Civil Disobedience: Contracts and Contempt*

During the first year after establishing my foundation in 2010, five unrelated individuals billed me for services I did not request. The first was a tax accountant who, without my knowledge or permission, undertook to correct a former accountant's mistake rather than return it to him to correct. The second was an architect who sent me an invoice for her detailed cost estimate for the renovation of my building, after I had declined her bid. The third was also an architect who, after I had declined his services as well, sent me a retroactive invoice for services I had not commissioned him to provide. The fourth was the printer company that had failed to repair my printer as requested, but instead made other adjustments and replacements at its own initiative that I had not requested, then pressured me to pay for them.

The fifth was Dr. ██████████, a former director of my archive. She refused to do the project I had assigned her, and declined to inform me of this until the day before she sent me an invoice for irrelevant activity I had not assigned her. I told her that as she had not done the assigned work, she had not earned the money she was demanding, and that I therefore would not pay her. So she sued me in court.

Although she and I had both presented detailed written arguments defending our respective positions,[1] the trial judge, Judge ████, did not address the pros and cons of the case. His comments were directed exclusively to the matter of classification, as to whether our work relationship was that of a client to a freelancer, or of an employer to an employee. German labor law disregards the professional agreements, promises and contracts that individuals make among themselves when entering into a work relationship. It is not for those individuals to fashion a unique professional relationship best adapted to the needs of both, through individual negotiation and discussion. Rather, it is the court's job to determine whether or not the "objective" criteria for an employment relationship, i.e. those created by Germany's politicians, have been met, independently of the intentions, wishes, or self-representations of the

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1 Adrian Piper, *Widerspruch* (13 Juli 2011); *Stellungnahme* (8 September 2011)

contracting parties. If the court concludes that these criteria have been met, it forces the client into all of the financial obligations and responsibilities of an employer, against her will.

Judge █████ explained this distinction to me at great length, and described in detail the consequences, should the court classify our relationship as that of an employer to employee. Mostly these consequences have to do with how much more I would be required to pay in retrospective pension and benefit costs than I would have by simply paying the invoice amount for which Dr. █████ sued me. It was later explained to me that if I refuse to pay these costs, the court will attempt to confiscate my property, auction it off, and get the money that way. If it cannot retrieve these amounts through auction, it will sentence me to prison for contempt of court. Judge █████ threatened to classify my relationship with Dr. █████ as an employer-employee relationship unless we settled our dispute immediately in his presence.

At that point, Dr. █████, who had signed a work contract with APRAF certifying her freelance status,[2] disclosed that she was a member of Germany's employees' union. This revelation added warrant to Judge █████'s threat, and also extra pressure on me to pay her invoice, on pain of union prosecution. I told Judge █████ that I had recently learned that *all* of my former staff were in fact members of the employees' union, even though all had represented themselves to me as freelancers and had also signed contracts verifying that they were.[3] They had signed their contracts under false pretenses, and, at the instigation of another former director, █████ (also present at the hearing, at Dr. █████'s invitation), had deliberately configured their work environment at the archive to simulate an employees' office workplace. They had claimed that no other jobs were available, and that their only alternative was to go on welfare. But when I advertised their positions after their departure, I found a surfeit of available freelance jobs in their areas of training, of exactly the kind that previous, genuinely freelance APRAF staff had also held.

After they had all resigned and threatened to take legal action against me if I did not pay them immediately, I was legally advised that this form of work fraud is quite common in Germany. Unemployed workers often pose as freelancers, then create de facto employee status by surreptitiously configuring an employee workplace. Courts regularly rule in favor of the worker – even if, as in this case, they have deliberately misrepresented their work status, signed their contracts under false pretenses, and extorted their client using methods that jeopardize the continued existence of the enterprise that hired them. Because the court regards whatever they say or do as irrelevant, unemployed workers can, with legal impunity, say and do whatever they choose in order to obtain work. They can lie, or violate their contracts, or pose as freelancers in order to obtain money to which they would have had no claim if the truth had been known at the outset. My archive staff, five women including Dr. █████, did all of these things.

