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DESERVING AUSTRIANS FIRST: THE IMPACT OF THE RADICAL RIGHT ON THE AUSTRIAN WELFARE STATE

Philip Rathgeb & Martin Gruber-Risak†

I. INTRODUCTION

Austria used to receive international attention when the radical right Freedom Party of Austria (FPÖ) gained electoral success and public office. From 1986 to 1999, under the leadership of Jörg Haider, the FPÖ increased its vote share from five to almost 27 percent in general elections. The subsequent government formation with the conservative People's Party of Austria (ÖVP) stimulated a wave of street demonstrations, international reactions, and even diplomatic sanctions imposed by Austria's 14 EU partners—all very unusual in the prototypical 'consensus democracy' of Austria. Although the FPÖ imploded around internal conflicts in the 2002 election, it recovered its vote share back to a whole 26 percent in 2017, leading to the formation of another coalition government with the ÖVP. This time, however, the party's entry in office was met with little, if any, domestic or international political outcry. On the contrary, the FPÖ, it seems, has become a 'normal' party in a European context characterized by the rise of similar radical right parties, whose core ideology is typically based on a combination of nativism, authoritarianism, and populism.¹ Although the so-called 'Ibiza-Gate' scandal put an early end to the government's tenure from 2017 to 2019, its programmatic outlook and policy performance provide us with an empirically observable record of Austria's radical right in office.²

In this article, we examine an underexplored part of the contemporary debate about radical right parties—labor law and social policy—by studying

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1. CAS MUDDE, *POPULIST RADICAL RIGHT PARTIES IN EUROPE* (2007).

2. The ÖVP's Chancellor, Sebastian Kurz, called for re-elections in May 2019 as German newspapers published extracts from a video that led the FPÖ's Vice-Chancellor, Heinz-Christian Strache,

the policy choices of the FPÖ in government, with a focus on recent reforms legislated from 2017 to 2019. While a now voluminous body of literature has investigated the ideology of radical right parties³, the factors influencing their success⁴ their voters⁵ and their impact on other parties⁶, few studies have so far explored their role in labor law and social policy. Looking at this area in particular, the Austrian story is in part a *general* one about radical right parties in office, marked by a policy of “welfare chauvinism”; that is, selective cuts in benefit entitlements for non-citizens.⁷ But it is also a *specific* one about a radical right party assuming office in a cartelized political establishment dominated by two historical major parties and their affiliated social partner camps. Recognizing this nationally distinct context is necessary to understand why the FPÖ’s distinctive impact lies in attacks on corporatist power sharing, typically at the expense of organized labor.

In what follows, we first discuss the general structures of the Austrian model of labor law and regulation. We then review legislative reforms implemented by the SPÖ-ÖVP grand coalition government (2007-2017) to understand the institutional and political context in which the ÖVP-FPÖ government assumed office. Our subsequent empirical analysis relies on primary and secondary sources to examine the policy choices of the ÖVP-FPÖ government under Chancellor Kurz (2017-2019). A final section concludes.

II. THE AUSTRIAN MODEL OF LABOR LAW AND POLICY⁸

The Austrian system of industrial relations is also called ‘Social Partnership’ (*Sozialpartnerschaft*), a very specific version of corporatism based on close voluntary cooperation between representatives of employers,

to resign from office. The video documents how Strache outlines plans to undermine the independence of Austria’s largest tabloid newspaper (*Kronen Zeitung*) and generate illegal party donations in return for the granting of infrastructural projects. The full video is now available online <https://express.at/die-fortsetzung-das-ibiza-video-uncut-zum-download-teil-2/>.

3. MUDDE, *supra* note 1.

4. Herbert Kitschelt, *Party Systems and Radical Right Parties*, in THE OXFORD HANDBOOK OF THE RADICAL RIGHT (Jens Rydgren ed., 2018).

5. Elisabeth Ivarsflaten, *The Vulnerable Populist Right Parties: No Economic Realignment Fuelling Their Electoral Success*, 44 EUR. J. POL. RES. 465 (2005); Daniel Oesch, *Explaining Workers Support for Right-Wing Populist Parties in Western Europe: Evidence from Austria, Belgium, France, Norway, and Switzerland*, 29 INT’L. POL. SCI. REV. 349 (2008).

6. Tim Bale, Christoffer Green-Pedersen, André Krouwel, Kurt Richard Luther & Nick Sitter, *If You Can’t Beat Them, Join Them? Explaining Social Democratic Responses to the Challenge from the Populist Radical Right in Western Europe*, 58 POL. STUD. 410 (2010).

7. Gijs Schumacher & Kees Van Kersbergen, *Do Mainstream Parties Adapt to the Welfare Chauvinism of Populist Parties?*, 22 PARTY POL. 300 (2016); Laurenz Ennsner-Jedenastik, *Welfare Chauvinism in Populist Radical Right Platforms: The Role of Redistributive Justice Principles*, 52 SOC. POL’Y. ADMIN. 293 (2018).

8. This section draws on Martin Risak, *Past and current challenges in Austrian labour law*, in II CONGRESSO EUROPEU DE DIREITO DO TRABALHO: OS DESAFIOS ATUAIS DO DIREITO DO TRABALHO 73 (José Joao Abrantes ed., 2018).

employees and the state. By international standards, Austria is one of the countries in which corporatist structures are most highly developed.⁹ Within this system, employers and employees are represented by a small circle of major organizations (the so-called “social partners”): on the employees’ side, the Austrian Trade Union Federation and the Federal Chamber of Labor, and on the employers’ side, the Federal Economic Chamber, the Standing Committee of Presidents of the Chambers of Agriculture and the Federation of Austrian Industry.

