DISQUALIFICATION FROM UNEMPLOYMENT BENEFITS: A CRITICAL STUDY IN SWEDISH SOCIAL SECURITY LAW

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In this paper an account is given of some of the results arrived at in a study of the Swedish rules on disqualification from unemployment benefits on the ground of refusal of work and of other self-imposed unemployment.[1] There are two schemes of unemployment benefits in Sweden. Together they cover almost the whole labour market. The rules are to be found in the Act on Unemployment Insurance (*Lag om arbetslöshetsförsäkring*) and the Act on Cash Labour Market Relief (*Lag om kontant arbetsmarknadsstöd*). My study relates chiefly to the Unemployment Insurance Scheme. The benefits granted by that scheme can be withheld either for a specified time, usually four weeks, or for an indefinite time if the claimant refuses to accept employment offered him by a public employment exchange, if he has quitted employment without good cause, or if he is not "at the disposal of the labour market". Similar rules exist in all countries with an unemployment insurance scheme financed by the state.

The main purpose of the study is to disclose the control and steering of the citizens that is built into the Swedish social security system. A developed social security system is not only an instrument for redistribution but also an efficient behaviour-steering instrument. There is a place for everybody in the Swedish social security system, but there is little, indeed hardly any, possibility for anyone to live outside the system. The social security system steers the behaviour of the citizens not only by distributing rewards but also by applying economic sanctions against those who do not fall into line. The disqualification rules in the Unemployment Insurance Scheme are the oldest and most highly developed sanction rules in the Swedish social security system. They have formed a pattern for similar rules in other branches of social security and in private labour law, too.

The study concerns both the way in which the rule-enforcing organization operates and the substance of the rules as this appears in legal practice. The first-mentioned part of the investigation is directed to demonstrating how legal practice operates in an area where the state has its own vital interests to maintain. The picture that emerges does not correspond to conceptions of law and legal practice that actually prevail. The

[1] This paper is based on a study which I intend to publish this year (1980) under the title *Avstängning från arbetslöshetsersättning vid arbetsvägran och annan självförvållad arbetslöshet.*

other part of the investigation is directed to exposing the interests that determine the substance of the rules in the legal practice and to showing how the contesting interests are balanced. The resulting picture is contrasted with the conceptions involved in the notion of the welfare state.

The investigation is based on a large body of case material derived from all levels in the rule-enforcing organization and covering the period 1965–78. Part of the case material, comprising some 2 000 cases, has been analysed statistically with the use of EDP techniques.

In carrying out the study, I have dealt with the case material in two different ways. I have tried to present it in such a manner that it gives a living picture of the conflict situations on a very concrete plane. I have also arranged it in description models designed to explain the legal practice on a more theoretical plane. Such description models could hardly be referred to as hypotheses. It would certainly have been possible to turn my description models into hypotheses, which would have been verified by the investigation. But such a model for scientific work would have given a false picture of how the investigation has actually been carried out. The final result could not have been a falsification of an advanced hypothesis. Are there in fact any studies in social science which lead to such conclusions? Instead, I started from undefined preconceived notions about factors determining the legal practice, notions which influenced my interpretation of the empirical material. But the empirical material in turn brought about revisions—sometimes radical—of the preconceived notions; these revisions have influenced the continued working with the empirical material, and so on. This dialectical process continued up to the point where the empirical data could be fitted into a coherent description and explanation of legal practice. True, I have not been able to escape the eternal dilemma of the social sciences—that the researcher sees what he wants to see, but the person who does not want to see anything sees nothing at all. However, I think that the ingrained juridico-technical interest to describe all legal conflicts that actually occur, irrespective of their social significance, has operated as a corrective against too subjective an approach to the empirical material.

This paper covers only certain aspects of the study, namely the theoretical explanations of the legal system and its practice and the contrasting state ideologies. It is impossible to give an account of the case material on a concrete plane in so limited a space as this papers offers. I have also excluded dogmatic and juridico-technical aspects. In what follows there will be no footnotes.

I use the letter *A* to denote the individual who is the subject of the legal practice. Other abbreviations are explained as they are introduced.

I start with the part of the study which concerns the way in which the rule-enforcing organization operates. That organization consists of four elements: (1) the *Job Service,* i.e. the local public employment exchange offices; (2) the Recognized unemployment societies (known as "funds"), which actually are administered by the unions; (3) the Labour Market Board (in Swedish *Arbetsmarknadsstyrelsen,* hereinafter referred to as AMS); and (4) the Social Insurance Court (*Försäkringsdomstolen*). A claimant for unemployment benefits must be registered with the Job Service as a job applicant. Under sec. 4 of the Labour Market Ordinance (*Arbetsmarknadskungörelsen*) the Job Service must notify the fund of all instances of refusal of work. Such notifications are generally called (job refusal) reports. The fund makes the first formal decision in the case. The decision will either withhold benefits from *A* or will award him a continued unbroken right to benefits in spite of the report. In the latter case, the fund is said to "accept" *A*'s refusal of work. If the fund decides to withhold benefits, *A* can appeal to AMS. There the case is decided either at head-of-division level or in the Unemployment Insurance Delegation (the Delegation). The Delegation is composed of representatives of AMS and of the funds. If AMS's decision goes against *A*, the latter can appeal to the Social Insurance Court. There is no way of appealing against a decision where the fund has accepted *A*'s job refusal, but there exists an established practice whereby AMS can treat such a case as a supervision case and first give the fund an opportunity to reconsider the matter. If the fund does not then follow the advice of AMS, it may be forced to replace its acceptance by a withholding of benefits. Such decisions are always taken in the Delegation.

