated in this chapter to offer a new approach to analysing reconciliation policy.

In the first part of this chapter we introduced the tradition of thought this thesis draws on, social constructionist social problems theory. Distancing itself from classical social problems theory the study conceptualises the social 'problem' of incompatibility of paid employment and care work not as a preexisting given 'discovered' by policymakers, but as construed in and through policy discourse.

However, the study associates itself with a contextual rather than a strict constructionist approach in order to move beyond a purely descriptive treatment of claims about incompatibility. Drawing on Bacchi (1999) it asserts that claims, or problem representations, about incompatibility can be assessed by their likely effects.

The study also incorporates some valid criticism of constructionist approaches. It acknowledges Hacking's (1999) critique that social constructionist research is often unclear about what it argues is 'socially constructed' and draws its consequences from his well-substantiated criticism of the verb 'to construct', but it questions his strict universal distinction of objects and ideas. The study is therefore explicitly concerned with how the understanding of the social 'problem' of incompatibility is construed in and through social policy legislation, the most powerful of policy discourses. Sidestepping potentially endless ontological debates, the study asserts that the incompatibility 'problem' cannot possibly be accessed or analysed separately from representations of it, and therefore puts representations centre stage.

In the second part of this chapter we introduced feminist Social Policy research. Feminist research provides the study with a standpoint from which to assess problem representations in reconciliation policy, and offers alternative problem representations. Treating reconciliation legislation as discourse, as dominant and momentous claims about the 'problem' of incompatibility, the study utilises feminist research into the welfare state in general, and gender equality policy and reconciliation policy in particular as important counter claims. It asserts that due to the disadvantaged position of women in society and their experience of being targets of reconciliation policy feminist counter claims are potentially epistemologically superior.

Drawing together feminist Social Policy and a modified contextual social constructionist paradigm the study harnesses epistemological and ontological tensions for gaining a broader understanding of German reconciliation policy.

3 Methodology

3.1 Introduction

This thesis modifies a contextual constructionist paradigm of inquiry with a feminist perspective, critically associating the study with it. This approach introduces an element of ontological, and particularly epistemological, tension into our research. We will explain in this section why we deem this to be fruitful and appropriate. However, before this issue can be discussed in detail, some other clarifications have to be made.

Although often confused or used synonymously, methodology and method are not the same. While methodology refers to the guiding theoretical framework for research, methods can be thought of as the tools for gathering and/or making sense of data. Ramazanoğlu (2002) defines methodology as a set of rules that determine how social research should be carried out:

‘Each methodology links a particular *ontology* (for example, a belief that gender is social rather than natural) and a particular *epistemology* (a set of procedures for establishing what counts as knowledge) in providing rules that specify how to produce valid knowledge of social reality (...)’ (Ramazanoğlu 2002: 11).

Harding (1987: 2) defines methodology as ‘a theory or analysis of how research does and should proceed.’ This framework connects the ontological and epistemological assumptions underlying the research with the actual research methods. Although, different social sciences have different methodological traditions (cf. Oakley 1998), many scholars share the above conception of methodology, which we adopt here.

Methodology and method in any research are linked to the chosen paradigm of inquiry. The choice of the paradigm of inquiry has profound consequences for selection of methodologies and methods from the range of theoretically possible options, limiting the number of possible and adequate ones. It also has far-reaching ontological and epistemological consequences.

We introduced the modified contextual constructionist research paradigm in the previous chapter. In this section, we will first present the ontological and epistemological assumptions upon which this research is based, thereby linking the research paradigm to methodological and methodical questions. In a second step, we will discuss the actual method applied. Together, this will amount to an outline and analysis of the framework within which this thesis’ analysis proceeds.

3.2 Paradigm of inquiry, ontology and epistemology

Fundamentally, this study is based upon a modified contextual constructionist paradigm of inquiry, complementing it with feminist standpoint epistemology.

While much strict constructionism argues that constructionism presents no ontological doctrine because it is not concerned with ontology, with what exists and under which conditions (cf. Gergen 1994; Potter 1996; Spector and Kitsuse 1974, 1977), this position has, however, been criticised as ontological itself (cf. Woolgar and Pawluch 1985). A unifying factor of constructionism is, however, its emphasis on the mediated nature of reality, the inevitability of interpretation in our perception of the world around us (Schwandt 2000). Generally, constructionism rejects the idea of the existence independently from the mediation of our understanding of a permanently fixed reality, which can be researched into or even thought of (cf. Shusterman 1991). However, ontologically, two conclusions can be drawn from this assumption in constructionism. Strongly holistic constructionism (cf. Denzin 1997; Richardson 1997) infers from the above the most radical relativist and anti-realist position, according to which everything, all social phenomena, are ‘constructed’ or constituted through interpretation. According to this version of constructionism, there is no way to evaluate competing interpretations or claims (Schwandt 2000). Contextual constructionism, in contrast, is based on a weak holism stressing that on the basis of evidence normative judgements of claims or interpretations are possible, bearing in mind that ‘such evaluation will always be comparative, fallibilistic, and revisable (Bohman 1991: 146, cit. in Schwandt 2000)’. Through its weak holism – accepting the possibility of external evidence (with the above qualifications) – contextual constructionism is thus open to accommodate other ontological positions, providing the basis for normative judgements.

Contextual constructionism ontologically holds that, although the nature of any phenomenon under investigation is constituted in the claims brought forward about it, reality limits the shape of possible descriptions. Further, it assumes that some indirect and imperfect access to knowledge is possible, while recognising that evidence is itself a construction. However, the evidence, contextual constructionism holds, is necessary to locate descriptions/claims in their social context. The question of what counts as evidence in this thesis will be addressed below.

Acknowledging the above debates but avoiding being caught up in prolonged ontological considerations, the study holds with Bacchi (1999) that regardless of its precise ontological status, reality (the ‘problem’ of incompatibility) cannot be assessed independently of problematisations of it. Discursive problematisations structure the understanding of the ‘real problem’ (cf. Atkinson 2000), which cannot be

thought about outside these claims about it. Ultimately, the study thus conceptualises the ‘problem’ of incompatibility as socially construed in and through government policy. Therefore, the analysis has to concentrate on the problematisations, or problem representations of incompatibility.

The study adopts a mixed ontological and epistemological approach combining two different strands of analysis: a modified form of contextual constructionism and feminist standpoint epistemology. While some feminists argue that these two approaches are incompatible (cf. Letherby 2003), this thesis draws on the others who try to combine them (cf. Ramazanoğlu 2002).

The first strand of analysis is driven by a modified contextual constructionist paradigm, assuming that because the ‘problem’ of incompatibility cannot be analysed independently of representations of the ‘problem’ in government policy, we have to concentrate on the construing on ideas about incompatibility in legislation discourse. Adopting Bacchi’s (1999) critique of contextual constructionism, this thesis, however, does not stop at describing official claims in policy, but it takes them apart, asking for underlying assumptions as to the implicit concern and causes of the incompatibility ‘problem’, to the policy ‘targets’, and the effects of limits imposed by discourse on what can be said.

The second strand of the analysis draws upon feminist standpoint epistemology and links into the modified contextual constructionist paradigm of inquiry. While some of the associated research on which the study draws does not share all of its ontological assumptions, it can nonetheless be utilised, by treating it as competing, though potentially superior problem representations. Critically associating ourselves with a feminist point of view provides the study with a perspective from which to assess problem representations of incompatibility. In spite of different ontologies, statements about likely effects and beneficiaries of problem representations thus become possible, as not the object of incompatibility itself is conceptualised as construed, but ideas framing and structuring our understanding of it. However, incompatibility cannot be accessed independently of claims about it.

Utilising a feminist standpoint allows the study to contrast official problem representations in policy (the discourse of power) with feminist problem representations (the discourse of the disadvantaged and marginalised) – based upon both empiricist and constructionist research – in order to ask for omissions and silences in the official discourse, and how policy ‘solutions’ would vary if the ‘problem’ were thought about differently, if alternative problem representations were dominant in policy.

In associating itself with feminist standpoint epistemology, the study asserts that in analysing a ‘problem’ that is overwhelmingly associated with and claimed to be

experienced by women, we need to turn to research based upon women's experiences as a resource for gaining knowledge.

Hardsock (1983) argues that activities of women that place them in a socially disadvantaged position can provide the basis of a privileged epistemic standpoint. Therefore, concerning the 'problem' of incompatibility, the feminist way of knowing is potentially superior and better grounded because of women's suppressed position in the male-dominated social world and their different bodily experiences (cf. Benton 2001: 146). In a society structured on the basis of gender, gender is an epistemically relevant category. Precisely because of their subordinate position in society, women experience wider epistemes than experienced by those in power. In any case, it is potentially promising to contrast the position of power with the feminist position of the disadvantaged.

Standpoint theory has attracted its share of criticism, which has pointed out some of its limitations. One of the most fundamental problems occurs if a feminist standpoint is treated as *per se* epistemically privileged (cf. Wylie 2003). Instead, Wylie (2003) emphasises that it is the specific situation of 'insider-outsiders', where women need accurate knowledge of the 'world' of the privileged in order to navigate it, that can afford epistemic privilege. The nexus of reconciliation is such a situation because women need knowledge of the male-dominated world of employment.

Feminist standpoint theory can also create huge barriers between knowers, up to the point of suggesting that it is impossible to share knowledge across social locations (cf. Walby 2001). While this critique is substantial it does not tarnish the adoption of standpoint theory in the study because it is not wholly based upon standpoint theory. Further, the study does not assume that only feminist research grounded in women's social location produces valid knowledge. It only holds that in the case of incompatibility, research grounded in women's experiences can provide a potentially superior access to knowledge.

Another limitation is that standpoint theory cannot account for internalised oppression, a phenomenon in which the perspective of the oppressed is damaged by the forces of structural oppression. Arguably, the perspective of women affected by internalised oppression is not reliable. The classic example for this is that victims of rape often blame themselves for the crime having internalised the dominant male perspective. However, this does not apply to social scientists writing about rape. Therefore, the fact that women may have internalised false beliefs about incompatibility does not make women social scientists' research about the issue unreliable *per se*.

Scholars (cf. Nelson 1990) have rightly drawn attention to the fact that some versions of feminist standpoint theory can find it difficult to account for a coherent

feminist standpoint while emphasising the variety of women's social location and experiences. However, the study is not affected by this problem because it operates with a more homogeneous category of 'women'. Therefore, in spite of the limitations addressed above, the study will utilise feminist standpoint epistemology. It provides an appropriate epistemological position for the study because claims about the epistemic significance of social location are most plausible for the analysis of social relations (cf. Wylie 2003).

By tapping into the academic discourse of the disadvantaged and marginalised, the study aims to achieve several things. First, it can serve to create a critical distance from the claims presented by official problem representations, which is thought to serve as a fruitful analytical tool. Second, drawing on feminist standpoint epistemology, feminist standpoints are conceptualised as superior competing problem representations, providing evidence to evaluate the official ones. At the same time, we are aware of the limitations of this approach.

Among available standpoints this thesis further chose feminism because it challenges the androcentric and sexist biases present in mainstream social research methodologies, methods, and theories. While it comes with its own biases, the study holds that in this particular case feminist research is based upon broader epistemes and therefore necessary. Carefully and reflectively adopting a feminist standpoint can therefore lead to new insights. The study does not pretend to be impartial; ultimately according to our paradigm impartiality is an illusion. However, we hope to counter the biases of mainstream research with a consciously chosen feminist point of view, without trading them in for new, and avoiding the paradox of bias (cf. Anderson 2004). We do this in full knowledge that a) in the end the critical distance achieved might not be substantial and b) that our findings are one representation of the 'problem' of incompatibility among others, albeit, hopefully, an interesting one for future research to consult.

The study adopts from feminism – itself marked by pronounced differences and remarkable variety – some broad ontological and normative assumptions about the social world and the – both current and desirable – position of women within it. On the most basic level, most feminists agree that there is some category (or categories) of 'women', distinct from a category of 'men'.⁸ Moreover, since Oakley (1972) brought it to Sociology, the relations between women and men in the social world are theorised

⁸ However, Daniels (2006), for instance, arguing against this dichotomy, challenges the gendered understanding of sexual difference. She holds that it hinders women's emancipation by implicitly assuming that the differences of women and men are more important than their similarities as human beings.

and analysed applying the concept of gender. In contrast to biological sex, which is based on genetic and physiological criteria, and divides human beings into males and females, gender refers to the parallel psychological and social division into femininity and masculinity, limited by biological sex but not identical, and socially unequal.

Although postmodern feminism rightly questions the idea of a homogenous category of 'women', arguing that gender should be only one analytical concept among others, and that it has to be analysed in its local and historical context (cf. Harding and Hintikka 1983; Butler 1990; Benton and Craib 2001), we cannot altogether dispose of it.

Further, feminism assumes that women are subject to structural and/or individual oppression or disadvantage in a male-dominated society. At the same time, and linked to this, it argues that femininity is systematically devalued, portrayed as inferior to masculinity. Finally, it holds the normative assumption that the oppression/disadvantage of women – generally, and within the welfare state in particular – and devaluation of femininity is unjust and therefore wrong, and has to be overcome.

The study can adopt the above assumptions because in our modified contextual constructionist approach some such assumptions are not only permitted but also necessary to be able put claims into their social context. However, because we are also aware that our research is itself construing incompatibility, it is essential to clarify our normative and ontological assumptions at the outset.

Second, combining a contextual constructionist paradigm with feminist standpoint epistemology, although it introduces contradictions and tensions, can enhance the process of knowledge acquisition by introducing different heuristics (cf. Longino 1993). Although ultimately the study argues that the tensions cannot be reconciled theoretically, they generate an analytic dynamic, which produces exciting new insights into reconciliation policy, thus justifying the chosen approach.

3.3 Rationale for qualitative inquiry

This thesis takes a qualitative approach to social inquiry, drawing on secondary data of different kinds: official policy documents and theoretical analyses. This section is concerned with this research strategy, providing the justification for choosing a qualitative approach. Bryman (2001:20) defines research strategy as the 'general orientation to the conduct of social research'. Quantitative and qualitative inquiries are routinely identified as the two alternative research strategies at researchers' disposal. It is in this sense that we use the term 'research strategy' here.

The generic term ‘qualitative inquiry’ comprises diverse research orientations (Silverman 1993, 2005). Within these orientations, various research methods are applied that differ from each other considerably (Bryman 2001). However, qualitative research shares some basic features and assumptions which distinguish it from quantitative research, although the taken for granted nature of this distinction has recently been challenged (cf. Hammersley 1999). In this section, we will present the rationale for choosing a qualitative approach in principle, thus preparing the ground for justifying my particular qualitative method in the following sections.

The dichotomy of quantitative and qualitative research has become common practice in the social sciences, from undergraduate text books to the latest research. The debate about these two approaches is extensive and not new. It is impossible – but fortunately also unnecessary – to do justice to it here. Suffice to begin with the fact that many scholars view quantitative and qualitative research as fundamentally different undertakings and harbour strong preferences for one or the other.

Basically, two different arguments are brought forward justifying qualitative inquiry: epistemological consistency and technical adequacy. In my view, both are valid, although to a different degree. The argument of epistemological consistency will be dealt with first, as it alone is able to justify qualitative inquiry in general.

The argument is advanced by authors (Filstead 1979; Lincoln and Guba 2000; Kuhn 1970; Rist 1977) who perceive quantitative and qualitative research as resting on and reflecting fundamentally different epistemological stances. According to this position, quantitative research rests on positivist epistemological assumptions, whereas qualitative research on the other hand is based upon postmodern epistemological assumptions, such as critical theory and constructionism. According to the former position, valid knowledge about the social world is produced by adhering to the scientific method of the natural sciences, whereas according to the latter, it is rather the product of focusing on actors’ interpretations of the social world. These epistemological assumptions are perceived as incompatible and contradictory (Lincoln and Guba 2000). If a particular piece of research is, thus, based upon a postmodern paradigm of inquiry, such as constructionism, the implicit epistemological assumptions necessitate qualitative inquiry of some kind. Quantitative inquiry with its inbuilt positivist assumptions stands in epistemological conflict to the constructionist epistemological assumptions. It is, therefore, not epistemologically consistent with the constructionist position. Thus, these authors argue that the research strategy is either entirely or to a large degree determined by the epistemological position or paradigm underlying the research. Exemplary of the second stance, Lincoln and Guba (2000) argue that although the fundamental philosophical positions of positivist and postmodern inquiry are contradictory and incommensurable, this does not apply to methods.

However, although the argument of epistemological consistency is sufficient to justify qualitative inquiry, it does not provide any guidance as to which qualitative methods are appropriate. Here, a different justification is necessary. Moreover, the argument has been qualified and thus weakened by recent scholarship.

The respective authors take the view that the argument of epistemological consistency presents an exaggeration of the differences between quantitative and qualitative inquiry (Bryman 2001; Hammersley 1999). Hammersley (1999) challenges the idea of two distinctive methodological paradigms. Both argue that epistemological assumptions do not determine the choice of quantitative or qualitative approaches as much as generally assumed. Bryman (2001) emphasises that methods are far more flexible and independent of philosophical assumption than customarily assumed. Although, there is a strong correlation of positivist paradigms of inquiry with quantitative methods and of interpretative paradigms with qualitative methods, this does not mean that paradigmatic choices inevitably lead to the application of these respective methods. A qualitative approach can be taken within a positivist paradigm and vice versa (cf. Bryman 1999). These authors perceive the matter of quantitative or qualitative inquiry rather as a technical question of the appropriate path of inquiry for a chosen question.

Even in the light of these qualifications, the epistemological consistency argument holds its ground to some degree. That research strategies should be consistent with the underlying philosophical assumptions, which provides a powerful justification for qualitative inquiry within a postmodern paradigm of inquiry. However, thus qualified, it does not rule out quantitative inquiry within a postmodern paradigm *per se*. This means that the argument of technical adequacy has to provide the explanation why qualitative is preferred to quantitative inquiry. Together, both arguments present a compelling case for qualitative inquiry. It is the nexus of paradigmatic and epistemological choices (epistemological consistency) and of linked research questions (technical adequacy) that has compelling methodological consequences, providing the necessary and sufficient justification for a particular qualitative approach. Although, it has been shown that paradigmatic choices do not automatically determine the research strategy, the linked research questions can do just that. Walker (1985: 16) accentuates this point:

‘Certain questions cannot be answered by quantitative methods, while others cannot be answered by qualitative ones.’

The decision for a qualitative approach, thus, is based upon both epistemological and technical considerations. With regard to the former, it follows from the above reflec-

tions on social constructionism as the general paradigm of inquiry and the epistemological assumptions linked with this choice. It connects with arguments about the epistemological nature of the qualitative/quantitative divide. Regarding the latter, it is based upon considerations of technical adequacy regarding the research questions. According to this argument, there is no best universal method research strategy. Strategies have to pass one important test: that of their suitability for the purpose. If strategies fulfil this condition of adequacy, their adoption in research is justified. Crucially, this test has to be carried out as the case arises. The decisive question must be: is the proposed method suitable for the research question that is being asked (cf. Mottier 2004)?

The twofold rationale for qualitative inquiry is reflective of the general discussion on the differences and respective merits between qualitative and quantitative research, which we will only touch briefly due to constraints of space and because there cannot be universally valid statements of a particular method's merits (Mottier 2004).

The ongoing controversy around qualitative or quantitative research is a defining feature of contemporary social research. Generally, the proponents of qualitative methods find themselves in an awkward position, forced to vindicate their methodological choice against the 'harder' quantitative alternatives. Again, this is saying rather more about the self-conception and dominant traditions of the respective academic disciplines than methodological questions. However, in recent years, qualitative research has become more widely accepted in the social sciences in general (cf. Hammersley 1999) and in sociology and social policy in particular. Still, in related disciplines such as History, a debate with similar intensity would barely be thinkable.

The critique of qualitative inquiry aims at the crucial criteria of reliability and validity in research. Above all, qualitative inquiry has been criticised for subjectivity. It has also been accused of being difficult to replicate and not transparent. Finally, problems of generalisability have been identified (Bryman 2001). Thus, qualitative approaches allegedly fail to meet the criteria of reliability and validity.

Proponents of qualitative inquiry, however, argue that the advantages outweigh these alleged weaknesses. Also, it has been suggested that the traditional understanding of the criteria of reliability and validity have to be redefined for qualitative research in terms of trustworthiness and authenticity (Guba and Lincoln 1994; see also Lincoln and Guba 2000). They argue that criteria of reliability and validity in their traditional conceptualisation in quantitative research are based on an implicit realist ontological position. If a different ontological position is taken, the criteria have to be redefined in those terms.

Returning to the argument of technical adequacy, the choice of a contextual constructionist paradigm together with research questions about political problem representations, their ‘silent spots’ and consequences requires a qualitative approach. It is through the in-depth analysis of rich, deep data, existing policy related texts, that our research questions can be answered. This thesis has to concentrate on the creation of meaning. Therefore, it is crucial to take an unstructured approach that enables us to be open to emerging themes in representations. Linked with that is the need for a contextual understanding of the case, focussing on processes. This in turn requires an approach that details rather than aiming at comparisons or generalisation. Finally, the combination of a constructionist approach with a feminist perspective implicates and necessitates that the researcher be close and emphatic, rather than distant.

It becomes apparent from the above, that a quantitative approach is not an adequate option for this study. It could not generate data able to answer the questions. Also, a quantitative approach is not needed because the key criteria of reliability and validity, redefined as trustworthiness and authenticity, can be met through a qualitative approach. However, research findings created through quantitative methods will play an indirect and secondary role that will be explained below.

Contributions downplaying the absolute character of the quantitative/qualitative divide (Bryman 2001; Hammersley 1996, 1999) open up opportunities of combining quantitative and qualitative methods. If the divide is not based on incommensurable ontological and epistemological differences, quantitative and qualitative approaches can be combined in a multi-strategy research design. Hammersley (1996) identifies three approaches to multi-strategy research: triangulation, facilitation, and complementarity. Facilitation refers to the use of one approach in order to facilitate research essentially using the other approach. The research strategy resembles the facilitation approach. In line with our epistemological assumptions, research based on quantitative methods will, firstly, constitute a basis from which to evaluate problem representations and, secondly, help identify important issues for qualitative inquiry with regard to the construing of the incompatibility ‘problem’.

3.4 The process of conducting the study

In this section we will describe in some detail the process of conducting the present study. It began with identifying the key policy domains that constitute reconciliation policy and included difficult choices about the nature of data, the time frame, and the selection of specific texts. The process culminated in multiple readings of the select-

ed texts, turning to secondary literature for ways to revisit the texts, and reflecting and rereading around points of apparent difference. Seven distinct chronological stages can be distinguished in conducting the study.

Identifying the elements of the field

The choice of reconciliation policy as object of investigation emerged out of a broad and general reading into changing German social policies, the tentative focus of which initially was family policies. After having decided upon reconciliation policy as topic of the study, in the first stage we needed to identify the key elements of the field. In other words, which policies did we need to analyse? The existing research on reconciliation policy includes quite different policies (cf. Bacchi 1999; Mazur 2005). However, the decisive criterion for our choice was which policies German policymakers construed as part of reconciliation policy.

In addition, due to the nature of Germany's political system some policies could not be included in this study. For instance, education policy falls within the remit of individual states (Bundesländer). Therefore, there are 16 different education policies within the German context, making it impractical to add it to the policies analysed. We are aware that the choice of policies potentially has implications for findings generated. The deliberate inclusion of some areas and exclusion of others amounts to a 'construction' of reconciliation policy. However, choices have to be made in any piece of research. What it means is that we must be transparent about our choices and be convincing in our justification and reflective about their implications.

Choice of legislative texts as discursive form

In the second stage choices had to be made about which particular discourse to analyse. Although, we had always intended to mainly concentrate on the governmental legislative discourse, initially, the idea was to contrast this discourse with other discourses, such as expert and mass media discourses. However, this idea proved impractical to pursue across four policy fields in the given time and was thus abandoned for reasons of economy.

The study chose legislative texts as the discursive form for two main reasons. This study is interested in how German policy construes the 'problem' of incompatibility of paid employment and care work. The unique character of legislative texts renders them the best data for answering this question. Legislative texts possess a particular authoritativeness. They can be conceptualised as the prime locus for the governmental discourse of power. Legislation constitutes a discursive intervention,

but it transcends the purely discursive realm. Legislation is also an attempted substantive intervention into the public domain and as such it has real, 'lived effects'. German legislative texts have an additional advantage in that they are very concise and always begin with a short section in which the policy 'problem' which is being addressed is explicitly described.

Choice of current period

In the third stage we had to decide on the time frame of our investigation. We decided to concentrate on the years 1997 to 2005, the term of office of Chancellor Schröder's centre-left coalition. This decision was based upon the hypothesis that the change over from the centre-right coalition under Chancellor Kohl to the centre-left coalition under Chancellor Schröder constituted a marked point of departure from previous conservative social policies. Our understanding was based upon a wide reading of the relevant German policy literature. Retrospectively it has to be added, though, that both our own understanding and other analysts' was probably somewhat skewed by the expectation of radical change at the end of a 16-year-long era of conservative government.

One of our questions related to change in problem representations of incompatibility over time. Here, the comparison of reconciliation policy under Kohl and Schröder was of particular importance. Therefore, the analysis of current reconciliation policy had to advance against the backdrop of previous reconciliation policy. This necessitated a historical approach that took its departure well before the period under investigation in order to be sensitive to change over time.

Identifying the specific texts

In the fourth stage we had to decide which specific legislative texts to include in our analysis. Fortunately, legislation in our wider investigation period in the relevant policy fields has not been very prolific. This mirrors a general trend in German policy-making, which tends to opt for outright new legislation rather than a large number of individual amendments. Therefore, we were in a position to survey all legislation in the relevant fields that had links with reconciliation policy. The initial number of legislative texts thus surveyed was between 5 and 25. Of those we concentrated in our analysis on legislation enacted under Kohl between 1981 and 1997 and under Schröder between 1997 and 2005. This reduced the number of texts for a detailed analysis to between 4 to 6 per policy field. Due to the nature of German legislative texts as described above, this number was practical for detailed analysis.

Process and practices of reading

After the selection of specific texts the process of data analysis could begin. In this fifth stage we thus subjected the selected texts to multiple readings with the aim of identifying implicit representations of the incompatibility 'problem'. In line with our research questions we posed to the texts a series of questions in a fixed logical order.

A detailed description of this process can be found in the following section on data analysis. Because we focused on a different aspect and enquiry questions in each reading, at this stage each text was subjected to a minimum of seven readings. In this process we adhered to a step-by-step plan devised prior to the first readings on the basis of our research questions. Fortunately, the procedure for the readings served our purpose and thus did not have to be altered in the course of the study. The plan was pinned up over our desk and remained there for the duration of our analysis in order to constantly remind us of the focus of each reading. However, occasionally we had to stop and restart a reading because our attention had wandered off to a different aspect than the one under investigation. After each reading we recorded our preliminary findings for each aspect of the text separately.

Secondary literature

Up to this point we deliberately did not consult secondary literature for our readings of the legislative texts. This was done in order to minimise the risk of reading other researchers' interpretations of the incompatibility 'problem' into the texts. However, in the sixth stage we turned to the academic literature on reconciliation policy. Here, in line with our methodological approach, feminist research played a key role.

First, we used secondary literature to check the preliminary results of our readings against other researchers' readings of some of the same texts and their interpretation of the relevant policies. Second, we used secondary literature to assure that we had not failed to include other relevant legislative texts in our analysis. Finally, we used feminist secondary literature to provide a point of view from which to identify omissions and gaps in current legislative problem representations as well as to provide us with alternative representations of incompatibility.

Reflecting and re-reading of texts

In the last stage we reflected upon our readings and interpretations. We critically surveyed our preliminary results and tried to identify interpretations that could have been reached without reading the specific texts. If it deemed necessary we re-read

individual texts. This necessity arose when our reflection had raised suspicion of our interpretations and when interpretations in the secondary literature differed markedly from those reached by us. In these cases we went back to our original texts and re-read them using the same step-by-step reading plan. We had to do this a number of times during our data analysis. However, in not a single case did the re-reading let us reach a different interpretation from the initial one. Thus our preliminary results became final results.

3.5 Historical research design

Some authors claim that a study concerned with one case is a case study. Yin's (2003) analysis of the case study method makes it clear that this is not the case. In a first step, he defines a case study as 'a comprehensive research strategy' investigating 'a contemporary phenomenon within its real-life context' (Yin 2003: 13, 14).

In this study however, we are concerned with non-contemporary events, as it analyses German reconciliation policy 1998 to 2005. Yin argues that in this case, a historical approach is called for rather than a case study.

In this thesis, we attempt to historicise problem representations in reconciliation policy in order to be able to analyse them. The historicisation of problem representations is crucial because it helps uncover shifts in claims about the nature of the problem and, thus, helps to uncover the seemingly self-evident (cf. Bacchi 1999).

As we have mentioned earlier, a focus on problem representation rather than problems is inextricably linked to the conceptualisation of policy as discourse. Together, the focus on discourse and problem representation and on non-contemporary events necessitates the adoption of a historical approach. Therefore, we will use a slimmed-down version of Bacchi's *'What is the problem (represented to be)? approach'* throughout the study. It is informed by Foucault's (1972) thinking about comparing different discursive formations but not dependent upon it, and will provide the starting point for the analysis of problem representations of incompatibility in individual policies by bringing problem representations into sharp relief.

The adoption of a study design focussing on only one case follows logically from the above. It is through historical in-depth analysis of rich, thick data in a specific context that answers can be found to the research questions. A comparative approach, transgressing the cultural and linguistic divide of nations, is fraught with extreme difficulty. A detailed study of the construing of the incompatibility 'problem' in one nation's reconciliation legislation is the appropriate research design for this particular qualitative study concerned with historical 'verstehen' rather than theory testing.

3.6 Documentary data

This study draws on two types of documentary data: official documents and theoretical analyses, particularly feminist studies of social policy and gender equality policy. In detail, the analysis will concentrate on draft and enacted bills in policies represented to be part of reconciliation policy, while (government) policy statements, manifestos and policy reports will be drawn on in order to facilitate historicisation. In addition, the study will draw on feminist studies of policies that are represented to be part of reconciliation policy, such as childcare, education, parental leave and anti-discrimination.

3.6.1 *Status of documentary data*

Documentary data of the kind described in the previous section is a source of very rich data. That it has not been used more widely in qualitative research is, indeed, a cause for concern. Silverman (1993) has pointed to the fact that sociologists in particular have not yet realised the potential of documentary data. More historically orientated scholars, on the other hand, have drawn on documents more frequently. Atkinson (2000) demonstrates what a wealth of data even a limited number of policy documents can provide.

The use of documents fits in well with a constructionist approach. In this study, we conceptualise government bills as texts that comprise particularly powerful claims (problem representations) with momentous ‘real’ consequences about the ‘problem’ of the incompatibility of paid employment and care work. In order to be able to answer the research questions it is essential to carefully analyse these dominant representations, the discourse of power.

Some issues concerning the status of government bills in social policy research, nonetheless, have to be addressed. In particular, these are questions of authenticity, credibility, representativeness, and meaning. They have to be asked constantly in the process of data collection and analysis.

3.6.2 *Data collection*

The collection of adequate secondary documentary data is no less complex than the collection of primary data. This also applies to the analysis and interpretation of secondary data, which requires a set of unique skills (Bryman 2001). We have chosen the kind of secondary data listed above because it provides an adequate basis to

answer our research question. We ask questions about problem representations in government policies as presented in legislation. Official documents represent the prime locus for these representations. Therefore, this study has to draw on them principally. However, because we also inquire into what has been left out of problem representations, we also draw on feminist scholarship in social policy. This allows the detection of problem representations that have never made it into the official policy discourse.

Independently of the choice of the types of data, each individual piece of data has to pass a rigorous test of quality. Scott (1990) formulates four criteria according to which data has to be tested: authenticity, credibility, representativeness, and meaning. Authenticity refers to the origin of the data. Is it genuine and it has in fact been authored by the alleged institution or person? For the above official German policy documents and theoretical analyses this question can generally be answered in the affirmative.

Credibility refers to validity of truth claims, be it secondary data or research. This criterion tests if evidence in the data is distorted or false. Since the aim of this study is precisely to describe and deconstruct claims made in the data, it is not relevant for their incorporation in this study if the data fulfils this criterion. However, it has to be fulfilled by theoretical analyses if these are drawn on to provide evidence for the evaluation of claims.

The criterion of representativeness assesses whether the data is typical for the respective type, institution, or position. It has to guide the selection process. Finally, meaning refers to clarity and comprehensibility of the data. In a qualitative study concerned with the construction of meaning through problem representation, there is a particular emphasis on this criterion.

3.6.3 *Data analysis*

In qualitative research data analysis serves more than the purpose of answering research questions. From it research questions emerge in the first place. However, once research questions have been formulated, the main aim of data analysis is to answer them. From the research questions about problem representations and the conceptualisation of government policy as discourse it follows that the focus of data analysis has to be the discourse of reconciliation policy in legislation. Thus, the adequate method for data analysis is some form of discourse analysis. Therefore, in line with the epistemological and ontological position of this thesis, the data analysis process draws on discourse analytical approaches within a historical framework.

Discourse analysis has become too a vast field to provide an overview. However, most approaches are concerned with questions very different from those of this thesis, and are, thus, not relevant. Neither does this thesis share the interest in the linguistic details of the process of the construing of meaning, nor is the detection of interpretative repertoires relevant to this study. The study concentrates on government legislation as discourse, and contrasts it with alternative feminist voices. It does not attempt to analyse the whole of incompatibility discourse.

Three points raised in discourse analysis are, however, central to our analysis. The starting point is to focus on the way something (in this case policy) is presented as ‘solution’ to a problem (cf. Widdicombe 1993). Texts proposing or discussing ‘solutions’ to ‘problems’ also implicitly or explicitly contain assumptions about the nature of the ‘problem’ addressed. In accordance with the study’s ontological position, such problem representations are inseparable from ‘reality’; they constitute and structure our understanding of reality.

Adopting Bacchi’s (1999) method of data analysis, the study will therefore first identify what the problem of incompatibility of paid employment and care work is represented to be about in legislation on reconciliation policy.

This means, that we will subject the data to a ‘sceptical reading’ (Gill 2000). Looking for what lies below the surface, we ask what reconciliation policy is concerned with: what is the incompatibility ‘problem’ represented to be about? The first step leads to the second, in which we will re-read the data, asking for the implicit assumptions and presuppositions these representations are built upon? This is a difficult process, because it aims at questioning what seems to be natural. It makes it necessary to step back from our own assumptions and values. It is crucial here not to accept the value/fact distinction usually made in non-constructionist research. However, drawing on feminist standpoint epistemology, consulting feminist analyses can help to overcome some perceptual limitations.

This process of trying to see what has become so engrained in our understanding of the world that we cannot perceive it is impossible to codify. It involves practical analytic skills that have to be learned through practice (cf. Potter 1997). This applies to the whole qualitative research process. Attempts to codify it, such as by Hycner (1985) and Morse (1994) might be useful to get started, but they only state the obvious: comprehending, synthesizing, theorizing and recontextualizing are key sequential phases of the analytical process. To a very large degree, the attempts at codification, ‘developing and justifying rigorous methods of data processing’ are ‘driven by frustration at the continuing low status of qualitative research and its felt inability to counteract criticism’ (Richards and Richards 1991: 39). However, we must not be

afraid or apologetic about the qualitative process because it is different from the quantitative. Instead we should cherish the importance of ‘artistic judgement’ and ‘creative insight’ in research (cf. Colaizzi 1978: 59, quoted in Hycner 1985).

In the third analytical step, we will turn to the effects of problem representations as identified in the previous sections. Within a framework, conceptualising discourse as action, we will again re-read and re-evaluate the above data. The focus will be on how problem representations in government legislation constitute the policy subjects; how they discursively impose limits on what can be said and the effects this has; and how they cause ‘lived effects’ in policy subjects. We will try and identify the beneficiaries of official representations in policy and to assess the scope for change problem representations entail.

From this step on, the feminist standpoint gains more and more importance. Only through the adoption of this standpoint, utilising feminist research as counter-claims albeit with superior epistemological value, evaluation of problem representations becomes possible. A strictly constructionist approach would have to stop at the description of claims. However, findings created in such a way have to be understood as fallible ‘constructions’ themselves.

In the fourth step, we will draw on the constructionist insight that any statement entails the non-statement of other things. We have to be sensitive to the fact that what is **not** said is just as important as what **is** said (cf. Gill 1996). Therefore, in this step, we will try to detect what is left unproblematic in the problem representations. This step necessitates the broadening of our data base, looking for alternative problem representations that have not been taken up by the official policy discourse. For epistemological reasons explained above, we will look for these in feminist scholarship. In the final analytical step, we draw on the entirety of the data and previous analysis. Here, we will try to figure how policy ‘responses’ would differ if the ‘problem’ of incompatibility were thought about differently.

4 A brief history of the incompatibility ‘problem’

4.1 Introduction

This chapter will begin the analysis of German reconciliation policy with a brief genealogy of the representation of ‘problem’ of the incompatibility of paid employment and care work. Therewith, we will set the scene for the following chapters, which will deal with individual policies that have addressed the ‘problem’ of the incompatibility of paid employment and care work.

As we have outlined in the previous chapters, the approach we take here rejects the notion that policy ‘problems’ are something external to the policy process. Policy ‘problems’ are not discovered by policymakers who then respond to them and in a separate step draw up policies addressing the problem. Instead, we hold that policies in fact construe the ‘problems’ they claim to have discovered and try to solve. This means that policies are not ‘solutions’ to ‘problems’ but part of the discursive construction of our ideas about and understanding of the ‘problem’. Reconciliation (of work and family life) policies are, thus, part of the discursive construing the ‘problem’ of the incompatibility of paid employment and care work.

We do not suggest here that the dual task of gainful employment and care work in the family has ever been unproblematic for German women. On the contrary, historical research suggests that even in the preindustrialised Germany of the early 19th century certain groups of women combined paid employment with care work (cf. Willms 1983). However, we can identify with some precision the moment when the ‘problem’ was named and ‘addressed’ first by German policy.

Policy-change in Germany is usually incremental and slow (Bird 2004). The policies and policy proposals resulting from the German policy process more often than not contain more than one competing or contradictory problem representation. Therefore, individual policies have to be analysed very carefully in order to tease out the different implicit representations of the incompatibility ‘problem’.

4.2 The ‘problems’ of mothers’ employment and of women’s inequality

In a way, one of the predecessors of the incompatibility ‘problem’ was the ‘problem’ of mothers’ employment. This in turn was preceded by the ‘problem’ of women’s employment.

This 'problem' has its origins in the 19th century bourgeois ideal of the family. The ideal foresaw that the male patriarch and 'father of the house' was active in the 'public' spheres of the community and paid employment, while the female homemaker was confined to the 'private' sphere of the home, caring for the children and her husband. In Germany, the bourgeois ideal found its legal expression in the Bismarckian welfare state. It legally and institutionally prescribed a male breadwinner model. Men were expected to support their wives and families through gainful employment. Their role as breadwinners was systematically reinforced and locked in by statutory social security insurance against unemployment, sickness and old age. Married women, however, were included into social security insurance only through their working husbands. For most German working class women, however, the ideal was unobtainable. In the social strata below the middle-classes, mothers' employment was widespread and more often than not urgently needed to make ends meet.

The emphasis of the 'problem' of mothers' employment was on its undesirability. According to bourgeois mores, women were the 'weaker' sex and predestined to care work and making the home, not to paid employment. Thus, the concern of this problem representation was that mothers 'neglected' their care duties in favour of gainful employment, assuming a 'wrong' place in society. This was represented to be against 'nature' and to lead to all kinds of negative effects for the women themselves (moral corruption in the workplace) and their children. The cause for women taking up paid employment was mainly represented to be economic need.