In the past, the collaboration between state and social partners was an important link between industrial relations and government policy. It provided a means of attuning collective bargaining to national economic and social policy and, in addition, opened up all aspects of that policy to possible influence by the social partners. According to the prevailing narrative, the origins of social partnership lie in the violent class struggles and high unemployment of the years between the two world wars, culminating in the civil war of 1934 and the annexation of Austria to Nazi Germany in 1938. These bitter experiences prompted employers’ and employees’ representatives, after 1945, to give shared interests and cooperation precedence over class interests and conflict. Since these beginnings, social partnership has developed into a permanent and stable element of Austrian society very much because social partners are linked to the two large political parties, ÖVP and SPÖ, through the practice of simultaneous office holding. The advisors to the ministers were usually drawn from the ranks of the social partners that serve as think tanks to them. These personal and institutional links fostered tripartite concertation. As the FPÖ is not part of these arrangements, the dynamics change when this party is part of a governing coalition. This was the case in 2000¹⁰, and in the short period of 2017-2019, as we will lay out below.¹¹

III. GRAND COALITIONS AND THE POLITICS OF COMPROMISE (2007-2017)¹²

To appreciate the direction and degree of the FPÖ’s policy influence from 2017 to 2019, we have to briefly consider the policies legislated by grand coalition governments in the previous decade. In the area of labor law and policy, we can identify three main reforms from 2007 until the re-

9. Detlef Jahn, *Changing of the guard: trends in corporatist arrangements in 42 highly industrialized societies from 1960 to 2010*, 14 Soc.-ECON. REV. 47 (2016).

10. HERBERT OBINGER & EMMERICH TÁLOS, *SOZIALSTAAT ÖSTERREICH ZWISCHEN KONTINUITÄT UND UMBAU: EINE BILANZ DER ÖVP/FPÖ/BZÖ-KOALITION* (2006).

11. For a comparison on the socio-economic policies of the FPÖ in government from 2000 to 2006 and from 2017 to 2019, see Philip Rathgeb, *Makers against takers: the socio-economic ideology and policy of the Austrian Freedom Party*, WEST EUR. POL., Feb. 18, 2020. For an in-depth focus on the policy record of the ÖVP-FPÖ cabinet under Wolfgang Schüssel from 2000 to 2006, see OBINGER & TÁLOS, *supra* note 10.

12. This section draws on PHILIP RATHGEB, *STRONG GOVERNMENTS, PRECARIOUS WORKERS: LABOR MARKET POLICY IN THE ERA OF LIBERALIZATION* 54-88 (2018).

elections of 2008, which are typically characterized by a “quid pro quo” type of compromise building between the grand coalition parties and their affiliated social partner camps. First, after long-standing disputes, the government legislated an extended coverage of unemployment insurance and educational leave in return for tightened eligibility conditions and availability requirements.¹³ Second, in the area of working time regulations, the government extended the possibility to find agreements at the shop floor and liberalized working time regulations for negotiations at the sector level. In return, the SPÖ and trade unions gained tightened sanctions for employers who breach the working time law and a new 25 percent bonus rate for part-time employees working overtime.¹⁴ Third, the introduction of the ‘needs-oriented minimum income scheme’ (BMS) was based on an initiative of the SPÖ and gave rise to an agreement between the social partners to implement a minimum wage of gross € 1,000 (14 times a year). In addition, the government stipulated an exemption from contribution payments to unemployment insurance to the benefit of low-wage earners.

The election of 2008, which occurred in the wake of internal conflicts, led to the formation of another grand coalition. Immediately after taking office, the SPÖ-ÖVP government under Chancellor Werner Faymann invited the social partners to design a tripartite policy response to the onset of the Great Recession. Faced with a severe GDP contraction of almost 4 percent in 2009, the three actors were quick to find a consensus around a series of policy changes aimed at: (i) the stabilization of employment and (ii) re-integration of people out of work. Perhaps the most prominent change was the extension of short-time work, first to 18 and then 24 months. This was tailored to similar measures in Germany, given Austria’s strong trade relationship with its larger neighboring country, especially in automobile production. Overall, the short-time work strategy was considered effective in retaining qualified staff, thereby mitigating the corrosive effects of the Great Recession on employment levels.

In addition to the short-time work extension, the policy response to the Great Recession included an expansion of training arrangements such as labor foundations in tandem with eased access to partial retirement. To finance these changes, the grand coalition increased ALMP spending by € 400 million (44 percent) in 2009.¹⁵ According to the Ministry of Labor, Social Affairs, and Consumer Protection, this investment saved or created

13. *Id.*

14. EMMERICH TÁLOS, SOZIALPARTNERSCHAFT. EIN ZENTRALER POLITISCHER GESTALTUNGSFAKTOR IN DER ZWEITEN REPUBLIK 116 (2008).

15. Roland Atzmüller, Manfred Krenn & Ulrike Papouschek., *Innere Aushöhlung und Fragmentierung des österreichischen Modells: Zur Entwicklung von Erwerbslosigkeit, prekärer Beschäftigung und Arbeitsmarktpolitik* 27f, in NEUE PREKARITÄT: DIE FOLGEN AKTIVIERENDER ARBEITSMARKTPOLITIK – EUROPÄISCHE LÄNDER IM VERGLEICH (Karin Scherschel, Peter Streckeisen & Manfred Krenn eds., 2012).

97,000 jobs in the same year.¹⁶ Moreover, with a significant loosening of eligibility criteria in 2008, the recipient rate of the educational leave scheme (*Bildungskarenz*) more than tripled from 2,621 to more than 9,000 employees in 2013. Further upskilling investments came into force in 2013: the qualified employees' grant (*Fachkräftestipendium*) and educational part-time work (*Bildungsteilzeit*).¹⁷ The former eases access conditions on re-training for low-skilled employed and unemployed workers. The latter addresses employed workers who pursue a reduction in working time to attend training activities by offering a monetary compensation for wage losses. Overall, the crisis response thus simultaneously involved both instruments to keep existing jobs (e.g. short-time work) and combat unemployment (e.g. training).