The most important result of this part of the study concerns the role in the system that is played by the employment exchange offices. At this level the legal rules operate only as a frame within which the Job Service and the individual placements offices can act freely in relation to the legal system. The Job Service reports only a small proportion of the instances of job refusal occurring in the job-placement activity. At the fund level, on the other hand, the decision-making is kept within very limited legal frames. The fund is obliged to take a decision in all reported cases. By and large it has only to confirm decisions which *de facto* have already been taken at the Job Service level. Only if the Job Service has stepped outside the legal frames for the reporting activity, which is unusual, or if new facts have emerged (e.g. a medical certificate) is the fund allowed to accept *A*'s job refusal, thereby "reversing" the decision already made. In cases not involving labour union interests the fund is allowed a certain limited scope for discretionary consideration. In other kinds of matters the fund has not

even the right to reverse the judgment made by the Job Service on certain requirements of the statutory rules. This statement refers especially to the requirement in sec. 5 of the Unemployment Insurance Act that the work shall be suitable "within the scope of the supply of jobs". AMS carries out an intensive supervision of accepted cases in order to check that the funds do not go beyond these borderlines for decision-making.

This means that the Job Service level is the dynamic level in the rule-enforcing organization, the level at which it is decided whether and how the disqualification rules function as a state steering instrument. If the state wants to increase or decrease the degree of constraint in the Unemployment Insurance Scheme or alter its direction, the necessary measures must be carried out at the Job Service level. Interventions at higher levels have only marginal effects. The number of reports made has fluctuated, in the last few years considerably, whilst the acceptance rate in the funds has been stable at around 10 per cent. My statistical investigation indicates that the relative frequency of different kinds of cases varies according to Swedish labour market policy as a whole.

The Job Service has in fact decision-making functions within the system. The decision-making function is manifested above all in the state of things described above, namely that the fund is obliged to make a decision in every reported case and that the fund's right of decision is limited to checking that the Job Service has acted within the legal framework. A concrete manifestation of the decision-making function of the report is that it results in a provisional withholding of benefits without even a fictitious decision by the fund.

According to the state ideology, however, those reports are not decisions but only notifications to the decision-making authority. The ideology is upheld consistently and with all available measures. The obligation to make reports is not regulated in the Act on Unemployment Insurance but only in the Labour Market Ordinance. There the report is labelled just as a notification, and its decision-making quality appears only from AMS's regulations and the way in which the system actually operates. Superior authorities try to suppress the term "report", which is commonly used for this notification and which might suggest a prosecution function. At courses arranged by AMS, the Job Service officials are taught to regard the reporting activity as a mechanical process which requires no particular consideration on their part and to adopt the attitude that the whole responsibility lies with the formal decision-making authorities. The Job Service officials have even been instructed not to become involved in any discussions with the clients on the interpretation of the rules but to refer them to the fund.

The provisional withholding of benefits on account of the report, which is perhaps the most obvious manifestation of the decision-making quality, is not regulated by law. This situation offends against an established principle of law which lays down that all provisional coercive measures awaiting a final decision must have explicit legal support. That this is so is hardly a mere coincidence. The reason must be that such a legal provision would reveal the real functions of the reports. The fact that provisional denial has no support in law shows that the interest in upholding an ideology can be so strong that established legal principles are set aside.

There are strong interests on the part of the state to conceal the role that the Job Service plays in the system. First of all, the state has an interest in concealing how the behaviour-steering and even repressive functions of the social security system are inseparably associated with the supportive functions of the system. This is contrary to the whole ideology that surrounds the welfare state and legitimates its use of power.

The welfare ideology is also necessary on the practical plane in handling individual cases. The most important steering measure in the contact between the authorities and the clients is probably not the sanctions or the threat of sanctions but what I call social-bureaucratic persuasion. This social-bureaucratic persuasion needs the welfare ideology if it is to function effectively. The steering and repressive elements involved in the contact must be concealed as far as possible, not only from the clients but also from those officials who have direct contact with the clients. It is a well-known fact that the reporting activity can seriously disturb the ordinary job-placement activity.

The state has a further strong interest in denying the actual decision-making function of the reports, namely that of keeping the activities of the Job Service below the legal level, where certain legal guarantees regarding exercise of authority must be upheld. Such legal guarantees limit the authorities' freedom of action and thus hamper a flexible and labour-market-adapted steering of the citizens.

The Recognized unemployment societies (the "funds") emerged as a result of the state's taking over the control of the previously independent labour union funds. This was done by purchasing them through the system of governmental grants. The state grants subsidies for the activities and the labour union organizations in return bind themselves not to pursue labour union interests against the state labour market policy in this part of their activity. Previously the conflict between labour union interests and state interests was openly admitted. Now it is denied, but it is nevertheless there.