The judicial reasoning was described to me: Such workers are excused from liability for fraud and extortion, and exempted from punishment, on the grounds that they are weak and dependent; and that they are only acting dishonestly because they are desperate for work. They are desperate for work

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[2] Adrian Piper, *Five APRAF Work Contracts*

[3] *ibid.*

because the education provided to them by the state has conditioned them for employment that is not available; and the state does not offer them the professional training they would need in order to employ themselves. Since they are entitled to employment even if no one will employ them, the revelation of their fraudulent behavior obliges their client to take on the role of de facto employer, and to pay all their health and pension benefits retroactively to the inception of their de facto employment. These were the costs with which Judge █████ and Dr. █████████ were threatening me. I told him that this was fraud; that her threats (and by implication, his) were extortion; that I would not be blackmailed into paying money to Dr. █████████ that she had not earned; and I walked out of the hearing. Judge █████ then carried out his threat.[4]

During this lengthy exchange, there was one brief moment of shocked silence, as though the air had been sucked out of the room, leaving only a pinched, wordless stillness that saturated the space with shame and collapsed its dimensions. That was when I stated that I would not be blackmailed and began to pack up my papers to leave. For that brief moment, it was as though all of them in that room with me were suspended by the realization that they had been caught, discovered in the midst of dishonest and dishonorable mischief that even they themselves could not condone. But the moment passed, and business as usual resumed: while I was preparing to leave, Dr. █████████ inquired as to the next steps in the procedure, and Judge █████ again spelled out in even greater and more vivid detail the consequences of my refusal to negotiate a settlement. I repeated that I accepted those consequences.

Dr. █████████, like the other four vendors who billed me for unwanted services, demonstrated contempt for her agreement to do the work I assigned her in exchange for the money I would paid her, and contempt for the goals and values that work was intended to further. Both she and Judge █████ demonstrated contempt for the due process of law that he, at least, was professionally obligated to uphold, in which a case that comes before the court is decided on its merits rather than on threats of extortion. And this part of German labor law demonstrates contempt for a human transaction – the practice of promising – that most mainstream political theorists agree is absolutely essential to a healthy and functional society. Collectively, that is really quite a lot of contempt for the process by which mutual trust is built.

The inviolability of voluntary promising stands at the foundation of the Social Contract tradition of law and political theory. In that tradition, human beings are conceived as free, rational and autonomous adults who mutually agree to give up part of the freedom they enjoy in an unregulated natural condition, in order to obtain the benefits of a stable, orderly society governed by laws of private property, contract, freedom of speech and association, and the like. The basic idea is that human beings exercise their power of rationality to recognize the value of a well-ordered society; and they exercise their power of autonomous choice to mutually agree to be bound by its requirements. The legal code that governs a well-ordered society is then justified by the basic principle that its citizens would freely and rationally agree to submit to it. A legal code that could not have been the outcome of its citizens' free and rational agreement cannot be rationally justified at all. Thus in the Social Contract tradition, the concept

[4] Herr █████, Richter, Amtsgericht Wedding, *Stellungnahme* (14 Oktober 2011)

of a freely chosen contractual relationship expresses the essential core of the relationship between citizen and state.