Taken together, the decade from 2007 to 2017 was a period of political compromise between the two major historical parties. Whereas the SPÖ and the interest organizations of labor achieved better protections for workers on the margins of the labor force (social assistance claimants and non-standard workers), the ÖVP and interest organizations of business gained tightened conditions in the eligibility criteria of the unemployed and increased working time flexibility. During the Great Recession, both camps agreed upon short-time work measures to protect the manufacturing core, with the SPÖ placing more emphasis on training and the ÖVP prioritizing cost competitiveness. With the SPÖ out of office, as we will show, the precarious margins of the labor force and non-citizens in particular became a target of deteriorations in employment and welfare standards.

IV. SHIFTING TO THE RIGHT: "AUSTRIANS FIRST"

Although the grand coalition managed to offset the socio-economic effects of the Great Recession quite effectively¹⁸, the two historical major parties faced a number of major problems that paved the way for the re-entry of the FPÖ into office. First, mounting internal conflicts in combination with low economic growth rates haunted the cohesiveness of the SPÖ-ÖVP government and led to frequent reform deadlocks, which negatively affected their approval ratings in public opinion.¹⁹ At times, the grand coalition circumvented open conflicts by delegating policy-making negotiations to their affiliated social partners, thereby providing interest group and bureaucratic elites a high level of policy autonomy. While the declining

16. *Id.* at 28.

17. Bernadette Allinger, *New Training to Plug Skills Gap*, EUROFOUND (Jun. 27, 2013), <http://www.eurofound.europa.eu/eiro/2013/04/articles/at1304011i.htm>.

18. Silvia Rocha-Akis, Christine Mayrhuber & Thomas Leoni, *Sozialpartnerschaft, Institutionen und Wirtschaft. Entwicklungen seit der Krise* (Österreichisches Institut für Wirtschaftsforschung, WIFO Studies, No. 61868, 2018).

19. FRITZ PLASSER & FRANZ SOMMER, WAHLEN IM SCHATTEN DER FLÜCHTLINGSKRISE. PARTEIEN, WÄHLER UND KOALITIONEN IM ÜMBRUCH (2018).

ability of the government to find common grounds allowed the social partners to regain influence²⁰, in the eyes of voters the grand coalition became increasingly ineffective and conflictual. Proof of this lack in popular support came with the first round of Austria's presidential election in April 2016, whereby the candidates of the ÖVP and SPÖ fell way below the 15 per cent mark, receiving less than one third of the vote altogether.²¹ Until 2016, by contrast, the candidates of the two historical major parties together received far more than two thirds of the vote, sometimes even more than 90 per cent.

Second, and related to this, the 2015 refugee crisis drove another wedge between the grand coalition partners and created opportunities for the FPÖ to mobilize around its core issues of immigration, asylum, and law & order. With an influx of 90.000 refugees, the country recorded the second highest number of asylum-seekers in Europe relative to its population size, ranking behind Sweden. "Integration and asylum" had thus turned into the most important issue of Austrian politics, with the FPÖ leading the polls between autumn 2015 and spring 2017.²² In this context, the ÖVP under its new party leader, Sebastian Kurz, had given up on the idea to restore the reform capacity of the grand coalition, whereas the SPÖ under Christian Kern advocated for a "New Deal" with the ÖVP. In response, the ÖVP called for re-elections in May 2017.

Haunted by very low approval ratings, the regionally and occupationally fragmented party elites provided Sebastian Kurz with much leeway to rebrand the ÖVP as the "New People's Party" and prepare for re-elections. In programmatic terms, the most marked change came with the adoption of a tighter position on immigration and an ultimate rejection of another crisis-ridden grand coalition in an attempt to co-opt the FPÖ on its nativist anti-establishment platform. Aided by Kurz' popularity and an extremely professional campaign, this programmatic strategy proved ultimately successful. The 2017 elections yielded an enormous victory for both the ÖVP (31.5 percent; +7.5 percent) and the FPÖ (26 percent; +5.5 percent), with the SPÖ stagnating at 26.9 percent. As a result, a broad consensus emerged on the political right in collaborating on a nativist agenda that puts 'Austrians first' and re-framed virtually any debate of socio-economic character into a culturally laden problem around the integration of Non-Western refugees and immigrants into Austrian society. It thus came as no surprise when the ÖVP

20. Philip Rathgeb, *Relying on weak governments: Austrian trade unions and the politics of smoothed dualisation*, 45 O.Z.P. AUSTRIAN J. POL. SCI. 45 (2017); EMMERICH TÁLOS & TOBIAS HINTERSEER, *SOZIALPARTNERSCHAFT. EIN ZENTRALER POLITISCHER GESTALTUNGSFAKTOR DER ZWEITEN REPUBLIK AM ENDE?* (2019).

21. Philip Rathgeb & Fabio Wolkenstein, *A long goodbye to the grand coalition: Austria's presidential election*, (EUROPP) EUR. POL. & POL'Y: LSE COMMENT (May 05, 2016), <https://blogs.lse.ac.uk/europpblog/2016/05/03/a-long-goodbye-to-the-grand-coalition-austrias-presidential-election/>.

22. PLASSER & SOMMER, *supra* note 19, at X.

and FPÖ could swiftly agree on the formation of a coalition government under the Chancellorship of Sebastian Kurz after the 2017 elections.