In Germany, the 1950s and 1960s have been characterised as a period of restoration (cf. Bird 2004) in which the Adenauer administration sustained a political campaign against mothers' employment. Partly due to the war, the 'problem' 'addressed' in policy had shifted from women's employment to mothers' employment. During the war women's employment had increased dramatically with women entering professions that had previously been wholly beyond their reach. Facing widespread disorientation and despair after the total military and moral collapse of Germany, the conservative Adenauer administration (elected into office 1949) tried reverse the shake up of gender relations that had been brought by the war effort and to restore 'traditional' gender relations in society. Many women had – willingly or not – become economically and mentally independent, and used to looking after themselves economically while their husbands were far away at the front. The attempted restoration of the 'traditional' family ideal was an important aspect of a political agenda of 'sending women back where they belong' (cf. Klenner 2005). It was inextricable linked with mass unemployment due to the destruction of the economy, which provided a motive for ousting women from the labour market.

Accordingly, West German family policy after the Second World War upheld and reinforced the male breadwinner model. It aimed at rolling back or at least containing mothers' employment through a range of policy instruments. Centrally, it increased family incomes earned by men through family benefits. Further, the 1957 tax reform introduced *Ehegattensplitting*⁹, which up until today provides a considerable disincentive for married women to take up paid employment. Also, national health insurance was reformed so that housewives qualified via their spouse, paying no contributions themselves.

Although the *Grundgesetz*¹⁰ stated that men and women were equal before the law, marriage law and family law explicitly and firmly set out the norm of the woman housekeeper. Article 1356 of the 1896 (sic) *Bürgerliches Gesetzbuch*¹¹ (BGB) stated that 'the wife is entitled and obliged to manage the conjugal household. She is obliged to take care of the housework.'¹² The same article permitted the wife to partake in paid employment only if her family commitments allowed it. This shows that the concern at this point was still women 'neglecting' what was represented as their lawful family duties. In this line of thinking the incompatibility of paid employment and care work was a proven fact of life, not a 'problem'. Women were represented and often perceived themselves as natural caregivers and their place was the home.

At the end of the 1960s, signs of change appeared on the horizon. In 1968, the first governmental report on the situation of the family in Germany contained careful criticism of the ideal of the women homemaker (cf. Erster Familienbericht 1968). Myrdal and Klein's (1956) three-phase-model of a women's life course was endorsed by the minister for family affairs. The model envisaged employment until the birth of the first child followed by a phase as full-time caregiver and return to paid employment when the child has reached school age. Although the three-phase-model signified the end of the 'problem' of working women, it did not contain any real modifi-

⁹ Literally, it means 'spousal splitting'. For the calculation of income tax a married couple's income is added up and then divided by two. Then, the tax rate is calculated for these imaginary parts and multiplied by two. German income tax has a strong progression, so that a lower rate applies to the split incomes. The couple as an imaginary entity in effect pays lower income tax. However, in reality the partner with the smaller income (in most cases the wife) suffers a higher tax rate in their income than they would have had they been unmarried.

¹⁰ Literally *Grundgesetz* this means 'basic law'. It is the constitution of the Federal Republic of Germany which came into force in 1949. Since the *Länder* of the German Democratic Republic joined the Federal Republic in 1990 it is the constitution of unified Germany.

¹¹ The BGB is the German civil code which came into force in 1900.

¹² 'Die Frau ist (...) berechtigt und verpflichtet, das gemeinschaftliche Hauswesen zu leiten. Zu Arbeiten im Hauswesen (...) ist die Frau verpflichtet (...).'

cation of the 'problem' of working mothers. Essentially, it upheld the normative assumption that mothers should stay at home with their children and do the care work, because the children needed them and they were best suited to it. It has to be seen in the context of full employment and a shortage of labour in Germany at the end of the 1960s.

In the 1960s, a second forerunner of the incompatibility 'problem' was the 'problem' of women's inequality. Again, we do not suggest here that women have ever been equal in Germany. However, we hold that we can ascertain with some confidence the moment when women's inequality was first construed as a policy 'problem'. In Germany, this happened for the first time in the 1960s, parallel to the emergence of the new women's movement. The second wave of feminism played an important role in the construing the problem of women's inequality. First, legal reforms of the late 1960s addressed the unequal treatment of married women in family law. Then, increasingly, the women's movement addressed women's inequality in the context of the labour market. Initially, its attention focused on unequal access to the labour market. Education reform by the new coalition government of Social Democrats and Liberals in the early 1970s widened access of women to higher education construing the problem of women's inequality as a problem of skills and training. The two 'problems' above are entwined with the incompatibility 'problem' and resurface in competing representations of it.

4.3 The emergence of the incompatibility 'problem'

In this section, we will briefly sketch out the beginnings of the incompatibility 'problem' in West Germany. The four subsequent chapters will provide a detailed analysis of the policies, which have been represented as 'solutions' to incompatibility.

The incompatibility of paid employment and care work was first named and addressed as a policy problem in Germany in the 1970s. This coincided with the first naming of the problem on the European Union level. In 1974, the Council of the European Communities first used the term denoting a policy objective parallel to a separate equality objective. In its Community Social Action Programme the Council stated that the European Community would 'ensure that the family responsibilities of all concerned may be reconciled with their job aspirations' (Council of the European Communities, cit. in Stratigaki 2004: 40). The Programme did, however, not result in any concrete activities at the time (Hantrais 2000) and reconciliation was not mentioned again in the EU context until 1989.

The addressing in Germany of the incompatibility issue coincided with the second wave of feminism, the formation of a political and social women's movement. It was from within the women's movement that the 'problem' was first construed and represented to be a problem of women's equal opportunities in the labour market (cf. Janssen-Jurreit 1979; Bothfeld 2005).

In 1970, the coalition government of Social Democrats (SPD) and Liberals (F.D.P) commissioned a second expert report on the family focussing on its socialisation function in society. In 1975 it published its findings and recommendations which included the introduction of *Erziehungsgeld*¹³ and *Erziehungsurlaub* for mothers; the creation of jobs with more flexible working conditions and working hours, particularly in the state sector; and the expansion of child care facilities both for children under schooling age and for school children through all-day schooling (cf. Zweiter Familienbericht 1975). Interestingly, thus, this report already contained two competing and contradictory representations of the incompatibility problem. The explicit aim of child raising benefits is that mothers can withdraw from the labour market and become full time carers for a certain time if they so wish. When child raising benefits are recommended as 'solution' to the 'problem', then the 'problem' of incompatibility is represented to be that mothers have to be in gainful employment against their will because of the financial situation of the family (cf. Bacchi 1999). On the other hand, when more flexible working conditions and hours or better child care facilities are presented as 'solution' then the concern is that mothers have to leave full time employment against their will because of the structural incompatibility of simultaneous employment and family commitments.

In the second report on the family the 'problem' of incompatibility was construed as a 'problem' of the ability of families to perform their societal functions.

In 1977, the draft of a new employment law was published. It took up feminist conceptions about incompatibility as a 'problem' of women's inequality, addressing the issue of discrimination against women in the labour market. It was later shelved. However, the 1977 reform of marriage and family law by Social Democrats and Liberals formally gave women the right to take up employment without their spouses' permission. This marked the legal end of the 'housewife marriage' and a transition to the ideal of 'marriage in partnership'. Two years later, the *Mutterschaftsurlaubsgesetz*¹⁴ introduced statutory maternal leave for 6 weeks before and 8 weeks after childbirth.

¹³ *Erziehungsgeld* can be translated as child raising benefits. *Erziehung*, however, also carries connotations of education, thereby reinforcing the idea of the key role of mothers in raising their children.

¹⁴ This can be translated as maternity leave act. Unlike English, German does not differentiate between 'holiday' and 'leave'.

In 1982, the Christian Democrats and Liberals formed a new government coalition. The Christian Democrats adhered to the Myrdal and Klein (1956) three-phase-model. When the Kohl administration took office, it explicitly proclaimed a turn towards a more conservative, 'traditional' family policy. The *Bundeserziehungsgeldgesetz*¹⁵ 1986 introduced a ten-month parental leave to be taken by either mothers or fathers following *Mutterschutzurlaub* and corresponding means-tested child rearing benefits. The 1992 reform of the *Bundeserziehungsgeldgesetz* increased the leave to 36 months to be taken by either mothers or fathers in up to three turns. Although, at first sight its provisions could appear progressive, particularly the fact that men could take parental leave, the problem representation of the *Bundeserziehungsgeldgesetz* was similar to the 'problem' of mothers' employment. Its explicit aim was to 'enable' mothers to be full-time caregivers through the payment of child rearing benefits. This means that the concern of the legislation was that mothers in paid employment neglected their children 'during the first phase of the life of a child in which the foundations are laid for the subsequent development of the child'.¹⁶ Although, the legislation was formally gender neutral establishing rights for mothers and fathers, given the gender regime of Germany it was *de facto* addressed almost exclusively at women.

4.4 A look at the German Democratic Republic

From 1949, for more than forty years, the German Democratic Republic (GDR) was the political antagonist of West Germany. The two ideologically competing German states existed in parallel until 1990. No historical analysis of German policies should ignore this fact. Even though my interest lies with the unified Germany, I feel obliged to take a brief look at the German Democratic Republic. Moreover, as both countries belonged to opposing political camps and each adhered to a fundamentally different *Weltanschauung*, we might expect to find fundamentally different problem representations in reconciliation policy.

When Germany was unified in 1990 this took the legal form of an accession of the newly established five *Länder* of the German Democratic Republic to the Federal Republic of Germany under the provisions of Article 23 of the *Grundgesetz*. As a

¹⁵ This translates into federal child care benefit act.

¹⁶ '(...) in der für die ganze spätere Entwicklung entscheidenden ersten Lebensphase eines Kindes (...)', Bundestagsdrucksache 10/3792.

result the political, legal and economic system of West Germany was introduced into East Germany, completely replacing the old socialist system. This also applied to the sphere of social policy with the introduction of West German standards and practices into the five so-called *neue Länder*. With the unification, therefore, the whole system of a separate GDR reconciliation policy ceased to exist. This has had radical consequences for women living in the territory of the former GDR. In terms of legislation, nothing survived of GDR reconciliation policy

It is important to remind the reader that the GDR was an undemocratic state through and through, a one-party system, ruled by the communist *Sozialistische Einheitspartei Deutschlands*¹⁷ (SED). Independent political parties or movements, such as a women's movement, could not exist.

Given these political conditions, the problems of applicability of my theoretical and analytical framework would have to be expounded if the GDR were the main focus of my research. As this is not the case, and this chapter explains why this is justified, a cursory analysis of GDR reconciliation policy can be satisfactorily achieved.

Similar to West Germany, East Germany made the equality of women a constitutional national objective (Article 7 of the constitution of the German Democratic Republic). However, this goal was to be achieved through full integration of women into the labour market. This was in line with communist states' approach to economic and social policy and welfare provision. Further, following the Soviet example with the declared unity of economic and social policies, integration into employment was the backbone of welfare provision in the socialist welfare state (cf. Deacon 1992; Ferge 1992; Götting 1998).

The integration of women into employment and their parallel redefinition as 'workers' was also of key ideological importance for the socialist state, providing role models for the next generation. In line with these aims the GDR from its beginnings promoted childcare facilities for children of both preschool and school age (Hildebrandt 1994). However, incompatibility as a policy problem was not officially construed for another two decades. The incompatibility problem was first named and addressed in the GDR in the 1960s. In 1965, § 10 of the new *Familiengesetzbuch*¹⁸ explicitly formulated the policy aim of reconciliation of paid employment and motherhood (cf. Amend-Wegmann 2003).

The backdrop of the first naming of incompatibility was a continuing lack of labour and falling birth rates. Additional to the above ideological reasons, a severe

¹⁷ SED translates into unified socialist party of Germany.

¹⁸ Family code.

shortage of labour had made the integration of women into employment an economic necessity for the GDR from the 1950s on (Böckmann-Schewe et al. 1995). In the early 1960s, however, women's participation in employment, needed so urgently by the economy, stagnated in spite of sustained ideological campaigns (cf. Amend-Wegmann 2003).

The new *Familiengesetzbuch* exclusively addressed women as mothers, as subjects of reconciliation measures. In its focus on motherhood and employment it reflected the political concerns of the time. Fathers did not feature in this earliest construction of the problem. Therefore, they were not represented to be part of the problem. They disappeared, or better, never appeared in the nexus of reconciliation. Thus, from the beginning the problem of reconciliation was construed legally as a women's issue, although it appeared in family law.

From the early 1970s a whole set of reconciliation policies was launched. In 1972, *Schwangerschaftsurlaub*¹⁹ was introduced establishing the right of six weeks of paid leave before and 20 after childbirth. At the end of the 1970s, a monthly paid day off for domestic work (*Haushaltstag*²⁰) was introduced. At the same time, generous leave for the care of sick children was introduced for married mothers of two or more children and for unmarried mothers of one or more children. Also, the possibility of reducing weekly working time from over 43 to 40 hours was introduced for mothers (Bundesministerium für Familie und Senioren 1991). Part-time work also became possible if it was only temporary.

However, the key of GDR reconciliation policy remained the provision of childcare for all ages. Its provision was continuously widened to cover more mothers, such as students in higher education. In the 1980s, childcare provision was comprehensive for ages 0–12 nearly all over the country (cf. Hildebrandt 1994).

In 1986, a one-year paid maternity leave was introduced. Fathers could not take leave for childcare. However, in the mid-1980 some reconciliation measures, such as time off for caring for sick children, were opened to men if they fulfilled certain conditions.

So, what was the problem of reconciliation represented to be in the GDR? In the proposed and implemented policies sketched out above, two contradictory representations of the problem of reconciliation show through. The first and dominant representation concentrated on the shortage of labour, the second on decreasing birth rates. Relating to the first, the underlying concern of GDR reconciliation policy was

¹⁹ Literally, pregnancy holiday, it was a form of maternity leave.

²⁰ Household day in literal translation, meaning a day spent with domestic chores.

that too many mothers were not in full-time employment. The GDR economy suffered from severe labour shortage exacerbated by the continued mass migration of people to West Germany until 1961 when as a consequence the borders were closed and the Berlin Wall built. Therefore, from the perspective of the state more mothers had to take up employment. The proposed 'solution' to this problem was primarily an upgrading of childcare facilities. Thus, the cause of this was implicitly represented to be the 'burden' of childcare barring mothers from participation in paid employment. Implicit here is the assumption that women spent too much time doing care work. The problem is construed as a problem of time. Offering childcare facilities relieves this 'burden' and 'frees' women for employment. GDR childcare policy defamilialised the care for children to a larger degree than West Germany making it a public responsibility. However, because GDR reconciliation policies left men completely out of the equation, it implicitly accepted and reinforced the gendered division of labour within the family (cf. Helwig 1995) and in the gendered normative hierarchy of social activities, employment is worth more than care work. Consequentially, the gendered nature of the labour market and gender discrimination were not substantially altered (cf. Vogt and Zwingel 2003).

The second problem representation of reconciliation policy focused on demography. GDR population was shrinking. The concern of this problem representation was that women did not give birth to a sufficient number of children. This concern becomes particularly visible in the fact that some reconciliation measures, such as time off for the care of sick children or child benefits, were tied to the number of children. Here, the cause of the problem is implicitly represented to be the 'burden' of paid employment. Accordingly, this 'burden' is then made lighter by measures 'relieving' women from their commitments in paid employment either partly and for a short time (*Haushaltstag*, part-time work) or for a sustained period of time following childbirth (*Schwangerschaftsurlaub* 1972, maternal leave 1986) 'allowing' them to do the care work either parallel to pursuing employment or (later) instead of it. Fathers appeared neither in the first nor the second problem representation. The problem of incompatibility of employment and family care work was thus construed as a mothers' problem of time management. By targeting only women as recipients of these reconciliation measures, women were construed as natural carers.

Nonetheless, due to the reconciliation measures women were able to pursue full-time employment in far greater numbers than their sisters in West Germany. In fact, the GDR came close to full integration of women into employment. Women's employment almost matched men's employment at the end of the 1980s (Klammer et al. 2000). However, the division of labour within the family and in the labour market

was not addressed, because it was not part of what the problem was represented to be. Unsurprisingly, thus, reconciliation measures did not lead to equal opportunities in the labour market. Although, women's employment eliminated economic dependency on their husbands, one of the reasons for the subordinate position of women in society, the labour market remained gendered and equal pay for work of equal value was not achieved (cf. Bast and Ostner 1992).

For some time both representations existed in parallel. Although, we will not in this research systematically try to analyse why some representations were dominant at certain points in time, it is safe to assume that the ideological commitment to full employment of women and related policies were a determining factor in the persistence of the first problem representation.

The most important finding of this look at the GDR is that, contrary to our initial expectations, the constructions of the incompatibility problem in the GDR do not contain representations that cannot be found in West Germany. For example, interestingly, the problem representation of incompatibility as women spending too much time doing care work is almost identical with the one brought forward by the West German Social Democrats in the 1970s. Therefore, we hold it is legitimate to deal with these problem representations in detail in the chapters analysing West German reconciliation policy, because the latter has become the reconciliation policy of unified Germany.

5 Anti-discrimination policy

This is the first of four main analytical chapters, analysing governmental discourse in legislation in four policy areas represented to constitute reconciliation policy: anti-discrimination, childcare, parental leave, and working time. The structure of these chapters is identical as laid out in the methodology chapter. The order of these four chapters is secondary, as reconciliation policy is understood as a whole that construes our ideas about the ‘problem’ of incompatibility.

In the analytical chapters the governmental problematisation of incompatibility and the construing of incompatibility in legislation, will be analysed trying to lay open its implicit assumptions and presuppositions. Throughout, the matrix against which official problematisations are analysed is provided by a feminist standpoint based upon feminist policy research outlined above. Official claims will, thus, be contrasted with feminist counter claims about the ‘problem’ wherein the latter will be conceded a superior epistemological value. However, although the impression can arise due to the wording of the study, this does not mean the feminist position is deemed to accurately reflect ‘reality’. It is used as an extremely fruitful and potentially superior counter position to fundamentally challenge and question the official discourse and, thus, to engender interesting findings. Further, in order to achieve at least some distance from official claims, the study assumes a pronounced scepticism, which might in some cases seem extreme. Some problem representations might initially be dismissed in their emancipatory potential for women, but then be judged more favourably at a later stage in the analysis. However, aware of the difficulties of achieving any distance from problem representations at all, this approach is advisable. Not only will extremes be reconsidered at the end of individual chapters, but they will also be put into a broader perspective at the end of the study, drawing on all analytical chapters. The cumulative representation of incompatibility, taking all four policies together, might differ not insignificantly from individual representations.

5.1 What is anti-discrimination policy represented to be about?

The purpose of this introductory section is to describe problem representations in their historical context. The aim is to tease out what the ‘problem’ of incompatibility

is represented to be in anti-discrimination policy. We will therefore start by asking what anti-discrimination policy has been represented to be about in Germany.

Compared to the policies to be dealt with in the following chapters anti-discrimination policy manifests less variation in terms of problem representation. Possibly, this is because it is a relatively new policy field. Generally speaking, anti-discrimination policy is about abolishing discriminatory treatment in specific areas of society. It takes the form of disallowing particular kinds of discriminatory acts against specific groups. Anti-discrimination legislation most commonly addresses race, sexual identity, and gender. All German anti-discrimination legislation addresses inequality in the labour market; some legislation also addresses other areas of society. In this thesis we will focus on legislation concerning gender discrimination.

In Germany, anti-discrimination has been construed in legislation in two ways: *Antidiskriminierung* proper and *Frauenförderung*²¹. While *Antidiskriminierung* translates into anti-discrimination, *Frauenförderung* entails a notion of positive intervention. However, two caveats have to be added: *Frauenförderung* does not necessarily mean affirmative action, and the two terms have also been used interchangeably in the past.

Germany has been a reluctant latecomer in formulating anti-discrimination policy which developed in the ‘Western’ democracies after the Second World War (cf. Höyng 1998). Still, the problem representations, which can be found in German anti-discrimination policy are very similar to those in other ‘Western’ countries. As we have mentioned above, all German anti-discrimination legislation is concerned with women’s position in the labour market. Therefore, anti-discrimination is represented to be about women’s employment. There are, however, some important differences in the details of problem representations that we will be elaborating on at the appropriate point in the argument. Within this broader framework, four distinct problem representations can be identified: anti-discrimination as being about direct discrimination; anti-discrimination as being about indirect discrimination; anti-discrimination as being about affirmative action; and anti-discrimination as being about managing diversity (cf. Bacchi 1999). They differ mainly in regard to what the cause of women’s inequality in the labour market is represented to be. We will deal with this aspect in more detail in the section after the next.

Until after the Second World War, unequal treatment of women and men in the labour market was not considered problematic in German legislation (cf. Höyng

²¹ *Frauenförderung* has no easy English translation. It is may be best captured by ‘measures for the advancement of women’.

1998). On the contrary, from the foundation of the modern unified German state in 1871 all through the Weimar Republic, but particularly in the ‘Third Reich’, legislation in all relevant policy areas actively supported and reinforced the ‘traditional’ gendered division of labour.

In 1949 the West German constitution, the *Grundgesetz*²², declared ‘[m]en and women are equal’. During a transitional period until 1953 all remaining discriminatory legislation was to be changed or removed. The *Grundgesetz* generally was a conscious attempt to eliminate for all times the deadly discrimination on the grounds of race, ethnicity, sexual identity, and disability during Nazi rule. The inclusion of the principle of gender equality in particular was an acknowledgement of, and compensation for, the horrible suffering of women caused by the war and their role in the reconstruction of Germany.²³

However, not only was discriminatory legislation not changed, it took a further 30 years until anti-discrimination legislation first appeared. The 1950s and 1960s were times of political and social restoration with the conservative Adenauer administrations pursuing an agenda of reinforcing the ‘traditional’ model of the family and the division of labour. From their perspective reducing discrimination against women was not desirable. Until 1958, even a number of laws remained in force, which blatantly contradicted the constitutional principle of equal treatment. Marriage law, for example, explicitly allocated domestic and care work to women; and their participation in paid employment was contingent on their husband’s approval.

The constitutional ideal of gender equality was interpreted by the German Constitutional Court, the *Bundesgerichtshof*, and by successive conservative governments not as equality of opportunity but as ‘equality in difference’, equal value of men and women’s position in different spheres (cf. Wahl 1999: 120). Women were assigned the ‘private’ of domestic and care work and men the ‘public’ sphere of paid employment. Social behaviour and roles were taken to be determined by biological difference. Discrimination against women in the labour market was represented to be caused by ‘natural’ biological difference and ensuing social norms. Therefore, in the 1950s and 60s it was not represented as a social ‘problem’ in legislation at all.

From the end of the 1960s a cultural change took place in Germany parallel to similar developments in other ‘Western’ democracies. The second wave of women’s

²² *Grundgesetz* translates into ‘basic law’. The ‘fathers of the constitution’ (there were only four ‘mothers’) wanted to emphasise its temporary character. Only due to the persistence of the female delegates to the constitutional convent was sex equality made constitutional.

²³ The so-called *Trümmerfrauen*, literally ‘wreckage ladies’, women who cleared away debris and cleaned bricks for reuse, still occupy a special place in collective consciousness.

movement gathered momentum and gained support in society and left-of-centre political parties. At the same time women's employment continued its steady increase despite the conservative framework provided by the welfare state and legislation. As a consequence, in 1976 a reform of family and marriage law formally abolished the legal allocation of gendered roles in marriage. However, the German women's movement, though very active, was overwhelmingly averse to legislation and relying on state institutions for the advancement of women's rights (cf. Wahl 1999). So, it was the liberal *Humanistische Union* which in 1978 introduced into public discussion the first draft of an anti-discrimination law, which was modelled on the British Sex Discrimination Act 1975. The draft disallowed treating women and men differently, and disallowed a number of discriminatory practices in the labour market, education, advertising, services, the legal and penal system, and in business (cf. *Humanistische Union* 1978). Disallowing different treatment of men and women construes the 'problem' as unequal treatment of likes because of stereotypes and prejudice. This is direct discrimination. However, proposing anti-discriminatory measures in such a range of areas as necessary for 'solving' discrimination against women goes further than calling for equal treatment in the labour market. It construes the 'problem' not as unjustified individual prejudice against women but as complex structural discrimination against women in society. Stipulating such comprehensive measures as 'solutions' to the discrimination against women implies that the rules of society are fundamentally flawed to women's disadvantage. This problem representation transcends direct discrimination construing the 'problem' as indirect, structural discrimination. In spite of transcending the labour market, the proposal was mainly concerned with discrimination against women in the labour market, construing the 'problem' first and foremost as being about women's employment. Getting more women into (good, well-paid) positions was central.

The first time discrimination against women was represented as a social 'problem' in German legislation was at the beginning of the 1980s. Even then this was largely due to pressure from the European Commission, which threatened Germany with an infringement procedure before the European Court of Law. The European Community directives 75/117 and 76/207 called for equal opportunities in the labour market, explicitly allowing quotas for the public and private sector to overcome the discrimination against women. The German Government initially denied the necessity of implementation, referring to the equality principle of the *Grundgesetz*. This would be a recurrent discursive strategy when faced with demands for anti-discrimination legislation. When finally forced to implement, the German adaptation of the directives, the *arbeitsrechtliches EG-Anpassungsgesetz*, did only con-

tain the basic principle of equal treatment in the labour market. The law was strictly limited to the labour market, construing the ‘problem’ of discrimination against women as a labour market problem, as being about women’s employment. If equal treatment is proposed as ‘solution’ to the ‘problem’ of discrimination against women in the labour market, implicitly the ‘problem’ is represented to be about treating likes differently. If only likes are treated alike, discrimination against women will disappear, is the logic. Implicit in this problem representation is the assumption that generally the rules of society work fairly and that discrimination is an individual aberration by employers. The ‘problem’ of the unequal treatment of women in the labour market is thus represented as being about direct discrimination.

In 1986, the parliamentary Green Party introduced a bill that went further than the *Humanistische Union*’s proposal of 1978 (cf. Abgeordnete Frau Dann et al. 1986). It entailed blanket clauses for women’s equal participation in politics and economy. To overcome discrimination against women in the labour market it envisaged a strict 50 percent quota, meaning that as long as women were underrepresented, only women would be employed or promoted until numerical equality was reached. The law would have applied to both public and private sector employers, and included a collective right to file an action for women’s organisations. Proposing a strict quota for the labour market construes the ‘problem’ of discrimination against women as a labour market problem. However, by explicitly including the political sphere, the problem representation also transcends the labour market. Therefore, the ‘problem’ is being caused by indirect, structural discrimination. Implicit in this problem representation is the assumption that society’s rules are so flawed to women’s disadvantage that removing ‘obstacles’ to women’s employment and promotion alone will not suffice. In order to counteract the effects of society’s male-biased rules women have to be given a boost to get into positions of economic power. Implicit is the hope that if only women could occupy half of the positions of power the rules of the game can be changed. The ‘problem’ of discrimination against women in the labour market is represented to be complex and structural, and it can only be tackled with positive interventions. This problem representation, therefore, is about strong affirmative action.

Following the publication of an expert report in 1980 on women’s position in society commissioned by the German Parliament (cf. Deutscher Bundestag 1980), several *Länder* introduced anti-discrimination in the late 1980s and early 1990s legislation for the public sector only. The report had recommended set targets and action plans for overcoming discrimination against women in the public sector labour market. Introducing positive measures to address discrimination against women implic-

itly construes the ‘problem’ as structural, indirect discrimination. At the same time, restricting legislation to the labour market, again, construes the ‘problem’ as a labour market problem. Consequently, anti-discrimination is represented to be about women’s employment. Further, restricting anti-discrimination legislation to the public sector construes discrimination against women as a policy ‘problem’ only in the public sector. Discrimination against women in the private sector remains unproblematised. Perhaps it was too big a ‘problem’ to address.

The ensuing *Länder* legislation entailed different forms of affirmative action, from very weak to moderate, establishing equality representatives and action plans. Introducing such positive measures represents the ‘problem’ of discrimination against women as ‘solvable’ only with positive intervention into the labour market. This is the problem representation of affirmative action.

The establishment of women’s equality representatives and action plans in the public sector marked an important step in the institutionalisation of the women’s movement.

A decade later, in federal anti-discrimination legislation, too, affirmative action became the dominant problem representation. Put under pressure by a second European infringement procedure, in 1994 the conservative Kohl administration amended the 1980 *arbeitsrechtliches EG-Anpassungsgesetz*. The ensuing *Zweites Gleichberechtigungsgesetz* introduced moderate positive action in the guise of ‘flexible’ set targets for the public sector labour market only. Anti-discrimination is construed as being about the labour market and women’s employment. Conceptualising set targets as ‘solution’ for the discrimination against women in the labour market implicitly accepts structural, indirect factors as underlying causes of discrimination against women. It further construes it as a ‘problem’ that can best be solved by positive intervention. This is characteristic for the problem representation of affirmative action. Interestingly, the law also addressed the ‘problem’ of incompatibility of domestic care work and paid employment directly for the first time in anti-discrimination legislation. It does this by introducing the possibility of part-time work, flexible working-time and family leave and by disallowing discrimination against part-time employees. What does this mean? First, dealing with incompatibility in the same law as discrimination against women, construes incompatibility as a women’s issue in spite of the respective articles being formulated gender neutrally. The policy measures addressing the incompatibility ‘problem’ are therefore aimed exclusively at women. Second, introducing opportunities for women with children to decrease working time and interrupt employment means that this is what they should do. Thus, the ‘problem’ of incompatibility is represented to be women who (have to)

spend too much time in paid employment. The 'solution' to the incompatibility is represented to lie in women reducing their working hours in paid employment in order to carry out the necessary domestic and care work. Men are notably absent from the problem representation.

Affirmative action in legislation remained strictly limited to the public sector labour market. In the public sector, discrimination against women was represented as a complex structural 'problem' of society which can only be 'solved' by positive intervention. This construes the discrimination against women in the public sector as a 'public' problem for which 'public' policy responses have to be developed.

In the private sector labour market, as we have seen, problem representations of direct discrimination remained dominant, construing the 'problem' as unwarranted unequal treatment of individuals caused by gender prejudice. This construes the 'problem' as an attitudinal and individual one which can be 'solved' by educating people. Construing the 'problem' as attitudinal and individual implicitly allocates it to the 'private' sphere of society and thereby forecloses the possibility of positive intervention.

Anti-discrimination legislation in unified Germany has its roots exclusively in West German policy. However, not to neglect the fact that for 40 years another German state coexisted with West Germany, we will venture a brief look at East German policies. The German Democratic Republic (GDR), too, guaranteed gender equality in its constitution of 1949. Article 7 read 'Man and woman are equal' (cf. Bühler 1997: 28). The GDR pursued a policy of integration of women into employment through qualification and extensive provision of extra-familial childcare. There were two main reasons for that. First, socialist ideology propagated gender equality and a male worker ideal. Accordingly, the socialist welfare state was built upon integration into paid employment. Second, for its whole existence the GDR suffered from severe labour shortage, because of its technological backwardness and emigration, and women's labour force was desperately needed. In 1971 the Government announced that the 'women's question' was solved. While women's employment reached much higher levels in the GDR than in West Germany, the GDR did not until 1977 acknowledge in legislation that discrimination against women occurred in the socialist labour 'market', too. In 1977, new employment law assigned state enterprises the task of creating equal opportunities for women, particularly through the provision of services (cf. Trappe 1995). In a market economy leaving it to private enterprise to 'solve' the 'problem' of discrimination against women would be characteristic of managing diversity. In a planned economy like the GDR however, envisaging services for employed women such as childcare, washing, and canteens implicitly ac-

knowledges that women are disadvantaged by the gendered division of labour. Therefore, the implicit problem representation is indirect discrimination, although the GDR would never have conceded that women were discriminated against, as this would have been tantamount to conceding the failure of its version of socialism.

5.2 What was anti-discrimination policy represented to be about 1998–2005?

The ‘red-green’ coalition pledged to make gender equality and equal opportunities again (after the late 1970s) a policy priority. The 1998 coalition agreement contains a vague declaration of intent to introduce anti-discrimination legislation (*Gleichstellungsgesetz*) for the public and private sectors. The action programme ‘women and employment’ published in 1999 reiterated the intention to pass comprehensive anti-discrimination legislation (cf. Aktionsprogramm ‘Frau und Beruf’ 1999).

In 2001, the first piece of legislation on anti-discrimination came into force. The *Gleichstellungsgesetz für die Bundesverwaltung* (equal opportunities act for the federal administration) ties in with existing equal opportunities acts of the *Länder*. The law applies to all agencies and departments of the federal administration, federal courts of justice and quasi governmental organisations receiving state funding. The aim of the *Gleichstellungsgesetz* is creating equal opportunities for women and men in the federal section of the public sector. It states that women are considered under-represented if they make up less than 50 percent of the workforce in any department. In addition to disallowing certain practices, such as advertising positions only to men, and asking questions about reproductive intentions, the law introduces positive action to improve women’s access to positions in the federal administration. In the provisions for positive action it follows the model of *Länder* anti-discrimination legislation: in employment women have to be given priority over equally qualified male candidates, unless specific factors tip the scales in favour of the latter:

‘Sind Frauen in einzelnen Bereichen unterrepräsentiert, hat die Dienststelle sie bei der Vergabe von Ausbildungsplätzen, Einstellung, Anstellung, und beruflichem Aufstieg bei Vorliegen gleicher Eignung, Befähigung und fachlicher Leistung (Qualifikation) bevorzugt zu berücksichtigen, sofern nicht in der Person eines Mitbewerbers liegende Gründe überwiegen.’

‘The respective administrative agency has to give preference to women, provided they possess equal qualifications, suitability, and performance, if they are under-represented in individual divisions. This rule applies to trainee positions, employment, appointment, and promotion. It applies only if no other candidate displays specific characteristics outweighing the female candidate’s suitability for the position.’

(Bundesregierung 2001: 3236)

The above quote from the *Bundesgleichstellungsgesetz* conveys an idea of a German legislative text. The excerpt is from article 8 headed ‘decision-making in employment and promotion’, which appears in the section on concrete measures to achieve equal opportunities for women and men. The other five articles under this heading deal with job advertisement, interviews, qualifications, professional development, and equal opportunities plans. All six articles thus deal with the employment of women. Additionally, at least four articles introduce new regulations for the labour market. Therefore, the general direction of equal opportunities measures, as well as the particular content of article 8, show that anti-discrimination policy is represented to be about women’s employment and about regulating the labour market. The quote from article 8 clearly shows that anti-discrimination legislation is primarily concerned with women’s employment. In some detail – and contradiction one is tempted to add – the lawgiver sets out to regulate the employment, appointment, and promotion of women in federal agencies. Hence, discrimination against women is represented as a labour market problem, and as being about women’s employment. Combining detailed lists of disallowed practices with a set target for the minimum proportion of women in the workforce, the law construes discrimination against women as a combination of direct and indirect discrimination. Introducing positive action in the guise of giving women priority over men if equally qualified builds upon indirect discrimination and represents the ‘problem’ of discrimination against women as one that can only to be ‘solved’ with positive, affirmative action. It implicitly assumes that women are disadvantaged by social structures.

In addition to the above, the law addressed the ‘problem’ of the incompatibility of domestic care work and paid employment directly. It obligates all agencies to create flexible working-time arrangements and conditions, offer part-time positions and special leave; and it disallows discrimination on the grounds of part-time work (cf. Bundesregierung 2001: Art. 12–15). As we have argued above in the case of the 1994 *Zweites Gleichberechtigungsgesetz*, dealing with the incompatibility ‘problem’ in the same law as discrimination against women firmly construes it as a women’s problem. The ‘solutions’ offered to incompatibility show what the ‘problem’ of incompatibility is implicitly represented to be. The measures all aim at women reducing their working time or interrupting their paid employment altogether. Therefore, the ‘problem’ is represented as mothers’ working hours. Women are represented to work too many hours in paid employment to be able to meet their domestic ‘responsibilities’. Implicitly, thus, domestic work is represented to be women’s work, although the law is formulated gender neutrally. This shows how traditional presuppositions about women and men’s respective place in society are car-

ried forward unquestioned in legislation that is supposed to alleviate discrimination against women. Moreover, men, again, do not have any place in the problem representation.

In late 2000 key points were produced by the Ministry for Family Affairs in a consultation process with feminist lawyers and activists for an Equal Opportunities Act for the private sector. The draft was never introduced into cabinet; instead of federal legislation a voluntary commitment of the private sector was negotiated in 2001.

The proposed legislation would have been effective for all private enterprise, obliging them to: draw-up implementation agreements with set targets for all areas where women were under-represented; compile regular reports on the *status quo* and concrete aims; and to conduct equal opportunities audits as a prerequisite for public contracts. Control of implementation was envisaged to be executed by individual shop committees and labour courts. Importantly, women's organisations were to be given the legal right to file class actions (cf. Bundesministerium für Familie, Senioren, Frauen und Jugend 2000: point 8).

Again, discrimination against women is represented as a labour market 'problem', as essentially being about women's employment. From the key points we can see that the 'problem' of discrimination against women is represented to be structural, indirect discrimination. If statistical under-representation of women in employment is represented as central to the 'problem', discrimination against women is implicitly construed as having structural societal causes. Moreover, giving women's organisations the right to file class action construes discrimination as a collective, public 'problem' as opposed to an individual one. Although, the law envisaged only comparatively weak positive action, the implicit problem representation in this proposal is affirmative action.

Similar to the two previous laws, incompatibility was addressed directly in this proposal: dependent on the size of flexible working-time, part-time work, internal childcare provision would have had to be introduced. Again, tackling incompatibility with a law aimed at discrimination against women in the labour market construes the 'problem' a) as a women's problem and b) as a labour market problem.

Introducing part-time work for women construes the 'problem' as women who work too many hours in paid employment to fulfil their 'domestic duties', and thus rests upon the presupposition that women are natural caregivers. Flexible working time for women implies that it is women who have to do the 'reconciling' of paid employment and care work. In both measures the 'problem' is represented to be the amount or organisation of women's paid work. There is however, another different

problem representation implicit in the proposal. Introducing internal childcare provision construes the problem as women who are impeded by care work ‘duties’ from participating fully in paid employment. This does not fundamentally question the gendered division of labour but it reverses the problem representation from women working too much to women not being able to work like men in paid employment.

In 2001 the projected anti-discrimination law for the private sector was shelved. Instead trade associations’ umbrella organisations and the Government negotiated a ‘voluntary commitment’ to reduce discrimination against women. The commitment recommended a range of vaguely formulated measures to enterprises in order to alleviate discrimination against women in the labour market, none of which were binding: making equal opportunities part of the corporate ‘philosophy’; increasing opportunities for part-time work and flexible forms of work; improving training for women to improve prospects for promotion; formulating binding set targets for gender equality; involving employees (cf. *Selbstverpflichtung der Wirtschaft*).

The explicit aim is increasing women’s labour force participation. The main focus of the agreement is the retention of highly qualified female employees by private enterprises. In times of a shortage of skilled labour this is the main concern of German employers. Changing the gender composition of the work-force and reducing discrimination against women in the labour market on the other hand is not a priority. This shows that private enterprise construes discrimination against women not as a ‘social problem’ but as a business ‘problem’. As in the other problem representations, it is represented as being a labour market ‘problem’. Broadly speaking, the implicit concern of the problem representation is women’s employment, too. However, on closer examination the ‘problem’ really is represented to be the retention of (highly qualified) female staff by employers.