The conflict between state interests and labour union interests in the

Table.
(per cent)

	Rate of acceptance in fund	Rate of approval upon appeal to AMS	Rate of supervision through the Delegation	Rate of "no objection" at Delegation
(a) Outside customary occupation/Unqualified	2	0	56	50
(b) Outside home district	15	18	6	24
(c) Other work expected	10	17	14	14
(d) Daily travel time	15	28	10	30
(e) Child care	17	14	10	35
(f) Job environment	11	29	2	50
(g) Personal reasons	7	8	4	25
(h) Inability to perform the work	15	15	8	25
(i) Health reasons	23	29	5	29
(j) Economic conditions	7	13	22	63
(k) Errors in the procedure	25	24	3	50
(l) No reasons	3	0	4	0
(m) Other reasons	10	18	7	24
Total	12	19	8	35

rule-enforcing organization appears very clearly in the statistical study. There are two grounds for job refusal involving labour union interests which are against the state labour market policy. These grounds are (i) that the job offered is outside *A's* customary occupation and/or is too unqualified and (ii) that the wages offered by the employer are too low. These two grounds of refusal, listed in the table below as (a) and (j) respectively, exhibit different values compared with other refusal grounds in almost all the variables examined, e.g. acceptance rate in the fund, approval rate upon appeal to AMS, supervision rate in AMS, and the outcome in supervision cases. "Supervision rate" denotes the relative frequency of refusal cases accepted by the fund, which are reexamined by the Delegation as supervision cases, of (the estimated number of) all accepted cases. The outcome in the Delegation is either that the Delegation imposes upon the fund to replace its acceptance by a withholding of benefits or that the Delegation declares that it has "no objection" to the acceptance decision. "Rate of no objection" refers to that.

The high supervision rate, together with the low acceptance rate in the funds in cases involving specific labour union interests, indicates that the supervision activity in AMS has been directed to suppressing those interests and that in these cases the funds have been deprived of any real right of decision. Upon consideration in the Delegation, however, the rate of "no objection" (AMS does *not* compel the fund to alter the decision) is

higher in the case of the refusal grounds related to labour union interests. That shows how the labour union representatives in the Delegation manage to balance AMS's strict control of labour union interests.

The part of AMS's supervisory activity which consists of persuading—and if that does not help—instructing the funds to alter previous acceptance decisions has gone on without any actual support in law. A traditional legal analysis reveals that there are grounds for asking whether this form of supervision does not violate fundamental principles of administrative law and that it may even be contrary to constitutional law. In committee reports from recent years in connection with various amendments of the Unemployment Insurance Scheme, the supervision activity has been described in an incomplete and even directly misleading way. The extent of the activity, its systematic character and its orientation towards "accepted cases" and especially "accepted cases" involving labour union interests have been concealed. Moreover, the legal complications have been concealed from those who are not already informed. But at the same time the committee reports contain a hidden message to the inner circle of initiates to carry on as hitherto and not to worry about possible legal complications.

The building up of the law on unemployment insurance primarily takes place through the Delegation's practice in appeal and supervision cases. When practice has reached a certain firmness it is codified in implementation regulations. AMS's implementation regulations are the paramount "source of law" for the offices at lower levels. Case law originating from the Social Insurance Court plays a very modest role in this field of law.

The Social Insurance Court's position as the highest instance and AMS's authority to enact implementation regulations imply that the areas of competence of the two authorities overlap. However, the two authorities act in such a way that the conflict does not appear openly. It has mainly been the Court that has subordinated itself by never passing a judgment involving a clear norm in a matter in which AMS has a labour market policy interest in leading the development of the law.

The state, however, wants to maintain the notion that it is the Court and not AMS that is leading the legal development in the field. This is shown very clearly in the Report on a New General Unemployment Insurance Scheme, presented in 1978 (*SOU* 1978:45). The Report contains a proposal for a revised appeal organization wholly adapted to an already accomplished reorganization of the appeal institution in the other branches of social security. It is emphasized how important it is that the Social Insurance Court should be able to fulfil its function of building up case law. There is no hint that the building up of the law is actually carried out in another way. The implementation regulations of AMS are not even

mentioned. The Report proposes that AMS shall cease to deal with appeal cases and that these cases shall be transferred from AMS to the new insurance courts, which are proper "courts". The possibilities for AMS to steer the legal practice at lower levels through implementation regulations would, however, be left intact. Further, it is suggested that AMS shall maintain its influence over the legal practice at the higher levels, this influence being at present disguised as a position of a "party".

I conclude from my investigation that the actual administration of the Unemployment Insurance is an integral part of Swedish labour market policy and that it is the governmental agency, AMS, that holds the steering position in the rule-enforcing organization. But my investigation demonstrates clearly that the state wants to give the public the impression that the administration of justice is separated from labour market policy and to conceal the real influence of AMS.