In electoral terms, the ÖVP-FPÖ government rested on a cross-class coalition between large employers, small business owners, and the higher-grade service class (i.e. managers, technicians, and technical experts) supporting primarily the ÖVP on the one hand, and blue-collar workers and lower-grade service workers supporting primarily the FPÖ on the other.²³ Whereas the ÖVP had traditionally drawn on high levels of support among business groups, the FPÖ attracted an unprecedented 62 percent among blue-collar workers in the 2017 elections. Drawing on Oesch's class scheme (2006), two thirds of the FPÖ's electorate had a working-class background, involving production workers and, to a smaller extent, lower-grade service workers.²⁴

What united this diverse class coalition was a preference for an authoritarian approach to immigration and asylum—i.e. a desire for order, conformity, and homogeneity, and the belief that these social norms should be ensured by state force if necessary²⁵—in combination with moderate tax cuts for middle- and high-income earners. Notably, the ÖVP came to share the FPÖ's long-standing ambition to target the welfare entitlements of non-citizens in response to shifts in public opinion during the refugee crisis, but strong working-class support required the FPÖ in particular to protect the employment and welfare standards of the (native) core workforce—also known as labor market “insiders”.²⁶ In this context, the costs of labor and welfare reform had to be shifted to non-citizens and the precarious margins of the workforce, which in the previous grand coalition government could bet on the support of the SPÖ.

A. Don't touch this: Public pensions and the 'deserving' core workforce

In the early 2000s, the ÖVP-FPÖ government entered office with the aim to reduce public spending on Austria's generous pension system in the interest of fiscal consolidation. The 2003 pension reform was thus the most substantial pension reform in Austria's post-war history, which (i) phased out access to early retirement options, (ii) increased deductions for early retirement, (iii) decreased the pension credits earned for each year of employment from 2 to 1.78 percent and (iv) extended the reference period for benefit calculation from the highest paid 15 years to 40 years. In response,

23. Julian Aichholzer, Silvia Kritzingner, Markus Wagner, Nicolai Berk, Hajo Boomgaarden & Wolfgang C. Müller, *AUTNES Comparative Study of Electoral Systems Post-election survey 2017* (2018), <https://doi.org/10.11587/GDBBPJ>; Rathgeb, *supra* note 11.

24. Rathgeb, *supra* note 11, at 3.

25. ROBERT A. ALTEMEYER, *RIGHT-WING AUTHORITARIANISM* (1981).

26. RATHGEB, *supra* note 12.

the trade unions organized mass demonstrations and industrial action—a very unusual phenomenon in the consensual culture of Austrian post-war politics.

In 2017, by contrast, the ÖVP-FPÖ government emphatically rejected cuts in public pensions. On the contrary, the FPÖ achieved a minimum pension of 1.200 Euro for workers with 40 years of paid employment, which, however, implied extra costs of only 40 million Euro per year.²⁷ In addition, the government legislated an extra-payment to low-income pensioners above the inflation rate in 2018. It could be argued that the absence of a broader pension reform has to do with the momentous lack of fiscal problem pressure and the phasing-in of previous reforms that have only gradually taken effect. In 2018, for example, Austria indeed recorded a modest fiscal surplus (0.2 percent/GDP), with the debt to GDP ratio declining from almost 85 percent in 2015 towards 74 percent in 2018.

At the same time, however, the OECD and EU Commission have regularly flagged up the country's early retirement arrangements that contribute to a relatively low employment rate among people aged between 55 and 64 years (54,5 percent in 2019, OECD stats.). This echoes similar demands from employer associations and market-liberal think tanks (e.g. *Agenda Austria*) that push governments towards measures to raise the (de-facto) retirement age by closing loopholes to leave the workforce before the statutory retirement age of 65 years. However, the “deservingness” notions of both parties implied that public pensions, sickness benefits, and elderly care should remain untouched. While Chancellor Kurz frequently re-affirmed that only those who “work hard” should be rewarded with welfare support and social solidarity, the FPÖ refrained from pension retrenchment all the more in its effort to retain strong working-class support. Not surprisingly, the introduction of minimum pension entitlements for people with long contribution records originated from the FPÖ's election manifesto. In this way, the government deprived the SPÖ of one its main issues, because it used to enjoy high levels of credibility on public pensions and thus enjoy strong support among older voters.

B. 'Austrians first' and welfare chauvinism

“The FPÖ stands for a social policy, which foregrounds its own citizens in no uncertain manner. This position ranges from social assistance towards affordable housing. Especially during the recent past, the welfare state has

27. This was an extension of the minimum pension of 1000 Euro for those having worked for 30 years introduced in 2017 under the SPÖ Minister of Labor, Social Affairs, and Consumer Protection. The FPÖ therefore continued a SPÖ-project claiming to be the party that achieves more for working people. From the beginning, this increased minimum pension was paid out only if the recipient lives in Austria and could not be exported like the pension itself. This was criticized as contravening EU laws; see Wolfgang Mazal, *Die Problematik der erhöhten Ausgleichszulage*, 52 Zeitschrift für Arbeits- und Sozialrecht 243 – 246 (2017).

reached its breaking point due to waves of immigration.”²⁸ In this way, the FPÖ portrayed itself as the safeguard of the Austrian welfare state by re-defining its boundaries along nativist lines. While a policy of “welfare chauvinism” is what any observer of the contemporary radical right would have expected from the FPÖ, it is remarkable that the conservative ÖVP under Sebastian Kurz adopted the FPÖ’s position without hesitation. The ÖVP’s programmatic renewal may well be considered a textbook illustration of what Cas Mudde calls the “mainstreaming” and “normalization” of the radical right’s policy demands.²⁹ The ensuing welfare cuts for non-citizens most clearly deviated from the “politics of compromise” observed under SPÖ-led grand coalitions.