Although, as we have seen, some of the individual measures belong to other problem representations, one crucial element is particularly revealing: the fact that tackling discrimination against women is left to individual employers. Leaving individual companies to deal with discrimination against women is based upon the implicit assumption that they are best suited to it; that it is in employers’ best interest to diminish discrimination against women. This, in turn, construes discrimination against women again as individual employers’ aberration, which embodies a return to the problem representation of direct discrimination. The structural and societal dimension of discrimination is thoroughly lost in the process.

In addition to anti-discrimination measures the commitment entails voluntary measures to tackle incompatibility, such as internal childcare, flexible working time

and part-time work. This shows anew that incompatibility is represented to be a women's problem. We have analysed above what parttime and flexible working time measures say about the implicit problem representation. In suggesting internal child-care as a 'solution' to incompatibility the commitment shows that the 'problem' is represented to be women who are impeded by care work 'responsibilities' from working in paid employment to their full capacity. This applies, however, only to already employed, high-qualified (middle-class) women.

In addition to the *Frauenförderung* approach of the *Gleichstellungsgesetz für die Bundesverwaltung* and the key points of the shelved Equal Opportunities Act for the private sector; anti-discrimination legislation also took the form of *Antidiskriminierung* proper. Under obligation to implement EU legislation on anti-discrimination and threatened – again – with infringement procedures, in 2004 the coalition introduced an Anti-Discrimination Bill into parliament. Germany was legally obliged to implement three recent anti-discrimination directives: directive 2000/43, implementing the principle of equal treatment between persons irrespective of racial or ethnic origin; directive 2000/78, establishing a general framework for equal treatment in employment and occupation; and directive 2002/73, amending Council Directive 76/207/EEC on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions. As a basic principle, the act makes it illegal to treat women and men differently in a number of areas. It disallows the discrimination against women²⁴ in the terms and conditions of employment and promotion (including the eligibility criteria for appointment); in working conditions and pay; in vocational training; in social security and health services; in education; and in access to goods and services (cf. Abgeordneter Olaf Scholz et al. 2004: Art. 2). Affirmative action is implicitly allowed by construing it as an exemption from the general prescription against unequal treatment (cf. Abgeordneter Olaf Scholz et al. 2004: Art. 5).

Consistent with German legislative practice, the 2004 Anti-discrimination Bill begins with a section outlining the policy 'problem' to be addressed and the aims of the legislation. This structure makes the task of identifying the implicit concern of policies relatively straightforward.

²⁴The act covered not only discrimination against women but a range of criteria, disallowing discrimination on the grounds of race, ethnic origin, gender, religion, political views, disability, age and sexual identity (cf. Abgeordneter Olaf Scholz et al. 2004: Art. 1).

‘Die Gleichheit vor dem Gesetz und der Schutz aller Menschen vor Diskriminierung ist ein Menschenrecht, das in Deutschland insbesondere in Artikel 3 des Grundgesetzes festgeschrieben ist. (...) Die EU-Richtlinien (...) verpflichten dazu, diesen Schutz im Bereich Beschäftigung und Beruf hinsichtlich der Merkmale Rasse (...), sexuelle Identität und Geschlecht auch einfachgesetzlich insbesondere für das Verhältnis zwischen Arbeitgebern und Beschäftigten umzusetzen.’

‘Equality before the law and protection of all persons against discrimination is a human right enshrined in article 3 of German Basic Law. (...)’

In order to implement this protection in regard to race (...), sexual identity and gender, the EU directives (...) obligate Germany to legislate in the area of employment and occupation, particularly regarding the relationship between employers and employees.’

(Abgeordneter Olaf Scholz et al. 2004: 1–2)

The above quote from the 2004 Anti-discrimination Bill demonstrates that the concern of anti-discrimination policy is women’s employment. Anti-discrimination legislation is represented to address the ‘problem’ of discrimination against women in employment and occupations. Thus, anti-discrimination policy is represented to be about women’s position in the labour market and in employment. This piece of legislation contains two different problem representations. On the one hand, rendering it illegal to treat women and men differently construes the ‘problem’ of discrimination against women as direct discrimination through unequal treatment. The underlying assumption is that if only women and men are treated equally discrimination will vanish. Direct discrimination is based on the implicit assumption that the rules of society generally are fair. In this problem representation, discrimination is caused by individuals with stereotypes.

On the other hand, disallowing seemingly gender neutral practices and criteria which contain a male bias and disadvantage women on the contrary construes the ‘problem’ of discrimination against women as indirect discrimination. The ‘problem’ shifts from individual aberration to social structures, which disadvantage women in the labour market and elsewhere. The Act, thus, entails a combination of the problem representations of direct and indirect discrimination. Anti-discrimination is represented as being mainly about women’s employment and the labour market, but the problem representation transcends this area, including education and social welfare.

A very important point has to be made here in regard to affirmative action. By including a clause explicitly allowing affirmative action for creating equal opportunities, it is implicitly construed generally as a violation of the very same principle. Affirmative action is construed as an exemption from the principle of equal treatment.

It is, thus, construed as preferential treatment of women. We will come to the effects of this particular framing of discrimination against women in section 7.4.

Due to general elections and the end of the legislative period, the law only came into force in 2006 under a different government, but essentially unchanged in terms of problem representations concerning discrimination against women.

5.3 What is the cause of incompatibility represented to be?

We have argued in the previous section that, some variation notwithstanding, what anti-discrimination policy is represented to be about – we call this the concern of policies – remained largely the same. The dominant problem representation in anti-discrimination policy remained that anti-discrimination was about the labour market, and more accurately about women's employment. Now, the next step is to scrutinise the next level in problem representations, the implicit 'diagnosis' of the cause of the 'problem'. With Bacchi (1999), we hold that any proposed 'solution' to a 'problem' necessarily contains assumptions about the nature of the 'problem'. Therefore, we will need to ask what kinds of assumptions about the nature of discrimination against women are implicit in proposed and enacted legislation. This is a necessary preliminary step towards widening our enquiry to the implicit assumptions about the 'problem' of incompatibility of care work and paid employment. We will ask what the cause of the 'problem' of incompatibility is represented to be; and if there were any changes in problem representations. Also, we need to examine whether we can we assume that where the concern of problem representations stayed the same what is represented to be the cause of the 'problem' also remained constant. Here, as in the subsequent chapters we will concentrate on enacted legislation.

The first time discrimination was construed as a policy 'problem' was in the early 1980s. The 1980 *arbeitsrechtliches EG-Anpassungsgesetz* contains the problem representation of direct discrimination. This problem representation construes the 'problem' of discrimination against women as getting women into paid employment. The cause of discrimination against women is represented to be individual aberration from social rules that otherwise work fairly. The best expression of this is the exclusively complaint-based nature of respective legislation. Its only 'intervention' is to disallow treating women and men differently. This implies that women and men are the same and have to be treated the same, while the criteria against which they are judged remains out of range. The implicit assumption is that everyone has to be assessed by their ability and not by unwarranted prejudice. However, the underlying

notions of what constitutes an ability remain unquestioned and male-biased (cf. Bacchi 1999: 95).

The ‘problem’ of incompatibility is not part of the problem representation of direct discrimination. Implicitly, however, the ‘problem’ of incompatibility is represented to be that women of child-bearing age and women with children can have a difficult time finding suitable employment, because of prejudice and stereotypes against women. The cause of incompatibility is represented to lie in attitudinal prejudice in the labour market, or more precisely, in the attitudinal prejudice of individuals. This means that the cause is not located in the ‘private’ domestic sphere.

Formulated first in European Community directives of the mid-1970s, and taken up by the German *Humanistische Union* in their draft in 1978, indirect discrimination also primarily construes the ‘problem’ of discrimination against women as getting women into paid employment. Indirect discrimination has been present as problem representation in all German anti-discrimination legislation since the 1994 *Zweites Gleichberechtigungsgesetz*, most of the time along-side affirmative action. Although, it continues to represent discrimination against women as a labour market ‘problem’, it contains entirely different assumptions about the cause of discrimination against women. An extract from the act’s section on part-time employment and family-related leave exemplifies the changed presuppositions:

‘Teilzeitbeschäftigung darf das berufliche Fortkommen nicht beeinträchtigen; eine unterschiedliche Behandlung von Teilzeitbeschäftigten ist nur zulässig, wenn sachliche Gründe sie rechtfertigen. Teilzeitbeschäftigung darf sich nicht nachteilig auf die dienstliche Beurteilung auswirken.’

‘Part-time employment must not hinder promotion. Treating part-time employees differently is only permissible if there is good reason for this. Part-time employment must not affect negatively any employment appraisals.’

(Bundesregierung 1993: 7)

In this section, the act addresses the practice that only experience gained in full-time paid employment is deemed relevant for promotion. This practice favours men as they are less likely to be employed part-time because their partners carry out the family care work for them. The 1994 Act obligates human resources departments to treat equally experiences gained in part-time paid employment if possible. Further it states that part-time employment must not have a negative effect on appraisals. This quote from the 1993 Bill, which is identical with the eventual act, the *Zweites Gleichberechtigungsgesetz* 1994, shows that the act contains quite different assumptions about the cause of discrimination against women.

Addressing rules and procedures in the labour market by disallowing seemingly gender neutral rules and practices, which in fact discriminate against women, it construes the ‘problem’ not as individual aberration, but as structural, systemic discrimination. Therefore, indirect discrimination implies that the ‘world of work’ disadvantages women through its rules and procedures. However, the complaint-based nature of legislation implies that although some rules and procedures discriminate against women, in general the rules work fairly. This different representation of the cause of discrimination implicit in indirect discrimination has consequences for what the cause of the ‘problem’ of incompatibility is represented to be. The ‘problem’ of incompatibility is represented to be that women of child-bearing age and women with small children are faced with difficulties finding employment and achieving promotion. So far, that is almost identical with direct discrimination. However, the cause of the discrimination against women in the labour market is represented to be not individual attitudinal prejudice but structural disadvantage: the rules of the labour market are male-biased, although they appear gender neutral.

In 1994, the amendment of the 1980 *arbeitsrechtliches EG-Anpassungsgesetz* construed discrimination against women for the first time as being about affirmative action. Affirmative action shares with indirect discrimination the implicit assumptions about the cause of discrimination against women described above. There is one important difference between indirect discrimination and affirmative action. Whereas indirect discrimination is based upon the assumption that disallowing discriminatory rules and practices will lead to equal opportunities, affirmative action presupposes that this is not sufficient. Regarding the ‘problem’ of incompatibility affirmative action also represents it to be about getting women into the labour market. As in indirect discrimination, the cause of incompatibility is represented to lie in structural disadvantaging of women by the rules of the labour market.

Managing diversity is an emerging problem representation in German anti-discrimination legislation discourse. It emerged alongside indirect discrimination and affirmative action in the 2001 Voluntary Commitment of Trade Associations that replaced the proposed Anti-Discrimination Act for private enterprise.

Although proposed measures such as set targets for increasing women’s share in employment, flexible working time, and improved internal childcare provision contain problem representations of indirect discrimination and even affirmative action, by the very fact that commitment is neither binding nor legislation, it construes discrimination against women as a business ‘problem’, a problem of the private sector. Thus, discrimination against women is transformed into a human resources ‘problem’. To leave fighting discrimination against women to private enterprise rests upon

the implicit assumption that they are indeed best equipped to deal with the ‘problem’. This implies that the ‘problem’ is located in the workplace, not in the gendered structures of society. Leaving the fight against discrimination against women to private enterprise also rests on the assumption that it has an interest in doing so. This way, discrimination is represented as harming private enterprise as well as women; an identity of interest between private enterprise and women is construed. Thus, managing diversity represents the ‘problem’ of discrimination against women as individual aberration based on stereotypes and prejudice. For incompatibility this implies that the ‘problem’ is about women with children having difficulties finding and retaining positions in paid employment, because they are treated differently from men. Discrimination becomes represented as being caused by treating likes differently. This problem representation therefore is a step backwards as it fails to acknowledge that for structural reasons women might indeed need different treatment, in the guise of extra support from employers. In the paragraphs dealing explicitly with ‘reconciliation of work and family life’, it becomes clear that the ‘problem’ is represented to be that mothers are often forced by the demands of domestic responsibilities to quit their employment. Thus, incompatibility here is represented to be caused by domestic responsibilities, in other words, care work.

Intertwined with indirect discrimination and with affirmative action, there is, however, another problem representation complicating the matter. From the 1994 *Zweites Gleichberechtigungsgesetz* until the 2004 bill for a general anti-discrimination law, all German anti-discrimination legislation included clauses, which directly addressed the incompatibility ‘problem’. As we have argued above, these clauses construed incompatibility as a women’s ‘problem’, which can be solved by flexible working-time, part-time work and family leave. Offering such measures as ‘solutions’ to the ‘problem’ of incompatibility represents it to be about women’s working hours and conditions. Offering flexible hours for women puts women in charge of reconciling work and domestic work, while part-time work construes the problem as being caused by women working too long hours to be able to meet their familial ‘responsibilities’. Family leave for women construes the ‘problem’ as women who work in paid employment *per se*, like the other two measures, it upholds and reinforces the traditional division of domestic labour and does not address the part men play in the ‘problem’. The underlying assumption is that women are responsible for care work even if they are in paid employment, and that care work takes precedence. This implies the notion that women are natural caregivers. Only bringing external childcare into the equation (as proposed in the shelved 2001 Equal Opportunities Act for Private Enterprise) changes the problem representation, because the problem is no

longer represented to be women who ‘neglect’ their ‘domestic duties’ but that those ‘duties’ keep women from working full-time. We can still see, however, that care work implicitly is represented to be women’s responsibility.

The problem representations of indirect discrimination and affirmative action and the one implicit in parallel clauses dealing with incompatibility are contradictory. Indirect discrimination and affirmative action represent discrimination against women as being caused by structural discrimination through male-biased rules of the labour market while the problem representation implicit in the ‘incompatibility clauses’ implicitly upholds traditional unequal gender roles.

5.4 What are the effects of problem representations?

In the previous section we have analysed what anti-discrimination is represented to be about, and then asked what the cause of the incompatibility ‘problem’ is implicitly represented to be. Here, we will go a step further and assess the problem representations we identified above by their likely effects. Drawing on Bacchi’s (1999) insight that we have to step beyond the pure description of claims about issues if we want to provide analysis that is both meaningful and emancipatory, the guiding question in this section will be about the likely beneficiaries of particular problem representations. Are the policy ‘targets’ likely to benefit most from particular problem representations? Or if not, who is?

We can differentiate between three categories of effects problem representations. Each of them will be examined individually in the following sections. First, we will ask how policy subjects and subjectivities are constituted in discourse. Second, we will turn our attention to the limits imposed by discourse on what can be said. We will investigate what effects those limits have on the construing of the incompatibility ‘problem’. And lastly, we will turn our attention to the ‘lived effects’ of discourse.

5.4.1 Constitution of subjects and subjectivities

In this section, we will move on to assess problem representations by their likely effects regarding how policy subjects and subjectivities are constituted in the discourse of anti-discrimination legislation. We will try and tease out implicit characterisations of policy ‘targets’, and reflect upon the consequences of these for the persons concerned. Clarke (2005: 454) critically observes a tendency in governmentality studies to assume that policy ‘subjects are successfully produced by the discourses, appar-

tuses and practises that seek to construct them'. Clarke's observation warns us against quick conclusions. However, we do not argue here that the constitution of policy subjects described here is intended. This question falls outside this study.

Direct discrimination construes the 'problem' of discrimination against women as being about getting women into paid employment. Accordingly, discrimination against women is represented to be a labour market 'problem'. The 'problem' is represented to be caused by unwarranted prejudice against women, making it difficult for them to find suitable employment. Thus, the 'problem' is construed as individual attitudinal aberration from the non-sexist norm, which is supposedly prevalent in society. In this problem representation the 'problem' of incompatibility is caused by discrimination against women accessing employment.

Direct discrimination

Direct discrimination has two different policy targets: discriminated women, conceptualised as a disadvantaged group, and individual men discriminating against women. Women as a whole are construed as potential victims of discrimination, while individual men are construed as perpetrators of discrimination. Characterising women as a discriminated against group, construes them as something very similar to a minority. This affects how women are construed as policy subjects. If women want to make use of respective legislation they have to adopt a particular identity offered by the implicit problem representation: the identity of the disadvantaged, the discriminated against, the marginal. Women are characterised as victims of unwarranted prejudice. Adopting such an identity is not particularly attractive for women who want to pursue a career in paid employment.

This is exacerbated by the fact that the rules of the labour market are implicitly portrayed as generally fair. Therefore, the notion that achievement is based upon individual merit and ability is left unquestioned. Failure to achieve (employment, promotion), thus, will lead women to questioning their ability rather than implicit notions of merit and achievement.

While women are construed as collectively affected by discrimination, men are implicitly characterised as generally not prejudiced against women. By conceptualising discrimination as individual attitudinal aberration, implicitly it is construed as the exception rather than the rule. This means that implicitly the majority of men are characterised as having nothing to do with discrimination against women.

Direct discrimination legislation is complaint-based. As we have argued above, this implies that generally the rules of the labour market work fairly, and discrimination against women is an exception. Discrimination is represented to be an excep-

tional clear-cut event, not a process. If discrimination is represented as exception from otherwise fair rules, the victim's person is moved into the centre of attention as we ask for reasons for the discriminatory event. This is because discrimination is construed as an event between two individuals, and as the perpetrator's attitude is scrutinised so, necessarily, is the person of the victim. The 'problem' of discrimination against women is represented to be treating likes differently. The implicit norm, however, in the labour market is the male worker. Thus, direct discrimination, therefore, has an inbuilt tendency to construe the victims of discrimination as the 'problem', as they do not conform to the 'norm', which remains unquestioned in its male bias. Although the problem representation addresses individual men's misconduct, there is a tendency for the attention to shift from perpetrators to victims. Structural factors remain outside the focus of direct discrimination.

Indirect discrimination

Indirect discrimination is quite similar to direct discrimination in the way it construes women as policy subjects. It also construes the 'problem' of discrimination against women as being about getting women into employment, and about access to promotion. As in direct discrimination, the discrimination against women is represented as being a labour market 'problem'. And as in direct discrimination, incompatibility is construed as being about women finding it difficult to enter the labour market or achieve promotion. The cause, however, is not represented to be individual prejudice but structural factors in the labour market.

Focusing on the structural reasons for discrimination against women in the labour market signifies a huge step forward, because for the first time it acknowledges that the 'rules of the game' are flawed to women's disadvantage. However, the downside of this is that because individual men are replaced as perpetrators by structural forces, women are now the sole policy 'targets'. This is exemplified by the creation by the *Zweites Gleichberechtigungsgesetz* 1994 of women representatives in large government agencies:

'In jeder Dienststelle mit regelmäßig mindestens 200 Beschäftigten ist aus dem Kreis der Beschäftigten nach vorheriger Ausschreibung eine Frauenbeauftragte zu bestellen; bei einem Anteil von regelmäßig weniger als zehn beschäftigten Frauen kann von der Bestellung einer Frauenbeauftragten abgesehen werden.'

'Every agency with more than 200 regular employees has to appoint a women representative following an internal advertisement. If women constitute under ten regular employees, the appointment of a women representative can be waived.'

(Bundesregierung 1993: 7)

Women representatives are responsible for the implementation in government agencies of the Equal Opportunities Act. Creating the position of women representatives implies that women, not men, are targets of policy. Also, we are presented with a situation where there is discrimination but no one is responsible. Anonymous structural factors cannot be called to account in the way men could. This construes women as victims of intangible forces, and at the same time absolves men from actually discriminating against women.

As in direct discrimination, legislation based upon indirect discrimination is complaint-based. This can be seen for example in the provisions of the Equal Opportunities Act 1994 (*Zweites Gleichberechtigungsgesetz*):

‘Verstöße der Dienststelle gegen den Frauenförderplan, dieses Gesetz insgesamt oder andere Vorschriften über die Gleichbehandlung von Frauen und Männern kann die Frauenbeauftragte gegenüber der Dienststellenleitung beanstanden.’

‘If the agency breaches the women development plan, this act in general or other equal opportunities regulations, the women representative can complain to the head of the agency.’

(Bundesregierung 1993: 8)

This point is very important because it implies that although some rules and procedures might be discriminatory, generally the rules of the labour market are fair. Prevalent male-biased notions of achievement, merit and ability remain unchallenged and continue to determine how we think about the labour market.

Again, women are forced to choose the unappealing identity of a victim if they want to make use of anti-discrimination legislation. By characterising women as victims of discrimination, the attention becomes easily focussed on them and what makes them victims of discrimination rather than on the causative factors. From there, it is only a small step to characterising women as the ‘problem’ once again. Men as perpetrators of discriminatory acts do not feature in this problem representation, as it focuses on structures.

Affirmative action

Affirmative action shares most aspects of indirect discrimination with the notable exception that it implies that disallowing indirectly discriminatory rules alone will not lead to equal opportunities for women. Also, its focus has slightly turned from employment to promotion. The ‘problem’ of incompatibility, however, is still represented to be mainly about getting women into employment. It is represented to be structural, caused by male-biased rules in the labour market.

As with indirect discrimination, affirmative action solely focuses on women. It construes women as the sole policy targets of anti-discrimination. We have already argued above that this brings with it an inherent risk to construe women as the 'problem', focusing on them rather than on what causes their discrimination.

Because of the gender-neutral language of affirmative action legislation, affirmative action has to be construed as an exemption from the general rule of equal treatment. Affirmative action is thus represented as consisting of the unequal treatment of women, giving them an advantage over male competitors. This characterises women as beneficiaries of preferential treatment (cf. Bacchi 2004). Therefore, affirmative action has been criticised and challenged as 'positive discrimination' against men. A number of high-profile court cases before the European Court of Justice bear witness to this (cf. *Kalanke v die Freie Hansestadt Bremen* (1995), case C-450/93; *Marschall v das Land Nordrhein-Westfalen* (1997), case C-409/95). Although, in Germany the guideline for affirmative action is to give precedence to women only if both candidates are equally qualified and if women are underrepresented, construing affirmative action as an exemption from equal treatment implies that lesser qualified women are preferred over better-qualified men. For women choosing the identity of so-called 'quota women' that comes with the dominant understanding of affirmative action is not particularly attractive, because it belittles their abilities. While women are represented as beneficiaries of preferential treatment, the structural factors disadvantaging women are not necessarily addressed. Most of all, men's advantaged position in the labour market and society at large remains outside the problem representation. Moreover, as in indirect discrimination, dominant notions of what constitutes ability and achievement are left unproblematised. We will come to the effects of this in the next section. Suffice to say here that women are unlikely to benefit from such a problem representation. In Germany, over a decade of affirmative action in the public sector labour market has not led to a significant improvement of women's position, because given the persistent socially structured notions of ability and merit men can still be chosen over women in spite of affirmative action in anti-discrimination legislation.

For all the above problem representations we can say that by framing discrimination against women as a labour market 'problem' the problem representations construe women as wage earners. However, because none of them address life outside the labour market, the traditional division of labour remains unaddressed and unquestioned. Women's characterisation as wage earners does not imply a change in their characterisation as caregivers.

Managing diversity

Managing diversity is only an emerging problem representation in German anti-discrimination legislation. Moreover, it does yet not occur in its pure form, as it is linked to indirect discrimination and affirmative action.

In managing diversity, discrimination against women is represented to be a labour market ‘problem’, too. However, the discrimination against women is represented to be caused by individual employers’ inability to appreciate the value of ‘diversity’, for which read women’s contribution to their company. Discrimination against women is represented as a human resources ‘problem’, and an internal business ‘problem’. This implies that it is a) in the employers’ best interest to eliminate discrimination and b) that employers are able to achieve this. This problem representation, therefore, represents discrimination against women again as individual aberration based upon attitudinal prejudice. It falls back on the problem representation of direct discrimination, eliminating structural factors from the equation which were established by indirect discrimination and affirmative action. In the German case, incompatibility is represented mainly as being about women’s ability to stay in paid employment after childbirth. The cause of incompatibility is represented to lie in the domestic ‘responsibilities’ of women.

Women are the sole targets of this version of managing diversity. They are construed on the one hand as workers, but on the other hand they are still implicitly construed as the ‘natural’ caregivers of their children. This is likely to exacerbate the ‘problem’ of incompatibility rather than solve it. Further, managing diversity is not about all women but mainly about highly qualified (middle-class) women, who are deemed a valuable ‘human resource’ by employers. Women are characterised as being the same as men. Managing diversity implies that people have to be judged only by their abilities and not by unwarranted prejudice. Those relatively few women who are able to emulate men in their working lives are likely to benefit from this problem representation. Those women who cannot conform to male-biased notions of achievement and merit are very unlikely to benefit, on the contrary. Although, the male worker model is the implicit norm in this problem representation, men are absent from it.

Incompatibility

We have shown above that indirect discrimination and affirmative action from 1994 until 2004 were intertwined in legislation with clauses dealing directly with incompatibility. These clauses contain another problem representation about incompatibility that is inextricably linked to the aforementioned. This problem representation

construes women as almost solely responsible for the reconciliation of domestic care work and paid employment. Women in paid employment continue to be construed as ‘natural’ caregivers by implying that for women care work always takes precedence over paid employment. Women who work in paid employment are characterised as neglecting their ‘domestic duties’ if they do not reduce their working time, take leave or opt for flexible working arrangements. Only in one instance is there a slight departure from this problem representation. When external childcare is proposed as ‘solution’ to incompatibility the ‘problem’ is no longer (exclusively) represented to be women who ‘neglect’ their ‘duties’ but that those ‘duties’ prevent them from working full-time. However, this does not change the fact that care work is in principle allocated to women and not men. Therefore, this problem representation is very unlikely to significantly improve either women’s position in the labour market or even the ‘problem’ of incompatibility.

The problem representations of indirect discrimination and affirmative action and the one sketched out here are also to some degree contradictory, as we have argued above. The simultaneous challenge of discrimination against women through structural forces and the upholding of ‘traditional’ gender roles are likely to exacerbate rather than alleviate the ‘problem’ of incompatibility.

5.4.2 What cannot be thought about within anti-discrimination discourse?

In this section, we will turn our attention to a different kind of effect problem representations have. Putting into practice the social constructionist insight that what is **not** said in discourse is as important as what **is** said, we will look at the limits that are implicitly imposed in the discourse in anti-discrimination legislation on what can be said about the ‘problem’ of reconciliation of paid employment and care work. Then, we will investigate potential effects that follow from these implicit discursive limits.

Interestingly, the limits that are implicitly imposed by the dominant discourse in anti-discrimination legislation are very similar in all the above mentioned problem representations. In this, the discourse in anti-discrimination legislation is markedly different from those in parental leave and childcare legislation. Therefore, we will deal with them simultaneously and then point to individual differences later.

On the most fundamental level, and some variation notwithstanding, all five problem representations examined in the previous section construe discrimination and consequently the incompatibility ‘problem’ as being mainly about participation in the labour market. Discrimination and incompatibility are first and foremost construed as labour market ‘problems’. Although indirect discrimination and affirma-

tive action broaden the scope to include other areas such as education, they nonetheless characterise discrimination mainly as being about women's employment.

Several things follow from this particular characterisation of discrimination as a social problem. To start with, due to this characterisation it is difficult to think about discrimination outside the context of the labour market. It is therefore rather difficult within anti-discrimination discourse to address areas other than the labour market, most notably in direct discrimination and managing diversity. If we are limited in our thinking to the labour market we can only conceptualise factors within this nexus as causative for discrimination. Factors outside the labour market cannot be included in the problem representation, and in the search for the causes of discrimination. This means that important issues such as unequal gendered chances in education and training, and the gendered domestic division of labour in the home and society at large remain firmly outside the focus of anti-discrimination. Policy 'solutions' therefore only intervene into the 'public' sphere of the labour market and not into the 'private' sphere of domestic labour, although the latter shapes the conditions for participation in the labour market. As a consequence of focusing solely on the 'public' sphere the public/private dichotomy is reinforced. Policy interventions based upon a discourse imposing such limits might improve individual women's chances in the labour market and indeed curtail the excesses of discrimination. What they are very unlikely to do is address that the 'world of work' is fundamentally built upon the unequal gendered division of labour.

Secondly, all problem representations construe discrimination as a women's issue, a social 'problem' with which solely women are confronted. In all problem representations women are construed as (the main or even only) policy 'targets'. This means that policies concentrate on women. We have argued above that it is only a small step from concentrating on women to construing women as the 'problem' in discrimination. This way the victims of discrimination become the focus of anti-discrimination policy. Construing women as the main or sole policy 'targets' effectively makes men disappear from sight. By focussing on the disadvantaged (women) the advantaged (men) cannot be thematised. If anti-discrimination is a discourse of disadvantage, the advantage men draw from the system is off limits. Instead of concentrating on those in power who benefit from existing rules, the discourse focuses on the disadvantaged. Within such discourse it is highly unlikely that existing privilege is problematised and addressed. By focussing on the disadvantaged they become the 'Other' who are different from the norm. The norm is, of course, implicitly male and thus unquestioned. The 'Other's' otherness thereby becomes an explanation for their discrimination. For the incompatibility 'problem' construing it as a

women's 'problem' means that women are characterised as being responsible for the reconciliation of paid employment and domestic work. Any inclusion of men into the problem representation is thus precluded. This in turn, makes it highly unlikely that the unequal gendered division of domestic work is addressed.

Thirdly, in all problem representations prevalent notions of ability, merit and achievement are taken for granted. There is no room in any of the problem representations to question and challenge those socially construed notions. In Germany as in other Western societies we come across the deeply ingrained notion that achievement (employment, promotion) should be based upon individual ability and merit. Discrimination is thus construed as an aberration from that expectation.

However, those very notions are socially construed, and they carry an implicit but invisible male bias. What constitutes ability and merit remains determined by the male worker model. Thus, traditionally 'male' abilities, such as physical strength, are valued more highly than 'female' abilities, and 'male' skills are valued as learned, while 'female' skills devalued as 'natural'.

Women's achievement is measured against a male-biased set of criteria. Thus, policy interventions based upon such a discourse are likely to only benefit women who are able to conform to the male model implicit in prevalent notions of achievement. Women who cannot conform are not likely to see their position in the labour market improved. There is no room within this discourse to question the implicit male norm for achievement.

We are now turning to points where the problem representations differ, where they impose different limits on what can be said within discourse. Direct discrimination, indirect discrimination, and affirmative action mainly construe anti-discrimination and therefore incompatibility to be about getting women into employment, while the German version of managing diversity construes it as being about retaining qualified female staff. While construing the 'problem' as getting women into employment might be beneficial for women who want to join the labour market, it closes off the space to problematise the situation of women in paid employment. Within this discourse the 'problem' of incompatibility disappears as soon as women are in paid employment. As this is not the case – arguably the 'problem' of incompatibility only begins at that point – policy interventions based upon this problem representation in anti-discrimination legislation are unlikely to address the 'real' problems employed women face reconciling paid employment and domestic work. Managing diversity with its focus on retaining female staff is more likely to benefit women. However, managing diversity only really addresses highly qualified middle-class women. All other women are rather unlikely to benefit from it.

Although direct discrimination and indirect discrimination differ in regard to the concern and cause of discrimination against women, they both implicitly construe discrimination as exceptional occurrences. This means that both are based on the assumption that generally the rules of the labour market are fair, although indirect discrimination allows perceiving some as flawed. The effect of this assumption is that both problem representations leave no room for fundamentally questioning the way paid labour is organised in society.

Both direct discrimination and managing diversity construe discrimination as individual attitudinal ‘problem’, as individual aberration from otherwise fairly working rules. This problem representation makes it difficult to think about discrimination as something structural and inherent in current society. Conceptualising it as aberration from rules closes off the space to problematise it as being caused by the very rules and procedures it is represented to be an aberration from. While undeniably individual women could benefit from policy interventions based upon such problem representation, women’s position in general is unlikely to be improved. On the contrary, the inherent risk is that attention shifts from the perpetrators to the victims of discrimination weakening the position of women rather than improving it.

Indirect discrimination and affirmative action construe discrimination as a structural ‘problem’. We have argued above that this is indeed necessary and a step forward. Without acknowledgement of the structural nature of discrimination against women, their position in society is unlikely to improve. However, on the other hand this problem representation can blur individual responsibility for discriminatory acts. By emphasising the structural dimension of discrimination, individual perpetrators vanish from the radar.

Affirmative action construes positive measures as preferential treatment of women. As can be seen from its prevalent perception as a violation of the rule of equal treatment, the focus has, again, shifted to women. Thus, it is impossible within this problem representation to problematise men’s privilege. The position of those in power, those who benefit from the male-biased rules of the labour market, is inaccessible to questioning. While women benefit from affirmative action, this problem representation at the same time weakens their position by construing them as receiving unjust preferential treatment.

5.4.3 *‘Lived effects’*

This is the concluding subchapter in our assessment of the likely effects of the discursive construing of a policy ‘problem’. Here, we will examine the ‘real’ effects of

discourse in anti-discrimination legislation. This subchapter rests upon the epistemological assumption expressed above that the fact we conceptualise policy 'problems' as socially 'constructed' does not mean they are not 'real'. For the women concerned, these discursively construed meanings do indeed constitute their reality.

Postpositivist proponents of discursive interventions claim that the formula for emancipation from discursively construed meanings is to challenge those meanings, which delimit how we think about an issue. Most feminist scholars in the field agree that challenging repressive discursive constructions of social 'problems' is both useful and necessary.

In the case of anti-discrimination policy, we have argued above that two characteristics in particular stand in the way of achieving gender equality. Firstly, it is construed as a women's 'problem' in the labour market across the different problem representations; and secondly, 'traditional' notions of merit and what constitutes ability remain prevalent. Discursive 'solutions' to this 'problem' tackle those points. Eveline (1994) appeals to women not to accept the construction of anti-discrimination as a women's 'problem' and to look at men's advantage rather than women's disadvantage, because the former is the flip side of the latter. Eveline (1999:9) argues women should fundamentally question the 'hierarchies of status, privilege and power that are intimately related to the formation of male identities'. Steinberg (1990) and Daune-Richard (2000), having recognised the socially 'constructed' nature of skills and abilities, also suggest challenging existing notions of what constitutes a skill or an ability rather than trying to emulate men's behaviour in the labour market.

Challenging 'traditional' constructions, which have negative effects on women, is of key importance in creating awareness of the causes of women's repression in society. They can trigger long-term processes of change in how people think about social 'problems'. However, while it is necessary on its own a purely discursive challenge of 'traditional' constructions will not be sufficient to bring about women's emancipation. What a purely discursive intervention cannot do is effect immediate change. The way meaning is construed changes neither easily nor quickly. In the meantime, thus, 'traditional' constructions remain dominant. They remain 'real' in so far that they determine how we think about the respective 'problems'.

Here, this means that although women can discursively challenge the construction of anti-discrimination and incompatibility as women's problems, most German women are likely to perceive it as such. They are likely to feel that these 'problems' are fundamentally about being women. The same applies to prevalent notions of ability, skill and merit. Although, it is of critical importance to challenge and hopefully gradually change those notions, this does not happen over night. In the mean-

time, the way women think about achievement in employment or outside are likely to be shaped by 'traditional' male-biased notions of skill and merit.

Turning to the problem representations analysed in the previous sections, we can ascertain that all of them produce 'lived effects'. However, before we set out to analyse those effects we have to point out again that ultimately differentiating between the effects caused by social structures (which are in turn created by discourse themselves), and the meaning-creating effects of discourse itself is impossible. What we can do here is limited to briefly touching on some important 'lived effects' in order to assess problem representations' potential for meaningful change.

Interestingly, similarly to the previous section, the main 'lived effects' are likely to be caused by all problem representations we have dealt with. Therefore, we will deal with those first and turn to individual variations later. The discourse in anti-discrimination legislation is likely to produce three main effects. They are a result of three shared characteristics in problem representations: first, construing discrimination and thus incompatibility as a women's 'problem; second, construing discrimination and incompatibility as labour market 'problems'; and third, upholding and reinforcing 'traditional' notions of merit, ability and skills.

Construing discrimination and incompatibility as a women's problem is very likely to have the effect that women indeed perceive those 'problems' as their 'problems'. This means that women are likely to look for 'solutions' (and thus implicitly also for the causes) within themselves and in their behaviour. This in turn is likely to have an adverse effect on women's self-esteem as this approach falls short of addressing the role of men and gendered structures of work in the equation and is therefore unlikely to render satisfactory results for women. Women are likely to come to feel that they are the 'problem' rather than being the victims.

In the same way as construing discrimination and incompatibility as women's 'problems' is likely to produce the effect of those issues being understood as such, construing discrimination and incompatibility as a labour market 'problem' is likely to result in women perceiving them as essentially labour market 'problems'. For incompatibility this means that women are likely to look for 'solutions' to the 'problem' of reconciling paid employment and care work in the labour market. It is unlikely therefore that the unequal gendered division of domestic work is perceived as part of the 'problem'. Women are thus likely to continue to feel responsible for domestic and care work. This 'lived effect' of discourse in anti-discrimination legislation benefits only men whose way of working remains the implicit norm in the labour market and whose identity as breadwinners (and non-caregivers) remains unquestioned.

Implicitly upholding ‘traditional’ notions of what constitutes ability and skills is arguably likely to, again, make women look inwards, questioning themselves and their qualifications. This is likely to make women feel inadequate and lacking the attributes and skills necessary to succeed in the labour market. Again, women are likely to look for the causes of discrimination and incompatibility within themselves, which is likely to increase the strain of trying to reconcile paid employment and care work.

Direct discrimination and managing diversity have another effect: women affected by discrimination are likely to start looking for the reason for discrimination within them, because as both problem representations construe discrimination as an individual attitudinal ‘problem’, the victim’s personality is subjected to the same scrutiny as the perpetrator’s.

The clauses dealing with incompatibility directly construe it as women’s responsibility. The likely effect of this is that women in fact feel responsible for reconciling paid employment and care work. This means that it is likely to be women, who feel they have to make compromises, adjust their lives to the needs of reconciliation and even withdraw from pursuing careers in employment. Implicit in the notion that reconciliation is women’s responsibility is also their characterisation as ‘natural’ caregivers. This reinforces ‘traditional’ gender roles rather than overcoming them. As women are made to feel responsible for reconciliation of paid employment and care work, they will also have to bear the strain of attempting it alone. Although, anti-discrimination policy’s declared aim is to address incompatibility, it is thus unlikely to reduce the burden, both psychologically and physically of women.

5.5 Omissions and blind spots

After this look at the likely effects of problem representations in anti-discrimination legislation, we will now move from the analysis of what can be pinpointed in discourse to what remains invisible because it is absent. In this section, we will therefore extend our inquiry to cover problem representations that are outside the existing discourse in anti-discrimination legislation. In accordance with our epistemological position, we will turn to feminist research in anti-discrimination policies in order to detect what is missing from the discourse in legislation. Based on these insights, we will try and establish what remained unaddressed in anti-discrimination legislation discourse. The idea underlying this approach is that in order to assess problem representations what is not said is just as important as what is said (cf. Bacchi 1999: 13).

This is indeed one of the central insights of social constructionism. Whatever is not mentioned, not said in any discourse – here, in the problem representations introduced above – could not consequently be possibly part of what the ‘problem’ is represented to be. Things that are not mentioned are, therefore, necessarily taken for granted and thus left unproblematic. This is an important point worth emphasising, because what is left unproblematic in discourse is not addressed by policies based upon it. What is taken for granted is very unlikely to be changed by policy interventions based upon the respective problem representations. As gender equality and the emancipation of women are the underlying normative ideal of this study, we will therefore need to look very carefully at what is not part of problem representations in anti-discrimination policy legislation.

Interestingly, the problem representations we identified above all share the most important omissions and blind spots. Therefore, we will deal with these collectively, and only point out exceptions where necessary.