I now turn to the substantive content of the disqualification rules, as it appears at different legal levels, the fund level and upwards. The relevant statutes are primarily the provisions, cited below, of the Unemployment Insurance Act, sec. 5, on "suitable work":

> An offered job shall be considered suitable, if
>
> 1. Within the scope of the supply of jobs, reasonable consideration has been given to the occupational experience of the insured and other qualifications and to other personal circumstances;
> 2. The conditions of employment are compatible with conditions for those employed under a collective agreement, or, if there is no collective agreement, are reasonable in relation to the conditions in comparable enterprises offered to employees with equivalent work assignments and qualifications;
> 3. The work does not relate to a workplace where there is an industrial conflict which is permissible according to law and collective agreement;
> 4. The conditions at the workplace correspond to what is laid down in statutes and regulations regarding measures aimed at prevention of ill health and accidents.

The disposition of the following part of the study is based on the different grounds that *A* may give for his refusal. I divide the grounds into three main groups, namely labour-market-related, enterprise-related and individual-related grounds for refusal. The great majority of cases where conflicting interests occur are covered by sec. 5(1) of the Unemployment Insurance Act. According to my terminology these cases are labour-market-related. The management demands that the labour force shall adapt itself to the changes in the structure of economic life, e.g. interests of occupational and geographical mobility.

A may have an interest in staying in his customary occupation or in choosing a special occupation or in getting a job corresponding to his vocational training/education. Such individual interests, however, have no legal protection at all. It is true that at the Job Service level there are norms which pay regard to individual excuses and recognize, e.g., that a trained building worker should not be offered an unqualified job during seasonal unemployment or that a person can draw benefits during normal search time in his customary occupation without the risk of being reported for job refusal. But occasionally the Job Service deviates from the normal practice and it is then revealed that there is no legal ground for such an excuse. An objection from *A* that the referral is contrary to normal practice is met with the simple answer that the unemployment insurance is not a professional insurance. A trained teacher may be obliged to accept temporary work involving washing up, cleaning and coffee-making in a pharmacy, a lawyer who has served as an officer of a district court may have to accept a job as assistant in an institution for alcoholics.

The goals of Swedish labour market policy are, according to the guiding principles confirmed by the Riksdag, "to bring about and maintain full productive employment and a free choice of employment". The committee which prepared the draft of the present Unemployment Insurance Act suggested a limited legal protection for this latter interest. Within the framework of the supply of jobs, reasonable consideration should, it said, also be given to *A's wishes* regarding type of employment. In the subsequent preparation of a Bill this part of the committee's proposals was deleted without a word of explanation. It would be hard to find a clearer example of the gap between declarations of goals and legal rules to be applied, between ideology and reality.

My study of the legal practice has shown that *A*'s interests of a non-economic kind in working in a particular occupation have no legal protection at all. The employers' demands for occupational mobility have been given absolute priority. On the other hand, a certain protection for the income level attained through prior employment in a certain occupation has emerged. *A* is not obliged to accept a job that carries pay substantially below his unemployment benefits and the unemployment benefits are related to his prior earnings. The Committee on a General Unemployment Insurance Scheme proposes a reform intended to strengthen the protection of the actual income obtained. The level of compensation of the insurance, it considers, should be raised and related more directly to *A*'s income. The idea is that *A* should be obliged to accept a job at a lower rate of pay, but that in that case he should have a right to supplementary benefits from the Unemployment Insurance Scheme.

The tendency to give legal protection to individual economic interests and especially the interest in maintaining an already-attained income level, whereas individual interests referring to non-economic values are disregarded, can be demonstrated in several other issues and can be considered a common feature of the law in this field. The trend reflects a society where we adapt our lives to the organization of private and public enterprise and in return get our security and self-respect from an established position in a hierarchical system of wages and social insurance benefits.

The employers' interest in a *geographically mobile* labour force is in conflict with the individuals' fundamental interests connected with the way of living in a family and in a social community. In the sixties the "mobility policy" was pursued forcefully and with a multitude of different measures. One of these consisted of the disqualification rules in the Unemployment Insurance Scheme. According to my statistical study, refusal to work outside the home district was the commonest ground of disqualification, such cases accounting for about one fifth of all refusal cases. In the seventies the extreme mobility policy was replaced by regional political measures. This change in Swedish labour market policy is reflected in the composition of the job-refusal cases. From 1970 to 1974, which is the last year covered by my statistical study, the outside-home-district cases accounted for only 5–10 per cent of all refusal cases. This supports my assumption that the legal practice in connection with the Unemployment Insurance Scheme is part of the labour market policy and that the changes take place at the Job Service level.

Swedish labour market policy, as revealed in actual administration during the sixties, had its brutal side. Families were split up or were torn away from their social environments and planked down in residential districts in another part of the country. The older generation was left alone in the sparsely populated areas of northern Sweden to manage as best it could. The employers' demand for labour was given priority to the point where it threatened the society's interest that children be provided with necessary care. There was some protection for the husband/wife relationship, but mainly as a reflection of their common responsibility as parents. The labour market policy did not and still does not provide any protection for other human relations.