First, the government legislated an indexation of family benefits (*Familienbeihilfe*) for children of foreign workers living outside Austria. In effect, the reform links the levels of family benefit payments to the cost of living in the home countries of foreign workers. This is a project of Chancellor Sebastian Kurz that originated from internal deliberations in 2016 and was made possible with the support of the FPÖ. The European Commission opposed the indexation from the beginning, claiming that it contravenes the directly applicable Regulation (EC) No 883/2004 on the coordination of social security systems. Finally, in May 2020, it initiated an infringement procedure before the European Court of Justice as the last step. In April 2020, an Austrian financial court also initiated a preliminary ruling procedure with the European Court of Justice on this question.³⁰ This legal discussion was accompanied with heavy EU-critical rhetoric of both the FPÖ and ÖVP claiming that the bureaucracy in Brussels limits national sovereignty and does not respect the right of subsidiarity enshrined in the Treaty establishing the European Union. In a way, this backed up the narrative of the ÖVP-FPÖ-coalition fighting against an overpowering EU-administration that forces the Austrian government to pay more to children living abroad than to those living in Austria if you take into account the local wages and purchasing power parity.

Second, the coalition government significantly cut the levels of social assistance for refugees and required immigrants from EU-countries to obtain a permanent residency for at least five years³¹ to qualify for social assistance entitlements. In the coalition agreement, these measures were part of the landmark-project called “Stop migration into the social state” under the more general header “Fairness and Justice”.³² It was argued that people, who work

28. FREIHEITLICHE PARTEI ÖSTERREICHS, DAS FREIHEITLICHE WIRTSCHAFTSPROGRAMM: FAIRNESS. FREIHEIT. FORTSCHRITT 15 (2017) (*election manifesto*, own translation).

29. CAS MUDDE, *THE FAR RIGHT TODAY* (2019).

30. Request for a preliminary ruling from the Bundesfinanzgericht (Austria) lodged on 16 April 2020 — AZ v Finanzamt Hollabrunn Korneuburg Tulln, 2020 E.C.R. C-163.

31. This was one of the demands of the FPÖ in their program for the elections 2017: “access to social benefits for non-citizens only after paying contributions for five years.”

32. Fairness was the main motto for the FPÖ electoral program titled “Austrians deserve fairness.”

or have contributed to Austria over years, have to be put into a better position financially than those who do not or have not done so yet. Therefore, social assistance for asylum seekers and persons granted subsidiary protection was lowered significantly (to a maximum of € 365 per month).³³ Refugees were considered to be attracted to Austria for economic reasons, i.e. to claim social benefits and therefore lowering them would decrease the “pull effect”. It was also argued that migrant families preferred having a large number of children and to claim child benefit than going to work. To counter this and to “make it attractive” to participate in the labor market, social assistance was capped for one household at € 1,500. These measures were first introduced in a number of federal states led by the ÖVP as a sort of “test balloon”. When the constitutional court³⁴ overturned them, the government adjusted its social assistance reform by making full benefit eligibility conditional on language requirements or the completion of compulsory schooling in Austria—two criteria refugees typically do not fulfil. It was argued that this was a necessary measure to integrate migrants into the Austrian labor market. In December 2019³⁵, however, the constitutional court ruled that making social assistance benefits conditional on a rather high command of the German (B1) or English language (C1) would violate the constitution as it is objectively unjustified. There are enough jobs available for persons with little command of the German and/or English language and therefore such severe negative incentives to learn German are not proportionate. The constitutional court also annulled cuts in social assistance levels for families with more than two children, arguing that the necessary living conditions for children with multiple children are not guaranteed. Therefore, these restrictions do not apply anymore.

Another recurring topic is the abuse not only of social assistance, but also of the health insurance, especially by foreigners. The ÖVP successfully lobbied for pictures being put on the social security card in the previous government with the SPÖ to make it harder to pass on the card especially within the family and to claim health services without being covered by the health insurance. In 2018, the FPÖ produced a cartoon video explaining that the picture will prohibit “Ali” (a man of obvious Turkish descent sporting curly black hair, a mustache and Fez) to go to the Austrian doctor using the social security card of his cousin.³⁶ In response to public protests, the

33. COALITION AGREEMENT FPÖ/ÖVP 100, 118 (2017). Additionally, a so called ‘integration bonus’ of 155 Euros was introduced to reward those who learn German and try to adapt to the Austrian way of living by taking part in a course conveying European values.

34. Österreichische Verfassungsgerichtshof [VfGH] [Constitutional Court] Mar. 13, 2018, G 136/2017, volume and reporter, case number and others (Austria).

35. Österreichische Verfassungsgerichtshof [VfGH] [Constitutional Court] Dec. 17, 2019, G 164/2019-25, G 171/2019-24, volume and reporter, case number (Austria).

36. Olivera Stajić, *Rassistisches Video auf FPÖ-TV: Freiheitliche sehen “Kommunikationsproblem”*, DERSTANDARD (Nov. 13, 2018),

obviously racist video was taken off the internet. The FPÖ's approach in restricting eligibility to natives in the provision of social housing³⁷, which has not found its way into the government program with the ÖVP, is another piece in its general concept of "Austrians first".

Taken together, the government's policy of welfare chauvinism not only illustrates the impact of the radical right's social policy agenda as part of a center-right coalition; it also demonstrates its constitutional limits in a consolidated liberal democracy. The Austrian experience thus shows how the constitutional component of a liberal democracy puts legal constraints on the introduction of ethnic divisions in welfare support.