The most important blind spot in the problem representations in anti-discrimination policy is men. Men are almost completely absent from all problem representations constituting the discourse in anti-discrimination legislation. The only exception is direct discrimination where men are represented as perpetrators of discrimination. However, even there discrimination is represented as a women’s problem. If men are not part of problem representations this has profound consequences. Firstly, the implicit male worker norm remains unchallenged and will continue to provide a yardstick against which women will be measured in the labour market. Secondly, the unequal gendered division of domestic labour, which makes the male worker norm possible in the first place, is not questioned but rather reinforced (cf. Höyng 1998: 301). The unequal gendered division of domestic labour, care work and childcare, are absent from the discourse as if it had nothing to do with discrimination against women. Even if discrimination against women is understood as a labour market ‘problem’ only, this omission amounts to missing the point of discrimination altogether.

Inextricably linked to the omission of men in problem representations of anti-discrimination is the total absence of the domestic sphere. Problem representations exclusively construe the ‘public’ sphere of paid employment as the scene of discrimination. This reinforces the ‘public/private’ dichotomy and consequently, the structures of ‘private’ sphere of the family are taken for granted and left unproblematic.

The limitation of problem representations to the labour market also excludes other spheres of society. Discrimination against women is not represented to be a complex ‘problem’ encompassing all areas of society but a limited phenomenon. Education, vocational training, political representation, taxation are all not represented to

be fields in which women are discriminated against, although it is prevalent and systemic in all these areas. There is some variation in the failure to represent discrimination against women in its complexity, though. Indirect discrimination goes furthest in including other areas of society into its representation of the causes of discrimination against women. It at least thematises education and vocational training, while the emphasis on the labour market persists.

A further blind spot is that women's integration into the labour market is not equivalent to an end to their discrimination. All problem representations construe anti-discrimination as being about getting women into jobs. However, firstly these jobs are often in the service and office sectors, generally low-paid sectors with low perspectives for professional development, and secondly, more often than not women are employed part-time (cf. Bothfeld 2005). Both kinds of work are often exploitative and likely not to be sufficiently paid to enable women to live an independent life. Getting women into employment alone clearly does not signify successful anti-discrimination policy while discrimination against women is perpetuated in employment.

The gender pay gap and discrimination against women in pay are further blind spots (cf. Klenner 2004; Pfarr 2001). Neither problem representation entails the implementation of existing equal pay legislation. Although, equal pay is a policy issue in its own right, its absence from the anti-discrimination discourse does not bode well for women. If implementation of equal pay laws is not part of anti-discrimination discourse, equal pay is construed as a non-binding ideal, not a prerequisite of equality.

Finally, issues of power in society and within the family are left untouched. Power asymmetries in families lead to unequal bargaining power of men and women, reinforcing the 'traditional' gendered division of labour. The conditions for the power imbalance are created by factors that remain unaddressed in the discourse in anti-discrimination legislation: the normative male breadwinner ideal, the devaluation of female work, and the advantages men draw from their position in the 'world of work', tax legislation, and insufficient childcare (Cyba 2002: 35). As power asymmetries in society remain unaddressed, men's ability to collectively shape the culture of work goes unscrutinised (Höyng 1998). Men thus continue shape the patriarchal culture of work.

5.6 Alternative problem representations

After having assessed problem representations in the discourse in anti-discrimination legislation by their likely effects and having exposed their blind spots from a

feminist perspective, we will turn to possible alternatives. In the concluding section of this chapter, we will therefore leave the discourse in anti-discrimination legislation and turn to feminist problem representations, which have not made it into the mainstream discourse in legislation. Our aspiration is to introduce feminist alternatives to the existing discourse in anti-discrimination legislation.

We have argued repeatedly that because women are construed as policy ‘targets’ in anti-discrimination legislation, men are likely to benefit the most from the existing discourse. Women are construed as the policy ‘problem’ and their behaviour is represented as problematic. Policy interventions target women, not men, whose behaviour therefore remain the implicit norm in the labour market.

To counter this effect Eveline (1994) suggests shifting from a discourse of women’s disadvantage to a discourse of men’s advantage. Bacchi (2006: 46) proposes to shift the focus away from women’s ‘differences’ to the ‘gendered norms in key political concepts’. The problem with construing discrimination as disadvantage is that the advantaged position is construed as the norm rather than an unfair extreme. Instead of implicitly characterising women as the policy ‘problem’, men are put centre stage. This could have several positive implications. First, the advantage men take of the male-biased system of work organisation is thematised, which is a first necessary step towards reducing unfair advantage. Second, attention is drawn towards men as holders of power rather than scrutinising the ‘victims’ of discrimination while those who define what discrimination is escape attention. Together this accentuates the structural character of discrimination against women.

Bacchi (1996) emphasises the second point arguing we need to address the power of ingroups who determine what the norm is if we want to escape being forced to unwittingly accept their ‘constructions’.

A different alternative problem representation holds that the ‘problem’ in discrimination is men’s attitude towards paid employment and how men’s identity is linked with it. Protagonists of this problem representation, such as Eveline (1999) and Höyng (1998) argue we have to concentrate on men and help them overcome their fixation on paid employment, their ‘heroic dedication to mental and physical work’ which comes ‘at the cost of joining in the emotional and familial labour and its rewards’ (Eveline 1999: 9–10). The aim is to make it attractive for men to discover and pursue other interests in addition to paid employment; crucially this has to include care work (Höyng 1998: 316). Höyng suggests two possible avenues for this, the redistribution of work, and the general reduction of working time. If discrimination against women, and linked with that incompatibility, were thought about in this way, ‘solutions’ would be more likely to focus on men rather than women.

Feminist proposals regarding the redistribution of domestic work and the reduction of working time will be introduced in more detail in the next chapter. Hobson (2002), Pascall and Warren (2006) Klenner (2005), Notz (1998), Creighton (1999) all advocate a considerable reduction of general working time hoping that it would 'free' men to do more care work, leading to a more equal division of domestic labour.

Including general working time in the discourse of discrimination against women is an important step because it thematises the existing structures of the labour market as major contributive factor to gender inequality. Ultimately, in this problem representation the cause of discrimination against women is represented to lie in the unequal division of domestic labour. Trying to address the unequal gendered division of domestic and care work construes the 'problem' of discrimination against women as a complex gender equality 'problem' rather than a narrow labour market 'problem'.

Parallel to the question of working time, the general redistribution and re-conceptualisation of work is seen by some scholars as a way of tackling gender inequality in the labour market and beyond (cf. Höyng 1998). Williams (2000: 271) argues that our work ideal is gendered: 'It is framed around the traditional life patterns of men and so discriminates against women.'

Both Beck (1998) and Rifkin (1997) offer ideas for a re-conceptualisation of work, although Rifkin is quite limited to 'traditional' voluntary work. Beck's idea of a new 'civic work' located between the state and private sector could lead to care work being organised in this new sector. However, unfortunately it is unlikely this would lead to a re-distribution of work, as the care work would probably still be carried out by women. Therefore, the most promising concept comes from Bergmann (1998). Bergmann's developed a new concept of work. His idea of 'New Work' consists of replacing 'traditional' paid employment with three equal forms of work: 'traditional' paid employment; high-tech self-providing, utilising the infrastructure of employers; and new work, which is defined as what individuals really, really want to do. Although, gender equality, is not explicitly part of Bergmann's considerations, taken up by feminists 'New Work' could herald an end to patriarchal 'time culture' which depends upon women carrying out the care work. Reconceptualising work represents the 'problem' of discrimination against women as inextricably linked to the way our societies choose to organise work. This potentially transcends the narrow focus on paid employment leading to a better understanding of structural discriminatory processes. The 'problem' is represented to be caused here by the male-biased notions of what work is.

5.7 Summary

In this chapter we analysed how the ‘problem’ of incompatibility of paid employment and care work has been construed in anti-discrimination policy. We have shown that, both before 1998 and after, incompatibility was represented to be about women’s employment. Incompatibility was represented to be about discrimination against women in the labour market.

For the public sector, problem representations remained largely unchanged, showing a combination of direct discrimination, indirect discrimination and affirmative action. However, for the private sector, the problem representation of direct discrimination was supplemented and partly replaced by indirect discrimination after 1998.

Policy interventions in anti-discrimination policy contain implicit assumptions about the cause of incompatibility. Here, two seemingly contradictory problem representations operate simultaneously. On the one hand, incompatibility is represented to be caused by attitudinal and/or structural barriers in the labour market to women’s and mothers’ (continuing) employment, while at the same time the ‘problem’ is represented to be caused by the demands of full-time employment. The common ground is that non-employment as well as full-time employment is represented as ‘problematic’.

With a shift to indirect discrimination as problem representation for the private sector, discrimination is increasingly construed as a structural ‘problem’ of male-biased rules in the labour market. However, all problem representations construed women as the sole or primary policy targets. This makes it likely that they and not men are perceived as the ‘problem’. While women are characterised as bread winners, their ‘traditional’ characterisation as caregivers remains intact. Thus, women are construed as being responsible for the reconciliation of paid employment and care work. Consequently, although particularly well-qualified middle-class women could benefit from such representation, it is men, whose privileged position in the labour market is not questioned, rather than women, who are likely to benefit most from problem representations in anti-discrimination policy.

The discourse in anti-discrimination legislation imposes limits on what can be said within discourse. The likely effects of these limits have been assessed in this chapter. Construing discrimination as a labour market ‘problem’ makes it unlikely that the gendered division of labour will be addressed, because problem representations focus on the ‘public’ sphere of employment while the ‘private’ sphere of care work remains invisible. Representing discrimination as a women’s ‘problem’ makes

it unlikely that the advantages men reap from their position will be thematised. Finally, as male-biased notions of merit, achievement and ability remain in force, it is unlikely women in general will benefit much from policy interventions, because they are measured against male-biased criteria.

Construing discrimination as a women's 'problem' in the labour market while leaving 'traditional' notions of achievement, merit and ability untouched means that it is likely that women perceive it as their 'problem', and continue to feel responsible for the reconciliation of paid employment and care work, questioning their behaviour and abilities rather than looking elsewhere. Men benefit most from this, as their position and behaviour are unchallenged.

In order to address omissions in the existing problem representations, we have introduced feminist contributions calling to replace the discourse of women's disadvantage with one of men's advantage (cf. Eveline 1999), focussing on men's attitude towards paid employment (cf. Höyng 1998), and putting the organisation of paid employment, and particularly working time centre stage (cf. Hobson 2002).

6 Childcare policy

6.1 What is childcare policy represented to be about?

As in the previous chapter, the purpose of this first section is to describe problem representations in their historical context. The aim is to tease out what the ‘problem’ is represented to be. I will therefore ask what the concern of childcare policy has been in Germany.

In Germany, political responsibility and funding for childcare policy is located historically at the level of the federal states, the *Länder*, and the local authorities, the *Kommunen*. The federal government can, however, enact federal legal guidelines restricting state legislation.

Childcare policies very broadly speaking are about the provision and regulation of public or private childcare outside the extended family. It is provided through three separate institutions: the *Krippe* for under 3 year olds, the *Kindergarten* for 3 to 6 year olds, and the *Hort* for children of schooling-age to the age of 10.²⁵

Today’s childcare policy has its predecessors in mediaeval churchly initiatives in poor relief; free cities and territorial princes followed suit (Bock-Pünder 1998). Its early institutionalisation began in the second half of the 18th century when the Enlightenment triggered a conception of childhood as a distinct phase in every human being’s development (cf. Rousseau 1762). In its aftermath, the aristocracy and above all the growing middle classes began founding public childcare initiatives as charitable institutions. These were unambiguously targeted at the poorest strata of society, underclass and impoverished working class. The main aim of public childcare was to restore bourgeois moral conceptions and prevent moral waywardness and physical decay in poor children and thus society at large. Also, it was meant as indirect poor relief by enabling the poorest mothers to participate in paid employment. In 1840, Fröbel opened the first public kindergarten in Germany open to all (who could afford it). Fröbel’s concern was early years education and child development rather than poor relief or moral direction (Erning 1987). Hence, the ‘social problem’ childcare was represented as a ‘solution’ to, was the poor standard of public education and treating children the same as adults, but not poverty. However, the previous problem representation, construing childcare as being about poverty, remained dominant (cf.

²⁵ They roughly correspond to day-nurseries, kindergartens and after-school care clubs.

Reyer and Kleine 1997). The emerging problem representation, implicit in Fröbel's suggestions, would not become influential in policymaking until the second half of the 20th century, when it gained in prominence.

Until then, public childcare, thus, was represented to be about emergency intervention into the family in cases where it failed to provide the kind of care deemed necessary by bourgeois mores. This intervention overwhelmingly affected underclass and working class families. In this problem representation, the family is implicitly construed as the natural unit responsible for childcare and early education. Family *de facto* meant mothers, grandmothers and sisters as with increasing industrialisation and the separation of working and living it was they who too were left in charge of the domestic sphere. Childcare in this problem representation is construed as a strictly private matter. Accordingly, there is no public responsibility for it beyond the alleviation of poverty, and intervention is only justifiable in emergencies.

Given this problem representation it is not surprising that no real federal or *Länder* childcare policy developed in West Germany until the 1960s. The allocation of childcare to the 'private' sphere of the family meant that policy intervention would not take place. Childcare facilities were mainly run by charitable organisations or religious communities, such as the Red Cross, the Samaritans, or the Catholic and Lutheran Churches.

Catholic social teaching had a significant influence on the thinking about childcare. Its concept of subsidiarity holds that whenever possible matters should be handled by the lowest or smallest competent unit. Consequently, the state should only intervene in such matter where the capacities of individuals or small groups are exceeded.

German constitutional theory also played an important role after the Second World War. The interpretation of the new constitution erected high hurdles against public intervention into the autonomy of the individual and family. This was in large parts a reaction to the totalitarian intrusion into this sphere during the rule of the Nazi party.

In Nazi Germany (1933–1945) public childcare had been considerably extended and predominantly brought under state control. Extended public childcare provision was part of a range of pro-natalist policies. Its main aim was to encourage and enable women to have more children to provide the *Reich* with future colonisers, in line with the National socialists' *Blut und Boden*²⁶ ideology. Also, it was meant to provide

²⁶ *Blut und Boden* translates into 'blood and soil'. It was used to mean that German people had a right to live on German soil. It also implied the forceful extension of Germany at the cost of its eastern neighbours and the colonisation of the new territories by German settlers.

early years education and indoctrination with Nazi ideology and gender role models, preparing boys for becoming soldiers and girls for becoming mothers (Ernig 1987).

After the Second World War, childcare policy developed very differently in the two German states. In the Federal Republic, childcare was reallocated discursively to the 'private' sphere. Public childcare was represented as being discredited by the totalitarian Nazi state (Fuhrmann 2005). Consequently, no public childcare policy was formulated. It was left to charities and the Churches to reconstruct and reorganise it with very little public funding (Ernig 1987). Therefore, childcare provision remained very patchy. The undersupply of public childcare provision was an integral part of the restorative social and family policies of the Adenauer era (1949–1963) described in the previous chapter, which aimed at restoring the 'traditional' family with male breadwinner and female housekeeper.

In the German Democratic Republic, on the contrary, childcare was incorporated into the public education system and upgraded considerably. Amalgamating education and childcare showed that childcare was represented to be partly about early education. Socialising children into the socialist order was one of its main aims. In addition to this problem representation, the large-scale extension of childcare provision for all age groups indicates another concern. In 1988 childcare provision reached 80 percent coverage for under 3-year-olds and 94 percent for children between 3 and 6 (cf. Hagemann 2006). As the socialist welfare state that developed after in the GDR after the Second World War was based upon integration into employment, childcare policy had the explicit aim of facilitating mothers' employment. Childcare policy was represented as being about facilitating mothers' participation in full-time employment.

In the West, from the mid 1960s the representation of public childcare as emergency intervention in cases of family 'malfunction' was challenged, at least for the group of 3 to 6 year olds. This became part of the general and pre school education reform discourse. This discourse had two strands. One, triggered by Picht (1964) centred on economic aspects of education and proclaimed that education in Germany was in such a catastrophic state, with too few students entering upper secondary and higher education, that it would in the near future affect the economy at large. The other, by Dahrendorf (1965) saw education as a universal civil right and demanded the elimination of social and gender related barriers to secondary and higher education. Both strands were taken up and combined by Social Democrat and liberal policymakers of the governing coalition. In 1970, regarding childcare, an interparty commission recommended the transformation of kindergartens into a form of pre-school (cf. Deutscher Bildungsrat 1970). Subsequently, some of the *Länder* for the

first time legislated for public childcare, and a number of (non-binding) early years education curricula were developed. This signified a discursive reallocation of childcare to the 'public' sphere. Childcare provision for 3 to 6 year-olds in kindergartens was now represented to be a public responsibility. No such development, however, took place for under 3 year olds and children of school age. Childcare for children under 3 and of schooling age, thus, remained firmly assigned to the 'private' sphere of the family. Childcare policies therefore only affected 3 to 6 year-old children, and childcare was represented to be a problem exclusively concerned with that age group. Under increasing budgetary strains preschool education reform was abandoned at the end of the 1970s. The new problem representation partly tied in with the earlier marginal problem representation which construed childcare as an educational problem, but emphasised the economic aspect of education. Hence, at the end of the day childcare for 3 to 6 year olds was represented to be an economic problem.

At the end of the 1980s, the conservative Minister for Family Affairs proposed a statutory right to a kindergarten place, and suggested children should be able to enter it at 2 ½ years. The underlying concern was children's psychological development in the face of an increasing number of single mothers and only children and thus, children's welfare. Childcare policy was, again, represented to be about supporting the family where it failed to provide the necessary environment for children to grow up in. Only this time the emphasis was on psychological development rather than poverty.

The ensuing 1991 *Kinder- und Jugendhilfegesetz*²⁷ (KJHG) abandoned the idea of a statutory right to a kindergarten place but continued to represent childcare as being about children's welfare needs. Paragraph 24 makes this clear: 'All children, whose welfare necessitates special attention in day care institutions, should have access to such help.'²⁸

Childcare policy was not concerned with facilitating women's workforce participation at all, but with providing welfare for children of mother's who deviated from the 'norm' of female housekeeper, which the conservatives were eager to promote.

German unification in 1990 brought an unexpected turn. In 1992, political conflict about the standardisation of abortion law in East and West Germany led to a statutory right to a kindergarten place being introduced for 3 to 6 year olds.²⁹ The 1992,

²⁷ *Kinder- und Jugendhilfegesetz* can be translated into 'children and youth assistance act'.

²⁸ 'Alle Kinder, für deren Wohl eine Förderung in Tagespflegeeinrichtungen oder in Tagespflege erforderlich ist, sollen eine entsprechende Hilfe erhalten.'

²⁹ The law foresaw a transitional period until 1996, when the right became enforceable.

*Schwangeren- und Familienhilfegesetz*³⁰ replaced both, liberal GDR legislation allowing abortion up until the twelfth week, and restrictive West German legislation allowing abortion only for limited indications. The political compromise included a trade-off in which stricter abortion rules for East Germany were made possible by better childcare provision for the whole of Germany. The transfer of the West German problem representation in abortion law to East Germany was balanced by the partial adoption of the East German problem representation in childcare policy by West Germany.

In the context of abortion law reform, the introduction of a statutory right to a kindergarten place was presented as a ‘solution’ to the problem that East German women would be forced by the stricter abortion law to give birth to unwanted children and consequently be compelled to give up participation in paid employment. In 1975, the Federal Constitutional Court had ruled that this potential outcome had to be avoided by policymakers reforming abortion law (cf. Meyer 1996).

In consequence of the *Schwangeren- und Familienhilfegesetz*, childcare policy was represented for the first time in West Germany as being about relieving mothers from care work and facilitating the pursuit of paid employment. However, the rationale behind this was to make abortion more difficult for women. Childcare and abortion became linked. Further, childcare policy was represented to concern only the group of 3 to 6 year-old children. For under 3 year olds and children of school age the law only envisioned childcare provision ‘as the need arises’³¹. Further, kindergarten places are usually half-day places, and therefore do not enable mothers to work full-time in paid employment. Childcare policy, thus, was represented to be about women’s participation in paid employment, but only part-time employment.

In conclusion, in Germany there have been four different problem representations in childcare policy: childcare as welfare; childcare as early years education; childcare as facilitating women’s labour market participation; and childcare as encouraging women to have more children.

6.2 What was childcare policy represented to be about 1998–2005?

In the 1998 general election, the coalition partners, Schröder’s Social Democrats and the Green Party campaigned on improving childcare provision (cf. Bündnis 90/ Die

³⁰ ‘Schwangeren- und Familienhilfegesetz’ translates into ‘pregnant women and family assistance law’.

³¹ ‘Nach Bedarf’.

Grünen 1998; Sozialdemokratische Partei Deutschlands 1998). In their 1998 coalition agreement both parties declared their intention to extend childcare provision for all age groups. However, the pledges remained vague, and no detailed proposals were brought forward at this stage (cf. Bündnis 90/Die Grünen and Sozialdemokratische Partei Deutschlands 1998).

The first policy intervention into childcare policy was a piece of taxation legislation. In 2001, a tax deduction for childcare was introduced for parents. It consisted of a basic tax allowance for all parents (1080 Euros for single, 2160 for married parents), and a separate allowance of 1500 Euros for childcare related expenses for parents who are in paid employment (cf. *Zweites Gesetz zur Familienförderung*). In order to be eligible for the second allowance, both parents have to be in paid employment.

Such a tax deduction for childcare firmly ties childcare to participation in the labour market. Childcare policy therefore is represented as being about women's participation in paid employment. Women who are not in paid employment are not eligible for tax allowances. The assumption underlying this is that women who do not participate in the labour market are responsible for providing care for their children. Therefore, they do not need financial aid to pay for external childcare. Underlying this is, again, the idea that women are natural care-givers for their children. Men, however, are not part of this problem representation.

Further, as tax allowances, however, disadvantage lower incomes; the 'problem' is represented to be about earners of above-average and higher incomes.

In April 2002, Chancellor Schröder's policy statement on family policy made clear again that the need for childcare provision was discursively being tied to work-force participation. He said that upgrading childcare provision so it met the needs of families was economically necessary, because it was the only way to tap into labour market reserves in the interest of the growth of the economy:

'Such childcare provision is essential, because (...) only this way all (...) talents can be used for the growth and prosperity of our economy (*Regierungserklärung* of 18/04/2002).'³²

In their second legislative period, the coalition made reconciliation of paid employment and care work one of their priorities. In their 2002 coalition agreement it stated:

³² 'Eine so ausgestaltete Betreuung ist mehr und mehr auch ökonomisch notwendig, weil sie ökonomisch vernünftig ist und nur auf diese Weise alle, aber auch wirklich alle Begabungsreserven in unserem Land für das Wachsen und Gedeihen der Volkswirtschaft genutzt werden können.'

‘[Creating] reliable childcare provision for children under 16 years that satisfies the need is the main aim of family policy in the next years.’³³ (29)

Regarding childcare, the centrepiece of reform was extending childcare provision. In 2004, the coalition introduced a bill aimed at reforming the 1991 *Kinder- und Jugendhilfegesetz*. The ensuing *Tagesbetreuungsbausgesetz*³⁴ was, as the name suggests, targeted at upgrading daycare provision. The accompanying explanatory statement avowed four explicit aims: early years education; facilitating reconciliation of domestic work and paid employment; pronatalism; and gender equality (cf. Bundesregierung 2004):

‘Die Sicherung des Angebots an Tagesbetreuung im Osten sowie der Betrauungsausbau im Westen sind angesichts einer notwendigen früheren Förderung von Kindern und im Interesse der Vereinbarkeit von Familienleben und Arbeitswelt wichtige Bestandteile einer nachhaltigen Familienpolitik. Ein Ausbau der Infrastruktur ist (...) ein erfolgreicher Weg, um die Entscheidung für das Erfüllen von Kinderwünschen zu erleichtern, um Familien und der Gesellschaft insgesamt bessere Entwicklungschancen zu geben sowie für mehr Geschlechtergerechtigkeit zu sorgen.’

‘In the interest of an earlier education of children and the reconciliation of family life and the world of work it is necessary to safeguard the current level of childcare provision in the East and to extend childcare provision in the West. Extending childcare infrastructure is (...) an effective way of enabling people to realise their wish for children, to give better chances to families and society as a whole, and to promote equal opportunities.’

(Bundesregierung 2004: 1)

The law’s explicit aim was to upgrade childcare provision for under 3-year-olds so that by 2010 the need would be met, and to improve quality of private day care through training of personnel. The target was to create 230.000 new day care places for under 3 year olds, 1/3 of which in private day care. To that end, the law contains a concrete definition of what constitutes the need for childcare for under 3 year olds. According to these minimum criteria for need, the local authorities have to provide daycare places at least for children whose both parents or single parent work in paid employment³⁵, or who need childcare because their welfare needs are not met by their parents:

³³ ‘Ein bedarfsgerechtes und verlässliches Betreuungsangebot für Kinder bis 16 Jahre ist oberstes Ziel der Familienpolitik in den nächsten Jahren.’

³⁴ ‘*Tagesbetreuungsbausgesetz*’ can be translated as ‘day care development act’.

³⁵ Including parents in compulsory education, higher education, vocational training or occupational retraining, cf. Bundesregierung 2004.

‘Für Kinder unter drei Jahren sind mindestens Plätze in Tageseinrichtungen vorzuhalten, wenn 1. die Erziehungsberechtigten oder, falls das Kind nur mit einem Erziehungsberechtigten zusammen lebt, diese Person einer Erwerbstätigkeit nachgehen oder eine Erwerbstätigkeit aufnehmen (...) oder 2. ohne diese Leistung eine ihrem Wohl entsprechende Förderung nicht gewährleistet ist (...).’

‘For children under three years of age day care places have to be provided if 1) both legal guardians or, if the child lives with only one legal guardian, this person are in paid employment or intend to take up paid employment or 2) if the welfare of the child is jeopardised without early education in day care.’

(Bundesregierung 2004: 11)

According to these criteria, only paid employment or failure of the parents to provide appropriate care and early education constitutes the need for childcare. We can leave parental neglect aside here for the time being, as the matter is nothing new having been brought forward from previous child protection legislation. More important is what the act has to say about the other criterion for the calculation of the need of childcare places. If paid employment constitutes a need for childcare places, childcare is necessarily represented as being about participation in paid employment. The above section about intending to take up paid employment demonstrates that women are the prime addressees of this piece of legislation. Given the existing division of labour in Germany women are far more likely than men not to take up or interrupt paid employment in order to do the family care work. Therefore, basing the computing of required childcare places partly on women’s intention to take up paid employment demonstrates that childcare is represented to be about women’s paid employment. However, the implicit change is limited by the fact that only paid employment of both parents or of a single parent constitutes the need for public childcare. The obvious reverse conclusion is that the paid employment of only one parent does not constitute this need. Therefore, the existing division of labour is not substantially challenged. Further, the fact that childcare is represented to be about women’s employment, does not necessarily mean full-time employment. Here, as the law contains no requirement for full-time day care, it is implicitly represented to be about women’s part-time employment.

Further, making the need for public childcare contingent on being in employment represents childcare as being about women who are currently in paid employment. This implies that childcare is increasingly represented to be about making having children more attractive for women who are in paid employment, rather than making it easier for women to return into employment after giving birth. This particularly concerns highly qualified female professionals (cf. Bien, Rauschenbach and

Riedel 2006). Therefore, childcare policy is also represented to be about professional women not having children.

According to the criteria, local authorities are not obliged to create day care places for children whose mothers are not in paid employment. This means that those other mothers are implicitly expected to take over the care work. And this, in turn, again implies a notion of women as natural caregivers and housekeepers. Such a problem representation clearly is not about gender equality.

The extension of day care is to be achieved to a large extent through private childcare provided by child minders. Therefore, childcare is not represented as being about early years education either.

Tying extended childcare provision to the economy's need for skilled employees might seem a good way for more women to earn an independent living. However, firstly, we have argued that enabling full-time female employment is not what childcare is represented to be about. Given the current gendered domestic division of labour, it is far more likely that women only become secondary wage earners dependent on their partners' support. Secondly, tying the need for extended childcare provision to the economy's needs entails the danger of it being reduced at any time when the economy is in decline.

6.3 What is the cause of incompatibility represented to be?

In the previous sections we have given a summary of what childcare policies are represented to be about – the concern of childcare policies – and how this has changed over time.

In this chapter, we will go further into the question of problem representations in childcare policies. First, we will ask what the cause of the 'problem' of incompatibility of domestic work and paid employment was represented to be in childcare legislation. Did what was represented as the cause of the incompatibility 'problem' change, and if so, in what respect?

Recapitulating, up until 1992 the 'problem' of incompatibility of domestic care work and paid employment was not part of problem representations in childcare policy. Then, by the introduction of a statutory right to a childcare place through the 1992 *Schwangeren- und Familienhilfegesetz*, childcare was represented for the first time as being about facilitating mothers' participation in paid employment.

However, the introduction of a statutory childcare place for 3 to 6 year olds translated a Federal Constitutional Court ruling on abortion into law stating that having

children must not be incompatible with women's wish for self-actualisation through participation in the labour market. Through this link to the abortion issue, the cause of the incompatibility 'problem' was represented to be the increased professional aspirations of women, resulting in insufficient childcare provision for mothers of 3 to 6 year old children. The fact that an increasing number of women wanted to participate in paid employment and continue to do so after the birth of a child was, thus, represented to have caused the need for childcare to facilitate their aspirations. This way, women's choices and aspirations become represented as the cause of the 'problem' of incompatibility. Further, this problem representation also implies that the provision of childcare for under 3-year-olds does not fall into the remit of public policy. It is allocated to the 'private' sphere of the family. Therefore, the division of labour between men and women is not addressed, reinforcing the 'traditional' division of labour where the mother becomes a full-time caregiver and the father the sole breadwinner. This shows that the 'solution' this law offers to women's incompatibility 'problem' is sequential reconciliation: mothers become full-time caregivers on the birth of their children for a minimum of three years. Then, they re-enter the labour market, but only part-time, as kindergartens only offer half-day care, remaining the main caregivers. By assigning childcare in the first three years of a child to the 'private' sphere, women are, thus, again implicitly constituted as natural caregivers who are *de nature* in charge of raising their children. This neatly ties in with the incremental extension of statutory parental leave to 3 years in the late 1980s and early 1990s described in the previous chapter.

Let us turn now to the childcare policies of the red-green coalition. Did problem representations change in regard to the implied cause of the 'problem' of incompatibility?

The introduction in 2001 of a tax allowance for childcare related expenses (cf. Zweites Gesetz zur Familienförderung) also represented childcare as being about mothers' participation in paid employment. Evidence for this is that only gainfully employed mothers were eligible for the allowance. What, now, is the cause of the incompatibility 'problem' represented to be in such a 'solution'?

If a tax reduction (in the guise of a tax allowance) is presented as a 'solution', implicitly the cause of the incompatibility 'problem' is represented to insufficient financial means on the part of the beneficiary. That the tax allowance was contingent on both parents being wage-earners means that the cause was represented to be the family's inability to afford external childcare, rather than women's. This fact also shows in the bill's definition of the policy 'problem' addressed by the proposed legislation:

‘Konsequente Fortsetzung der wirkungsvollen Steuerpolitik der Koalition und der von ihr getragenen Bundesregierung zugunsten von Familien insbesondere mit niedrigem und mittlerem Einkommen.’

‘The continuation of the coalition’s and the government’s effective fiscal policy for the benefit of low and middle-income families.’

(Fraktionen der Sozialdemokratischen Partei Deutschlands und Bündnis 90/Die Grünen 2001: 1)

According to such a representation, if only families had enough financial means to be able to afford external childcare, the incompatibility ‘problem’ would be solved. The domestic division of labour remains untouched by this problem representation.

As only women who are currently in paid employment are eligible for tax reductions, childcare is not represented to be about helping mothers with children into paid employment (e.g. after parental leave) but making it easier for working mothers to stay on in paid employment. Further, as tax allowances generally disadvantage earners of lower incomes, childcare is represented here as being about helping (highly qualified) higher-income earning mothers to remain in paid employment after the birth of their children.

Finally, as both parents have to be in paid employment in order to be eligible, the family, again, is represented as a homogeneous unit. Women are not constituted as independent agents. Their particular problems in finding and staying in paid employment do not feature, nor do power imbalances or conflict within the family.

Also, the tax allowances are quite low and do not cover the cost of external childcare. This suggests that only part-time, complementary external childcare is represented to be the ‘solution’ to the incompatibility problem. In turn, this implies that mothers were expected to take over a substantive part of childcare themselves, meaning that they could not possibly engage in full-time paid employment, if it was only for this piece of legislation.

The key piece of the red-green Government’s childcare legislation, however, was the 2004 *Tagesbetreuungsbaugesetz*. It too, represented childcare as being about women’s employment. Yet, it also contains another emerging problem representation, construing childcare as being about women not having children.

The explicit aim of the *Tagesbetreuungsbaugesetz* was extending childcare provision for under 3 year olds so that it would meet the childcare needs of families. However, the 2004 law did not introduce a statutory right to a place in a childcare institution. It merely introduced concrete criteria for what constitutes the need for childcare for under 3 year olds. According to these criteria the *Länder* and local authorities have to provide daycare places only for children whose both parents or single parent work in paid employment, higher education, or occupational retraining.

These criteria firmly tie the need for childcare to participation in paid employment. For children whose mothers (or fathers) are not gainfully employed, provision of childcare places remains purely voluntary.

If calculation of need for childcare places is based in such a way upon the number of gainfully employed mothers, the problem is represented to be mother's lack of access to the labour market (cf. Bacchi 1999: 131). If extended childcare provision for gainfully employed mothers of under 3-year-olds is presented as 'solution', implicitly the cause of incompatibility is represented to be insufficient childcare provision for this group, forcing them to spend too much of their time doing care work, to the ultimate extent that they are forced out of the labour market. This implicit cause can be detected in the bill's rationale for the proposed legislation:

‘Die Verbesserung der Kinderbetreuung (...) hilft Müttern und Vätern, Berufstätigkeit und Kindererziehung zu vereinbaren, die Erfüllung eines Kinderwunsches zu erleichtern und Chancen für Familien und die Gesellschaft insgesamt zu erweitern.’

‘The expansion of public childcare provision (...) helps mothers and fathers to reconcile paid employment and care work, facilitate the fulfilment of people's wish for children, and to improve chances for families and society as a whole.’

(Bundesregierung 2004: 21)

If an expansion of childcare provision helps parents to reconcile paid employment and care work, in reverse the current lack of childcare provision is represented as the cause of incompatibility of paid employment and care work. As we have argued above, if the need for childcare places is calculated on the basis of the number of mothers who are currently in gainful employment, the concern is less about getting mothers (back) into paid employment than facilitating staying on in paid employment for female professionals who have a baby. Therefore, this legislation also entails a second, different but related, problem representation, which is concerned with facilitating gainfully employed women's decision to have a child.

However, what is represented to be the cause of the 'problem' is the same in both problem representations implicit in the *Tagesausbaubetreuungsgesetz*: insufficient external childcare provision for under 3-year-olds. And the 'solution' offered for women's incompatibility 'problem' is identical: parallel pursuit of paid employment and care work. However, this problem representation, also, too, construes the family as a homogeneous unit. Women are not conceptualised as independent actors but subsumed into 'the family'. This leaves the traditional division of labour within the family unaddressed, reinforcing 'traditional' gender roles rather than questioning them. Further, in being concerned with the family's capacity to afford childcare, women's economic independence is not at the heart of this problem representation.

6.4 What are the effects of problem representations?

After having questioned what childcare is represented to be about and what is implicitly represented to be the cause of incompatibility, in this section we will look at the effects of problem representations. In doing so we draw on Bacchi's (1999) insight that we have to step beyond the description of competing claims about issues if we want to provide analysis that is both meaningful and emancipatory at the same time. This is what her contextual social constructionist approach allows us to do.

We will try and assess the problem representations described in previous sections by asking for their likely outcomes, effects and implications. The guiding question in this section will be about the likely beneficiaries of particular problem representations: who is likely to benefit most from particular problem representations and who is not?

We differentiate between three categories of effects of problem representations. Each of them will be examined individually in the following sections. First, we will ask how policy subjects and subjectivities are constituted in discourse. Second, we will turn our attention to the limits imposed by discourse on what can be said. We will investigate what effects those limits have on the construing of the incompatibility 'problem'. And third, we will try and assess the 'lived effects' of discourse.

6.4.1 *Constitution of subjects and subjectivities*

In this section, we will assess the likely effects of the main problem representations, in regard to how policy subjects and subjectivities are constituted in childcare policy discourse. We will try and tease out implicit characterisations of policy 'targets', and reflect upon the consequences of these for the persons concerned. Basically, hitherto childcare policies comprised two different 'solutions' for the 'problem' of incompatibility of paid employment and care work. The first, we call it sequential reconciliation, envisages women exiting the labour market on childbirth to become full-time caregivers. After an at least 3 year period as full-time caregivers on maternal leave, women then return to part-time paid employment while still being in charge of the remaining care work.

Sequential reconciliation

The 1992 *Schwangeren- und Familienhilfegesetz* introduced sequential reconciliation as 'solution' to the 'problem' of incompatibility of paid employment and care work through the introduction of a statutory right to a childcare place for 3 to 6 year olds.

This piece of legislation is inextricably linked with the parallel harmonisation of abortion law in East and West Germany. Intelligibly, therefore, the policy 'targets' of this legislation were exclusively women. Although formulated gender-neutrally, in its motivation and rationale, the introduction of a statutory right to a childcare place for 3 to 6 year olds was exclusively aimed at women.

The reform of abortion law and, linked with that, childcare legislation was meant to prevent women from using abortions as a means of birth control, as had become common practice in the former German Democratic Republic. The explicit aim was to 'encourage' women in their decision for a child. In other words, improved childcare provision is the condition under which women could be legally forced into having children they do not want to have. In the 1970s, The (West German) Federal Constitutional Court had precluded any tightening of abortion law if no provisions were put into place preventing that being forced by law to carry a child to term automatically meant becoming a full-time caregiver, thereby violating women's right of self-determination.

If women are thought of as having to be 'encouraged' by extended childcare provision not to have abortions, implicitly, this carries the message that women will take morally wrong decisions about their life and pregnancy if they are left alone. This way, women are construed as policy 'problems'. Women who prefer a career in paid employment to becoming full-time caregivers for at least three years are, thus, characterised as self-centred, career-focussed, and selfish to the degree of what anti-abortionists call 'murder'. Women's aspirations for a self-determined life and economic independence become represented as morally wrong and selfish. It has to be emphasised here also that men's career aspirations are never characterised in this negative way. Further, pregnancy, abortion, and raising children are represented as having nothing at all to do with men. The effect of this is that solely women are characterised as being responsible for these aspects of life. Men are absent from the equation. Therefore, sequential reconciliation contains an implicit characterisation of men as sole breadwinners while their children are aged 0 to 3, and main breadwinners when they are entitled to a childcare place aged 3 to 6.

Underlying the implicit moral condemnation of women there is a biologically deterministic notion of gender roles: if women become pregnant, they have to become mothers; if they are mothers, they have to become caregivers to their children. This is represented as the 'natural' cause of things. Any deviation from this 'natural' chain is represented as being morally wrong and detrimental to children. Notably, fathers and men, again, are absent from this equation. Implicitly, they are therefore construed as natural breadwinners, while their behaviour is not subjected to moral questioning.