These are the main features. However, the picture also contains some other elements. During the period covered by my study, the legal protection of the woman's right to stay in her home district was noticeably weakened. Regulations giving married women, especially those with children, an indisputable right to refuse jobs outside the home district were abolished in the mid-sixties. On the other hand, the legal protection of

women's right to participate in the labour force has been strengthened. Today the husband can sometimes cite his wife's employment in the home district as a valid reason for refusing work outside the district. Previously it was taken for granted that the woman should simply give up her occupation and move too.

In the outside-home-district cases it is also noticeable that much more attention is paid to individual economic interests than to non-economic values. Increased living costs in connection with temporary work outside the home district are often accepted as a ground for refusal, whilst no attention whatever is paid to the interest in maintaining daily contact with the children or in being able to help elderly relatives. My explanation is as follows. When claims for protection against economic losses become a substantial obstacle to the geographical mobility of the labour force, these losses can be eliminated through wage increases or governmental subsidies. Such measures will raise the cost level in Swedish industry but do not alter the basis of societal organization. The human values, on the contrary, appear as factors alien to the system. They can certainly play a role below the formal legal level and also break through on the legal level as discretionary judgments in individual cases, but they cannot be given any systematic legal protection within the framework of the existing societal organization.

The outside-home-district cases have decreased in number as compared with other categories, as reported above. The "daily travel" group, on the other hand, is increasing. These are cases where *A* objects that the daily travel connected with the offered job will be too heavy a burden. The "daily travel" cases reflect the conflict between the development of a more centralized production structure and a slower process with regard to the dwelling structure. The individual interests have here a legal guarantee in the form of the 12-hour rule, as it is called. *A* can refuse to accept the job if the working hours and travelling hours together will amount to more than 12 hours daily. At the Job Service level it is not the 12-hour rule that is applied, but other norms based upon the "usual commuting distance for the district" within the 12-hour rule. There is thus room for a sharpening of the steering, if needed, without even touching the legal level.

The difficulty of arranging (acceptable) child care has become an increasingly common ground for refusal. This trend is obviously connected with the growing degree of participation in the labour force among women. The labour-market-related conflict in the child-care cases lies between the employers' demand for female labour and the interest that children shall be well cared for. The legal practice follows the same pattern as in other labour-market-related conflicts. The employers' need for labour is given priority whenever children can be provided with a

minimum of care. All forms of child care must be accepted, even forms which in other contexts are not considered to fulfil the societal norms.

When it is not possible to provide any child care during the working hours in the job offered or the jobs available on the market, a question of distribution policy will arise. Is it reasonable to grant benefits to women in this situation? The actual answer is no. The woman has no right to benefits even if she has been a wage earner for many years and, through no fault of her own, has been put in a situation where her offer to work, limited by the necessity of child care, no longer corresponds to the demands of the market. I have carried out a systematic analysis of the legal arguments put forward to justify this practice and found that they are not compatible with established principles for legal reasoning. I draw the conclusion that the administration of the system has been determined by the—never pronounced—principle of distribution policy that women who have to take care of their children must be provided for within the family.

It should be noted, however, that the administration of the system in the child-care cases has been softened in some respects in recent years, possibly as a consequence of more organized demands by the upholders of women's rights.

The enterprise-related refusal grounds include grounds involving that the conditions of pay, working environment or other conditions of employment are too unfavourable in relation to what can be demanded from the enterprise, not, as to the labour-market-related grounds, in relation to what can be demanded from *A* considering where he lives, his previous occupation, and so on. The dominating subgroup is inadequate economic conditions. There are few cases where *A* argues that the working environment is not acceptable in relation to what can be demanded from the enterprise; this occurs in only one or two per cent of the total number of the refusal cases. Nevertheless, the working environment in a broad sense, e.g. the distribution throughout the day of the working hours, is a very common ground for refusal. But this conflict is not recognized and formulated as a question about what demands can be made upon the enterprise, but as a question about what demands can be made upon the individual with regard to adaptation to an existing working environment. The following account relates primarily to the wage cases.

A leading principle when the Unemployment Insurance Scheme was introduced in Sweden was that it must be "neutral" in relation to the labour market. The principle mainly referred to the wage level. Leading economists argued that unemployment insurance tends to raise the wages

above the "natural level" settled by the market and thereby increases unemployment.

What does this "neutrality" signify? In a community without any unemployment insurance or other forms of unemployment relief, everybody who cannot get a living in some other way is forced to make himself available as a wage earner on the conditions offered in the market. Unemployment insurance removes this relationship of dependence. Some unemployed persons may prefer to live on the insurance benefits rather than accept a job on the conditions offered in the market. This is not "neutral" and therefore the insurance must include rules preserving the constraint to be at the disposal of the market on the conditions offered. These rules are the disqualification rules. The fact that the phrase "be at the disposal of the labour market" has become so generally accepted confirms this interpretation of the function of the disqualification rules.