C. Tax cuts for 'hard-working' people and families

Unlike the Social democratic approach to expand funding for benefits in kind (e.g. public schools and child care) as well as direct cash transfers in order to reach persons of all income levels, the ÖVP-FPÖ government program puts emphasis on leaving more money in the pockets of the "hard-working" people and families by "taking less of their hard-earned money away from them". Not redistribution is seen as the solution to existing social problems; paying less taxes should make sure that "families can fulfil their dream of their own four walls more easily again, because property is an important prerequisite for a self-determined life."³⁸

The landmark project was the introduction of the so called "Family Bonus Plus", a tax deduction of € 1,500 per child (under 18) and year, provided that the child lives in Austria. It was introduced very quickly in 2018 and came into effect from 1.1.2019. Although the government program stated it would only be paid for children living in Austria, due to EU legislation it also applies to children living in EU-countries. But, like the family benefit, it is indexed according to the cost of living in the country the child resides.³⁹ For children living outside the EU, the "Family Bonus Plus" cannot be claimed. This fits into the general narrative of only supporting family members living outside Austria if necessitated by EU-law (see above 4.2.) and to do everything to avoid giving benefits to foreigners.

In the government program, it was stipulated explicitly that this "Family Bonus Plus" should not be subject to negative tax, i.e. it was only available to persons actually paying tax. Especially single mothers with an income below the tax threshold would not have benefited from it. In fact, Chancellor Kurz argued that the design of the "Family Bonus Plus" as a tax benefit

<https://www.derstandard.at/story/2000091229977/ali-und-der-sozialmissbrauch-rassistisches-video-auf-fpoe-tv>.

37. FREIHEITLICHE PARTEI ÖSTERREICHS, *supra* note 28, at 15.

38. ÖSTERREICHISCHE VOLKSPARTEI & FREIHEITLICHE PARTEI ÖSTERREICHS, ZUSAMMEN. FÜR UNSER ÖSTERREICH. REGIERUNGSPROGRAMM 2017 – 2022, 126 (2017).

39. Therefore, for children living in Bulgaria only about half the Family Bonus Plus can be claimed, c.f. decree of the Minister of Finance, Federal State Gazette II 141/2019.

requires the payment of taxes, and if this is not the case the persons do not deserve such a benefit. After a lengthy discussion, an “additional child bonus” (*Kindermehrbetrag*) of up to € 250 was introduced for single parents. It is only available to the “deserving poor” though, i.e. if these persons actually are in paid employment and pay tax, and if they have not received an unemployment benefit or social assistance for 330 days or more per year. The whole design of this important initiative shows well the underlying ideology: Although the aim to support families could have been achieved by increasing the cash benefit for families, the government undertook major efforts to design complicated tax reductions that increase the administrative burdens on employers and the tax offices. All this is done to make sure that only “hard-working” families benefit from the newly introduced “Family Bonus Plus”. The more they earn and therefore the more taxes they pay, the more they benefit from the bonus. This again supported the general argument of the ÖVP-FPÖ-government that those who pay more into the system should benefit more from it, whereas exemptions will only be made for those not already living off the state and making enough effort to be part of the workforce.

Foreseen was also a substantive tax reform with the declared goal that “hard work pays off”⁴⁰ by reducing the tax burden on workers and entrepreneurs. Thereby, tax payers shall have more money available for buying houses and apartments as well as to invest in private old age pensions. On several occasions, it was stressed in the government program that private property facilitates an autonomous and financially secured life. It was planned that a structural reform and tax reductions should be presented in 2020. Yet, the fall of the government in 2019 thwarted those plans.

D. Against the ‘red bloc’

The FPÖ had traditionally been *the* anti-corporatist party in Austria. As such, it used to oppose the privileged integration of employer associations and trade unions in public policy-making and in the administration of social insurance boards.⁴¹ Its rejection of Austria’s consensual policy-making style between governments, business, and labor—often called ‘social partnership’—is based on deep power-strategic calculations. Unlike the two historical major parties, the FPÖ lacks close institutional and personal linkages to interest groups from the labor and employer side. Vertical coordination usually takes place between the SPÖ and the interest organizations of labor on the one hand, and the ÖVP and the interest organizations of business on the other.⁴² The FPÖ has thus aimed to dismantle the ‘social partnership’ as

40. ÖSTERREICHISCHE VOLKSPARTEI & FREIHEITLICHE PARTEI ÖSTERREICHS, *supra* note 38, at 126.

41. *See e.g.*, JÖRG HAIDER, DIE FREIHEIT, DIE ICH MEINE (1993).

42. TÁLOS, *supra* note 14.

a way of undermining those corporatist elite relationships from which it felt excluded.

By contrast, the ÖVP has traditionally been entrenched in the ‘social partnership’ due to its close ties to the Economic Chamber (WKÖ). The privileged influence of the employers thus remained secured by the government participation of the ÖVP. Yet, the FPÖ could side with the ÖVP in reducing the institutional power of Chambers of Labor and the trade union confederation (ÖGB)—both of which sustain close ties to the SPÖ. By weakening the institutionalized influence of the interest organizations of labor, the FPÖ could entrench itself in decision-making structures and weaken the extra-parliamentary support base of the SPÖ. The ÖVP’s allies in the WKÖ, on the other hand, may use the FPÖ’s anti-union stance to swing the balance of power from labor to business in corporatist administration boards.

It was therefore no surprise that the FPÖ formulated the very same proposals for institutional reform as Jörg Haider⁴³ did almost 25 years ago: the abolition of compulsory membership in the Chambers and the merging of the regionally and occupationally fragmented 23 social insurance providers that are based on corporatist self-administration.⁴⁴ The ÖVP though prevented the abolition of compulsory membership in the Chamber system but gave in to the FPÖ in exerting pressure on the financial situation of the Chambers. The Chambers were asked to provide the government with concrete measures to increase efficiency and to reduce the financial burden on their members until June 2018. If government considers the proposed measures not sufficient “it reserves the right to introduce legislative measures in parliament”⁴⁵, i.e. lowering the statutory contributions. The sudden and unexpected fall of the government in the wake of the ‘Ibiza-Gate’ scandal in 2019 prevented legislative changes in the funding of the Chambers though.