Although the right to a kindergarten place for 3 to 6 year olds in itself was a considerable improvement, women were still construed as the natural caregivers of their 0 to 3-year-old children. Childcare policy was not represented as being about 0 to 3-year-olds, and accordingly this group did not feature in policy proposals. Therefore care for these young children was implicitly assigned to the 'private' sphere of the family. There overwhelmingly mothers carried out the care work. Excluding 0 to 3-year-olds from problem representations of childcare fits in with the notion that children need their mother for healthy psychological and mental development. Through construing women as natural caregivers (full-time to 0 to 3-year-olds, and part-time thereafter), women are also construed as dependent on their male partners. As childcare provision was not envisaged to cover the whole working day, and after school care was unavailable to most women, women could only work in paid employment part-time. Part-time work, however, cannot generate enough income to lead an independent life.

The second policy 'solution' to the 'problem' of the incompatibility of paid employment and care work, we call it parallel reconciliation, envisages women returning to their positions in paid employment after a much shorter period of maternity leave.

Parallel reconciliation

Let us briefly anticipate an important point we elaborate on in the next chapter. In parental leave policy, parallel reconciliation was a marked shift, as men for the first time were represented as being part of the incompatibility 'problem'. In childcare policy, this is not to the same extent the case: fathers' participation in paid employment only constituted a need for a childcare place for a 0 to 3-year-old if their partner was also gainfully employed. This makes clear that fathers' participation in the labour market was not represented to be the cause of the need for external childcare. However, vice versa, mothers' gainful employment alone does also not constitute the need for external childcare. This shows that although men's behaviour is not represented to lie at the core of the incompatibility 'problem', there has been a change in how men are characterised as policy subjects. Or rather, in contrast to sequential reconciliation, men have become policy targets: secondary targets merely, but targets none the less.

In childcare policy, the 2004 *Tagesbetreuungsbaugesetz* actually introduced parallel reconciliation as a 'solution' to the 'problem' of the incompatibility of paid employment and care work, although it can also be found in the introduction of tax deductions for childcare related expenses in 2001. It has replaced sequential reconciliation as the dominant problem representation in childcare policy.

Extending childcare places for 0 to 3-year-olds with the aim of meeting the needs of all families for the first time in unified Germany represents childcare as being about this age group. From a feminist perspective this can be seen as a marked improvement, as childcare for young children is not automatically allocated to the 'private' sphere and therefore to women.

However, basing the number of new childcare places required on both parents' participation in the labour market, firmly ties childcare to participation in paid employment. Women are characterised as a valuable human resource in a time of shortage of highly qualified labour. While this helps overcome the notion of women as 'natural' caregivers, it entails a new danger: if women are thus characterised as a labour reserve that can be tapped into when the economic situation requires it, it is easy to reverse the argument to push women out of the labour market in a time of economic decline (cf. Bacchi 1999).

Linking the need for childcare places to (qualified) women's employment constitutes women as passive targets of policy. Construing women in such a way leaves no room for arguments of social justice and gender equality. Further, by representing 'family' needs as the problem, women are not construed as independent agents, but as part of 'the family'. Only single mothers who are active in the labour market constitute a need for a childcare place. In a way, this construes single mothers or, in other words, fatherless families as a social 'problem'.

In the criteria determining the need for childcare, paid employment is implicitly equated with the failure of the family to provide adequate childcare: the computing of the number of required childcare places is based upon mothers in paid employment and 'failing' families. This shows how discursive constructions of 'good motherhood' are still prevalent.

Through the linking of the need for childcare with family 'failure' in criteria defining what constitutes the need for childcare, employed women are further characterised as needy and deficient. They are characterised as being in need of the help of the welfare state because they cannot fulfil the dual role of breadwinner and caregiver. This in turn implies that it is solely women's role to reconcile those two roles.

Summing up, on the one hand, women are thus characterised as workers and additional breadwinners and on the other hand, if as mothers they are gainfully employed, they are implicitly still characterised as deficient, as 'bad mothers'. This perpetuates the strain and pressure on women, particularly on middle-class women who are the primary policy targets of parallel reconciliation. Consequently, '[m]iddle-class women who engage in paid labour (...) are caught between discursive con-

structions of the ‘good mother’ and a model of self-actualization based on paid labour (Bacchi 1999: 147).

Turning to the characterisation of men, there is much less to be said. Through parallel reconciliation in childcare policy, men are for the first time in this policy area also characterised as policy targets. According to the 2004 criteria, single fathers constitute a need for childcare places just as single mothers. Fathers also for the first time in childcare policy are characterised as potential caregivers. If a mother is gainfully employed and her partner not, a family is not assumed to need external childcare in the computing of required childcare places. This is a meaningful development. However, this economic setting, where the male partner is not active in the labour market and the female is, is very rare in Germany. Moreover, characterising fathers as potential care-givers in extraordinary circumstances does not change the fact that men are still characterised primarily as breadwinners.

6.4.2 What cannot be thought about within childcare discourse?

In this section, we will turn to another kind of effect problem representations can have. First, we will look at the limits that are implicitly imposed in discourse in childcare policy legislation on what can be said about reconciliation of paid employment and care work. In a second step, we will ask about the effects that follow from these limits.

In childcare policy, we have identified two main problem representations of the ‘incompatibility’ problem: sequential reconciliation and parallel reconciliation. In the legislation of the red-green Government, parallel reconciliation has replaced sequential reconciliation as the dominant problem representation. However, as we have seen in the previous section, both problem representations also have a number of similarities, for example in how they characterise women. They share a number of implicit assumptions and presuppositions. This should not surprise us at all, as even competing discourses necessarily incorporate elements of what they oppose (cf. Cameron 1990). The incorporation by one problem representation of elements of another epitomises the difficulty of moving outside a discourse, the conceptual and interpretative frameworks in which we think about any given issue (cf. Foucault 1977).

Above, we have argued that the discourse in childcare legislation implicitly equates women’s participation in paid employment with failure of the family to provide adequate childcare: temporary absence from the family home because of gainful employment is implicitly represented as another way in which mothers can fail their children. Therefore, ultimately, external childcare provided by welfare associations or

local authorities is represented as emergency intervention in the interests of a child where its 'natural' providers of care fail to 'function'. This implies that the family – for which read the mother – is the 'normal' space in which children are cared for. Any other organisation of childcare is therefore represented as a deviation from the 'natural' norm. And as such, it can only be second best (cf. Jurczyk 2005). The implicit ideal, even in parallel reconciliation, is still mothers becoming full-time caregivers for their children. What follows from this is that the existing discourse makes it impossible to think about external childcare as 'normal'. It in fact makes it very difficult even to think about it as something positive. It is very unlikely indeed that such a representation of childcare contributes anything to alleviating the dilemma employed mothers find themselves in, torn between constructions of the 'good mother' and the wish for personal independence and a fulfilling job. As long as 'demand' for places plays a part in the 'solution', extra-familial childcare is linked to women's failure to provide adequate care, because the norm is that no childcare is needed.

Second, justifying the need for extended external childcare by the economy's need for their skills represents childcare as a privilege for (highly qualified) gainfully employed middle-class women. Within this framework, it is impossible to think about childcare as a basic social right for all women, or even an obligation of society to women in the name of gender equality. More gender equality, thus, is very unlikely to be an effect of childcare policy. Further, representing childcare in this way closes off the space to address the issue that with middle-class women actually the least needy are becoming 'beneficiaries' of extended external childcare. Thus, it legitimises, under the guise of improving the possibility for women to reconcile paid employment and care work and gender equality, the inequality of the most disadvantaged women (cf. Bacchi 1999: 131).

Third, underlying the skills discourse is the presupposition that marketable skills are more valuable than non-marketable skills. This reinforces the devaluation of care and domestic work and a simultaneous over-evaluation of paid work, with the effect of perpetuating the unequal gendered division of labour in society. To think outside the assumptions of this framework is impossible within the discourse in childcare legislation, making changes to the gendered division of labour a very unlikely outcome of childcare policies. Highly qualified middle-class women are likely to benefit from better availability of external childcare, but reconciling paid employment and care work will remain their 'problem', rather than men's. Women with less marketable skills are unlikely to benefit from policies based on such problem representations as the current ones. The main beneficiaries, although they are not direct policy 'targets' are men, as their privileged position in society is not put into question. It re-

mains firmly off limits even in parallel reconciliation, so that thinking about men's privileges is not possible within this discourse.

Fourth, as we have shown above, the representation of childcare as public responsibility is contingent on women's participation in paid employment. If women are not gainfully employed, childcare is represented to belong to the 'private' sphere. Given the existing division of labour and gender roles, this means that childcare is still represented to be women's responsibility (cf. Letablier and Jönsson 2003).

Although, initially parallel reconciliation seems to be able to at least dilute the dichotomy of 'public' and 'private' spheres, in fact its effect is the opposite: tying a public responsibility for childcare to women's participation in the 'public' sphere of the labour market may partly reassign this particular aspect of childcare to the 'public' sphere, but at the same time fundamental dichotomy is reinforced, with women's care work firmly assigned to the 'private' sphere. Therefore, within this discourse in childcare legislation it is impossible to conceptualise childcare as a fundamentally public 'issue'.

Fifth, the discourse in childcare legislation does not address the domestic division of labour between women and men. Therefore, the existing 'traditional' division of labour is reinforced. Again, men are more likely to benefit from this than women. The way society is organised, depending on women's unpaid labour, goes unchallenged. We shall come back to this in the section dealing with omissions and blind spots in problem representations.

And finally, by basing the computing of required new childcare places on 'family' needs, the family is construed, yet again, as homogeneous unit. First, this closes off the space to think about power relations between men and women. Women's economic dependency on men, particularly full-time caregivers', cannot be thematised. Existing gender roles and attitudes are reinforced rather than changed. Further, it is very difficult with this framework to conceptualise women as independent agents with interests different from their partners'. The conservative discourse on the harmonious family construing it as the pillar of society is still prevalent. Within the discourse in childcare legislation, therefore, women's subordinate position in society cannot fundamentally be improved, nor can we address issues such as domestic violence or abuse.

6.4.3 'Lived effects'

In this section, we will conclude our assessment of possible effects of the discursive construing of a policy 'problem' by venturing a look at the 'real' effects of discourse

in childcare legislation. The *raison d'être* for this subchapter is provided by the assumption that the socially 'constructed' nature of policy 'problems' does not make them somewhat unreal. For the people concerned, discursively construed meanings do constitute their reality.

Proponents of discursive interventions claim that the true way to emancipation is to challenge the socially construed meanings, which delimit how we think about an issue. Most feminist scholars in the field agree that challenging repressive discursive constructions of social 'problems' is both useful and necessary. In our case, we have identified the construction of women as 'natural' caregivers as one main obstacle to gender equality. A discursive 'solution' to this 'problem' would entail appealing to women not to accept this construction. Proponents (cf. Williams 2000) tell women to reject the notion that being a woman is somehow intrinsically linked to becoming the main caregiver, and start thinking differently about raising children, most importantly to include men in it. Williams (2000: 271) encourages women to challenge the 'way society tells women that children should be raised **and** [own emphasis] the way it chooses to organise market work'. Kremer (2006) points at the changeability of ideals of care indicating women should think differently about the social place for childcare, promoting the ideal of professional care.

However, while challenging repressive discursive constructions is necessary, it alone cannot achieve the emancipation of women. This approach ignores that construed meanings do not change easily, and in the meantime the construed meanings remain 'real', determining what we think and feel about those issues in question. For our research this means that regardless of discursive feminist interventions for most German women, motherhood is for the time being very strongly associated with being a caregiver for the child. Simply to suggest women should think differently about themselves misses the point (cf. Bacchi 1999). We will have to keep this point in mind for our analysis of alternative problem representations in the section after the next.

Both main problem representations we encountered above in childcare legislation produce 'lived effects', although one important disclaimer has to precede our argument: differentiating between effects of discourse and effects of material policies, between the meaning-creating normative effects of discourse and the effects of social structures themselves created by discourse, is ultimately impossible. However, briefly introducing some important 'lived effects' of policy discourse in childcare policy will be helpful in order to assess policies' potential for change.

The policy discourse in childcare legislation produces two key 'lived effects' for women. The first, which we will elaborate on in the next chapter on parental leave, is

that in childcare policy in spite of some change women are still construed as ‘natural’ caregivers to their children. This corresponds to the equivalent construing of women as ‘natural’ caregivers in parental leave discourse. Although, highly qualified middle-class women are also construed in parallel reconciliation as workers and breadwinners, this does not affect women’s characterisation as ‘natural’ caregivers to their children, which persists. Far from dismantling the ‘traditional’ division of labour between men and women this problem representation reinforces it.

The ‘lived effect’ of this characterisation is that German women on the one hand still feel primarily responsible for care work. Women perceive themselves as ‘natural’ caregivers to their children. We will discuss the implications of this in the next chapter; therefore, we will concentrate our attention here on one aspect. While still feeling responsible for care work, middle-class women (in particular) feel also obliged to compete with men on unequal terms in paid employment after childbirth. Given that the world of employment is designed for male workers who have their domestic and care work done for them by their female partners, this is not likely to reduce the ‘real’ problems women face trying to juggle the demands of paid employment and care work. On the contrary, construing women as both workers and caregivers while excluding men and the organisation of work from the problem representation of the incompatibility ‘problem’ is only going to exacerbate women’s dilemma. Middle-class women are expected to fulfil two roles at the same time: male worker and female caregiver. The likely effect of childcare policy is therefore that women feel more strained than before. Being expected to fulfil two roles at the same time without men’s involvement is very likely to leave women feeling more inadequate than before, because they find it hard to achieve the new implicit ideal.

The second ‘lived effect’ is created by the fact that in childcare discourse dual breadwinner households are equated with dysfunctional families. The prevalent presupposition in childcare policy is that childcare should be provided within the family. Only if the family provide childcare because the parents do not have the ability or are not in a position to do so for whatever reasons, extra-familial childcare is accepted as a good ‘solution’. For women, thus, participation in the labour market is implicitly put in the same category as child abuse or neglect – that way ultimately, participation in paid employment by mothers is likened to, say, alcoholism. Consequently, for many women using external childcare is tantamount to conceding failure to provide adequate care for one’s child. In effect, both ‘lived effects’ combine to exacerbate rather than alleviate the ‘real’ problems mothers of young children experience when they participate in paid employment.

6.5 Omissions and blind spots

In this section, we will widen our scope beyond the discourse in childcare legislation. Our methodological framework demands we turn to feminist research in the field of childcare policies in order to identify what is missing from discourse. On this basis, we will try and establish what remained unaddressed in childcare legislation discourse. Underlying this approach is the notion brought forward by social constructionism that what is not said is just as important as what is said (cf. Bacchi 1999: 13). Things that are not mentioned, not said in discourse – here, in the problem representations introduced above – are consequently not part of what the ‘problem’ is represented to be about. What is not mentioned is, therefore, necessarily taken for granted and left unproblematic. This point is worth emphasising because what is left unproblematic in discourse is not tackled by policies based upon it. And what is taken for granted is very unlikely to be changed by policy interventions based upon the respective problem representations. Gender equality and the emancipation of women being the underlying normative ideal of this study, we need to look very carefully at what is not part of problem representations in childcare policy legislation.

Above, we have assessed the effects of discourse in childcare legislation imposing certain limits on what can be expressed at all within it. Here, we do something closely related; and our basic theoretical assumption remains the same: whatever remains outside the discursive construction of the ‘problem’ is very unlikely (to say the least) to be changed. Only, in this section we focus on things that could possibly have been said within discourse but have not.

The most momentous blind spot in childcare discourse is men. We have alluded already to the absence of fathers from problem representations in childcare policy. Childcare thus continues to be represented as a women’s ‘problem’ that can only be addressed by targeting women. By omitting fathers from problem representations in childcare legislation automatically care work is assigned to mothers. This reinforces the ‘traditional’ division of labour within the family. Even parallel reconciliation does not provide any leverage to question the current domestic division of labour. The advantage men derive from this is their privileged position in the labour market, perpetuated by not being part of discourse.

Further, as we have argued in the previous section, the absence of fathers from discourse makes it near impossible to address the unequal gendered division of labour between men and women in the wider society. Without thematising men’s privilege it is unlikely it will be reduced to the benefit of women. Men’s privilege is inextricably linked with the ‘public/private’ dichotomy in which childcare is assigned to the ‘private’ sphere. Not addressing men in childcare discourse also perpet-

uates this dichotomy which in turn brings forward and perpetuates a situation, in which men occupy better paid and higher valued positions in the labour market.

In conjunction with that, what is further left out in discourse in childcare legislation is the organisation of paid employment in German society. It is implicitly taken for granted and thereby treated as a given that it is beyond the scope of political intervention. All the focus is on interventions into women's lives not into the social structures that shape them. The current organisation of paid work is based upon the 'traditional' division of domestic labour, in which women 'free' their partners for full-time gainful employment by attending to care and domestic work. Therefore, the implicit model of a worker is based upon a male norm and relies upon the unequal gendered division of domestic labour. Therefore, women entering the labour market have to do so under disadvantaging conditions. To illustrate, there are certain 'female' professions, like nurses and nursery teachers that offer no scope for professional development and operate on the assumption that women will only be active in them until the birth of their first child (cf. Bertram 2004). Women, who are the disadvantaged through the organisation of paid work, cannot compete with men in the labour market on an equal footing. As long as the organisation of paid work itself is omitted from problem representations, the chances for real gender equality are slim.

Sequential and parallel reconciliation also both completely fail to acknowledge the diversity of women's experiences and problems. Women have very different experiences of incompatibility. In parallel reconciliation, highly qualified middle-class women are the sole policy targets. Women are treated as a homogeneous group, as if all women belonged to the middle-class and had the same problems staying in employment after childbirth. But, many women face problems entering the labour market at all. Further, social disadvantage is reinforced by unequal access of women of different social strata to extra-familial childcare (cf. Bien, Rauschenbach and Riedel 2006).

The failure to bring non middle-class women into the picture can also be made clear elsewhere. In the 2004 *Tagesbetreuungsausbaugesetz*, private child-minders are scheduled to account for 1/3 of the planned expansion of extra-familial childcare. Although the 2004 legislation entails some reference to better training and quality control, childminding remains an unqualified profession. This situation is illuminated by the bill's section on qualifications required from childminders:

'Geeignet (...) sind Personen, die sich durch ihre Persönlichkeit, Sachkompetenz und Kooperationsbereitschaft mit Erziehungsberechtigten und anderen Tagespflegepersonen auszeichnen.'

'Suitable (...) are persons who display an appropriate personality, qualification, and willingness to work with legal guardians and other day-care workers.'

(Bundesregierung 2004: 11)

Although the wording is gender neutral, childminding is an almost exclusively female occupation. Therefore, the bill's emphasis on personality and willingness to work with others betrays an underlying assumption that women are natural caregivers. The mention of qualifications is meaningless because no formal qualifications are required. Accordingly, childminding is low paid, and usually not a full-time occupation. Childminders cannot earn enough to be able to support themselves; they rely on the financial support of their male partners.

The upgrading of extra-familial childcare by means of childminders, therefore, will probably make it easier for high-skilled middle-class women to stay in paid employment, but it will do by exploiting low-skilled women and at their cost. Low skilled women in general are unlikely to benefit from policies based on parallel reconciliation.

Further, parallel reconciliation is implicitly based on the assumption that participation in paid employment is 'good' for mothers. What is missing here is that for many women with children, gainful employment, given the current organisation of the labour market, is not necessarily liberating. Most of the expansion of female employment in Germany has been in part-time employment in the service sector. Many of those positions neither offer job security nor sufficient pay to lead an economically independent life. Moreover, many women are engaged in menial, repetitive and dirty work with low social status that can hardly be thought of as providing a basis for self-actualisation.

6.6 Alternative problem representations

In this concluding section, we will leave the discourse in childcare legislation and turn to problem representations, which have not made it into this mainstream discourse. Focusing on these marginal problem representations we aim at offering feminist alternatives to the existing discourse in childcare legislation.

Above we have tried to assess existing problem representations in childcare policy by their likely effects, exposing who was likely to benefit from them and who not. We have argued that while women are construed as policy 'targets' men are likely to benefit the most from the existing discourse.

Although, middle-class professional women are also likely to benefit somewhat from upgraded childcare provision for 3-year-olds, at the same time the characterisation of women as 'natural' caregivers is perpetuated. Together with the new characterisation of middle-class women as workers and breadwinners, this is likely to deep-

en the dilemma women face about paid employment and care work. Working-class women on the other hand, are discouraged from taking up paid employment.

A discourse that does not include men does not address gender inequality and the unequal gendered division of domestic and paid labour. Women in general are not the beneficiaries. By focusing exclusively on women, discourse in childcare legislation perpetuates and reinforces the implicit male norm upon which the labour market is built. Within the framework of this discourse the benefits men draw from this and their advantaged position cannot be challenged or altered. Therefore, we will here discuss alternative feminist problem representations, which by addressing these fundamental issues could possibly improve women's situation.

Drawing on Pateman (1989) and Lister (2000), Bacchi (2006: 46) suggests shifting the focus from women's dependence on men to men's independence, thus 'questioning men's lack of participation in care giving activities'.

Many feminist scholars demand a substantial upgrading of public childcare provision, both in terms of quantity and of quality. Fox et al. (2006) argue that low-waged women in particular would benefit from accessible and affordable all-day childcare by enabling them to increase their working hours. This would help them escaping the part-time 'trap' of low-paid, menial work with no prospects for career advancement.

However, instead of construing childcare as welfare, or as early childhood education, or as necessary to facilitate women's participation in paid employment, Moss (1997) conceptualises childcare as multi-faceted 'community need'. Moss calls for 'early childhood services', publicly funded universal childcare institutions, for all children irrespective of their parents' employment status, bringing forward the argument of the 'social value' of childrearing. Rejecting the notion of services as business, he envisages childcare institutions as community resources meeting diverse needs, such as care, education, socialisation, and family support.

Construing childcare as 'community need' rather than women's need could be an improvement. It potentially transfers the incompatibility 'problem' from the 'private' to the 'public' sphere. However, neither does it address the gendered division of domestic labour nor the gendered division of labour in society. Men and the organisation of paid work remain outside discourse and so does the fact that overwhelmingly women will provide childcare in public institutions.

The closest resemblance to Moss' concept can be found in Sweden, Norway and Denmark, where a near universal right to affordable and high quality public childcare exists. However, even in Sweden childcare is still linked to the employment status of parents (cf. Nyberg 2004).

In the light of the abovementioned omissions of the ‘community need’ problem representation it is not surprising that Nyberg (2004) remains critical in her assessment of Swedish childcare policy. She ascertains that although Swedish childcare policy enables women to be more economically independent and promotes a dual-earner model, it does not promote dual-carer families.

On the face of it, the concept of childcare as ‘social investment’ as mapped out by Jenson (2006) or Lister (2006) is quite similar to ‘community need’ in its advocacy of universal and accessible public childcare. This problem representation encapsulates the notion that states must provide care and education to young children for two reasons: an economic and a sociopolitical. First, it aims to supply the economy with well-educated future employees and at the same time enable everyone irrespective of their background to lead an independent life through participation in paid employment. Second, ‘social investment’ aims at enabling all citizens to play an active role in society. Historically, Knijn and Kremer (1997) and Jenson (2006) argue, ‘social investment’ has been part of Danish ‘social pedagogy’. As in ‘community need’ however, the problem is that gender equality is not part of the problem representation. ‘Social investment’ emphasises the economic benefits of public childcare at the cost of women’s equality. The gendered division of domestic labour and of paid labour is not addressed. Therefore, although ‘community need’ and ‘social investment’ can bring very real improvement for women in combining paid employment and childcare work, it locks them into being responsible for childcare. The fundamental issue of the unequal gendered division of labour in society is unlikely to be affected by these problem representations, at least in the foreseeable future.

The third alternative problem representation in childcare discourse might have the most potential to address the incompatibility ‘problem’. Scholars who favour this problem representation argue that childcare has to be about men and not concentrate exclusively on women. Gornick and Myers (2003: 10) argue that childcare has to be deprivatised in order to address the gendered division of labour. Belonging to this strand of thought, Leira (2006) conceptualises universal childcare as a basic social right. This problem representation entails that the ‘problem’ in childcare is the unequal gendered division of domestic labour, which in turn is inextricably linked to the organisation of paid employment and gender equality (cf. Letablier and Jönsson 2003; Gornick and Myers 2003). As long as the fundamental issue of the male bias in the organisation of paid employment is not addressed, childcare provision might make women’s employment/care balancing act easier to bear, but reconciliation will remain a women’s ‘problem’.

This problem representation implicitly rejects the notion implicit in most other problem representations that the market should determine how we live our lives.

Rather, its proponents (Bacchi 1992; Klenner 2005; Notz 1998) hold the labour market should be reorganised in such a way that it accommodates care work as an integral aspect of life.

Fraser (1997) and, drawing on her for Germany, Klement and Rudolph (2003) argue that the opposition between care giving and breadwinning should be dismantled by making women's complex lives the model for the organisation of society in a universal caregiver model. Ultimately, this aims at restructuring the institution of gender itself.

Central to this demand is the regulation of labour conditions far beyond the European Union's Working Time Directive. Feminist scholars argue that in order to make men caregivers we need to overcome the notion that it is individual choice that prevents them from it (cf. Hobson 2002). Instead, we need to look at the social conditions that provide the prescriptive framework for those 'choices' (Pascall and Warren 2006). The idea is that reducing general working hours for men and women could create conditions under which men are 'freed' to take over more care work, resulting in a more equal division of domestic labour. Klenner (2005), Notz (1998) and Creighton (1999) advocate a drastic reduction in general working time, establishing a shorter full-time standard for all employees while maintaining a living wage. Knijn and Kremer (1997) and Knijn (2003) in their concept of 'inclusive citizenship' envisage a right to public childcare embedded into the regulation of labour conditions, including a reduction of working time.

Such a reduction of working time represents the 'problem' of incompatibility as a gender equality 'problem' addressing the role of men and the organisations of work. It might have the potential to counter the gendered division of care work.

6.7 Summary

In this chapter, we analysed how the 'problem' of incompatibility of paid employment and care work was construed in German childcare policy. From its beginnings to the early 1990s, the dominant problem representation in childcare policy represented it to be about children's welfare. In 1992, it was represented for the first time as being about mothers' continued participation in paid employment, albeit part-time. From 1998 to 2005, this problem representation remained dominant in childcare legislation.

Although, regarding the concern of childcare policy the year 1998 marks no crossroads, what is represented implicitly as the cause of the incompatibility 'problem' is fundamentally different. While the 1992 act represented women's aspirations to a career in paid employment as the root cause of incompatibility, after 1998 the insufficient externalisation and socialisation of childcare became represented as the

cause of the 'problem'. Parallel reconciliation replaced sequential reconciliation as the dominant problem representation.

Sequential reconciliation targeted solely women, whose behaviour was characterised as a policy 'problem'. Women were construed as natural, full-time caregivers during the first three years of their children's life while fathers did not feature. Parallel reconciliation targets mainly women, but men appear as potential caregivers at the margins. Women's characterisation as sole caregivers is broken up by their parallel characterisation as breadwinners, but at the same time they remain construed as caregivers. Both problem representations construe the family as a homogeneous unit.

In our assessment of the effects of limits imposed in discourse in childcare legislation, we found that the construing of the 'private' sphere of the family as the 'normal' space for childcare, which makes reconciliation women's responsibility, makes it difficult to talk about childcare as an 'public', extra-familial activity. Further, construing a skills shortage as justification for childcare provision makes it unlikely it will be framed as a basic social right, or even an obligation of society towards women, leaving the inequality of the most disadvantaged women unaddressed. Construing marketable skills as more valuable than non-marketable skills makes it unlikely the unequal gendered division of labour will be addressed, although, individual highly-qualified women are likely to benefit from this representation. Finally, the characterisation of the family as a homogenous unit makes it difficult to address issues of gendered power imbalance.

Assessing the 'lived effects' of discourse we argued that construing women as 'natural' caregivers is likely to leave them feeling responsible for care work. Construing middle-class women simultaneously as breadwinners while men remain largely absent from discourse is likely to exacerbate women's feeling of being responsible for reconciliation and, thus, their incompatibility, rather than to reduce it. Characterising external childcare as an anomaly is likely to create a feeling of failure in women who make use of it and negatively affect uptake.

The absence of men from discourse, the organisation of paid work, and the exploitation of low-skilled women by middle-class women were identified as important omissions in the discourse in childcare policy legislation. Pointing to alternative problem representations, we introduced feminist contributions suggesting that instead of thinking about childcare as being about women's employment, childcare should be represented as being about the gendered division of labour (cf. Klenner 2005; Notz 1998; Creighton 1998). This would entail reorganising the labour market so that it accommodates care work.

7 Parental leave policy

7.1 What is parental leave policy represented to be about?

In this chapter, we are subjecting parental leave policy to an analysis. According to our theoretical framework it is essential that the historical context of problem construing be given particularly careful attention, the tool for which is what Foucault calls genealogy. Problem representations change over time; the observation of this change makes it possible to question what seems to be self-evident and natural. Therefore, historical analysis of leave policies will have its starting point in the 19th century; well before the actual period of inquiry and long before the terms incompatibility or reconciliation of paid employment and family care work made their first appearance.

In Germany, as in most countries, parental leave policies have their origin in maternal leave policies, originating, in turn, in legal bans on the employment of women before and after childbirth. The first legal ban on the employment of women in the weeks following childbirth was introduced in Bismarckian Germany in the last quarter of the 19th century. It was part of occupational health and safety legislation. The concern of employment bans was to protect mothers' and their children's health, not at all to enable mothers to stay in paid employment, rather the contrary. This has to be seen in the context of 19th century bourgeois mores mentioned above. After the end of the employment ban there were no provisions at all in place facilitating mothers' return to work. They were expected to stay at home for the moral good of the family and wider society, an ideal utterly unattainable to working class women whose income was often bitterly needed.

In the first half of the 20th century, employment bans for pregnant women and mothers were gradually extended. The concern of these measures remained the same as in Bismarckian times: mothers' and their children's health. The aim was to stop women from working in paid employment shortly before and after childbirth because it was represented as detrimental to the health of both mothers and their children.

Nazi Germany extended employment bans for mothers in *Mutterschutzgesetz*³⁶ (law on the protection of expectant and nursing mothers). The prime aim of this legislation was to protect the health of mothers and children, particularly the latter:

³⁶ *Mutterschutzgesetz* literally translates into 'law for the protection of mothers'.

‘[The aim of *Mutterschutz* is] to protect the employed woman from dangers to her performance of motherhood (sic!), to secure safe pregnancy and childbirth, and to enable breastfeeding and the care of the child.’³⁷

After the war, *Mutterschutzgesetz* remained in force and thus problem representations remained unchanged. During the 1950s and 60s consecutive conservative governments sustained a campaign against mothers’ employment, extending statutory employment bans. Mothers’ employment was represented to be detrimental to children’s health and development and, thus, morally wrong. Thus, mothers who stayed in paid employment were represented as bad mothers and put under pressure to become full-time caregivers.

Mutterschutz, which until today constitutes one of the tiers of German parental leave policy, was and is concerned with pregnancy and childbirth, not with childcare and childrearing. After the leave period of 8 to 12 weeks, the child disappears from sight, revealing the implicit assumption that mothers stop working in paid employment and become full-time caregivers. Also, because *Mutterschutz* is construed as having to do with pregnancy and mothers’ health, fathers do not feature at all, as if women become pregnant by themselves and then have to be protected from themselves (and from employers) so they do not overwork, harming their unborn children.

The extension of *Mutterschutz* undeniably has brought very real improvements to the living conditions of pregnant women and mothers. They are better protected from exploitation at the workplace. However, the problem representation implicit in *Mutterschutz* is that mothers are engaged in paid employment whereas they should become full-time caregivers. This is visible in that *Mutterschutz* not only financially discourages pregnant women from paid employment but also bans mothers from partaking in paid employment after childbirth. The underlying assumption is that pregnant women and women who have given birth should not work in paid employment, at least for a ‘critical phase’ around child-birth. Also implicit is that the employer is financially responsible for supporting women on *Mutterschutz*, as the state pays only a small part of benefits, while the employer pays the difference from previous earnings. This patriarchal setting construes women as dependent and needy beneficiaries rather than persons with certain rightful entitlements. It reinforces women’s subordination to – mostly male – employers.

³⁷ ‘(...) die im Erwerbsleben stehende Frau vor Gefahren für ihre Mutterschaftsleistung zu schützen, einen ungestörten Schwangerschafts- und Geburtenverlauf sicherzustellen sowie Stillen und Pflege des Kindes zu gewährleisten.’ (Reichsarbeitsblatt 1942, III 159, cit. in Bulla 1968: 38.)

At the end of the 1970s, however, a second tier of maternal leave was established. The creation of this second tier is closely linked with the construing in the 1970s of the problem of incompatibility of paid employment and family care work.

The 1970s were a decade of considerable cultural and also political change in Germany as in other Western industrialised nations. The women's movement gained strength and campaigned for legal equality. A new Social Democrat/liberal Government had come into power in 1969. It won the general elections with the slogan 'daring more democracy'³⁸, setting out an agenda of progressive reform, and embracing the women's movement's call for legal and cultural change. Maternal leave policy became the first policy area in which the 'problem' of incompatibility of paid employment and family care work was construed. In addition to *Mutterschutz* a new set of (partly contradictory) ideas took the stage.

In 1970, the new coalition Government of Social Democrats and Liberals commissioned an expert report on the family (cf *Zweiter Familienbericht* 1974: 11).³⁹ Published in 1974, the report diagnosed an increased incompatibility of 'familial and extra-familial roles' and 'conflicting roles of mothers' (*Zweiter Familienbericht* 1974: 65). Therewith, the incompatibility problem appeared for the first time in a policy document.

As we have mentioned before, proposed 'solutions' to 'problems' in policy papers construe our understanding of the 'problem'. The report proposed two complementary 'solutions' to incompatibility. On the one hand, it advocated the introduction of *Erziehungsgeld*⁴⁰ (child raising benefit), a new benefit to be paid to mothers and fathers who stop working in paid employment and become full-time caregivers. On the other hand, the report suggested the Government create more flexible public sector jobs allowing the reconciliation of paid employment and care work, and the upgrading of childcare provision by the *Länder* (federal states) for children of all age groups.

The implicit concern of first 'solution' is that one parent should become a full-time caregiver upon the birth of their child rather than stay in paid employment. The 'problem', therefore, is represented to be about children's welfare. However, if fathers become eligible for child raising benefits while absent from paid employment,

³⁸ 'Mehr Demokratie wagen'.

³⁹ "[Die] Leistungen und Leistungsgrenzen der Familie hinsichtlich der Erziehungs- und Bildungsprozesses der jungen Generation zu bestimmen' und daraus 'Schlußfolgerungen für die praktische Familienpolitik zu ziehen.'"

⁴⁰ *Erziehungsgeld* can be translated as child raising benefit; literally, it means something like 'upbringing money', although *Erziehung* also has an additional connotation of 'education'.

their previous non-involvement in care work becomes represented as part of the ‘problem’ of incompatibility. By taking over care work, fathers free mothers for full-time employment. Yet, had only mothers been envisaged as recipients of *Erziehungsgeld*, the ‘problem’ would have been represented as mothers who are in paid employment rather than full-time care-givers.

The problem representation implicit in the second ‘solution’ – more flexible jobs for women – represented the ‘problem’ as that mothers leave full-time paid employment against their wish on the birth of their children. The cause of incompatibility was represented to lie in the organisation of paid employment.

The expert committee’s main concern was the well being and development of children within the family. Measures to alleviate the incompatibility ‘problem’ for mothers were, thus, envisaged under the premise of children’s wellbeing:

‘For the children’s sake provisions have to be put into place to reduce the frustrating situation in which women are either constrained against their will to the home or confronted against their will with the double burden of homemaking and paid employment.’⁴¹ (Zweiter Familienbericht 1974:137, own emphasis).

The fact that measures were targeted to increase children’s welfare did not *per se* make them less beneficial to women. However, it shows how persistently problem representations centre on children when ostensibly mothers and their needs are discussed.

Five years after the report, in 1979, maternal leave legislation was passed by parliament in the shape of the *Mutterschaftsurlaubsgesetz*⁴² (maternal leave act). This was ten years after, in 1969, the introduction of child raising benefit was first proposed (cf. Münder 1987).

Partly, the *Mutterschaftsurlaubsgesetz* took up the problem representation of the expert report. The ‘problem’ of incompatibility was represented to lie in the fact that mothers have to reconcile the double burden of paid employment and care for an infant. The older problem representation of ‘employed mothers’ was (at least partly) replaced. The act introduced *Mutterschaftsurlaub*⁴³ (maternal leave) and the related *Mutterschaftsgeld*⁴⁴ (maternal benefits). Mothers, and only mothers, in paid employ-

⁴¹ ‘Um der Kinder willen ist dafür zu sorgen, daß die frustrierenden Zwänge abgebaut werden, die die Frauen entweder – gegen ihre Wünsche – im Haushalt festhalten oder aber – gegen ihre Wünsche – in die Doppelbelastung von Haushalt und Beruf hineinstellen.’

⁴² *Mutterschaftsurlaubsgesetz* literally translates into ‘motherhood leave act’. ‘Maternal leave act’ does not really encapsulate the meaning as the leave was contingent on *Mutterschaft* or motherhood, thus on having given birth. Foster mothers were excluded from leave and benefits.

⁴³ *Mutterschaftsurlaub* translates into ‘motherhood leave’, see previous footnote.

⁴⁴ *Mutterschaftsgeld* can be translated as ‘motherhood benefit’; literally, it means ‘motherhood money’.

ment gained a statutory entitlement to six months of paid leave *Mutterschaftsgeld* of 750 Deutschmarks per month. Social security insurance contributions were taken over by the state. However, only birth mothers were eligible for leave and benefits, not foster mothers or caring relatives and not fathers.

From these ‘solutions’ we can surmise what the ‘problem’ of incompatibility was represented to be. Introducing paid leave exclusively for mothers, represents the ‘problem’ to be one of mothers who are in paid employment after child-birth rather than at home caring for their babies. The concern is, thus, primarily mothers and children’s health and children’s development. On the other hand, the relatively low level of benefits provides an incentive to return to the workplace sooner rather than later, and together with the short duration of leave makes it clear that a return to paid employment is desired by policymakers. The concern here is therefore, that women stop participation in paid employment immediately after childbirth but then return to their positions in paid employment within six months.

The fact that *Mutterschaftsurlaub* did not make fathers eligible for leave and benefits led to profound criticism from the women’s movement and to a number of related high profile court cases in the early 1980s. Some fathers even – unsuccessfully – took the case up to the court of ultimate resort, the European Court of Justice. They appealed against the provisions of the *Mutterschaftsurlaubsgesetz* on the basis of European Council Directive 76/207 on the implementation of the principle of equal treatment for men and women⁴⁵ (cf. Peinelt-Jordan 1996). The European Court of Justice dismissed the case in early 1985.

However, the long-lasting legal battle for fathers’ right to parental leave (and duty to care) was not only indicative of cultural change in Germany and organised feminism’s growing influence, but it also influenced new policy proposals in the area of parental leave. When in 1985 the first conservative Kohl administration proposed new parental leave legislation, it included married fathers’ entitlement to paid leave on the same terms as mothers’.

In spite of fathers’ entitlement to parental leave, the ensuing 1986 *Bundeserziehungsgeldgesetz*⁴⁶ was a thoroughly conservative piece of legislation that had the explicit aim of making women full-time caregivers, and attempting to reconstruct the housewife marriage (cf. Notz 1998). In contrast to its predecessor and also to the oppositional draft by the Social Democrats, its aim was, thus, not to make it easier to

⁴⁵ Council Directive 76/207/EEC of 9 February 1976 on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions.

⁴⁶ *Bundeserziehungsgeldgesetz* literally translates into ‘federal child raising benefit act’.

combine paid employment and childcare commitments but to win over women to stay at home with their children for a sustained period of time.