If unemployment insurance is to be quite neutral, either there must be no rules on "suitable work" at all or existing rules must be entirely adapted to the conditions actually offered on the market, which is basically the same thing. But ever since unemployment insurance was introduced in 1934, the principal rule has been that the payment offered shall be in accordance with the collective agreement in the sector concerned. This rule was not neutral in the above sense when it was introduced. The collective agreement as a norm for the wage level was not generally accepted by employers. However, the conditions of political power were such that the state had to accept this labour union norm as a governmental norm. The unions would never have accepted participation in the Unemployment Insurance Scheme if the state had not accepted this norm. The so-called neutrality was an adaptation to existing power conditions and was not neutral in relation to existing conditions on the market. Today the collective agreement as a norm for the wage level is accepted even by employers. As a result, the norm has become so neutral that it is almost superfluous.

I now turn to the administration of the system in the wage cases and how it has developed during the period investigated. The principal statutory rule is still that payment offered shall be "compatible" with the collective agreement for the sector. According to the statute text it is not necessary that the employer shall be bound by a collective agreement. However, the legal practice has developed towards a position very close to such a requirement. The funds have constituted the active force behind this development, but the situation is now almost entirely accepted by AMS, though not explicitly but with reference to certain guarantees in the labour-market insurance policies which presuppose a valid collective agreement. The development in practice represents an adaptation to a trend in

the community towards recognizing the collective agreement as a norm for the employment relationship.

Thus in practice a binding collective agreement is necessary. But at the same time the existence of a collective agreement is sufficient for the work to be considered suitable as regards employment conditions. The authorities do not investigate whether the conditions offered are actually in accordance with an existing binding collective agreement. It is presupposed that such issues will be dealt with in due course once *A* has been engaged. This development of practice represents an adaptation to the increased possibilities for the unions to enforce the observance of the collective agreement. This development has taken place gradually and without reflection. People have not been aware of the increased union control over employment conditions that is inherent in the rules on suitable work. There is not only the fact that union control has made state control superfluous. The state control is not compatible with the union control, which is partly based on extralegal strategies, negotiation settlements and the right of the parties to interpret the collective agreement in accordance with their policies. These issues have been brought up for consideration on some occasions and have caused considerable confusion. No solution of principle has been reached.

The rule applicable to activities where there are no collective agreements, e.g. housework and domestic work in industry, is that the benefits offered shall be "reasonable in relation to benefits granted in comparable enterprises to employees with equivalent work assignments and qualifications". This provision has been interpreted in such a way that these activities have been compared with each other. Even payment that is extremely low has been accepted, the argument being that equally low remuneration occurs in other "comparable" activities.

There is a striking difference in the actual administration in the field within the union sphere of interests and in the field outside this sphere. In the former area the administration has approved demands that go further than the statutes (e.g. the requirement that a binding collective agreement shall exist, instead of the requirement that the benefits shall be "compatible with" those of the collective agreement). In the latter area the legal practice has been so completely adapted to the market that the rule has not operated as an independent rule but only as a legitimation of existing conditions on the market.

The tensions in the administration of the system lie at present in cases where manpower is recruited to enterprises which, while they fulfil the minimum rules of the collective agreement on suitable work, nevertheless in various respects offer conditions less favourable than those obtaining in

other enterprises. The public employment exchange system and the Unemployment Insurance Scheme are adapted to the market in such a way that it must be precisely those enterprises which take advantage of the disqualification rules. The better enterprises can offer conditions which are more favourable than the unemployment benefits.

The authorities are aware of this dilemma. On one occasion AMS intervened with a formal instruction to the Swedish employment offices not to provide "bad employers" with new manpower to an unlimited extent. This formal instruction was declared unlawful by the JO (the Swedish Parliamentary Commissioner for the Judiciary and Civil Administration). But this is not necessarily a hindrance to an informal administration of that sort at the Job Service level. When, however, the funds sometimes in their decisions in reported cases try to take a harder line against these "bad employers", this is not accepted by AMS. The supervision rate in wage cases is very high (see above).

The third and last of the three groups referred to earlier is that consisting of individual-related refusal grounds. The alleged ground is related to *A* as an individual and refers to some deficiency in *A*'s physical or mental equipment, his ability or vocational experience or his adjustment at the workplace. The conflict of interests involved in the individual-related cases is not so clear and unambiguous as the conflict involved in the labour-market-related conflicts, where it is a question of weighing individual interests against the need of the firms for manpower. This description model does not cover the fact that a large proportion of those who invoke individual-related grounds are no longer in demand on the market but on the contrary are on their way to being expelled from the market. In these cases another problem, too, appears, namely the interest of exercising social control over those who cannot be fitted into the public and private enterprises. I shall return to this issue later on.

The most important subgroup among the individual-related refusal grounds consists of the health cases, i.e. cases in which *A* argues that the job offered would be hazardous to his health. Thus the conflict in question is (or appears to be) between the individual's interest in retaining his standard of health and the employer's demand for manpower in work assignments hazardous to health. But this conflict, or rather the fact that the legal solutions involve a weighing of interests where certain health risks connected with the organization of production are accepted is concealed in the system of requiring medical certificates.