Yet, the ÖVP consented to the FPÖ’s long-standing demand to merge the occupationally and regionally fragmented social insurance providers from 23 to only five. This was described as “one of the great reform projects of this new federal government”.⁴⁶ Notably, the reform implies a reduction in the influence of organized labor on corporatist administration boards in favor of employers by creating a parity between unions and employers at all levels of decision-making in a newly created Austrian Health Insurance that merged the 9 regional health insurance providers of employees (*Österreichische Gesundheitskasse*).⁴⁷ It also increased the influence of the Ministry of Social

43. HAIDER, *supra* note 41.

44. FREIHEITLICHE PARTEI ÖSTERREICHS, *supra* note 28.

45. ÖSTERREICHISCHE VOLKSPARTEI & FREIHEITLICHE PARTEI ÖSTERREICHS, *supra* note 38, at 129.

46. *Id.* at 100.

47. Maria Hofmarcher-Holzhaecker, *Umbau der Steuerung in der Gesundheitspolitik seit 2000: Etappensiege für Schwarz-Blau*, in *DIE SCHWARZ-BLAUE WENDE IN ÖSTERREICH. EINE BILANZ* 282-301 (Emmerich Tálos ed., 2019).

Affairs that was then in the hands of the FPÖ. Not surprisingly, the interest organizations of labor protested against this reform, whereas the government emphasized the efficiency-enhancing effect of reducing the number of health insurance providers. The Constitutional Court, once again, annulled some minor parts of the reform, but the enhanced role of employer representatives remained untouched.⁴⁸

E. Giving in to business: the FPÖ and working time deregulation

Since the 1990s, all government programs included measures to “flexibilise” the traditionally rather strict Austrian working time legislation aiming on one the hand at avoiding the 50% premium for overtime by introducing different flexible working time schemes, and on the other hand at extending the maximum working hours of then 10 per day and 50 per week. In the past, this was always achieved as some kind of compromise between business and labor, involving the social partners to a certain extent. This time it was different though. The electoral program of the ÖVP planned to extend the maximum daily working hours to 12 and the maximum weekly working hours to 60 based on collective agreements on the industry or company level as well as on consensus at the individual level.⁴⁹ The electoral program of the FPÖ though does not include such projects.⁵⁰ The government program⁵¹ itself is not that clear about the involvement of the social partners, but it obviously assumes that they will be involved at least at the company level. The working time reform then looked very different with the general introduction of the 12-hour working day for anybody without the involvement of the social partners, neither at the industry nor at the company level. The procedure to introduce such a significant change in the working time legislation was notable too, as the amendment to the Working Time Act was not introduced as a ministerial draft with a formal consultation procedure involving the social partners, especially the Trade Union Federation and the Chamber of Labour, but it was presented in parliament out of the blue by a number of ÖVP- and FPÖ-members in June 2018 and rushed through within one month before the summer break. It then entered into force in September 2018 after large demonstrations of the trade union movement that opposed the extension of the maximum working hours. Both parties framed the augmented working hours as an increased freedom for the workers and a withdrawal of an over-paternalistic state, with the FPÖ stressing the

48. Österreichische Verfassungsgerichtshof [VfGH] [Constitutional Court] Dec. 13, 2019, G 78-81/2019, G 67-71/2019, G 119-120/2019, G 211-213/2019, volume reporter, case number (Austria).

49. ÖSTERREICHISCHE VOLKSPARTEI, DER NEUE WEG 1/3. NEUE GERECHTIGKEIT UND VERANTWORTUNG 72 (2017).

50. FREIHEITLICHE PARTEI ÖSTERREICHS, *supra* note 28.

51. ÖSTERREICHISCHE VOLKSPARTEI & FREIHEITLICHE PARTEI ÖSTERREICHS, *supra* note 38, at 138.

liberation of the individual workers from the decision-monopoly of the union-affiliated works councils.⁵²

The second step foreseen in the government program concerning working time, namely the shift of the decision over flexible working hours and the resulting elimination of overtime bonuses from the industry to the company level⁵³, has not been undertaken within the legislative period due to the fall of government in 2019. This is an old demand of the ÖVP framed as the concept that decisions should be taken where they really matter. As works councils at the company level have less bargaining power than unions at the industry level, this would very likely mean a significant reduction in wages due to the loss of overtime premiums to a certain extent. For business, of course, this results in lower labor costs and one issue less to compromise in the sectoral collective bargaining agreements.

Another project shifting the power balance between business and labor significantly was the project to reform the unemployment benefit system in order to make it less attractive to be unemployed or—in the words of the government program—to “increase the incentives to work and to avoid inactivity traps”. The foreseen measures were a limitation of the jobs unemployed persons can refuse without losing entitlement to unemployment benefit (e.g. the reasonable daily commuting shall be increased from 1.5 hours to 2 hours for a full-time job). Although the net replacement rate is not very high at 55 percent⁵⁴, it was foreseen that it shall decrease over time and be limited in duration, given that entitlements to the second-tier unemployment benefit (*Notstandshilfe*) can be received infinitely. Afterwards the unemployed can only claim social assistance at a lower rate and with obligations to use up their savings and sell most of their assets before gaining entitlement. Foreigners shall be entitled only to limited benefits (see above 5.2.). This project was met with heavy opposition from the beginning, with the effect that the FPÖ Minister of Labor, Social Affairs, Health and Consumer Protection backed down and postponed it to a later point of time that never came due to the break-up of the ÖVP-FPÖ government. The discussion was framed by a distinction between the “deserving” and “undeserving” unemployed, i.e. those who had been working most of their life and not being able to find a job a couple of years before their retirement and those who refuse to take up paid employment in order to live off the unemployment benefit. This again fed into the general narrative around the ‘welfare magnet’ thesis according to which ‘poor’ foreigners migrate to Austria in order to take advantage of generous welfare

52. Walter Rosenkranz, *Betriebsräte verlieren ihr Entscheidungsmonopol*, WIENER ZEITUNG (Jul. 30, 2018, 10:59 PM), <https://www.wienerzeitung.at/meinung/gastkommentare/979915-Betriebsraete-verlieren-ihr-Entscheidungs-monopol.html>.