The 1986 *Bundeserziehungsgeldgesetz* replaced the 1979 maternal leave act and its provisions for leave and child raising benefits. Instead, it introduced *Erziehungsgeld* (child raising benefits) and *Erziehungsurlaub*⁴⁷ (parental leave). In contrast to *Mutterschaftsgeld*, *Erziehungsgeld* was payable, to all mothers for the first 10 (18)⁴⁸ months of a child's life. In the first six months it amounted to 600 Deutschmarks per month, after that it was means-tested and would decrease depending on family income⁴⁹. The payment of *Erziehungsgeld* was also contingent on ceasing participation in full-time paid employment. However, up to 19 hours of part-time employment were permitted. Until the end of the last Kohl administration, *Erziehungsgeld* was not increased in line with inflation or general wage increases. Therefore, it was *de facto* devalued.

Erziehungsurlaub, as parental leave, corresponded in duration with *Erziehungsgeld*. Although, fathers were for the first time eligible to take leave and receive benefits, this only applied to fathers who were married to the mothers of their child. Further, by default the mother was the beneficiary of both *Erziehungsgeld* and *Erziehungsurlaub*. A request had to be made to the competent authority to transfer entitlements to the father (cf. Bundesregierung 1985).

The 1992 amendment of *Bundeserziehungsgeldgesetz* extended the possible duration of *Erziehungsurlaub* to three years and of *Erziehungsgeld* to two years. It also made all fathers eligible, not just those married to the mothers of their children (Bundesregierung 1991). The ban on dismissal was renewed but without guarantee of return to the previously held position. With the *Bundeserziehungsgeldgesetz* the conservative/liberal coalition took up a conservative proposal in the discussion of the 1979 act: to reward female care work through *Familiengeld*⁵⁰, a universal benefit payable to all mothers. Feminists in Germany and elsewhere have at several points demanded the recognising and rewarding of female care work (cf. Müttermanifest 1987). Therefore, it seems difficult to dismiss *Erziehungsgeld* altogether. In fact,

⁴⁷ *Erziehungsgeld* translates into 'child raising benefit', but literally means 'upbringing money' a strong additional connotation of education. *Erziehungsurlaub*, accordingly, literally means upbringing leave with the same connotation of education and translates into 'child raising leave'.

⁴⁸ Initially 10 months, for children born after 31 December 1987: 12 months, after 1 June 1989: months, after 1 July 1990: 18 months.

⁴⁹ Since 1994 *Erziehungsgeld* is means-tested from the start, yet with higher allowances.

⁵⁰ Literally *Familiengeld* means 'family money'; it can be translated as 'child raising benefit'.

these feminist voices were quoted as evidence supporting its policies by the Kohl Government. However, the very low level of *Erziehungsgeld* alone proves that the act was not about recognising and rewarding women's care work in any meaningful way. 600 Deutschmarks were not even enough to sustain one's existence. For single mothers taking *Erziehungsurlaub*, thus, meant becoming dependent upon social benefits. For married mothers it meant becoming financially dependent upon their husbands (cf. Notz 1998). Such low level benefits betrayed the real concern of introducing *Erziehungsgeld*: reinforcing and cementing the 'traditional' division of labour and power relations with the family (Notz 1998).

In contrast, the opposition draft by the Social Democrats had a different thrust altogether. It proposed an incentive for fathers to take over at least a part of childcare work. In addition to a 12-month paid leave; mothers and fathers were to have a separate entitlement to another 12 months of unpaid leave that could be transferred to the partner. Further, if the father took at least four months of the initial 12-month leave, the entitlement for benefits and leave would extend by three months (cf. Fraktion der SPD 1985). This constituted an active encouragement, however small, for fathers to take over some care work and it could have, thus, marked the start of a gender role change.

So, what was the 'problem' of incompatibility represented to be in *Bundeserziehungsgeldgesetz* and to what extent – if at all – did this problem representation vary from previous representations?

Firstly, as mentioned above, long parental leave construes the 'problem' as mothers who are in paid employment rather than at home doing care work. The longer the leave the more pronounced the implicit assumption that mothers' place was at home with their children. This betrays underlying assumptions of women as 'natural' caregivers. The fact that men were made eligible does not fundamentally change the fact that the parental leave was construed as a women's 'problem', because initially by default women were the recipients of child raising benefits and parental leave. Further, experience since 1986 had shown that fathers did only take parental leave in negligible numbers. Therefore, although potentially fathers' entitlement to leave included them in the problem representation, it did so only marginally. The main concern of parental leave policy remained that children's welfare was adversely affected by mothers' employment.

Making all women eligible to child raising benefits regardless of their previous employment status construed *Erziehungsgeld* not as some sort of compensation for foregone earnings but as remuneration for childcare work. Fixing this reward at the given low rate, however, betrayed the low status assigned to this work and also im-

PLICITLY construed raising children as something that had to take place in a traditional family of breadwinning father, full-time caring mother and X children. Only for families with stay-at-home mothers did *Erziehungsgeldgesetz* really bring a financial advantage.

By making benefits contingent upon stopping paid employment the act construed the problem of incompatibility of paid employment and family care work as something absolute. The dichotomy of the antagonistic spheres of paid employment and family work was reinforced. Although part-time work up to 19 hours per week was permitted, economically it did not make any sense because benefits were lowered according to earnings.⁵¹ The *Bundeserziehungsgeldgesetz*, thus, prescribed sequential reconciliation of paid employment and family work as the only way of reconciliation, betraying its real concern: make women full-time caregivers. The aim of the legislation was that in the first phase of their life and development – allegedly the most important – they were looked after by their mothers.⁵²

In conclusion, in parental leave policy the ‘problem’ of incompatibility was construed as a women’s problem that could be and should be solved by sequential, not parallel, reconciliation of paid employment and family care work. The life model this problem representation produces is still that of Klein and Myrdal (1965), according to whom women undertake professional training, work in paid employment until the birth of their first child, and then they go on *Erziehungsurlaub* for at least three years supported by their husbands who work full time. When the children are old enough to go to kindergarten mothers re-enter the labour market part-time.

7.2 What was parental leave policy represented to be about 1998–2005?

Both coalition parties, SPD and Greens had campaigned under the banner of cultural and societal modernisation. Women’s policy and reconciliation of paid employment and family work featured prominently in both parties’ manifestos (Bündnis 90/Die Grünen 1998; SPD 1998) and election campaigns, which explicitly targeted profes-

⁵¹ Consequently, at the end of the 1990s only about 4 percent of women on *Erziehungsurlaub* worked part-time (*Statistisches Jahrbuch* 1999: 469).

⁵² Research on the take-up of *Erziehungsurlaub* and -geld show that the legislation indeed achieved its aim (Bird 2004). In 1989, three years after the introduction of *Erziehungsurlaub*, only 1.3% of beneficiaries were men. And, although the figure almost doubled to 2.5% at the end of the 1990s, it thus remained very low until the reform of 2001 (cf. BMJFFG 1989; Klammer et al. 2000; Vaskovics 1999). Differences in the uptake of parental leave by fathers in East and West Germany were negligible (cf. Klammer et al. 2000: 334).

sionally successful women. Consequently, expectations were high among feminists for a policy change. In their coalition agreement of October 1998, Social Democrats and Greens agreed to make equal opportunities one of their priorities in policy-making:

‘The new Federal Government will make equal opportunities for men and women once again the aim of comprehensive social reform.’ (SPD and Bündnis 90/Die Grünen 1998: 35)

In his first policy statement in Parliament, Chancellor Schröder announced the policies of the coalition agreement in regard to its gender equality reform project. His Government ‘had to create the conditions’, he said, ‘to enable women to participate in paid employment’. This statement also shows what the Government meant by reconciliation of paid employment and family care work: to enable more women and mothers to be in paid employment. Thus, the central concern incompatibility was represented to be that participating in paid employment was difficult for women and mothers.

In the coalition agreement the reform of parental leave was envisaged, under the heading of family policy, not under women’s policy or reconciliation of paid employment and family care work. This structuring of policy proposals is meaningful as it shows in what context parental leave policy was thought about. In their agreement, both parties envisaged a reform of *Erziehungsurlaub* aiming at ‘creating the conditions for more choice and a more equal sharing of family and work for mothers and fathers’ (SPD and Bündnis 90/Die Grünen 1998: 34).

Reform of *Erziehungsgeld* and *Erziehungsurlaub* began in 2000, taking the legal form of an amendment of *Bundeserziehungsgeldgesetz*. The amendment came into force in January 2001 (cf. *Bundesgesetzblatt* of 26/10/2001). Due to a number of errors in the act’s wording it was publicised again in December 2001, *Erziehungsurlaub* being now renamed *Elternzeit*⁵³ (cf. *Bundesgesetzblatt* of 12/12/2001).

Let us have a closer look at the legislation’s provisions to establish what the ‘problem’ of incompatibility of work and family life is represented to be. As its amendment character suggests the new *Bundeserziehungsgeldgesetz* does not amount to an all-out break with tradition but a reform within the general framework of existing legislation. But, just how much has changed in terms of problem representation? To start with, many provisions of *Bundeserziehungsgeldgesetz* remain the same. *Erziehungsurlaub*, or *Elternzeit* as it is now called, still follows *Mutterschutz*. The maximum duration of leave remains at three years per child. *Erziehungsgeld* can still

⁵³ *Elternzeit* literally means ‘parent time’.

be claimed for up to two years and the actual amount remains linked to parents' combined earnings.

As we have argued above, the implicit concern of long parental leave is that women work in paid employment after childbirth rather than stay at home with their children doing care work, which is represented as detrimental to children's welfare. This concern reveals itself in the bill's statement of the aims of the proposed legislation:

‘Mit der Einführung eines Erziehungsgeldes wird ermöglicht oder erleichtert, daß sich ein Elternteil in der für die ganze spätere Entwicklung entscheidenden Lebensphase eines Kindes dessen Betreuung und Erziehung widmet.’

‘The introduction of child care benefits will make it possible or at least easier for one parent to become a full-time caregiver during the first phase of their child's life which is crucial for its development, providing care and early education.’

(Bundesregierung 1985: 1)

Although it is phrased gender neutrally, it is clear that for ‘parent’ read ‘mother’. Fathers who became full-time caregivers were widely considered an oddity. The German tax system, which the conservative coalition staunchly defended, put a prohibitive price on such a decision. Also, by default child benefits were paid out to mothers. By implying that the care of a stay-at-home parent is necessary for children's development, in reverse continuing paid employment is represented as detrimental to children's development. The underlying assumption is that mothers' care is essential for the development of their children. Implicitly, mothers who work in paid employment rather than being at home with them thus neglect their children. Through long leave, incompatibility of paid employment and family care work is construed as something absolute, an either/or situation. The only solution to this is sequential reconciliation, first a phase of childcare then re-entry into the labour market.

Making claimants eligible for benefits during parental leave is a form of recognition of family care work and compensation for foregone earnings. However, establishing rights to long parental leave also carries the message that taking long leave is desired, desirable and right. The possibility of long parental leave betrays the expectation that people will take it up.⁵⁴ The fact that leave can be taken for three years but benefits can only be claimed for two years in this light means that taking the third year of leave is contingent upon being supported by the breadwinner. Also, the maximum amount of benefits is so low that claimants become either dependent on their partners/ husbands or on means-tested social benefits. It does not constitute a sufficient independent income. Finally, linking benefits to parents' combined earnings

⁵⁴ Also, the longer benefits are paid, the longer mothers claim them (cf. Bird 2003).

construes the family as a homogeneous economic unit. Diverging interests of women and men, dependency and power issues cannot be addressed within such a framework. Women's individual interests and economic situation simply do not feature.

Turning now to the changes, they concerned both child raising benefits (*Erziehungsgeld*) and parental leave (*Erziehungsurlaub*). Regarding *Erziehungsgeld*, firstly, income limits for means-tested *Erziehungsgeld*⁵⁵ were increased by approximately 10 percent. Secondly, the maximum amount of *Erziehungsgeld* was increased from 400 to 600 Deutschmarks⁵⁶ per month. And finally, a 'budget option' for *Erziehungsgeld* was introduced whereby parents can choose to receive 900 Deutschmarks for a maximum of 12 months rather than 600 Deutschmarks for up to two years.

Regarding *Erziehungsurlaub* (now *Elternzeit*), most importantly, both parents gained an entitlement to up to three years of parental leave which they can take alternating (with up to two changeovers) or both at the same time. Maximum leave is three years per child, regardless of whether one or both parents take it. So, if both parents choose to take leave at the same time, they can both take three years of leave. With the employers' approval up to 12 months of *Elternzeit* can be taken up to the child's 12th birthday. Also, parents on *Elternzeit* gained a statutory entitlement to working part-time under certain conditions.⁵⁷ In addition, they gained the right to return to their previous full time position after their period of leave. Finally, the maximum working time while on *Erziehungsurlaub* and *Erziehungsgeld* was increased from 19 to 30 hours per week.

An increase of benefits could potentially mean a stronger recognition of women's care work and as such it has been demanded by some feminists (cf. Koch 2002). It can make women more independent of their partners or husbands. However, the 2001 increase from 400 to 600 Deutschmarks, although amounting to a 50 percent rise, still leaves benefits at a level far beneath the level of an independent income. It is little more than an overdue compensation for inflation (cf. Koch 2002). Thus, the rise did not alleviate women's dependency on their partners or social welfare. Moreover, the continuing low level of benefits continues to make it unlikely fathers will take up parental leave in any larger numbers because they usually earn higher wages. Without higher compensation for foregone earnings women remain financially dependent on the male breadwinner's earnings. This fits in with *Elterngeld's* official justification as an incentive to do the family care work, not a compensation for foregone earnings.

⁵⁵ *Erziehungsgeld* is only means-tested from the sixth month on.

⁵⁶ Ca. 204 and 307 Euros respectively.

⁵⁷ The entitlement only applies to firms with more than 15 employees. Also, employers can reject part time work for important operational reasons.

On the other hand, the new budget option of receiving 900 Deutschmarks⁵⁸ for a maximum of 12 months rather than up to 600 Deutschmarks for up to two years arguably amounts to a significant rise of benefits. However, this alternative level of benefits is still insignificantly above the level of social benefits.

The budget option is an incentive to take shorter leave. As such, however, it is contradicted by the statutory right to take up to three years of leave. By itself, a shorter leave on higher benefits would construe the problem of incompatibility as a ‘problem’ of the first months after childbirth rather than a long-term problem. The new entitlement of fathers and mothers to take leave together is about increasing fathers’ uptake of parental leave and, therefore, participation in family care work. This new concern of parental leave legislation is also expressed in the bill’s section on the aims of the proposed piece of legislation:

‘Bisher steht der Erziehungsurlaub den Eltern nur abwechselnd zu und er endet am dritten Geburtstag des Kindes. Diese starre Regelung ist mitverantwortlich für den Anteil von nur rd. 1,5% Vätern unter den Eltern im Erziehungsurlaub. Künftig können die Eltern den Erziehungsurlaub ganz oder zeitweise auch gemeinsam nehmen. Seine Gesamtdauer von bis zu drei Jahren für jedes Kind verlängert sich dadurch nicht.’

(Bundesregierung 2000a: 2)

‘Hitherto, parents have to alternate when sharing *Erziehungsurlaub*, and it ends with the child’s third birthday. This inflexible rule is partly responsible for the fact that only approximately 1.5 percent of parents on *Erziehungsurlaub* are fathers. From now on parents will be able to take *Erziehungsurlaub* simultaneously, either partly or fully. The total duration remains up to three years per child.’

In this section, the extremely low participation of fathers in family care work is explicitly addressed as a policy ‘problem’ needing legislative attention.

Effectively thus, the new entitlement to take parental leave simultaneously is concerned with the division of labour within the family. Parents can double their combined time on leave if they take it at the same time. Together with the new statutory right to work part time during *Elternzeit*, the opportunity to take leave simultaneously arguably opens up new avenues for a more equal sharing of paid employment and family care commitments between men and women. In terms of problem representation, this new right to working part time is about allowing mothers to remain in the labour market while on leave, and to maintain their professional qualifications.

Koch (2002) argues that underlying the reform of parental leave was a new model of the division of labour within the family, something close to the universal care-

⁵⁸ Ca. 460 Euros.

giver model (cf. Fraser 1997). The new ideal fostered by this legislation was that both parents worked part time and shared the care work equally during the first years of their child's life.

From the above we learn that there were contrary tendencies in the reform of parental leave. Which dominated? What, in conclusion, was incompatibility as a 'problem' represented to be about in parental leave policy 1998 to 2005? Did reforms amount to a turning away from previous problem representations or did they, despite the emancipatory rhetoric, perpetuate them?

The answer is complex. Parental leave legislation contains different and sometimes contradictory problem representations. To answer our questions we necessarily have to prioritise and weigh changes in representations against constants. On the one hand, the 2001 reform introduced the possibility of both parents taking leave at the same time while continuing to work for up to 30 hours a week, increased benefits, and introduced an incentive to take shorter leave. Care giving fathers have become part of what parental leave policy, and thus implicitly incompatibility, is represented to be about. On the other hand, the main parameters of German parental leave remain relatively unchanged: duration of leave, low level of benefits, and treatment of the family as homogeneous economic unit. These parameters, we will argue, continue to dominate problem representation and, thus, also the effects of parental leave policy. Therefore, although the problem representation is considerably altered, it remains remarkably constant in its core. The dominant problem representation persists, although a new, emergent, representation is entering the stage. Still parental leave policy construes the 'problem' of incompatibility of paid employment and family care work predominately mainly as it being difficult for mothers to become full time caregivers. The 'solution' this representation offers, is to enable women to become stay-at-home mothers. On the margins however, a contrary representation is gaining ground according to which the 'problem' is that participation in employment is difficult for mothers. This representation, implicit in parts of the reform, offers a different solution to the 'problem' of incompatibility: to enable women to pursue a career while raising children through a more equal sharing of care work between men and women.

7.3 What is the cause of incompatibility represented to be?

We have argued in the previous section that, in spite of some meaningful change, to a large degree, the representation of what parental leave policy is concerned with remained constant. We call this the concern of parental leave policies.

The dominant problem representation in the coalition's parental leave policy remained that parental leave policies were about enabling women to become full-time caregivers while putting their professional careers on hold. Although this representation remains dominant, an emergent problem representation implicit in some reform measures construes parental leave as being about making staying in paid employment possible for mothers.

The next step is to scrutinise the next level in problem representations: What was the cause of the 'problem' of incompatibility represented to be? Were there any changes as to what the cause of the 'problem' of incompatibility was represented to be? Also, can we safely assume that where the concern of problem representations stayed the same what is represented to be the cause of the 'problem' also remained constant?

Let us first take a look at parental leave policy under the Kohl administration. Recapitulating, long leave (up to 3 years) for all mothers construes the 'problem' as being about caring for a child. More precisely, that becoming full-time caregivers is difficult for women in paid employment. The underlying assumption is that young children for their optimal development need the presence of a parent at home. Moreover, that ideally this parent is the mother as she is the natural caregiver. Consequently, the implicit cause of the 'problem' is represented to be women who spend too much time outside the home in pursuit of a career in paid employment. This can be either because they want to pursue a career or out of necessity.

Low, means-tested, benefits contingent on the partners' combined income fits into this problem representation. Both measures reinforce women's dependency upon their partners. The family is treated and thus construed as a homogenous unit. Women who want to preserve some financial independence by working part-time during parental leave are punished financially through reduced *Erziehungsgeld* on the one hand and German tax law⁵⁹ on the other. Effectively, couples who break with of the 'traditional' division of labour within the family are financially punished. Thus, the underlying assumption of benefit levels and treating the family as a homogenous unit is that women and men are responsible for different spheres, the home and paid employment respectively (at least while there are young children). Further, *Erziehungsgeld* in its current shape presupposes that men should be the sole breadwinners and women caregivers, staying at home with their children.

From this it becomes obvious that here the cause of the 'problem' of incompatibility is represented to be a turning away of women from the 'traditional' division of

⁵⁹ Through *Ehegattensplitting*, see previous footnote on *Ehegattensplitting*.

labour within the family. In other words, the cause of the ‘problem’ is that women spend too much of their time in paid employment rather than staying at home doing the care work.

As we have argued in the previous section, as far as the duration of leave, eligibility and benefit levels are concerned; parental leave policy reform under Schröder did not amount to a shift in what incompatibility was represented to be about. Thus, what is represented to be the cause of the ‘problem’ has not changed either. However, what about the areas where the 2001 Act brought changes in what the ‘problem’ is represented to be about, in what reconciliation is concerned with? Let us go through the changes brought by the 2001 Act.

To begin with, as indicated above, the increase of benefits and income limits has not made any difference as far as problem representations are concerned. Benefit levels (600 instead of 400 Deutschmarks) are still low and thus do not amount to a real compensation for foregone earnings. The introduction of a so-called budget option (up to 12 months on a maximum of 900 Deutschmarks instead of up to 24 months on a maximum of 600 Deutschmarks) provides an incentive to take shorter leave rather than to exhaust the statutory entitlement of 36 months. The explicit aim of this provision is to encourage more fathers to take *Erziehungsurlaub*. Implicitly the cause of incompatibility is represented to also lie with men rather than exclusively with women:

‘Das monatliche Erziehungsgeld von grundsätzlich 600 DM für bis zu zwei Jahren erhöht sich – im Rahmen einer neuen Budget-Regelung als familienpolitische Alternative – auf monatlich 900 DM, wenn es insgesamt nur bis zum 12. Lebensmonat in Anspruch genommen wird. (...) Das Budget-Angebot berücksichtigt die unterschiedlichen familiären Lebensverhältnisse. Es könnte mit einer stärkeren Beteiligung der Väter am Erziehungsurlaub der elterlichen Partnerschaft und dem Wohl des Kindes dienen.’

(Bundesregierung 2000a: 21)

‘If the monthly child care benefit is claimed for a maximum period of 12 months rather than 24 months, it increases from 600 Deutschmarks for up to two years to 900 Deutschmarks, providing a family policy alternative.’ (...) This budget option provides for different familial circumstances. It could lead to an increase of fathers’ participation in parental leave and thus be conducive to a more equal sharing of parental responsibilities and benefit the child’s welfare.’

According to this excerpt from the bill getting more fathers to participate in parental leave is desirable first and foremost because it can lead to a more equal sharing between parents of family care work. Thus encouraging more fathers to take parental leave is represented as a ‘solution’ to the ‘problem’ of incompatibility of paid employment and family care work women are faced with. If the ‘solution’ is getting

more fathers to participate in family care work, the ‘problem’ is represented to be caused by fathers’ present non-participation. This problem representation, therefore, aims to alter the unequal gendered division of labour in family and society, which is therefore implicitly represented as the cause of incompatibility.

The introduction of a statutory right to parallel leave for both parents contains the clearest departure so far from previous problem representations. As we have argued above, introducing this right is about the division of labour within the family. Through it incompatibility is, thus, construed as something caused by the unequal division of labour within the family and the wider society. When introducing the right to parallel leave is presented as the ‘solution’ for incompatibility, then the problem is represented to be about only one partner taking leave, at present the mother, while the other partner does not. Thus, incompatibility is a ‘problem’ mothers’ face pursuing a career and caring for their children. It is a problem concerning mothers but caused by men who do not take on their share in family care work.

This right is particularly relevant in view of the new right to work part time during *Elternzeit*. In conjunction with this right introducing a parallel leave option propagates a new model of the family. In this model, a dual earner dual carer model, both parents share equally the family care work while working part time in paid employment (cf. Pfau-Effinger 2004).

Introducing a statutory right to work part-time while on parental leave presents working part time as a ‘solution’ to the incompatibility problem. Thus, for mothers the problem is represented to be not partaking in paid employment while on parental leave. This is interesting in that it reverses the problem representation of previous conservative leave policies. According to this new representation the ‘problem’ of incompatibility manifests itself in mothers who do not work in paid employment during *Elternzeit*, while the previous representation construed engagement in paid employment as incompatible with family care work. Further, when the above statutory right is presented as the ‘solution’ to the ‘problem’ then it is construed as something solvable by this measure. The right to work part-time during parental leave gives employees the right from their employer to a reduction of weekly working hours. Thus, the ‘problem’ is also represented to be caused by employers’ unwillingness to employ mothers on a part-time basis.

In conjunction with the option of taking parallel leave there is, however, yet another dimension to the right to work part-time. As we have seen, parallel leave thematises men’s non-involvement in care work. As mothers’ ability to work part-time in paid employment is to a large degree contingent on their partner taking over some of the family care work, fathers’ non-participation is implicit here as another cause

for women not being in paid employment part-time while on leave. Also, fathers' not reducing their working hours is brought to attention. Increasing the maximum working time on *Elternzeit* from 19 to 30 hours per week complements the problem representation examined above.

‘Die zulässige wöchentliche Arbeitszeit für eine Tätigkeit während des Erziehungsurlaubs erhöht sich von 19 auf 30 Stunden (für beide Elternteile: 30 + 30 = 60 Std.). Da die Eltern gemeinsam Erziehungsurlaub nehmen können, beeinträchtigt die mögliche neue Arbeitszeit nicht die Betreuung des Kindes.’

‘The allowed weekly working time in paid employment during parental leave increases from 19 to 30 hours (for both parents: 30 + 30 = 60 hours). The child's care and welfare are not affected because both parents can take parental leave simultaneously.’

(Bundesregierung 2000a: 2)

The increase has to be judged together with the new parallel leave. It in fact only makes sense in conjunction with the introduction of parallel leave. When increasing the maximum permitted working time is presented as a ‘solution’ to incompatibility, the ‘problem’ is construed as being about the previous limit being too low. Incompatibility is, thus, represented as being about parents wishing to do care work, and be in paid employment at the same time.

If mothers want to spend more of their time pursuing a career in paid employment this has repercussions for fathers. If only one partner takes *Elternzeit* while the other is in full-time paid employment increasing the maximum working time during leave would be pointless. A full-time caregiver could hardly utilise the opportunity to work in paid employment for 30 hours per week. Therefore, increasing the maximum working hours on leave represents the non-participation of men in care work as cause for women's incompatibility ‘problem’. This representation manifests itself in the last sentence of the above quote where the expectation is expressed that fathers take parental leave simultaneously to enable mothers to work in paid employment. Although it is phrased gender neutrally, it is clear that it aims at fathers because it is they who currently do not take parental leave in significant numbers.

To conclude, policy proposals and legislation contain two different and contradictory representations of what the incompatibility ‘problem’ is about and its causes. The dominant representation dates back to parental leave reforms of the Kohl Government. It is implicit in long parental leave, low benefits for all women whether in employment or not, and treating the family as a homogeneous economic unit. This representation construes the ‘problem’ as being about women who spend too much of their time in paid employment rather than at home caring for their children. It is represented to be

caused by economic necessity and women's choices. In spite of policy reforms of the Schröder Government this representation is still dominant in parental leave policy.

However, an emergent problem representation challenges the dominant representation. It can be found in measures of the 2001 parental leave act such as the introduction of parallel leave, the right to work part-time during *Elternzeit*, and increased maximum part-time working hours. This representation construes the 'problem' as being about the unequal gendered division of labour in family and society. According to this representation the 'problem' of incompatibility is caused by men's non-participation in family care work.

7.4 What are the effects of problem representations?

This section will look at the effects of problem representations. In doing so it draws on Bacchi's (1999) claim that we have to step beyond the description of competing claims about issues if we want to provide analysis that is both meaningful and emancipatory at the same time. This is what her approach allows us to do. We will try and assess the problem representations described in previous sections by asking about their likely outcomes, effects and implications. At the heart of this exercise stands a search for likely beneficiaries. Who is likely to benefit most from particular problem representations?

There are three general categories of effects that problem representations have. We will examine them individually in the following three sections: The ways in which subjects and subjectivities are constituted in discourse; the effects which follow from limits imposed by discourse on what can be said; and the 'lived effects' of discourse.

7.4.1 Constitution of subjects and subjectivities

In this section we will ask for the likely effects of the two main competing problem representations introduced in previous sections in regard to how subjects and subjectivities are constituted in parental leave discourse. This section, thus, is about uncovering implicit characterisations of policy 'targets', and reflecting upon the implications of these characterisations for the target groups (cf. Bacchi 1999:93).

Sequential reconciliation

The main 'targets' of parental leave policies of the Kohl era in the 1980s and 1990s undoubtedly were women and mothers. These policies introduce sequential reconciliation as 'solution' to the 'problem' of incompatibility of paid employment and care

work. As we have shown in the previous sections, men only feature at the margins of problem representations. We have argued further how the respective problem representations still prevail in parental leave policies adopted by the Schröder Government in spite of the emergence of a new problem representation.

The dominant problem representation of sequential reconciliation is that mothers work in paid employment while they should rather take parental leave and stay at home doing care work. The ideal propagated by this problem representation is that women stop paid employment altogether on childbirth and only take it up again after a couple of years, at the earliest when the child reaches kindergarten age. Even then, women are expected to carry out care work parallel to paid employment, working part-time so as not to interfere with the former. This problem representation is implicit in key features of German parental leave legislation, such as long leave, benefits for all mothers (independent of previous employment), and treating the family as homogenous unit.

As primarily mothers are ‘targets’ of policy, these problem representations constitute reconciliation of paid employment and family life as a women’s problem. Thus, women are constituted as being responsible for the reconciliation of paid work and care work within the family.

In this conservative discourse mothers are constituted as victims of the double burden of paid employment and care work from which they have to be relieved. They are characterised as not capable of pursuing a career in paid employment and caring for their children. This exclusive focus on women, however, makes them the ‘problem’, rather than structural factors.

However, although, women facing this double burden are characterised as victims, they are constituted first and foremost as victims of their own choices. Women who break out of traditional gender roles are portrayed as responsible for the situation they are in. This becomes apparent in the fact that women who earn during leave are financially punished. This implies a questioning of their motives for being in paid employment. There is an implicit insinuation that mothers who are in paid employment after childbirth do so for their personal gain, which is portrayed as egotistic behaviour causing harm to their child. For mothers, thus, pursuing their own interests is characterised as moral deficiency. If men pursue their individual gain it is, however, not portrayed as morally wrong. The male norm of self-centred behaviour remains unaddressed and unquestioned. In this representation, because women are the primary policy ‘targets’ they become the ‘problem’. Their behaviour, choices and situation are characterised as problematic. This characterisation becomes visible when the bill’s aims are read carefully:

‘Mit der Einführung eines Erziehungsgeldes wird ermöglicht oder erleichtert, daß sich ein Elternteil in der für die ganze spätere Entwicklung entscheidenden Lebensphase eines Kindes dessen Betreuung und Erziehung widmet. (...) Die Erziehungskraft der Familie wird gestärkt, ihre Erziehungsleistung wird von der Gemeinschaft anerkannt.’

(Bundesregierung 1985: 1)

‘The introduction of child care benefits will make it possible, or at least easier, for one parent to become a full-time caregiver during the first phase of their child’s life which is crucial for its development, providing care and early education. (...) The family’s capacity to provide a good upbringing and early education is strengthened and recognised by society.’

Not only does the first sentence implicitly represent paid employment of mothers as detrimental to the child’s welfare by emphasising how important a full-time caregiver is for the development of the child. Further, if the ‘family’s capacity to provide a good upbringing and early years education’ is strengthened by mothers becoming full-time caregivers; reversely it is weakened by mothers who stay on in (part-time or full-time) paid employment. Together this demonstrates how women are represented as the ‘problem’.

Other factors, particularly men’s non-involvement in care work and the unequal gendered division of labour are not problematised. We will deal with this in more detail in the next section.

In sequential reconciliation women are represented as ‘natural’ caregivers. Although the wording of the *Erziehungsgeldgesetz* is gender neutral and only states that the full-time presence of a parent at home is vital for a child’s development, implicitly this means mothers. The implicit characterisation of women as natural caregivers exerts huge normative pressure on women. It compels women to define their identity through their choices about childcare. Williams (1990: 758–759, cit. in Bacchi 1999) makes this point, writing that ‘members of targeted groups are impelled to select an attachment, an identity from a restricted list of offerings (...)’.

In sequential reconciliation, the ‘solution’ to the incompatibility ‘problem’ is represented to be a temporary withdrawal from the labour force to care for a young child. The duration of the time designated solely for childcare is comparatively long, three years. The opportunity to take such long leave conveys an expectation that this is what women should do. It is an implicit normative pressure on women’s behaviour. This problem representation, thus, establishes a discourse of ‘good motherhood’. In order to be ‘good’ mothers, women have to stop working in paid employment and become full-time caregivers for at least three years. Mothers who choose not to take stop working altogether and remain in part-time employment are financially punished by reduced benefits and thus constituted as ‘bad’ mothers.

The rhetoric in the 1986 *Erziehungsgeldgesetz* about women's ability to choose between paid employment and care work is thereby unmasked as a choice between selecting an identity of 'bad' career women or 'good' stay-at-home mother. Furthermore, if femininity is equated with care giving, as is the case in characterising women as 'natural' caregivers, women who challenge this find their very identity as women questioned. At the very least, as we have argued above, they are branded as bad mothers.

Women are constituted as dependent individuals needing support and protection from their partners. The benefit levels of *Erziehungsgeld* do not allow women to be economically self-sufficient and independent. When they take *Erziehungsurlaub* they become dependent on their husbands and partners or on means-tested social benefits. Women raising children alone become 'social problems' as recipients of social benefits. This constitutes women as vulnerable, somewhat less than the (male) norm, and lacking the capacity to be independent.

In sequential reconciliation paid employment and care work are represented to be fundamentally incompatible in the first three years of a child's life. If women are involved in the former they cannot care for their children in an appropriate way. Therefore, vice versa, women who do the care work cannot work in paid employment without neglecting their 'duties' as mothers.

All of the above reinforces the separation of private and public spheres. The strict demarcation of the 'public' sphere of paid employment and the 'private' sphere of care work is strictly upheld. This severely restricts the usefulness of this representation. Bacchi (1992), Pateman (1983) and Thornton (1991) have shown that thinking about women's unequal position in society without questioning the allocation of family life to the 'private' sphere falls well short of an adequate analysis.

As we have shown above, there has been a strong element of continuity in problem representations in parental leave legislation discourse. Therefore, in West Germany sequential reconciliation simply perpetuated previous problem representations about women and paid employment. It was different, though, for East German women. The substitution of GDR parental leave policies with West German policies amounted to a complete redefinition of women as policy subjects. Although, women in the GDR were implicitly expected to carry out the care work and men were not represented to be part of the 'problem' of incompatibility, and thus were constituted as caregivers, they were also constituted as socialist workers, whose full-time participation in paid employment was a matter of course. Now, mothers of young children were characterised as full-time care-givers only.

Parallel reconciliation

Whereas in sequential reconciliation the policy ‘targets’ were almost exclusively women, parallel reconciliation also addresses men. This fact alone deserves emphasising: it constitutes a marked shift. For the first time men become part of the problem representation. As we have seen, sequential reconciliation has little place for men, making incompatibility a women’s ‘problem’. How exactly men are constituted as a policy ‘target’ we will examine in this section. Therefore, we have to analyse here the effects of this problem representation on both men and women, fathers and mothers.

Parallel reconciliation is an emerging problem representation in parental leave policy. In contrast to sequential reconciliation it does not constitute the spheres of paid employment and care work as mutually exclusive but as compatible. It implicitly entails that mothers do not engage in paid employment as much as desirable. This problem representation can be found in some new provisions introduced by the 2001 Parental Leave Act, such as the budget option for *Erziehungsgeld*, the new right to work part-time during *Elternzeit*, and the increase of maximum weekly working time during leave.

Parallel reconciliation is an attempt to change gender roles and encourage men to take over more care work in the family. Men are explicitly addressed as caregivers by the new right for parents to take leave at the same time. For the first time, men are characterised by policy as caregivers while mothers are characterised as breadwinners:

‘Working fathers are being recast as caring fathers, mothers as workers, households as two-earner units that share their resources, be they time or money.’ (Ostner 2002: 160)

This is a significant development. However, men are not constituted as full-time caregivers in the way women have been, but as additional, as part-time care-givers. Though fathers are, by introducing the option to take leave at the same time, also characterised as caregivers, this is coupled with the right to work part-time on leave and an increase in the maximum hours of part-time work. And still, characterising men as caregivers changes what being a father is represented to be about. It thus also changes notions of ‘good’ fatherhood. Normatively, in parallel reconciliation fathers are characterised as ‘good’ fathers if they take over (at least some) care work, spend more time with their children and share care work more equally with their partners. This amounts to a huge change in notions of fatherhood compared with the full-time breadwinner of sequential reconciliation. The fact that being a ‘good’ father implies doing care work could exert a certain normative pressure to do so. However, not fol-

lowing the new model of fatherhood does not carry the same moral stigma as it does for women. Fathers who do not take over care work and domestic responsibilities are not represented to be 'bad' fathers by any provision in parental leave policy. Neither are there financial implications, nor is the duration of leave reduced if fathers do not take over care work. Therefore, there is little incentive to choose an identity of caregiver from the possible attachments on offer.

At the same time as fathers are constituted as caregivers, mothers are constituted as breadwinners. However, mirroring the constitution of fathers as part-time carers, they are not characterised as full breadwinners in full-time employment but as additional, semi-breadwinners, combining part-time paid employment with care work. For mothers to work part-time during parental leave is made the normative ideal.

In effect, parallel reconciliation constitutes men and women, fathers and mothers as more equal partners. How they are characterised as policy 'targets' and subject is noticeably converging. However, incompatibility is represented as an attitudinal 'problem' of men towards parental leave. If only men could be convinced to share care work women's incompatibility problem would be solved. This totally ignores that men's non-participation in care work is not solely a problem of men's consciousness but the result of structural factors. The male norm of a professional career, of seniority and promotion is implicitly accepted. Also, construing incompatibility as an attitudinal problem leaves us with the impression that we are dealing with barriers to individual women's career opportunities put up by their partners' behaviour. Again, structures, such as the unequal gendered division of labour, are implicitly accepted and cannot be questioned within this framework. The implicit representation that incompatibility is about individual women and men leaves no room to challenge societal structures. Even if representing men's behaviour as part of the problem means some progress it does not allow us to question the underlying structures responsible.

Although the non-participation of fathers in care work is picked out as a central theme by parallel reconciliation, the strict demarcation between 'private' and 'public' sphere is not. The two spheres stand in less stark contrast but their very existence is not questioned. Therefore, the underlying presupposition that paid employment is something 'public' while care work is a 'private' matter re-mains intact. We will look more closely at the consequences of this in the next section.

Finally, in spite of some advancement, parallel reconciliation also still implicitly presumes that when mothers return to full-time employment, the children somehow disappear. In conclusion, parallel reconciliation changes the characterisation of mothers and fathers from full-time caregiver and full-time breadwinner respectively to dual earner/dual caregiver. However, it is only the emergent and not the dominant

problem representation in parental leave policy. Therefore, its implicit constitution of policy ‘subjects’ and subjectivities is contradicted and effectively largely overridden by the problem representation of sequential reconciliation. However, taking into account the whole of reconciliation policy, this balance might be altered again in favour of emergent problem representations.

7.4.2 *What cannot be thought about within parental leave discourse?*

In this section, we will examine what limits are imposed by the parental leave discourse on what can be expressed about reconciliation of paid employment and care work. Then, we will ask what effects follow from these limits.

In parental leave policy we have identified two main competing problem representations of the incompatibility ‘problem’. Both are discourses in their own right, but they are also part of the broader discourse in parental leave legislation, which again is part of the reconciliation discourse. This should not confuse the reader, as discourses should *per se* be thought of as multiple and contradictory.