The content of the actual law in the health cases can be described only in relation to the medical certificate. The alleged health grounds are accepted

if and only if *A* can present a medical certificate which fulfils certain formal criteria. The certificate must be individual-related and it must contain a statement based on a medical or psychiatric diagnosis or at least on the presence of symptoms of that sort and a declaration that the work is not suitable for *A*. The requirement of individual relation implies that the fact that the work is not suitable must be described as a deficiency in *A* as an individual. A medical certificate stating that shift work is hazardous to everybody or at least to everybody above a certain age and therefore also to *A* (possibly a correct statement) would not be accepted. The requirement of a diagnosis signifies that any social considerations that might have induced the doctor to issue the certificate must not appear in the certificate. The conclusion that the work is not suitable for *A* need not be justified and in most cases is not further explained. Above all, the certificate does not state that the conclusion was based on the weighing of interests, still less how this weighing was done. I have never seen a medical certificate stating that while the work admittedly involves some health risks for *A*, nevertheless these risks are no greater than those which must be accepted, e.g., in relation to a call to do shift work.

Thus it is not possible to gather any general norms or guiding principles from the medical certificates. The only thing that these show is how unevenly and arbitrarily the system of medical certificates operates at the individual level. Much depends on whether *A* can get hold of a doctor, what attitude is taken by this doctor and how the certificate is formulated. Provided that the certificate follows the formal requirements, the authorities rarely intervene, even if the certificate is obviously made "on request". However, this occurs in cases where medical certificates are presented by a group of unemployed persons who are all in the same social situation, e.g. live in a place where the main enterprise in the district has closed down. The common social situation reveals that the judgments in the certificates do not relate to individual-related medical questions.

The authorities are well aware how unevenly and arbitrarily the system of medical certificates operates at the individual level. They know that different doctors have different grounds for judging and that impermissible social considerations often influence the judging. But they turn a blind eye to this and do not take measures to make the assessments of the medical profession more uniform. There are at least two reasons for this inertia. First, the certificate system operates satisfactorily at the macro-level. The medical profession does not issue certificates in job-refusal cases to an extent that in any way menaces the employers' need for manpower in jobs hazardous to health. These medical certificates are of only marginal importance compared with, e.g., the medical certificates in normal cases of

illness. It is the macro-level which is of consequence from the point of view of the authorities.

Secondly, an overt steering of the judgments of the medical profession would reveal that the question is not only one of medical judgment but also one of labour-market policy. The participation of the medical profession in labour-market policy fulfils an ever more important legitimating function. This legitimating function presupposes that the medical profession is acting as a specialist group, which makes purely medical judgments without any steering from state authorities.

Another individual-related ground for refusal is inability to perform the work. *A* argues that on the ground of deficiencies in his training, education, experience, ability, etc., he cannot perform the work offered or cannot carry it out well enough, that he is afraid of it or has an aversion for it. These are individual interests which cannot be weighed and measured in such a way that they can be taken into consideration in the legal system. The rule applied is simply that the employer alone decides what *A* can manage or not manage. The objection does not count if the employer is willing to employ *A*. The administrtion here is very strict, much stricter than in the health cases.

The inability ground is often invoked in cases where *A* is offered an unqualified job in the swelling sector of medical care and other social care, but it does not count there either. A tacit rule that *males* shall not be assigned to nursing work against their wish has recently been abolished. The forced recruitment to this sector that is visible is certainly of very limited extent. But the legal level is only the tip of an iceberg.

The tendency to medicalize labour-market questions is visible in the inability cases, too. Even during the period covered by my study, the boundary of the health cases has been moved. Matters which ten years ago were considered to have nothing to do with *A*'s health are now regarded as assertions which can be confirmed or refuted by means of a medical certificate.

Personal conflicts at the workplace are for obvious reasons rare as grounds for refusal to take an offered job. They are, however, rather frequent as grounds for leaving a job. "Voluntary quitting", as it is called, also entails disqualification from benefits, if *A* did not have "good cause" to leave the job.

Those who leave are the "losers" in the personal conflicts occurring at the workplaces. It is the victors and not the losers who write the history in the cases. *A* seldom manages to prove that his employer, supervisors or fellow employees have behaved in such a way as to give him "good cause" to leave his employment. The only way *A* can avoid disqualification is to

transform the conflict into a state of deficiency in himself and present a medical certificate testifying to, e.g., symptoms of stress. If *A* refuses to submit to this medicalization and insists that he has been treated wrongfully, he will be disqualified from benefits.

According to the Unemployment Insurance Act, sec. 4, a person claiming benefits must be "capable of work". This prerequisite has always been interpreted very generously for *A*. As long as there exists employment in the open market that *A* could do, he is considered "capable of work". Even very gravely handicapped persons can according to legal practice fulfil the criterion of being "capable of work".

However, the protective function in this interpretation of the rule has been undermined through the recently introduced principle whereby a claimant who refuses to undergo medical examination and rehabilitation can be disqualified from benefits. The principle has no statutory support. It was introduced in practice and thereafter received some backing in a not very clear statement by the Secretary of State in the Bill on Unemployment Insurance. No firm criteria for establishing when the authorities can require that *A* shall undergo medical examination have been developed. It is sufficient that the authorities consider the examination appropriate.