53. MARTIN RISAK, *ARBEITSZEITPAKET 2018*, 5 (2018).

54. Martin Risak & Erika Kovacs, *Active and Passive Labour Market Policies in Austria and Hungary - A comparative analysis of recent changes and trends*, 8 EUR. LAB. L. J. 168 (2017).

benefits, something that has to be stopped to maintain the existing level of social security for those who deserve it, meaning those who have paid into the system or have contributed otherwise.

V. CONCLUSION

By examining the radical right FPÖ's labor and social policy record in coalition with the conservative pro-business ÖVP from 2017 to 2019, we can identify two notable deviations from previous Social democratic-led grand coalitions: (1) welfare chauvinism and (2) attacks on institutional union power. First, as the ÖVP under Sebastian Kurz aimed to co-opt the FPÖ on immigration and integration, the government pushed through welfare chauvinist reforms that would have been impossible to implement in cooperation with the Social democrats (e.g. the indexation of family benefits for children living abroad against the advice of the European Commission, the reduction of social assistance for refugees). In fact, the ÖVP called for early re-elections in 2017 by declaring that "change" was simply not possible with the SPÖ, and that only coming out strong after the elections would make "reforms" possible. The rise of the FPÖ thus created a welcomed opportunity to break away from the grand coalition and induced the ÖVP to adopt the radical right's welfare chauvinism. The government framed new divisions in the welfare entitlements of citizens versus non-citizens as a way of rescuing the fiscal sustainability and benefit generosity of the Austrian welfare state by reducing the social benefits of immigrants who would otherwise stay on state support without sufficiently seeking paid employment. In other words, the "pull-factor" of easy access to social benefits had to be minimized by differentiating between the natives and outsiders—only by working hard and by paying into the system, they may gain access and deserve being protected in Austria to the prevailing extent.

Another impact of the FPÖ in government had been a reduction in institutional union power within the Austrian system of corporatism (the so-called "Social Partnership"). Given the SPÖ's links to organized labor and the ÖVP's links to organized business, the FPÖ has traditionally felt excluded from Austria's cartelized political establishment that incorporated the two historical major parties and their affiliated interest groups on both sides of the class divide.⁵⁵ As the influence of the employers' associations remained secured by their allies within the ÖVP, the FPÖ channeled its anti-corporatist sentiment against the trade union movement in particular. This anti-union strategy resonated with the FPÖ' ambition to entrench itself in corporatist

55. Philip Rathgeb and Michael B. Klitgaard, *Protagonists or consenterers: radical right parties and attacks on trade unions*, *Journal of European Public Policy*, online first, 2021.

decision-making structures and weaken the extra-parliamentary support base of the SPÖ.

While the political right managed to form an ideologically cohesive government on immigration control, law and order as well as tax cuts, the FPÖ's strong working-class support was at times difficult to reconcile with the ÖVP's pro-business agenda. The government's ideological emphasis on "deservingness"—i.e. "hard-working" Austrian citizens deserve state support—arguably incorporated the FPÖ's (native) working-class voters.⁵⁶ For example, one of the party's main social policy successes was the moderate increase in minimum pensions for those who have paid social insurance contributions for a long time, typically the male core workforce. This "deservingness" consensus thus helps understand relative continuity in the areas of pensions, sickness, and elderly care (i.e. for "deserving" benefit recipients), but the conflicts posed by reform negotiations around the unemployment benefit system demonstrated the limits of this strategy. Whereas the ÖVP wanted to limit the maximum duration of unemployment benefit receipt along the lines of the German *Hartz-IV* legislation, the FPÖ opposed any plans that would have hit the entitlements of workers with long contribution records. This intra-coalition tension became even more acute with the general introduction of the 12-hour working day. While both coalition partners legitimized working time deregulation as a matter of "individual empowerment" against the allegedly paternalistic intervention of the state and/or trade unions, it put the FPÖ under considerable pressure from public protests and declining approval ratings. At the same time, however, the Working Time Act had the welcomed effect of reducing union power by overriding existing union-administered regulations at the sectoral- and firm-level. In other words, the "anti-red" sentiments of the FPÖ blended in well with the neoliberal policy outlook of the ÖVP in this policy area.

In concluding, the Austrian case also illustrates the constitutional limits of the radical right's welfare chauvinism in a consolidated liberal democracy. Notably, the Constitutional Court contested substantial cuts in social benefits for non-citizens, which shows the importance of constitutional constraints on governments and parliaments to preserve basic human rights—and that the system still works. It nullified two core provisions of the reform, namely the cap on family benefits targeted at large migrant families "living off their children" and the requirement of rather high levels for German language proficiency for an increased benefit. On that note, it is interesting that in the short period of this coalition, the FPÖ managed to appoint two new judges in the Constitutional Court. Although it remains to be seen how the new judges

56. Philip Rathgeb, *Makers against takers: the socio-economic ideology and policy of the Austrian Freedom Party*, 44 (3), *West European Politics*, pages 635-660.

will influence the jurisprudence in the future⁵⁷, the FPÖ certainly achieved a new consensus on the political right to put “hard-working” Austrians first at the expense of non-citizens.

57. As the term of office of the 14 judges at the Austrian Constitutional Court runs until the 70th birthday of each judge and because they can only be revoked by the Court itself, the FPÖ appointed judges will shape the jurisprudence for many years to come.