As we have shown in the previous section, both discourses have differently constituted women and men as policy ‘targets’ and subjectivities. However, although the two problem representations differ to some degree, they also share a number of implicit assumptions and presuppositions. This is not at all surprising as it is widely accepted now that discourses necessarily incorporate elements of what they oppose (cf. Cameron 1990). The partial incorporation by competing discourses of elements of their predecessors draws attention to the fact that it is very difficult to move outside a discourse, which we should think of as conceptual and interpretative frameworks (cf. Foucault 1977). As we have argued above, we will not go into the question of who makes discourse here but concentrate on the effects of discourses. More precisely, we will concentrate on the limits that both problem representations impose on what can be said in spite of their differences.

To start with, legally parental leave is constituted as a privilege of a certain group in the labour market, overwhelmingly women (cf. Peinelt-Jordan 1996). This very constitution of parental leave as a privilege for mothers (and fathers) makes it very difficult to look at parental leave as something other than preferential treatment for a specific group. Parental leave is, thus, constituted as preferential treatment for women (as they and not men tend to take it) in the child raising phase of their lives. This representation, again, constitutes solely women as policy ‘targets’ and leaves no room for questioning the organisation of paid employment in general. It thus hides the fact that women are in many respects not the beneficiaries of parental leave but

its victims. The representation of parental leave as a temporary exemption from the norm reinforces the implicit male norm.

The implicit characterisation as privilege is also mirrored in the German term for parental leave until 2002, *Erziehungsurlaub*. Literally it means ‘child raising vacation’. The term was changed to *Elternzeit* or ‘parent time’ in a gesture intended to signify the departure from sequential reconciliation.

Further, both problem representations, sequential reconciliation and parallel reconciliation, construe incompatibility as a problem individuals are faced with. And although parallel reconciliation brings men’s non-participation in care work into the equation, making it potentially more emancipatory than sequential reconciliation, it does not go beyond that. Incompatibility is construed as having to do with personal choices of women and men. Within this individualising and psychologising discourse (cf. Krug 1998) it is not possible to address crucial structural factors in the issue of reconciliation of paid employment and care work. Neither the unequal gendered division of labour in society with its effects on status, pay and mode of employment and the persistent pay gap, nor the logic of the labour market and human resources policies can be thought about within this framework. The implicit male norm underlying all of these areas remains unquestioned and therefore out of reach. It is, therefore, very unlikely that policy interventions based upon these problem representations will make any difference to those structural factors. The discourse leaves no place for questioning the male norm of a working life. The idea that how men work could be wrong and the source of the ‘problem’ cannot be expressed within its framework. Although parallel reconciliation, again, is more emancipatory, aiming at encouraging men to take over some care work during a short period and thus constituting them as short-time, part-time caregivers, it does not question the male norm in the ‘public’ sphere as such. Interlinked with that, it leaves no room to talk about what value we attach to particular kinds of activities in society and why.

Correspondingly, construing part-time work as a ‘solution’ to the ‘problem’ of incompatibility (most prominent in parallel reconciliation) closes off the possibility of thinking about part-time work as a symptom of the ‘problem’ rather than its ‘solution’. Thus, Krug (1998) argues that German women’s preference for part-time work after parental leave is evidence for the structural incompatibility of full-time paid employment and care work.

Further, both problem representations carry forward the demarcation of a ‘public’ and a ‘private’ sphere in society, the ‘private’ being outside the scope of policy intervention. Although parallel reconciliation aims at getting mothers in paid employment (at least part-time) while sequential reconciliation aims at the opposite, both implicitly place child and domestic care work firmly in the ‘private’ domain. But feminists,

such as Pateman (1983), Thornton (1991), and Bacchi et al. (1992) have argued, this means placing an issue outside the space for policy intervention. Therefore, as long as care work is allocated to the 'private' domain, changes to the unequal gendered division of labour are unlikely. Feminists argue that the division of labour within the family is a public issue, because it determines the division of labour in the society as a whole. The notion that our economic system is based upon care work being carried out by women without remuneration is highly relevant, but cannot be addressed within the framework of a discourse separating 'private' and 'public' spheres. The 'public'/'private' dichotomy, reinforced by discourse, thus blurs the complex interrelation of family and society. It is supported by an intervention/non-intervention dichotomy, which blurs and mystifies policy intervention (cf. Olson 1985).

Although parental leave discourse construes incompatibility as a 'problem' individuals face, it at the same time construes the family as one homogeneous unit. The fact that women and men, be they partners or spouses, can and do have different and divergent interests remains outside the discursive limits. Further, the constitution of the family as a harmonious unit precludes the problematisation of tensions and power imbalances between the partners. Therefore, neither competing interests of women and men nor power relations and imbalances within the family can be addressed within this discourse.

Further, both problem representations construe care work not only as part of the 'private' sphere but also as something specifically located in the family. And although parallel reconciliation constitutes fathers as additional caregivers it does not challenge the location of care work in the family. That care work can take place outside the family cannot be expressed within the framework of discourse in parental leave legislation (cf. Beckmann and Hornung 2001).

Finally, the constitution of incompatibility as an attitudinal 'problem' of women, and in the case of parallel reconciliation also men, has serious implications, too. If individuals' attitudes are the problem 'solutions' within the discourse will concentrate on changing attitudes. A policy intervention into social structures is out of the question. It is located outside discourse. Within parental leave discourse as it presents itself at the moment, thus, advocating structural intervention into the labour market and the organisation of paid work is not possible.

7.4.3 *'Lived effects'*

In this section we will look at the 'real' effects of parental leave discourse on people. The fact that notions of motherhood, fatherhood, care work and paid employment are, in this argument, deemed to be socially construed does not make them any less 'real'

for the people concerned. Summing up the contrary position, Bacchi (1999:46) observes that ‘once we acknowledge that the way we think about things is delimited by socially construed meanings, the way forward appears to be simply to challenge those meanings’. For instance, if the ‘problem’ is claimed to be the discursive constitution of mothers as ‘natural’ caregivers, as is the case here, a solely discursive ‘solution’ to this could be to appeal to women not to accept this. It would ask women to reject the notion that motherhood is intrinsically linked to being the sole full-time caregiver.

However, this would not change the fact that for most German women motherhood is currently associated with being the ‘natural’ caregiver for their child. To suggest that women should simply start to think differently about motherhood is, therefore, inadequate (cf. Bacchi 1999). Neither of the two problem representations we identified above focuses solely on discursive intervention. Both are implicit in material policy interventions in the guise of parental leave legislation. Therefore, we will only venture a brief and tentative look into the ‘lived effects’ of discourse. It has to be mentioned here however, that differentiating between effects of discourse and effects of material policy interventions, between the normative effects of discourse itself and the effects of social structures created by discourse, is neither possible nor the aim of this study. Nonetheless, we will briefly look at the ‘lived effects’ of parental leave legislation discourse, as it promises interesting findings.

The strongest ‘lived in’ effect of parental leave discourse as we have described it is that German women indeed feel responsible for care work in a way that men do not (cf. also Repo’s (2004) findings for the UK and Finland). Most women do think of themselves as ‘natural’ caregivers when they have children. Women for whom being a ‘good’ mother is an important part of how they construe their identity have been pushed into taking long parental leave. Bird (2004) has shown how the increase in the duration of maximum statutory leave has had a strong normative effect on the uptake of leave. The longer statutory leave is available the longer women have taken parental leave. Also, the percentage of women taking leave has increased significantly parallel to the increase in duration of leave (cf. Bird 2004: 242–243). So, leave is taken by more mothers for a longer period of time. From the 6 month Mutterschutz to 3 year *Erziehungsurlaub*, the proportion of mothers on leave increased from 59 to 81 percent (Bird 2004: 247). This, in turn, has all kinds of very real negative effects for women (although they are not central here), from financial dependency over unemployment to vulnerability to domestic violence.

It follows from women feeling responsible for care work that women see reconciliation of paid employment and care work as their responsibility. The feeling of being caught up and torn up between paid employment and care work is, thus, almost

exclusive to women. Bird (2004) emphasises that overall discourse in parental leave legislation has not changed regarding the constitution of women as natural care-givers:

‘At no point has the belief in the mother’s exclusive responsibility for the care and upbringing of her child been seriously challenged.’ (280)

Also, having to suffer the blow to one’s identity caused by being forced out of paid employment and into care work by normative pressure and societal structures is something exclusively women experience in Germany. At the same time, men are not likely to feel responsible for care work in any comparable way. Neither is fatherhood constituted as an integral part of being a man to the same degree as motherhood is for women, nor is being a ‘good’ father constituted as equally important as being a ‘good’ mother. Further, notions of ‘good’ fatherhood are not linked equally with caring for their offspring. On the contrary, ‘good’ fatherhood is still constituted as being able to provide for the family through paid employment. This is highly relevant, because turning away from ‘traditional’ gender roles within the family necessitates non-conformity from both fathers and mothers (cf. Bird 2004).

We have argued above that East German women were exposed to an implicit attempt to redefine them as policy subjects through the total substitution of existing parental leave (and other social policies) in the former German Democratic Republic by West German policies. Therefore, women socialised in the German Democratic Republic, before 1990, also have experienced different ‘lived effects’ from West German women. The way women are constituted in the new West German parental leave discourse amounts to a full-scale redefinition or new constitution of East German women, from socialist full-time workers to full-time housekeepers. East German women, thus, have to cope with a situation in which all their previous notions about being a women and a mother are put into question discursively. The ensuing uncertainty, disorientation and dismay about the fact that all of a sudden the ‘problem’ was represented to be mothers in paid employment is unique to East German women.

7.5 Omissions and blind spots

In this section we will look at what is missing from the discourse in parental leave legislation. To do this, we will turn to feminist research into parental leave policies, treating it as superior counter-claims, yet claims nonetheless. We will ask what is left unaddressed in the discourse in parental leave legislation. The logic behind this is the constructionist notion that what is not said is as important as what is said (cf. Bacchi

1999: 13). What is not said in problem representations is necessarily not part of what the ‘problem’ is represented to be, and therefore left unproblematic. This is important, as what is left unproblematic is very unlikely to be changed by interventions based on the respective problem representation.

Above, we have analysed the effects of discourse imposing certain limits on what can be expressed within it. What we do here is closely related in the way that what remains outside the discourse is not likely to be addressed by policy interventions just as what is not represented to be part of the ‘problem’ is unlikely to be changed. Here, however, we are broadening our analysis to what could have been expressed but has not. We have already identified some omissions and blind spots in the previous chapters. Let us here recapitulate.

The first blind spot of parental leave discourse in legislation is the temporal dimension of parenthood. German parental leave legislation construes incompatibility as a ‘problem’ mothers face during the first years of raising their child. Parental leave is available for up to three years. After that children disappear from sight. The notion that care work does not disappear after three years is not part of discourse. Although the 2001 Act introduced a limited possibility to postpone one year of leave until the child’s 8th birthday, this does not eradicate the blind spot. The existence of and need for continuing care work is not part of parental leave legislation discourse.

Further, single parents are notably absent from legislative discourse. The discourse’s focus on the family makes us almost forget that single mothers face very real and different problems. Salles (2002: 211) shows that single mothers take parental leave less frequently than married or cohabiting women. Single mothers very often cannot afford to stop working in paid employment, as the current benefit levels are too low to compensate for foregone earnings. At the same time staying on in full-time paid employment is made difficult by the demands of care work (cf. Peltner and Züchner 2006). It is contingent on informal care arrangements as public childcare provision for under 3 year olds is not meeting demand (van Santen 2006).

This draws attention to the notion, also absent from discourse, that women are not a homogenous group. How women experience incompatibility varies greatly according to their level of education, occupation, and area of residence (cf. Salles 2002; Klement et al. 2006; Repo 2004). Middle-class women with higher education degrees and correspondingly higher earnings can afford private day care for their children if they live in areas with less developed public childcare provision. Therefore, they can continue to be in paid employment even if their partners are not willing or able to take over care work. Partnerships in which both partners hold degrees are characterised by significantly higher rates of female employment and a decrease

of the male breadwinner model (cf. Klement et al. 2006: 247). But, women with low educational qualifications and lower earnings are more dependent on public childcare provision and, consequently, find themselves pushed into a full-time carer model. Policy interventions based on problem representations from which women's different economic situations are missing in this way are likely only to benefit highly qualified women with above average earnings. Feminism for the elite, nappy changing for the rest, the likely effect has been named in bitter irony.

The most momentous blind spot in existing discourse, however, is the gendered division of labour within the family and society. Although, parallel reconciliation tentatively thematises the fact that women are left alone with care work, sequential reconciliation omits it completely. Structural reasons are notably not part of the discourse as to why women currently do the lion's share of care and domestic work. Although the problem representation of parallel reconciliation characterises men as part-time caregivers and thus brings them into the picture, the structural reasons as to why almost exclusively women take parental leave are not addressed. Men's non-participation in care work is construed as an attitudinal problem. To start with, the gender pay gap and the organisation of the wage-earner society are missing from discourse. That men and employees in 'male' professions receive better remuneration than women and employees in 'female' professions is not part of the discourse. These facts create a situation in which, in most cases, women earn less than their partners. Given the low parental leave benefit levels this works as a barrier against men taking parental leave.

Further, the implicit male norm in the labour market remains unaddressed. Notions of status, hierarchy and pay – deeply ingrained in our society in general and employers' views in particular – are based on seniority and continuous full-time employment and, thus, implicitly setting a male norm. Women with their more fragmented work biographies can never be assessed fairly on the grounds of these criteria (Gutschmidt 2000).

With the gendered division of labour being all but absent from the discourse, a problematisation of its consequences for women is necessarily also lacking. The fact that almost only mothers take parental leave and, thus, do the lion's share of care work, however, has all kinds of negative effects for women. None of these are part of parental leave discourse. The issue of re-integration of women into the labour market after parental leave (cf. Amend-Wegmann 2003: 278) is as absent as that of cumulative negative effects of leave on women's careers in paid employment in the middle and long run (cf. Ziefle 2004). Re-entering the labour market after a period of parental leave is already difficult for women, but re-entering it at a position equal to

the one left the more so. Women's economic situation in retirement is hugely adversely affected by periods of full-time childcare, part-time employment and delayed promotion (cf. Beckmann and Hornung 2001; Bothfeld 2005).

The fact that the gendered division of labour is a blind spot in the discourse in parental leave legislation shows that incompatibility of paid employment and care work is not construed as a gender equality 'problem' (cf. Krug 1998). Even in the more emancipatory problem representation implicit in the 2001 Parental Leave Act, the language is gender neutral. Thus, the focus remains on women rather than being switched to men. The implicit representation of women as the only policy 'targets' has, thus, not substantially been challenged. Further, the different status and remuneration allocated to activities in the 'private' and 'public' sphere and within the latter is completely absent from parental leave discourse. This severely restricts the usefulness of problem representations. Construing incompatibility as a women's 'problem' not only makes it highly unlikely that broader social structures favouring men over women will be challenged leading to more equal gender equality, but also that men will be compelled to take over more care work.

7.6 Alternative problem representations

In this section and concluding this chapter, we will turn our attention from problem representations that have made it into parental leave legislation to alternative marginal problem representations.

In the previous sections we have assessed existing problem representations by their likely effects. Our particular point of critique has been that within the existing discourse in parental leave legislation, it is very unlikely that women and mothers benefit from proposed policy interventions as they do not address gender inequality and the gendered division of labour. Most of all, existing discourse in parental leave legislation is about women and therefore does not problematise the implicit male norm against which women are construed as policy 'targets'. How men benefit from the existing gendered division of labour remains thus outside the discourse.

Here, we will introduce alternative feminist problem representations, which could possibly make a real difference to women and mothers by bringing men and the male norm into the picture. Before we start, one frequently quoted proposal has to be dismissed. The idea of introducing a flatrate 'child raising salary' has been presented as an answer to some feminists' demands for recognition of women's care work. Opielka (2000) suggests a taxable monthly 'salary' of 2000 Deutschmarks

(1022 Euros) for the parent who raises a child, independent of employment status and up to the child's 8th birthday (in its initial stage).

However, the 'problem' here is represented to be about remuneration and recognition of care as equal, not about the very real problem of trying to combine paid employment with care work women face. The cause of the 'problem' is represented to be lacking societal recognition of care work, not the gendered division of labour. Again, the 'problem' of incompatibility is thus construed as an attitudinal problem.

Although the proposal is formulated gender neutrally, it is *de facto* addressed at women. It provides an incentive to become full-time caregivers to those whose earnings are lower than the 'child raising salary'. That means women. It is very unlikely such a policy intervention would change the gendered division of labour. On the contrary, it would probably cement and reinforce it by incentivising women to become full-time caregivers and exacerbating the problem of re-integration into the labour market. Finally, facilitating a very long exit from the labour market further reinforces the demarcation between paid work and care work, making the parallel pursuit of both less likely (cf. Koch 2001).

Things are slightly different with the idea of tying parental leave benefits to previous earnings. Stolz-Willig (1999) suggests paying the care giving parent who temporarily stops paid employment 70 percent of previous net earnings as benefits for one year. This construes benefits as compensation for foregone earnings.

However, although this might constitute an incentive for some men to take parental leave, the 'problem' here is represented to be about women's precarious social situation, about creating social security for women who are affected by a fragmented working life. The 'problem' is not represented to be about the problems mothers face staying on in paid employment caused by the gendered division of labour. Consequently, the proposed measures do not aim at men and social structures and are not likely to change the unequal division of labour.

Let us now turn to a problem representation that has the potential of aiming at the centre of what I have argued to be the 'real cause' of the incompatibility of paid employment and care work. This problem representation is about women's inequality in paid employment caused by the unequal gendered division of labour in family and society. Policy proposals thus recommend a fundamental redistribution of domestic and paid labour between men and women. Typically, these proposals suggest policy interventions in one or more of the following three areas: individualised parental leave entitlements for each parent (Nyberg 2006a); an upgrading and extension of public childcare (cf. Gornick, Meyers and Ross 1997; Hagemann 2006); and shorter working hours for all employees in full-time employment (cf. Fagnani and Letablier

2006; Pascall and Lewis 2004). Some, such as Fox, Pascall and Warren (2006) suggest policy interventions in all three areas.

As part of a redistribution of labour between men and women, some German feminists (cf. Gutschmidt 2000; Kirner and Kirner 1998; Koch 2002; Notz 1998) suggest introducing a statutory requirement to share parental leave equally between fathers and mothers. This 'solution' suggesting a mandatory equal sharing of parental leave between fathers and mothers implies the farthest departure from existing problem representations in parental leave legislation. Its advocates take legislation in Sweden and Norway as their policy role model. These countries have introduced individualised leave for fathers, so-called 'daddy leave', of different length.⁶⁰ If this leave is not taken by fathers, the overall length of parental leave is reduced, providing an incentive for fathers to take over more care work (cf. Duvander et al. 2005; Nyberg 2005).

Such a proposal draws attention to men's present lack of participation in care and domestic work and therefore shifts the focus from women to men. Instead of implicitly construing women, their behaviour and choices as 'the problem', men and the way they work are put centre stage. Thus, the implicit male ideal worker norm of Western labour markets can be scrutinised and questioned.

In addition to an equal sharing of childcare through 'daddy leave', proponents of a redistribution between women and men of care and domestic work and paid employment demand the upgrading of childcare provision, so that all-day public childcare is available for children of all ages. This 'solution' finally construes the 'problem' of incompatibility as a 'public' one, overcoming the long-standing allocation of care work to the 'private' sphere, which makes policy intervention very difficult. However, if only comprehensive childcare is presented as the 'solution' to incompatibility, men again disappear from sight.

Of the German advocates of a redistribution of labour Notz (1998: 112) goes furthest in that she suggests radically reducing general working time after the French 35-hour week model, with a view to creating full-time employment with a living wage for women and men that leaves more time for activities such as care and domestic work, community work, and cultural activities.

Redistribution of labour is not just about making it easier for mothers to remain in, or return to their positions in paid employment. This, as laudable as it may be,

⁶⁰ Sweden has two months non-transferable leave for each parent, and proposed five months each plus five to be shared between parents. Iceland has three months individualised leave per parent and another three months to be shared.

would not alter the current situation in which women are the sole focus of parental leave policies and thus constituted as the inherent policy problem. As long as the focus of parental leave policies does not shift to fathers, gender inequality is not addressed:

‘(...) parental leave and childcare policies that stop at facilitating women’s employment often means allowing women to combine work with family responsibilities rather than achieving equality with men in the home and the labour market’ (Nyberg 2006b: 102).

Redistribution of labour, in contrast, is about fundamentally changing the division of labour by getting men to take over more care and domestic work and reduce their working hours in paid employment (cf. Nyberg 2006b).

7.7 Summary

In this chapter, we analysed how the ‘problem’ of incompatibility of paid employment and care work was construed in German parental leave policy.

Traditionally, parental leave policy was about children’s wellbeing and childcare. The ‘problem’ of incompatibility was represented to consist of mothers who work in paid employment. Briefly, this problem representation was partly replaced in 1979; only to be reactivated by the 1986 Parental Leave Act representing paid employment and care work as absolute contradictions for mothers, proposing sequential reconciliation as ‘solution’.

After 1998, there has been an important change in problem representations. Although, the ‘traditional’ problem representation remained influential, another, representing parental leave policy to be about women’s employment and a more equal division of domestic labour emerged in the Parental Leave Act 2001.

Before 1998, the cause of the incompatibility ‘problem’ was represented to lie in women’s aspirations for a career in paid employment, and therefore to be self-induced. While this representation remained active, it was partly replaced by one representing the unequal gendered division of domestic labour and men’s non-participation in care work as the cause of incompatibility.

In sequential reconciliation women are the primary policy targets. They are characterised as dependent upon their partners and natural caregivers, ‘good motherhood’ being represented as contingent upon full-time care giving. Though, women are construed as victims of incompatibility, they are characterised as victims of their own choices and therefore represented as the ‘problem’. Significantly, in parallel reconciliation both women and men become policy targets. While women are char-

acterised as (part-time) breadwinners, men are characterised as (part-time) caregivers. ‘Good fatherhood’ is linked with care work, changing ‘traditional’ gender roles and construing women and men as more equal partners.

Construing parental leave as preferential treatment characterises women as beneficiaries, making it difficult to voice the view that they are rather victims. Construing incompatibility as an attitudinal ‘problem’ of individuals within the ‘private’ sphere of the family closes off the space to think about it as a structural ‘problem’ of the ‘public’ space, caused by the unequal division of labour and the organisation of the world of work. Interventions into those structures are, thus, unlikely.

As a ‘lived effect’ of discourse in parental leave policy, women feel they are the natural caregivers of their children and are responsible for care work in a way men do not, although this might change under the influence of parallel reconciliation. Women feel that reconciliation is their responsibility, and consequently the feeling of being caught up between two conflicting worlds is an experience almost unique to women. In East Germany, women experience particular uncertainty and dismay about their discursive re-figuration from full-time breadwinner to full-time caregiver.

We identified the temporal dimension of incompatibility and the implicit male norm in the labour market and the organisation of paid labour as main gaps in present problem representations. Alternative problem representations construe the unequal gendered division of domestic and paid labour as the cause of incompatibility, proposing a re-distribution of labour through extended public childcare provision (Gornick and Myers 2003), shorter general working time (Fagnani and Letablier 2006), or individualised leave entitlements for each parent (Nyberg 2006a).

8 Working time policy

In this chapter, we will examine working time policy in Germany. Working time policy is a vast and complex field regulating the length and continuity of working time. It potentially includes regulations for paid holidays, maternity leave, pension age, employed children and youth, opening hours, and for free weekends for most professions.

For several reasons, we will concentrate here on part-time employment policy. First, in the German system of tariff autonomy general working-time is generally left for trade unions and employer associations to negotiate; federal governments rarely legislate in this matter. The most recent policy intervention was in 1994. Second, most importantly part-time employment policy is the area of working time policy explicitly associated with the incompatibility ‘problem’ in the coalition’s 1999 legislative programme *Frau und Beruf* (women and employment). Therefore, part-time employment legislation is represented as part of the ‘solution’ to incompatibility.

This section serves the purpose of describing the development of working time policy in its historical context. The aim is to tease out what working time policy was represented to be about, or, in other words, what the ‘problem’ in working time policy was represented to be.

8.1 What is part-time employment policy represented to be about?

Part-time employment policy is a relatively new policy field in Germany. Notwithstanding this fact, it has been represented to be about quite different policy ‘problems’.

Part-time employment policy emerged in the 1960s. Since the beginning of the 1960s part-time employment increased steadily (Auth 2002). The backdrop of this development is provided by the fact that from the mid-1950s until the early 1970s Germany experienced a phase of prolonged economic growth and pronounced labour shortage.

On the federal level, the first policy interventions in the field of part-time employment took place at the end of the 1960s. Female federal civil servants with children under the age of 16 could apply to switch to part-time employment for a maximum of 6 years. The policy was modelled after similar policies in Lower Saxony and Baden-Württemberg, which at the beginning of the 1960s had introduced a similar

option for some female civil servants to counter the acute shortage of teachers (cf. Sechstes Gesetz zur Änderung beamten- und besoldungsrechtlicher Vorschriften). In both cases, by offering the opportunity to work part-time, mothers should be encouraged to remain in employment instead of withdrawing from the labour market altogether in order to raise their children. As approval of applications was dependent upon actual labour shortage in a specific field, working time policy was represented to be about labour shortage.

Under the conditions of continuing labour shortage at the end of the 1960s the Federal Labour Office, the *Bundesanstalt für Arbeit*, supported employers in their effort to recruit women part-time into the labour market, providing advice and labour exchange services gauged to this group.

In the middle of the 1970s when the economic tide turned, male federal civil servants were also given the right to apply for part-time employment under the same conditions as their female colleagues. In contrast to the introduction of a part-time option for mothers, this step was taken with a view to an imminent oversupply of civil servants, particularly teachers. Labour supply remained the concern of working time policy, this time, however, oversupply.

When Germany entered a phase of economic decline and unemployment rose steadily, from 1977 to 1980 the Federal Labour Office offered part-time employment in employment-creation measures to women with the aim of redistributing labour. Thus, part-time employment continued to be represented as being about oversupply of labour.

In 1980, the right to apply for part-time employment was extended to all sectors of the civil service in which a special public interest justified this in exceptional circumstances. The maximum age of children in the household was increased to 18 years. In the following decade and a half, the maximum duration of part-time work was increased successively to 9 years (1984) and 12 years (1989) under conservative governments. Approval of applications to switch to part-time employment was contingent upon labour supply in the public sector. Both in times of oversupply and in times of under-supply of candidates for the civil service, individual applications for part-time work could be approved. This shows that working time policy was firmly represented to be about labour supply.

In 1984, the conservative/liberal coalition adopted a law regulating part-time employment (cf. Bundesregierung 1984). The ensuing 1985 *Beschäftigungsförderungsgesetz*⁶¹ introduced minimal protection for part-time employment, but mainly it was

⁶¹ *Beschäftigungsförderungsgesetz* can be translated as ‘promotion of employment act’. Initially, it was due to lapse in 1994, when it was extended until 2000.

about flexibilisation of employment. The Act represented working time policy as being about creating employment opportunities through flexibilisation of labour supply.

At the same time, the draft bill proposed by the oppositional Social democrats, however, for the first time represented working time policy as being about reconciliation of paid employment and care work for women (cf. Abgeordnete Frau Dr. Däubler-Gmelin et al. 1984). It proposed the creation of non-discriminatory part-time employment as a means to allow women to reconcile paid employment and care work.

In 1996, a part-time campaign targeted employers, promoting part-time employment as a flexibilisation strategy. No substantial legal changes were made.

Although, part-time employment policy has, since the unification of Germany, exclusively been shaped by the West German ‘tradition’, a brief look at part-time employment policy in the German democratic Republic is interesting. Not unlike West Germany, East Germany experienced a rapid expansion of part-time employment from 1960 to 1975 (cf. Amend-Wegmann 2003). However, the political aim behind the introduction of part-time opportunities was very different. The socialist economy was suffering from severe labour shortage and the socialist welfare state, based upon integration into paid employment, and needed the permanent full-time integration of women into paid employment. Part-time employment was meant as means towards this end, making women’s employment socially acceptable and realisable (cf. Oertzen 1999). It was exclusively available to women. When it became evident that part-time employment rather than increasing labour supply reduced it, as full-time employed women switched to part-time, part-time employment was severely restricted in the mid-1970s. Therefore, part-time employment policy was represented to be about labour supply and the integration of women into paid employment, not reconciliation of paid employment and care work.

8.2 What was part-time employment policy represented to be about 1998–2005?

The promotion of part-time employment was explicitly part of the red-green coalition’s reconciliation policy. In their 1998 coalition agreement both parties agreed on launching a gender equality policy action programme called *Frau und Beruf*, or women and employment (cf. Sozialdemokratische Partei Deutschlands and Bündnis 90/Die Grünen 1998). The programme, which was unveiled the following year, comprised the promotion and upgrading of part-time employment.

In 2000, the coalition adopted a part-time employment law, the *Gesetz über Teilzeitarbeit*⁶², which came into force in 2001 (cf. Bundesregierung 2000b). The Part-time Employment Act 2000 established a legal right for employees to have their contract of employment converted into a part-time contract and to return to full-time if vacancies arise before any new employees are hired. Converting a contract of employment to part-time can only be denied on operational grounds. The Act also obliges employers to advertise part-time opportunities to staff and employee representatives, and outlaws discrimination against part-time employees.

The 2000 Act contains three different problem representations. First, in the tradition of previous part-time legislation, part-time employment is represented to be about creating employment through flexibilisation. If the expansion of part-time work is offered as an employment policy tool, the ‘problem’ in question is represented to be about creating employment. This problem representation can be found in the bill’s section on the proposed legislation’s wider aims:

‘Die Ausweitung der Teilzeitarbeit hat eine erhebliche beschäftigungspolitische Bedeutung. Darüber hinaus ist nichtdiskriminierende Teilzeit für die Durchsetzung der Gleichstellung von Frauen und Männern eine wesentliche Voraussetzung.’

‘The expansion of part-time employment is an important means of increasing employment. Further, non-discriminatory part-time employment constitutes one of the preconditions for the implementation of gender equality.’

(Bundesregierung 2000b: 1)

The second sentence clearly represents part-time employment as inextricable linked to gender equality issues. It further alludes to the fact that the proposed legislation addresses discrimination against part-time employees.

At the same time, however, another problem representation is present. By conceptualising legislation in the field of part-time employment as part of a ‘solution’ to the gender equality ‘problem’, part-time employment policy is necessarily represented to be about gender equality. If disallowing discrimination against part-time employees is presented as a ‘solution’ to the discrimination against women, the ‘problem’ is represented to be about gender equality and discrimination against women.

Thirdly, introducing a (albeit conditional) statutory right to switch to part-time takes up the problem representation which emerged in 1984 in the oppositional Social Democrats’ bill, representing part-time employment policy to be about the rec-

⁶²The full title is *Gesetz über Teilzeitarbeit und befristete Arbeitsverträge und zur Änderung und Aufhebung arbeitsrechtlicher Bestimmungen*, which translates into ‘part-time and temporary employment act and employment regulations act.’

conciliation of paid employment and care work. If the introduction of a statutory right to switch from full-time to part-time is offered as a ‘solution’ to a policy ‘problem’, the ‘problem’ is represented to be about the reconciliation of paid employment and care work.

Parallel to the Part-time Employment Act, the coalition adopted an amendment of the existing *Bundeserziehungsgeldgesetz*⁶³, the Parental Leave Act. It came into force at the same time as the Part-time Employment Act. The two pieces of legislation are inextricably linked. Although we have dealt with parental leave policy in a separate chapter, the *Bundeserziehungsgeldgesetz* also legislates in the field of working time policy. Therefore, we will need to have a more detailed look here at its provisions concerning part-time employment.

To remind the reader of the *Bundeserziehungsgeldgesetz*, here is a brief summary of its content. The Act increased childraising benefits and introduced a budget option offering parents the right to claim higher benefits for a maximum of 12 months rather than the lower ‘normal’ rate for the full 24 months. It introduced an entitlement for both parents to take up to three years of parental leave (*Elternzeit*), which can be taken alternating (with up to two changeovers) or at the same time. The maximum remains at three years per child, regardless of whether only one or both parents take it up. Thus, if both parents choose to take leave at the same time, they can both take three years of leave.

In regard to working time, parents on *Elternzeit* gained a statutory entitlement to switch to working part-time under certain conditions.⁶⁴ Further, parents were given the right to return to their previous full-time position after their period of leave. Finally, the maximum permitted working time while claiming child raising benefits (*Erziehungsgeld*) on *Elternzeit* was increased from 19 to 30 hours per week.

If introducing a statutory right for parents to switch to part-time employment during parental leave (instead of having to drop out of paid employment for the duration of leave) is presented as ‘solution’ to a policy ‘problem’, the ‘problem’ is represented to be about parents having to drop out of the labour market during the first three years of the life of their child. More precisely, however, as parental leave is almost exclusively taken up by mothers, the ‘problem’ is represented to be about women who are forced out of the labour market during parental leave. Part-time employment is, thus, represented to be about the reconciliation of paid employment and care work.

⁶³ *Bundeserziehungsgeldgesetz* translates into ‘child benefit act’.

⁶⁴ The entitlement only applies to firms with more than 15 employees. Also, employers can reject part time work for important operational reasons.

8.3 What is the cause of incompatibility represented to be?

Part-time employment policy contains complex problem representations. On the one hand, part-time employment policy is still represented to be about creating employment as it was before 1998. On the other hand, it is also represented to be about gender equality and the reconciliation of paid employment and care work.

In this section, we will turn to the next level in problem representations, analysing what Bacchi (1999) calls the implicit ‘diagnosis of the cause of the ‘problem’. Any proposed ‘solution’ to a policy ‘problem’ necessarily contains assumptions about the nature of the ‘problem’. What follows from this is that we will need to investigate the problem representation representing part-time employment policy as being about reconciliation of paid employment and care work, asking what kinds of implicit assumptions are made about the nature of the ‘problem’ of incompatibility of care work and paid employment. We will thus ask what the cause of the ‘problem’ of incompatibility is represented to be in part-time employment policy.

Until 1998 government part-time employment policy represented it to be about labour supply, either undersupply or oversupply, and about creating employment through flexibilisation. The ‘problems’ part-time employment policy was designed to ‘solve’ were labour shortage and oversupply of labour respectively, depending on economic and demographic trends. Incompatibility of paid employment and care work was not part of these problem representations.

The situation changed with the red-green coalition taking power in 1998. Both, the Parental Leave Act 2000 (*Bundeserziehungsgeldgesetz/Gesetz zur Elternzeit*) and the Part-time Employment Act 2000 (*Gesetz über die Teilzeitarbeit*) contained, among others, problem representations construing part-time employment as being about reconciliation of paid employment and care work.

Although, the incompatibility ‘problem’ is construed slightly differently by these two pieces of legislation, there also is an overarching similarity. Both, the Part-time Employment Act 2000 and the Parental Leave Act 2000 construe incompatibility as being about women having to decide between full-time employment and withdrawing from the labour market altogether because of care work. Both problem representations construe incompatibility as being caused by structural factors, working time in one case and legal restrictions in the other. The ‘solution’ both pieces of legislation offer to the ‘problem’ of incompatibility is parallel reconciliation through a temporary change to part-time employment.

The right to switch from full-time to part-time employment and back to full-time, introduced by the Part-time Employment Act 2000 represents part-time employment to be about the reconciliation of paid employment and care work. Implicit-

ly this provision also contains an assumption about the cause of the incompatibility of paid employment and care work. Section eight of the part-time employment bill specifying the right to switch to part-time employment is interesting in this respect:

‘Ein Arbeitnehmer, dessen Arbeitsverhältnis länger als sechs Monate bestanden hat, kann verlangen, dass seine vertraglich vereinbarte Arbeitszeit verringert wird. (...) Der Arbeitgeber hat mit dem Arbeitnehmer die gewünschte Verringerung der Arbeitszeit mit dem Ziel zu erörtern, zu einer Vereinbarung zu gelangen. Er hat mit dem Arbeitnehmer Einvernehmen über die von ihm festzulegende Verteilung der Arbeitszeit zu erzielen.’

‘An employee who has been employed by the employer for more than six months can demand that their contractual working time be reduced. (...) The employer has to discuss with the employee the desired reduction with the aim of reaching an understanding. The employer, who finalises the working time arrangements, has to reach agreement with the employee regarding the reduction of working time.’

(Bundesregierung 2000b: 3)

Here employees are given the right to reduce and renegotiate their contractual working hours with their employer to suit their needs. Bearing in mind that the legislation first and foremost aims at women and mothers, the respective employees’ needs are largely determined by family care work.

If employees are given the right to convert their contracts of employment into part-time contracts so as to meet their working hour needs, this means that implicitly full-time employment and care work are construed as fundamentally incompatible. Further, we need to analyse the problem representation against the backdrop of the fact that part-time employment is overwhelmingly female employment. While for men it remains an exception, for women it is almost as common as full-time employment⁶⁵. Therefore, care work and full-time employment are represented as incompatible, as two commitments that are impossible to meet at the same time. The cause of incompatibility is, thus, represented as two irreconcilable demands on mothers (and to a much lesser degree on fathers): paid employment and care work. If reducing one’s working hours in paid employment is offered as a ‘solution’ to incompatibility, implicitly the cause of the ‘problem’ is represented as long working hours for mothers. In other words, the cause of the ‘problem’ is represented to be that mothers ‘have’ to work too much in paid employment.

The right to return to full-time employment after a period of working part-time shows further that incompatibility is represented to be something temporary, caused by the demands of care work during the early years of a child’s life.

⁶⁵ In 2003, circa 45% of women in West Germany and 27% in East Germany were employed parttime, compared with 5% of men in both parts of the country. Cf. Bothfeld 2005, 139.

The problem representation implicit in the parental Leave Act 2000 is slightly different. Although, granting parents a right to work up to 30 hours a week in paid employment while on parental leave and childcare benefits also represents part-time employment to be about reconciliation of paid employment and care work, the implicit cause of incompatibility is represented differently. As parental leave is taken overwhelmingly by mothers, incompatibility is represented to be caused by previous conservative parental leave legislation, which forced women out of employment if they wanted to take parental leave and claim childcare benefits. Incompatibility is, thus, represented to be caused by legally enforced economic inactivity, that is, absence from the labour market.

8.4 What are the effects of problem representations?

Previously, we have analysed what part-time employment policy is represented to be about, and asked about implicit assumptions about the cause of the incompatibility ‘problem’. In this section, we will venture further and try to assess the problem representations we identified above by their likely effects. We will draw here on Bacchi’s (1999) thesis that if we want to provide analysis that is both meaningful and emancipatory, we have to step beyond the pure description of claims. Thus, the guiding question in this section will be who is likely to benefit from particular problem representations? Who are policy targets of part-time employment policies? And further, is it the policy ‘targets’ that are likely to benefit the most from a particular problem representation? Or if not, who is likely to benefit most?

We will differentiate here between three kinds of effects problem representations. Each of them will be examined individually in the following sections. To start with, we will ask how policy subjects and subjectivities are constituted in discourse. What effects follow from this particular constitution of subjects? Secondly, we will turn our attention to the limits imposed by discourse in legislation on what can be said. We will investigate what effects these limits have on the construing of the incompatibility ‘problem’ as such. And finally, we will try and assess the ‘lived effects’ of discourse.

8.4.1 Constitution of subjects and subjectivities

In this section, we will try and assess the problem representations introduced above by their likely effects regarding how policy subjects and subjectivities are constitut-

ed in the discourse of part-time employment policy legislation. In order to do so, we will try to tease out the unexpressed, implicit characterisations of policy ‘targets’, and then reflect upon the consequences of these characterisations for the persons concerned.