The German constitution – the *Grundgesetz*[5] – was intended to be the most highly evolved expression of this tradition. Founded on the ashes of the Second World War and cognizant of the shortcomings of the American Constitution, Germany's legal code enshrines this conception of the person as a free, rational and autonomous agent, and of the agreements and contracts such a being is therefore naturally entitled to make, in its opening paragraphs. These are the fundamental principles that justify it. So, for example, **Article 5.1.1** recognizes the right of freedom of speech, the right to express, disseminate and teach one's beliefs in word, writing and image. **Article 10** of the *Convention for the Protection of Human Rights and Basic Freedoms*[6] reaffirms this right, and adds that it may be abrograted only for reasons of security or reputation that do not apply here. To make a promise or verbal agreement is clearly a form of speech that expresses one's beliefs about what one is going to do and has obligated oneself to do. A contract is a formalized promise. The right to freely enter into a contractual agreement is therefore protected by the right of free speech. Similarly, **Article 12.1** of the *Grundgesetz* recognizes the right to freely choose one's profession and workplace. This cannot mean simply that I am free to choose among a predetermined selection of professions concocted and presented to me by someone else. **Article 2.1** entitles me to the free development of my personality within the bounds of legality. It therefore implies, together with **Article 12.1**, that I am free to develop my own, best way of contributing productively to society if I can make a living at it. Similarly, **Article 9.1** guarantees the right to freely form associations; and **Article 9.3** guarantees the right to freely form associations that protect and further work and economic conditions. **Article 11.1** of the *Convention for the Protection of Human Rights and Basic Freedoms* of 1 June 2010 reaffirms this right, and makes particularly clear in its language that although a union would be one obvious example of such an association, the law is by no means confined to this familiar case [„und sich frei mit anderen zusammenzuschließen; dazu gehört auch das Recht, zum Schutz seiner Interessen Gewerkschaften zu gründen und Gewerkschaften beizutreten."]. The association with another or with several others that I form in a contractual work relationship also protects and furthers the work and economic conditions of my life, in a workplace of my choice. **Article 1.3** of the *Grundgesetz* obligates the legislature, the executive and the judiciary to apply these principles directly and without intermediaries („als unmittelbar geltendes Recht") to particular cases. That means that these principles apply to every individual subject to the law directly and unconditionally, without qualification by other intervening principles, policies or political considerations.

These principles recognize my right to freely enter into contractual working relationships of my own choosing with other rational adults. ***Article 1.3** ensures that no court can override my right to define my profession for myself, and on that basis to freely form a contractual association with another, on the grounds that my choice meets or fails to meet certain "objective" criteria that in fact were subjectively constructed in order to serve specific political ends.* Indeed, **Article 9.3.2** of the *Grundgesetz* unconditionally prohibits any such attempt to limit or obstruct this right as void and illegal. It is up to me to freely choose the profession I wish to

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[5] *Basic Law for the Federal Republic of Germany [Grundgesetz]* (23 May 1949)

[6] *Convention for the Protection of Human Rights and Basic Freedoms* (1 June 2010)

practice, and therefore the criteria my professional practice must meet. It is the market, not a court of law, which appropriately decides whether my choice is satisfactory to those who freely agree to hire me. So these articles of Germany's *Grundgesetz* express and epitomize the values of the Social Contract tradition that inspired it.

By contrast, those more recent statutes of German labor law which deprive me of these rights, and which Judge █████ applied, express contempt for these values, and flout the political and legal principles on which the *Grundgesetz* is based. They cheapen the value of honest self-representation, of honesty, of promising, of voluntarily undertaking an obligation to perform, and of honoring one's contractual obligations to others more generally. They deprive workers of the basic human right to freely determine their own contractual relationships with other rationally autonomous adults. Those laws reward and encourage impostors, relieve them of accountability, and protect them from the legal consequences of swindling and blackmailing their clients. In these ways, they infantilize and corrupt German workers and excuse them from the ethical obligations and responsibilities of independent self-determination that adulthood ordinarily confers. They express contempt for the very workers they are putatively designed to protect.

By categorically refusing to pay Dr. █████████ money she did not earn, regardless of the judgment of the court, I risk contempt of court charges on that count alone. By categorically insisting on my right to freely enter into a contract with her of our choosing, and by therefore categorically refusing to recognize the court's right to impose an employer/employee classification on our professional relationship, I risk additional contempt charges. I risk further contempt charges by consequently refusing a court order to pay her retrospective health and pension benefits, should the court insist on that right. Given the role that contempt has played in this narrative, one might describe as poetic justice the likelihood that I will be sentenced to prison for contempt of court. For I do, indeed, feel contempt for a court that expresses such contempt for due process, and for my natural human right as a free and rational adult to form a contractual relationship of my choice with another free and rational adult. No human being, no legal code, and no court of law can deprive me of that right, and I will not obey one that tries. Nevertheless I will accept and serve the sentence handed down by that court, because I accept the terms of the Social Contract that it so contemptuously violates.

Adrian M. S. Piper
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