Other coercive measures connected with medical examination and treatment can according to established principles of law only be used under conditions laid down in statutes, and are subject to legal guarantees of different kinds. Disqualification from benefits constitutes a powerful coercive measure. However, it is not ideologically recognized as a coercive measure and it has therefore been possible to introduce enforced medical examination without provoking adverse reactions.

According to ch. 20, sec. 3, cf. ch. 2, sec. 11, of the National Insurance Act (*Lag om allmän försäkring*), a person can be disqualified from sickness benefits on account of refusal to undergo treatment "intended to shorten the duration of the sickness or to bring to an end a reduction in the insured person's ability to work". At about the same time as the Social Insurance Court accepted disqualification from unemployment benefits on the ground of refusal to undergo medical examination, the Court rendered another judgment invoking the quoted provision in the National Insurance Act. A woman of foreign origin was disqualified from sick benefits because she had terminated a course in the Swedish language granted to her as rehabilitation treatment. These two judgments demonstrate how the boundaries between work, training and treatment are being erased and how the coercive measures in the different branches of social security are merging into a homogeneous system for support and steering.

According to the Unemployment Insurance Act, sec. 31, the disqualification rules "may, if it is reasonable" be applied to a person who refuses to attend or who quits labour market training/education (AMS's vocational training courses for the unemployed). The provision was introduced in 1964. In the *travaux préparatoires* of the Act the provision is justified by reference to expected immediate useful effects, such as better vocational skill and better prospects on the labour market. In practice no requirements of that sort are upheld. *A* can be disqualified, not only for refusal to accept vocational training in a more limited sense but also for refusal to attend general working-life-orientated courses. Immigrants are disqualified for refusal to attend courses in the Swedish language. *A* is entirely at the mercy of what the authorities consider appropiate in his case.

Disqualification from benefits on the ground of refusal to attend vocational courses is in my opinion the most obvious manifestation of the disqualification rules as measures for social control of those citizens for whom there is no place, at least not for the time being, in normal working life. There is simply no clear evidence that enforced labour-market training has useful effects with regard to vocational skill, etc., sufficient to justify the coercive measures. The aim must then be social control.

There is in the disqualification rules an inherent mechanism which means that weak groups on the labour market are hit particularly hard. It is easy to point to manifestations of this mechanism. It begins to operate already at the Job Service level. The job applicant who seems to have good prospects is given the list of vacant jobs and is then left to take care of himself, the applicant who seems to have a more problematic unemployment situation is taken care of by a placement technician. It is this personal service which also involves the controlling and repressive elements, the social-bureaucratic persuasion, the threats of report and the reports themselves.

The severest sanction in the Unemployment Insurance Act is disqualification according to sec. 30(2) until such time as *A* has participated in the labour force for at least 20 days. It is obvious that this sanction hits with particular force those who are not in demand on the labour market. The orientation towards weak groups is also incorporated in the requirements for the use of the sanction. One of the two type cases in which the sanction has to be applied according to the application regulations of AMS is that where a person who is "difficult to place" quits the work he has. If two persons, one of them a skilled building worker in his thirties, the other an unskilled middle-aged woman, both quit their employment on account of exactly the same degree of inability to get on at the workplace, the building worker gets off with a disqualification limited to four weeks, whilst the

middle-aged woman risks a disqualification under the 20-days rule, i.e. exclusion unless she participates in the labour force for 20 days, and this solely because it is more difficult for her to get a new employment.

According to AMS's regulations, disqualification on the ground of refusal to attend vocational courses is only to be used against those who do not do their best to get out of their *difficult* labour market situation. That is tantamount to saying that the sanction is to be used only against the weakest groups on the labour market.

These concrete examples, which could be multipled, reveal a structure in which the helping and supporting function is intrinsically associated with the controlling and repressive functions.

The use of sanctions directed against weak groups on the labour market, e.g. disqualification under the 20-days rule and on account of refusal to attend vocational courses, is increasing. The use of the disqualification rules in situations where the aim (typically) is to provide the employers with the manpower they want has not increased, at least not to the same extent. This indicates that the centre of gravity in the system of sanctions is shifting from the function of providing the employers with suitable manpower to the function of exercising social control over groups outside normal working life.

Another common feature in the disqualification rules is the lack of regard to the rule of law in the sanctions directed against the weakest groups. The sanctions come into existence without statutory support. The requirements for their use are unclear or even non-existent.

The 20-days rule developed in practice without any legal support. When it was codified in 1964, certain legal guarantees were instituted. These guarantees have successively been loosened and even circumvented in the most flagrant way.

Disqualification on account of refusal to submit to medical examination has not yet any statutory support.

The rule of disqualification on account of refusal to attend vocational courses contains no legal guarantees at all, only a legitimation of an entirely free exercise of authority. The sanction "may"—not "shall"—be applied "if it is reasonable". The requirements for what is to be considered suitable employment certainly allow for a wide range of arbitrary considerations, but there are rules with some substantive content. The authorities' freedom of action is not total.

The difference that is found throughout as regards legal guarantees for different groups indicates that the level of legal guarantees in the state's exercise of power is related to the political strength of the group subjected to it.