We will concentrate here on the problem representation representing part-time policy as being about the reconciliation of paid employment and care work, which are implicit in the Part-time Employment Act 2000, and the Parental Leave Act 2000.

Introducing a statutory right to behave in a particular way, to make a particular choice about one’s life contains an implicit assumption that the respective behaviour is desirable in regard to providing a ‘solution’ to a ‘problem’. Therefore, the introduction of a right to switch to part-time employment contains a certain normative assertion that taking up this option is helpful in order to reconcile paid employment and care work:

‘[Die] Regelungen [sollen] die Akzeptanz für Teilzeitarbeit erhöhen, die Diskriminierung von teilzeitbeschäftigten Arbeitnehmern verhindern und den Wechsel von Vollzeit- zu Teilzeitarbeit und umgekehrt erleichtern.’

‘[The] provisions [are to] increase acceptance for part-time employment, stop discrimination against part-time employees and facilitate the change from full-time to part-time employment and vice versa.’

(Bundesregierung 2000b: 1)

If the legislation’s aim is to ‘facilitate the change from full-time to part-time employment and vice versa’, consequently the respective behaviour is represented as a ‘solution’ to the incompatibility ‘problem’.

The respective provision by the Part-time Employment Act 2000 is directed equally at both, men and women, fathers and mothers. Thus, men as well as women are construed as policy targets. One could object that women are the primary targets of the legislation because ‘traditionally’ it is they who use a reduction of working time as a reconciliation strategy. On the other hand, however, this is balanced by the fact that it is men who overwhelmingly hold full-time positions (95%, cf. Bothfeld 2005: 139); and therefore arguably a right to switch to part-time employment addresses them primarily. Fortunately, we do not need to conclusively resolve the question here; suffice to establish that this aspect of part-time employment policy is the only policy area investigated in this study so far in which men are construed as policy targets in a similar way to women.

This is a significant change, because characterising men as targets of a policy, which is represented to be about the reconciliation of paid employment and care

work implicitly construes men as part of the ‘problem’ of incompatibility. In the previous chapters, we have repeatedly argued that from the characterisation of a group as a policy target follows a preoccupation with that group. The targeted group becomes construed as different from some implicit norm and is thus construed as ‘problematic’ by virtue of this deviance. Until this point this construction of policy targets as the ‘problem’ almost exclusively concerned women/mothers. Therefore, characterising men as policy targets is highly relevant, because it means that their behaviour, working time choice in particular, is subjected to scrutiny in a similar way to women’s behaviour previously.

Through the implicit assertion that reducing one’s working time is what people should do to reconcile paid employment and care work, men are characterised as caregivers to their children, part-time caregivers in fact, but the shift is notable nonetheless.

At the same time, however, men are still characterised as breadwinners, albeit breadwinners who are expected to reduce their working hours temporarily. Women on the other hand are characterised as part-time caregivers/part-time breadwinners, similar to the characterisation of men. However, although the characterisation of women and men is similar, the effect on them is quite different. Given that women ‘traditionally’ have not been construed as ‘natural’ breadwinners the new characterisation can be seen as an improvement. At the same time, however, women are likely to be expected to take the opportunity to switch to part-time employment in a way men are not because of the persistence of ‘traditional’ gender roles. The pressure on women to go part-time is therefore likely to be greater than it is on men. Still, women are likely to benefit from the fact that men are construed as part-time caregivers as this construction might indeed increase men’s share in care work.

The characterisation of both women and men as caregivers is a remarkable change in working time policy. Both are characterised as responsible for care work, which implies a convergence of gender roles. At the same time, the notion of women as ‘natural’ full-time caregivers is challenged.

We will turn now to the Parental Leave Act 2000, where the problem representation is slightly different, although part-time employment is also represented to be about the reconciliation of paid employment and care work. Introducing a statutory right to work up to 30 hours part-time during parental leave contains the same normative assertion as introducing a right to switch to part-time employment: that taking up the option is helpful in order to reconcile paid employment and care work. Further, similar to the above policy measure, it addresses both women and men, being phrased gender neutrally. Although, the policy primarily addresses women, be-

cause it is overwhelmingly they who take parental leave, it also addresses men, being conceived as a measure to encourage more men to take over some care work.

Both, men and women are construed as policy targets with the results explained above. Mothers are characterised as secondary wage earners and breadwinners, while men are characterised as secondary caregivers during the first three years of their children's life. Further, if we also consider the right for parents to take parental leave at the same time, both parents are construed as part-time breadwinners and part-time caregivers, introducing a dual caregiver/ dual breadwinner model. The likely effect of this is that gender roles of women and men converge.

8.4.2 What cannot be thought about within working time discourse?

Having reflected on the constitution of policy subjects in discourse, we will turn here to a different kind of effect of problem representations. The theoretical basis of this section is provided by the social constructionist insight that what is unspoken is as important as what is said. By making statements on a particular policy 'problem' the discourse implicitly delimits the nexus of the issue. What is not addressed remains outside of the discourse and cannot easily be thematised. Thus, we will look at the limits that are imposed in and through the discourse in part-time employment legislation on what can be said about the 'problem' of reconciliation of paid employment and care work. Subsequently, we will try and expose potential effects following from these implicit discursive limits.

In part-time employment policy the current problem representation of the incompatibility 'problem', implicit in the Part-time Employment Act 2000 and the Parental Leave Act 2000, is parallel reconciliation.

The first limitation imposed through the discourse in part-time employment policy legislation is at the same time also an improvement. Incompatibility is construed as a structural 'problem', as incompatibility of paid employment and care work in terms of available time. From a feminist point of view, the construction of incompatibility as a structural 'problem' denotes a marked improvement; at long last attention has shifted away from women to the structure of society. Acknowledging the structural nature of the incompatibility 'problem' is an important step.

However, there also is an inherent danger in construing the 'problem' in such a way as structural. By making everything structural, it becomes difficult to establish who is responsible for the 'real' problem women face trying to reconcile paid employment and care work. There is a tendency for individual responsibility to disappear in this structural construction. Thus, the fact that individual men contribute to

their partners' incompatibility problems by not doing care work remains outside of the discourse. Individual men's choice not to take over their share of care work is not problematised. The likely effect of this limitation is that there is little pressure on individual men to change their behaviour, and take over more care work. In spite of its potential the emancipatory effect of this problem representation for women is likely to be severely limited by this.

The second limit can be found in the fact that incompatibility is construed as a time 'problem': that incompatibility is about available time for care work and paid employment respectively. The Part-time Employment Act 2000 construes incompatibility as about not having enough time to do the necessary care work while in full-time employment, while the Parental Leave Act 2000 construes it as not having enough time to be employed full-time during parental leave. Underlying the notion of incompatibility as a time 'problem' is the presupposition that the family is the place in which care work should take place. This in turn makes it difficult to think about care work as something that can be organised outside the family. The family is construed as the place in which re-conciliation should be organised between the spouses through division of responsibilities. This implies a traditional notion of the family as a homogeneous unit made up of one woman and one man. Power imbalances between women and men remain outside the discourse as do single mothers and fathers. The representation of incompatibility as a time 'problem' makes it likely that the search for 'solutions' to the incompatibility 'problem' will remain limited to a re-distribution of labour within the family. At the same time such a representation makes it unlikely that 'solutions' will be looked for outside the nexus of the family. While this holds some potential for improvement for women, it does not necessarily imply a fundamental change in the unequal gendered division of labour.

Thirdly, in parallel reconciliation, incompatibility is inextricably linked to paid employment, notably women's employment. Therefore, incompatibility is construed as a labour market 'problem'. This is also visible in the representation of incompatibility as being about creating employment in the Part-time Employment Act 2000 (cf. chapter 8.2). Thinking of incompatibility as a labour market 'problem' closes off the space to think about it as being about the way 'work' is conceptualised as paid employment. This construction makes it very unlikely that 'work' will be reconceptualised, resulting in a revaluing of care work in society.

Finally, the problem representation of parallel reconciliation is based upon the presupposition that life consists of two antagonistic, mutually exclusive spheres: full-time paid employment on the one hand, and care work on the other. This limitation is closely linked with the representation of incompatibility as a time 'problem'. The

‘problem’ of incompatibility is represented as a zero-sum game: what is to be gained on one side simultaneously has to be taken from the other side. Simultaneously, care work is subordinated to paid employment. Such a problem representation makes it very difficult to think about care work as something that can be externalised. The likely effect of this is that extra-familial childcare provision will remain a low priority and that thus women will continue to be forced to become part-time caregivers. Men, on the contrary, are not likely to suffer from these limits in the same way, because of their strong ‘traditional’ association with the ‘public’ sphere of paid employment.

At the same time, the underlying public/private dichotomy, assigning care work to the ‘private’ sphere and paid employment to the ‘public’ sphere remains unchallenged. The likely effect of this is that the devaluation of care work is very unlikely to be addressed within such discourse. If care work continues to be devalued it is unlikely that men can be convinced to take over more of it. For women this means that it is very unlikely parallel reconciliation will translate into much progress redressing the unequal gendered division of labour.

8.4.3 *‘Lived effects’*

In this concluding subsection on the assessment of likely effects of the discursive construction of incompatibility, we will examine the ‘real’ effects of discourse in part-time employment legislation. It is based upon the epistemological stance expressed above: that conceptualising policy ‘problems’ as socially construed does not mean they are somewhat less ‘real’. For the women and men concerned, the discursively construed meanings described above constitute their reality, at least until new meanings will have been construed.

Some postpositivists propose to tackle construed meanings discursively with pure discursive interventions. They claim that the formula for emancipation from discursively construed meanings is to challenge those meanings, which delimit how we think about an issue. Most feminist scholars in the field agree that challenging repressive discursive constructions of social ‘problems’ is both useful and necessary. However, while it is necessary, discursive interventions are very unlikely to result in immediate change. Existing meanings are not changed easily or quickly. Until those new meanings will be generally accepted and internalised – which is far from certain – the old meanings provide the reality for people concerned. Therefore, we will need to look at the ‘real’ effects of discursively construed meanings described in the previous sections.

Although the problem representations analysed in the previous sections are not purely discursive interventions, they nonetheless produce ‘lived effects’. The fact

that the problem representations are implicit in material policy interventions, however, creates one problem that needs to be identified again: ultimately, it is not possible to differentiate between the effects of social structures (which, in turn, are partly caused by policies) and the meaning-creating effects of discourse. Therefore, we are limited here to identifying some important 'lived effects', trying to evaluate problem representations' potential for change.

The first important 'lived effect' stems from the fact that part-time employment and consequently reconciliation of paid employment and care work are not exclusively represented as a women's issue any more. This means that in all likelihood both men and women will be affected by this construction of the incompatibility 'problem'. Although, the Parental Leave Act 2000 still predominantly addresses women, in principle men have become policy targets of reconciliation policy. Through the introduction of a general right to switch to part-time employment in parallel reconciliation men are characterised as (part-time) caregivers. This characterisation of men as supplementary caregivers is likely to cause men to perceive reconciliation increasingly as their 'problem' as well as a women's problem. However, this will probably be limited to those men who can financially afford to temporarily switch to part-time: relatively affluent middle-class white collar employees.

At the same time, although women are characterised as part-time breadwinners during child raising, they are not simultaneously characterised as full-time breadwinners equal to men. This is not surprising as such in a part-time employment policy, but can have important effects. Due to the persistence of 'traditional' gender roles, women are likely to feel a stronger normative pressure to change to part-time work than men as a reconciliation strategy. This could mean that instead of making more fathers do care work, this problem representation may establish a male breadwinner/female supplementary breadwinner and caregiver model. Ironically, this in turn could result in lessening the pressure on their partners to do the same and, thus, lead to an increased overall workload on women.

The fact that incompatibility is construed as a structural 'problem' makes it likely that women and men will think about it as such. Although, this characterisation is more appropriate than previous ones, when it is internalised, there is less reason for individual men to change their behaviour. Structures are anonymous and can obscure individual responsibility. Women could thus forgo leverage over their partners to take over more care work.

The construing of incompatibility as a time 'problem' caused by the antagonism of two conflictive spheres which has been 'solved' within the family, makes it likely that women will continue to perceive reconciliation of paid employment and care

work as their responsibility, at least until ‘traditional’ gender roles have changed (cf. Runté and Mills 2004). This is because the ‘private’ sphere of care work continues to be associated with the female.

8.5 Omissions and blind spots

Now that we have finished our investigation of the likely effects of problem representations in part-time employment legislation, we will move on from the analysis of what is implicit in discourse to what remains invisible, because it is absent from legislative discourse. In this penultimate section, we will extend our analysis to problem representations that exist outside the dominant discourse in anti-discrimination legislation. Turning to feminist research into part-time employment policies, we will try to detect the gaps in this discourse in working time legislation. Based on these alternative voices, we will try to establish what remained unaddressed in part-time employment legislation discourse.

The central idea behind this particular approach is that in order to assess problem representations it is necessary to overcome the preoccupation with what is there to be seen. One of the key insights of social constructionism is that what is not said is just as important as what is said (cf. Bacchi 1999). Whatever is omitted and not said in discourse consequently cannot be part of what the ‘problem’ is represented to be. Assumptions and presuppositions, which are not mentioned, are, therefore, necessarily taken for granted and thus left unproblematic. This point is worth emphasising, because what is left unproblematic in discourse is very unlikely to be addressed by policies based upon it.

In this study gender equality and the emancipation of women are the underlying normative ideals. In order to assess the potential of problem representations for the advancement of gender equality, we will therefore need to look very carefully at what is not part of problem representations in part-time employment policy legislation.

In its treatment of working time policy, this chapter has focused on problem representations in part-time employment policy, because it is the primary field of working time policy showing legislative activity from 1998 to 2005.

The fact that policy interventions in working time policy were limited to part-time employment necessarily means that some issues cannot possibly be part of discourse in legislation, such as general working time. Therefore, there are also gaps in the problem representations if we examine part-time employment policy alone.

Although part-time employment policy contains problem representations construing it to be about the reconciliation of paid employment and care work, these interestingly concentrate on the 'public' sphere and on paid employment. At the same time, the 'private' sphere and care work are neglected. Consequently, the continuing devaluation of care work is not part of the discourse. Care work is not represented as an important social practice in its own right (cf. Eckart 2000: 20). Care work and parenthood are, thus, by omission, represented in highly privatised terms (cf. Rosenfeld et al. 2004).

Second, although incompatibility is represented as structural, problem representations only contain the time dimension of the structural 'problem'. Other important constitutive factors are completely missing from discourse. Neither the legislation, which favours the male breadwinner model, nor insufficient childcare provision are part of this discourse. Equally missing are low pension and unemployment insurance entitlements for part-time employment (cf. Bauer 2001).

Third, existing problem representations fail to acknowledge that incompatibility as a time 'problem' is not limited to paid employment but encompasses the whole organisation of society (cf. Jürgens 2006). Not only the opening times of shops and public facilities, working hours and school hours, but also the whole temporal organisation of the world of labour and society are part of incompatibility, being a product of a patriarchal culture (cf. Eckart 2000). If no aspect of this wider context of incompatibility is part of the problem representations in working time policy, it is unlikely that policy interventions will address the wider structural reasons for incompatibility as a gender equality problem.

Fourth, the discourse in part-time employment legislation does not address existing 'traditional' gender roles. Although men are constituted as policy targets, what is missing from discourse is the fact that dominant gender roles and the patriarchal organisation of the world of paid employment make it unlikely men become part-time caregivers (cf. RÜling 2001). Part-time employment remains unattractive to men because their identity is linked to achievement in paid employment, and notions of merit and achievement in paid employment are tied to full-time presence at the workplace.

Finally, issues of power in society as well as within the family are missing from problem representations in working time policy. Families are construed as homogeneous units in which the division of labour is negotiated among equals. However, in reality, power asymmetries in relationships lead to profoundly unequal bargaining positions. The asymmetry of power is reinforced by structural factors unaddressed by part-time employment policy. The persistent attribution of care work to the 'private sphere' and of women to care work; the devaluation of care work; tax legislation favouring the male breadwinner model; and the advantages men derive from their

privileged position in the world of paid employment all remain unaddressed (cf. Cyba 2002). Although part-time employment allows mothers to reconcile paid employment and care work, generally it does not earn a living-wage (cf. Bothfeld 2005). Therefore, it does not fundamentally change the economic dependency of women on their full-time employed breadwinning partners. On the contrary, part-time employment rather perpetuates dependency, because it is ‘mostly available in certain segments of the labour market’ and it ‘lowers the opportunities for professional advancement’ (Bothfeld 2005:181). Incompatibility is, thus, not represented to be about creating independent livelihoods for women.

8.6 Alternative problem representations

Having exposed the blind spots of existing problem representations in the discourse in working time legislation from a feminist perspective above, we will turn to possible alternative problem representations. In this final section of this chapter we will therefore leave the discourse in part-time employment legislation and turn to feminist problem representations, which have not entered the mainstream discourse in legislation. Our aim is to introduce feminist alternatives to the existing discourse in working time legislation.

This being the final chapter in our analysis of reconciliation policies, we have already introduced most alternative problem representations in previous chapters. Where this is the case we will avoid repetition and only briefly recapitulate, referring to the relevant chapters for a more detailed account.

To begin with, an alternative problem representation could transcend paid employment and problematise the very nature of work itself. In Chapter Six, we have introduced the re-conceptualisation of work, overcoming the preoccupation with paid employment as an alternative problem representation. Several authors, among them Mutz (1999), suggest this problem representation. A different concept of work, such as Bergman’s (1998) ‘New Work’ might offer scope for care work to become regarded as an essential part of work rather than its antagonist as is the case in current part-time employment policy. If incompatibility were conceptualised as a general ‘problem’ of the wage-earner society *per se*, ‘solutions’ would be more likely to be broader, questioning the way our society is organised.

Second, feminists, such as Hobson (2002), Pascall and Warren (2006), Klenner (2005), Notz (1998), and Creighton (1999) have proposed an alternative problem representation. This problem representation, which is also brought forward by Junter

Loiseau and Tobler (1999), construes the division of domestic labour as the real 'problem'. We have introduced this problem representation in the aforementioned place. Instead of offering part-time employment as a gendered alternative to full-time employment, they call for a general reduction of working time to enable men to take over more care work and arrive at a more equal distribution of domestic labour. Klenner (2004) also falls into this category, calling for a reduction of the full-time working norm. If incompatibility were thought about along the lines of this problem representation, part-time employment would probably become less important as 'solution' while at the same time the gendered division of domestic labour would gain prominence.

A third alternative problem representation construes men's attitudes towards paid employment and the way their identity is linked to it as the 'problem' in reconciliation policy. According to Höyng (1998) and Eveline (1999), (introduced in Chapter six) discourse has to concentrate on men and their unhealthy obsession with paid employment. If the 'problem' of incompatibility were thought about along these lines, it is likely that policy interventions would concentrate on men rather than women and men or targeting primarily women.

Ostner (1995), Eckart (2000) and Raasch (1998) all suggest that reconciliation should be about gender equality instead of paid employment. According to them the 'problem' underlying incompatibility is that still men's lives are treated as the norm underlying incompatibility policy. Instead, women's lives rather than men's should provide the basis for policy. In this basis, Raasch (1998:40) advocates a new gender order, while Eckart (2000) proposes the creation of a new caring society, and Ostner (2000) argues for separating the provision of social security from paid employment. If incompatibility were envisaged more as a gender equality 'problem' than a labour market 'problem', there would be a greater chance of 'solutions' improving women's position in society in general rather than just helping them to combine paid employment and care work.

8.7 Summary

In this chapter, we analysed how the 'problem' of incompatibility of paid employment and care work was construed in German part-time employment policy.

From its emergence in the 1960s to 1998 part-time employment policy was represented to be about labour supply, undersupply or oversupply. While this representation remains inherent in policy, it has since 1998 been supplemented and partly re-

placed by other problem representations, representing part-time employment policy to be about gender equality, reconciliation of paid employment and care work, and women's employment.

The implicit representation of the causes of incompatibility is complex and contradictory. While the Part-time Employment Act 2000 construes incompatibility as a fundamental, structural and temporal 'problem' caused by the working hours of full-time employment, the Parental Leave Act 2000 construes the cause as legally enforced economic inactivity during parental leave.

Both women and men are constituted as policy subjects in part-time employment policy, meaning that men become represented as part of the incompatibility 'problem'. Men are characterised as part-time caregivers to their children while their characterisation as breadwinners persists in modified form. Women are characterised as part-time breadwinners in the early years of their children's lives, and while their characterisation as caregivers survives, the notion of women as natural full-time caregivers is challenged. The constitution of subjects manifests a significant tendency for gender roles of women and men to converge.

Although parallel reconciliation as a problem representation marks a significant improvement for women, it also imposes several limits on what can be said in discourse, making it unlikely that issues such as personal responsibility of men for incompatibility, the male-biased organisation of paid employment, and the public/private dichotomy will be addressed.

Concerning the 'lived effects' of discourse we found that as incompatibility is no longer represented solely as a women's 'problem' more men might perceive it as their 'problem'. This might, in turn, lead to them taking over more care work. However, the persistence of 'traditional' gender roles and the characterisation of incompatibility as a time 'problem' in a world of two antagonistic spheres means that women are likely to continue to perceive incompatibility as a 'problem' to be solved by them.

Alternative feminist problem representations were introduced in order to address the gaps and omissions in current discourse in part-time employment legislation. Representing incompatibility as a fundamental 'problem' of wage-earner societies could lead to a re-conceptualisation of work (cf. Bergman 1998) and help to overcome the preoccupation with the 'public' sphere of paid-employment, and introduce care work as an equally essential component of life. Representing incompatibility as mainly a gender equality 'problem' linked with the unequal gendered division of labour (cf. Ostner 1995; Eckart 2000; Raasch 1998) could help overcome the notion that incompatibility is primarily a time 'problem', while 'traditional' gender roles re-

main unaddressed. And finally, representing incompatibility as a men's problem could make it possible to address the implicit male norm in the organisation of the world of paid employment and the way men's identities are linked with and depend upon paid employment.

9 Conclusion

9.1 Introduction

The purpose of this thesis was to subject German reconciliation policy of the years 1998 to 2005 to fundamental scrutiny, combining and contrasting a contextual social constructionist paradigm of inquiry with a feminist point of view or normative position. The main question was: what is the ‘problem’ of incompatibility of paid employment and care work represented to be?

Conceptualising policy as construction and discourse rather than as ‘solution’ to a given external policy problem, the study investigated how legislation in anti-discrimination policy, childcare policy, parental leave policy and working time policy construed the ‘problem’ of the incompatibility of paid employment and domestic work, how legislation shaped the understanding of and ideas about the ‘problem’ by offering ‘solutions’ to it.

The study is based on the assumption that combining paid employment and family care work is a very real problem for women, but that ultimately the ‘real problem’ cannot be separated from the representations of the ‘problem’. It therefore concentrated on representations of the incompatibility ‘problem’. The study began by describing problem representations in their historical context, asking what they have been concerned with. Then, it moved on to an analysis of what the cause of incompatibility has implicitly been represented to be in reconciliation policies.

The study ‘deconstructed’ problem representations in reconciliation policy, revealing their underlying implicit assumptions and presuppositions and also attempted to assess problem representations by their likely outcomes, comparing the ‘construction’ of the incompatibility ‘problem’ pre and post-1998. The study asked questions about the ways policy subjects and subjectivities are constituted in legislative discourse; about the effects that follow from discursively imposed limits on what can be said; and about the ‘lived effects’ of discourse.

Contrasting problem representations in reconciliation legislation with others expressed in feminist scholarship, the study identified gaps and omissions in the problem representations from a feminist perspective and introduced alternative feminist problem representations, speculating how policy ‘solutions’ might differ if the ‘problem’ was thought about differently.

In order to form and answer the research questions, the study draws on two different literatures and traditions of thought, developing an original research methodology.

First, it draws on social constructionist social problems theory. Distancing itself from classical social problems theory the study conceptualises the social ‘problem’ of incompatibility of paid employment and care work not as a preexisting given ‘discovered’ by policymakers, but as construed in and through policy discourse. However, the study associates itself with a contextual rather than a strict constructionist approach in order to move beyond a purely descriptive treatment of claims about incompatibility. Drawing on Bacchi (1999) it asserts that claims, or problem representations, about incompatibility can be assessed by their likely effects.

The study also incorporates some valid criticism of constructionist approaches. It acknowledges Hacking’s (1999) critique that social constructionist research often is unclear about what it argues is ‘socially constructed’, although it rejects his strict distinction between objects and ideas. The study is concerned with how the understanding of the social ‘problem’ of incompatibility is construed in social policy legislation, the most powerful of relevant policy discourses. Sidestepping potentially endless ontological debates, the study asserts that the incompatibility ‘problem’ cannot be analysed separately from representations of it, and therefore puts them centre stage.

Second, the study draws on feminist Social Policy research. Feminist research provides the study with a standpoint from which to assess problem representations in reconciliation policy, and offers alternative problem representations. Treating reconciliation legislation as discourse, as dominant and momentous claims about the ‘problem’ of incompatibility, the study utilises feminist research into the welfare state in general, and gender equality policy and reconciliation policy in particular as important counter claims. It asserts that due to the disadvantaged position of women in society and their experience of being targets of reconciliation policy feminist counter claims are potentially epistemologically superior.

This is the place to briefly reflect on the theoretical and methodological difficulties encountered as well as the methodological advances made. Combining a contextual constructionist approach with feminist standpoint theory has engendered theoretical tensions which, although arguably reconcilable, the study has not attempted to reconcile theoretically. Contextual constructionism and standpoint theory operate with different and, to a point, antagonistic epistemologies. The former emphasises the relative nature of knowledge while the latter stresses the privileged epistemic location of women in regard to certain social phenomena. However, both generally

share the assumption that knowledge is situational. The epistemological tension resulted in degree of methodological tension. However, although the study did not attempt to reconcile these tensions theoretically, it has in reconciled them in practice, developing a working methodological framework, which harnesses epistemological and methodological tensions. One of the methodological advances of the study lies therefore in demonstrating that arguably contradictory epistemological approaches can in practice be combined to good effect, thus confirming in practice a point made by Hammersley (1996). Actually because of its inherent tensions the methodological framework developed generates an analytic dynamic that produces valuable new insights into reconciliation policy and the construing of the incompatibility 'problem'. Another advance is that the study has addressed one of Bacchi's (1999) inconsistencies. As Hoggart (2000) points out, Bacchi is inconsistent in her treatment of the relation between competing representations and social reality. Bacchi insists that she analyses only representations of 'problems', but at the same time she never questions the reality of women's subordination. The study was able to overcome this problem by adopting feminist standpoint theory as a second theoretical basis. By treating feminist research as epistemically privileged in the specific case of incompatibility the study could justify recourse to its findings.

The aim of this concluding chapter is to summarise the main findings and to tie together the main themes, and to draw some conclusions about the changing phenomenon that is reconciliation policy and its possible effects. In the process the contribution of the study to Social Policy research in general and reconciliation policy research in particular will be highlighted. The final section of this chapter will discuss areas in need of further research, suggesting possible future research paths.

9.2 Contributions of this study

By drawing together contextual social constructionism and feminism in the analyses of German reconciliation policy, this thesis makes a contribution to three interrelated bodies of knowledge: Social Policy research; feminist policy studies; and the study of the incompatibility of paid employment and care work in particular.

As a study in the context of the academic discipline Social Policy, the study made a methodological contribution, transferring a new contextual social constructionist method and research questions from Political Science and Policy Studies to Social Policy. Social Policy as a distinct discipline is a British peculiarity and relies upon interdisciplinary cross-fertilisation through an influx of new ideas and methods. In

doing so, the study provides Social Policy with a tried and tested method capable of transcending the limitation to a description of claims, which is oftentimes criticised as a severe constraint of social constructionist approaches, by making an assessment of problem representations possible. Even for critics of social constructionist paradigms of inquiry, the study constitutes stimulating fundamental research in that it thematises and questions what is usually taken for granted.

In feminist studies on German social policies, although social constructionist approaches have been applied, there is no literature on the construction of policy problems through policy. Here, the study introduces a new method to the field and generates first tentative findings, opening up opportunities for further research and discussion.

There is little up-to-date literature on German reconciliation policy during the years 1998 to 2005, and no up-to-date study covering reconciliation policy as a whole. Although studies exist on individual aspects of reconciliation policy, there is no social constructionist literature on German reconciliation policy. German political scientists and sociologists prefer realist epistemologies; Policy Studies and Social Policy do not exist as distinct subjects in the German context. This thesis is not only the first study on any of the four policies we analysed that combines a contextual social constructionist paradigm with a feminist position, it is also the first social constructionist study on German reconciliation policy as a whole. Providing the findings of the study get publicised through the appropriate academic outlets, it will constitute a valuable point of reference for future research.

9.3 Findings of this study

Chapter four provided a historical introduction to the main chapters, historicising the ‘problem’ of incompatibility and respective problem representations. It demonstrated that the incompatibility ‘problem’ is inextricably linked to the ‘problem’ of mothers’ employment, which itself originated from the ‘problem’ of women’s employment, on the one hand and to the ‘problem’ of women’s inequality on the other hand. It demonstrated that the incompatibility ‘problem’ was first construed as a policy ‘problem’ in the 1970s by women’s organisations in the wake of the second wave of feminism, and represented to be about women’s inequality in the labour market. The study demonstrated that the construction of incompatibility in reconciliation legislation has to be understood as parallel and competing working of the contradictory underlying policy ‘problems’, women’s employment and women’s inequality.

Chapter four also showed that in spite of fundamentally different political systems, reconciliation policy in the German Democratic Republic did not exhibit unique problem representations of incompatibility, providing the justification for concentrating on West German policy.

The four main chapters of the study revealed a complex interplay of different and competing problem representations. Problem representations of incompatibility in anti-discrimination, childcare, parental leave and working time legislation do not add up to a uniform representation of incompatibility.⁶⁶

Although, the individual chapters were by their very stance critical, by pulling together the four main constitutive parts of reconciliation policy as construed by the red-green coalition, a slightly different picture emerges: the whole is more than the sum of its parts. The study highlighted important changes in what the ‘problem’ of incompatibility of paid employment and care work was represented to be before and after 1998.

First, across the four policy areas women’s employment has become dominant in the implicit representation of what the policy ‘problem’ of incompatibility is about. Gender equality has emerged as new implicit concern of reconciliation policy, but has not yet gained dominance by any standard. While anti-discrimination and childcare policy, both before and after the change of government in 1998, were represented to be about women’s employment, in parental leave a concern with women’s employment and with gender equality partly replaced the ‘traditional’ concern with children’s welfare. In working time policy women’s employment and gender equality have partly replaced the previous concern with labour supply.

Second, what is implicitly represented in reconciliation policies as the cause of the incompatibility ‘problem’ has undergone a distinct shift. This finding is based upon the notion that policy ‘solutions’ always contain a (implied) diagnosis of the causes of the ‘problem’. Both in childcare and in parental leave legislation it has changed from mothers’ career aspirations in paid employment (working mothers) to more equitable – from a feminist perspective – causes. In childcare policy, it has been completely superseded by insufficient externalisation and socialisation of childcare work, while in parental leave it has been partly replaced by the unequal gendered division of domestic work. Legislation in anti-discrimination and working time policy simultaneously represents both structural and attitudinal barriers to mothers’ employment

⁶⁶ An analysis as to whether this was deliberate or accidental would be interesting. Future research could tie in here, possibly using the concepts of homogenization and heterogenization, cf. Clarke (2005).

and the time demands of full-time employment as causes of incompatibility, implying that reconciliation should be achieved through part-time employment.

Third, the assessment of the likely implications of problem representations in reconciliation policy has shown that policy subjects are constituted differently in legislative discourse. Although discourse in anti-discrimination legislation continues to construe women as sole policy targets, a notable shift has occurred across the policies under investigation. After 1998 all other policies construe both women and men as policy targets, although with the exception of working time policy women remain the primary targets. A shift has, thus, taken place in discourse away from construing women as the 'problem' in incompatibility and towards an inclusion of men into problem representations in reconciliation policy. Women are now characterised as breadwinners, although mainly as additional, part-time breadwinners, and their characterisation as caregivers persists. This means that while women's characterisation as full-time caregivers is broken up, they continue to be construed as 'natural' caregivers to some degree, construing women as responsible for the reconciliation of paid employment and care work. At the same time, men are increasingly characterised as part-time caregivers as well as breadwinners. Thus, although a far cry from gender equality, the discourse in legislation in childcare, parental leave and working time policy shows a visible shift – somewhat limited to well-qualified middle class parents – towards a convergence of gender roles. While women could benefit from a changed constitution of policy subjects in discourse, men are likely to benefit the most, because their advantaged position is not seriously questioned.

Four, analysing the effects that follow from discursively imposed limits on what is part of incompatibility, the study finds that although problem representations have changed, discourse in reconciliation policy continues to impose momentous limits on what can be said within discourse. This is important because any alternative proposal by referring to existing discourse involuntarily adopts parts of what it opposes. Though the limits vary across policies, some similarities can be established. Firstly, the 'traditional' public/private dichotomy, identifying a 'private' sphere as beyond the scope of policy, is not questioned but generally reinforced in discourse. Consequently, interventions into the 'private' sphere are unlikely, or at least unlikely to be significant. Secondly, the continuing (though weakened) focus on women closes off the space to question men's advantage. Their privileged position in society, occupation of positions of power, personal responsibility for the discrimination against women, power imbalances within the family, and the male biased organisation of paid employment all remain unlikely to be addressed fundamentally. Finally, although it has just emerged in incompatibility discourse, the continuing focus on the

labour market, marketable skills, and incompatibility as an attitudinal ‘problem’ (in parental leave policy) make it unlikely that policy interventions will substantially address the unequal gendered division of labour.

Fifth, assessing the likely effects of problem representations on how people construe their identity in society, the study shows that legislative discourse has real, ‘lived effects’. Although we have taken pains to demonstrate how meaning is construed in discourse, this does not make those meanings unreal. They are perceived by German people as real, and this has consequences. The ‘lived effects’ of discourse in reconciliation policy mean that women are likely to feel like ‘natural’ caregivers and to perceive themselves as responsible for care work. With women’s simultaneous characterisation as breadwinners and caregivers in childcare, parental leave and working time policy, women are also likely to feel responsible for reconciling paid employment and care work. Although, this might change as a consequence of men being increasingly characterised as secondary caregivers, the persistence of existing meanings makes it likely that in the foreseeable future women will continue to feel responsible for care work and for reconciling paid employment and care work in a way men will not.

Sixth, contrasting the dominant legislative discourse with feminist counter claims, the study highlighted what discourse in reconciliation policy is not about, and it identified in the process issues that are not likely to be addressed by policy. Although the study presented a tendency in legislative discourse after 1998 to include men, the representation of incompatibility as a women’s ‘problem’ prevails. Men are not represented to any comparable degree as part of the ‘problem’ of incompatibility. Men’s attitude towards paid employment, the way their identity is connected with it, and the effect this has on women is not part of discourse. This makes it unlikely that policy interventions will focus on them rather than women.

Further, the male-biased organisation of paid employment is by and large not part of discourse in reconciliation policy, making it unlikely that the advantages men draw from it will be problematised. Although gender equality emerged in parts of reconciliation discourse as an additional problem representation, it is notably absent from others, rendering it unlikely it be addressed directly.

Finally, the study introduced alternative feminist problem representations of incompatibility in order to hypothesise how policy ‘responses’ might differ if the ‘problem’ were thought about differently. If the current discourse of incompatibility as a women’s ‘problem’ were replaced by a discourse of incompatibility as a ‘problem’ of male advantage and bias in society, policy interventions might be more likely to address the male-biased organisation of paid employment and men’s behaviour and attitudes towards paid employment and care work.

If the current dominant discourse of women's employment were replaced by a discourse of gender equality or citizenship, policy interventions might be more likely to address the unequal gendered division care work, directly leading to a re-distribution of labour in general. Further, if the discourse of two antagonistic spheres of life ('private' versus 'public') in reconciliation policy were replaced by a discourse of re-conceptualising work, policy interventions might focus on creating opportunities for leading lives in which integrating care work and paid employment is normal.

On the other hand, it cannot be ruled out that existing problem representations may have positive effects for women precisely because they seem to focus on issues that are not contentious.

The conclusion is also the place to offer some reflection on the substantive findings of the study. Some of the findings outlined above amount to what can only be described as a major surprise. Thinking back, one of the underlying assumptions during the phase of refining the object of investigation was that the issue of gender equality had not only gained greater prominence during the years of the red-green government, but also that red-green policies amounted to something of a sea change. Thus, the assumption was that women benefitted greatly from the new red-green reconciliation policies. When it became clear during the analysis how persistent problem representations are across the policies analysed, this was perceived as very surprising. It served to make visible some of the underlying assumptions of the study. When the analysis showed that across the policies analysed the representation of incompatibility as a women's issue had not fundamentally changed, and that the male-biased organisation of paid employment continued not to be part of problem representations, it caused me to question the results and repeat some of the analytic steps. We realise that at the outset of the study we expected to find a distinct change in problem representations between policies of the conservative Kohl Government and those of the red-green coalition led by Schröder. In conclusion, the surprising findings will cause me to reflect even more carefully on my assumptions when we begin a new study. They will also have implications for the theoretical foundations of future research. When looking into the structure/agency issue in discourse is warranted in future research, we will tend to affiliate my research with approaches emphasising structural factors in shaping discourse.

9.4 Future Research

This book opens up a number of possible avenues for further research, some of which we will briefly outline here. First, as reconciliation policy has further devel-

oped since the cut-off date of this thesis a study could use it as basis to investigate the development of reconciliation policy and the representation of incompatibility under a different government. In late 2005, a coalition of conservatives (CDU/CSU) and social democrats (SPD) replaced the red-green coalition. How the new government's reconciliation policy will construe the incompatibility 'problem' remains a fascinating question to pursue.

Second, a study could include other countries into a similar analysis of reconciliation policy. A comparative study into the construing of incompatibility as a policy 'problem' across different countries, for example using a most dissimilar case design, would be the logical next step on the basis of this thesis. Choosing countries with different gender and welfare state regimes, such as Sweden or Norway, the United States or the United Kingdom, and France could engender interesting insights on the perspectives for gender equality.

Third, the study only briefly introduced alternative problem representations in the context of reconciliation policy. Further research could more closely investigate feminist and other currently marginal problem representations about incompatibility that exist outside the mainstream discourse in legislation.

Fourth, further studies could combine the meta-level approach this thesis offers with meso-level or micro-level discourse analytical approaches and methods. Such studies could complement or even challenge this thesis' findings about the constitution of subjects and subjectivities and 'lived effects' by analysing individual persons' discursive constructions of incompatibility.

Fifth, this study concentrates on discourse in legislation. Further studies could attempt to connect a social constructionist focus on problem representations in reconciliation policy with recent methods developed in Corpus Linguistics. Thus, it could not only expand the scope to the broader policy discourse, but also explore the methodological possibilities for Social Policy research of electronic text analysis tools which render possible for the first time the analyses of very large bodies of text.

Sixth, this thesis identified the issue of who makes discourse as beyond its scope. Further research is needed into the complex issue of power in policy discourse so this could be investigated. A study could pursue the important question of the relationship between structure and agency in reconciliation policy systematically.

Finally, future studies could investigate the question about structure and agency in reconciliation policy following a different path that avoids being caught up in general theoretical conundrums. They could further explore the possibilities of combining constructionist and realist approaches in analysing reconciliation policy in particular and policy in general, trying to connect Public Policy research tools and

approaches with a contextual social constructionist approach. Future research could explore in detail the development of a particular policy initiative or piece of legislation, investigating the complex interaction of policy actors and institutions, but at the same time posing the fundamental questions social constructionism is so suited to answering. This could, again, be combined with an exploration of the methodological potential of electronic text analysis in social science.

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