The European Model of "Social" Capitalism: Can It Survive European Integration?*

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The three sets of questions I want to discuss here are as follow:

- Is there such a thing as "European capitalism"? Are there institutional and structural features that apply more or less to all European political economies and only to European political economies? How do European political economies and societies contrast if compared to their liberal counterparts of the Anglo-Saxon world?
- If they exist, how can these distinctive similarities, or family affinities of European capitalisms, be explained in historical terms and justified in normative or functional terms?
- What can we expect and predict concerning the impact of European integration upon the distinctive features of European "social capitalism"? Is it likely that European societies will converge in the process of integration on the distinctive European "social model," as represented by and inherited from European nation-states, or is there evidence of trends to the opposite? If so, European integration would undermine the "Europeanness" of the emerging political economy of the European Union (EU).

I. "EUROPEAN" CAPITALISM?

As to the first of these sets of questions, much of the historical and social science literature is preoccupied with an approach that has been labeled "methodological nationalism." The national state and society, not "Europe" as a whole, is the standard unit of analysis, and for good reasons. On the one hand, the nation-state, at least in modern history, must be conceived of as a self-contained and self-governing entity with distinctive centers of legitimate political rule and the enforcement capacity which has effectively enabled it to shape the institutional structure of its society and economy. Also, until recently, most of the data which

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are available for social scientific analysis are gathered by national agencies, such as national statistical offices, according to national standards and definitions. Virtually all cross-sectional comparative literature compares countries, and to a much lesser extent sub-national units (such as regions) or supranational units (such as "families of nations").

There are, however, a number of features that European societies have in common. Some of these features have remained distinctively European, while others have spread from Europe and its pioneering role to other parts of the globe. Instances of such historically rooted and distinctive features of "Europeanness" are Christianity, the legacies of the absolutist state, the modes in which this form of political rule has been overcome, a history of vast interstate warfare, colonialism, doctrines and precepts of revolutionary liberation, the nation-state, the sciences, and capitalism itself. This list does, however, invite the objection that there are as many dissimilarities among European states and groups of states: Christianity is divided into Roman Catholicism and Orthodoxy in the fourteenth century and then again into the former and Protestantism in the sixteenth. Revolutionary liberation and nation-state building occurred in some countries, but not (or with much delay) in others. Some states acquired vast colonial empires, others not. Some countries in Europe were capitalist pioneers, others latecomers. And so on. Nevertheless, historians and sociologists have elaborated structural similarities which supposedly govern all (or, at any rate, most) European societies.

These similarities are either of a substantive or a procedural nature, manifesting themselves in distinctive structures or in ways of "getting things done." As to the former, religious life, the family, the city, political parties and party cleavages, economic institutions, and artistic forms are cited as instances of shared features of all European societies. As to "procedural" similarities (and as an offshoot of the Weberian problem of "occidental rationalism," or "modernization," with its dialectic of liberating gain of control and the concomitant loss of freedom within "iron cages"), "Europe" has been associated with the idea and practice of limiting, balancing, and managing diversity and conflict, and buffering the consequences of change, through the use of state power.

The social, economic, and political contours of Europe are not easy to determine. Even if it comes to defining a sub-set of its features, such as the welfare state, we are bound to conclude that "the idea of a European welfare state model does not leap automatically from the data." The rhetoric of the "European Social Model," as it was inaugurated by Jacques Delors in the early 1990s, may be criticized for representing more of a normative vision than a consolidated reality. Much of the academic literature points to the wide range of variation that can be observed among European welfare states, economic institutions and forms of democracy. Perhaps a reasonably clear and meaningful identity of "the" European model emerges only if Europe is contrasted with non-European global regions, such as East Asia, the underdeveloped South, or North America.

Moreover, (West) European history of the second half of the twentieth century is to a large extent shaped by the US and its military, political, intellectual, economic, and esthetic hegemony. What ties social actors together are links (such as mass air travel, global markets, the Internet) of a global, not a European scope. Arguably, "Europeanness" is nothing that can be found in the shared histories of European societies but, to the contrary, something that is in the still elusive state of "becoming," an artifact of European integration and its homogenizing impact. Also, in speaking of "European" society, authors often have in mind some features that characterize core West European societies and which (partly) serve as a pole of attraction or a model for imitation to societies located in Europe's eastern and southern peripheries.

Yet in spite of these various caveats concerning the risks of reifying "Europeanness," modern European history is arguably shaped, I submit, by what one might call a "logic of discontinuity." This discontinuity applies in time and space. It is a "logic" in that discontinuity poses challenges and calls for types of responses that exhibit some European elective affinity. Spatial discontinuity results from the contest over land borders and the need of all states to define and defend their contested territorial base against neighboring states, which historically usually happened in the form of international war, conquest, and separation. By discontinuity in time, I mean the relative frequency of regime changes in European history. There is hardly any European country that matches the United States in both the stability of its territorial shape and the longevity of its constitution. In view of these two distinctive European features of discontinuity, every political elite of every state at virtually every moment of its modern history has to fear three kinds of enemies: "reactionary" classes and elites representing the past who challenge the current regime; "progressive," or "rising" social classes threatening the current regime from, as it were, the opposite direction and in the name of some splendid future; and foreign rival

\(^{3}\) Castles 1993.

\(^{4}\) Ertman 1997; Anderson 1993.

\(^{5}\) Kaebble 1987; Crouch 1999; Therborn 1995.


\(^{7}\) Baldwin 1996, p. 35.

\(^{8}\) Münkler 1995.

\(^{9}\) Just a rather trivial reminder: There is a minority of countries in Europe, as well as a small minority of spaces within these countries, where the following rule does not apply: You cannot travel 200 miles (half a day of travel, by modern standards) in any direction without ending up in a different country (with its different history, language etc.), or, for that matter, in saltwater. Exceptions to this rule are only to be found, within EU-27 Europe, in France, Germany, and a tiny fraction of Spain.

\(^{10}\) Symptomatically, Switzerland, the least Europeanized of European polities, seems to come closest to the US in these respects among all European countries; this applies also to being among the few European countries having escaped a land war on its own territory in the nineteenth and twentieth centuries.
A third kind of discontinuity within European societies has to do with an overlap of religious divisions and those of social class, with both of them being well crystallized in terms of both formal representative organizations (such as political parties, churches, associations) as well as distinct universes of social intercourse. Without taking the time here to look at the interaction of temporal (or domestic) and spatial (or international) discontinuities and sources of conflict, and without illustrating this vast and somewhat schematic generalization on the basis of the rich evidence available, I believe, in its support by historical sociologists and social historians, let me jump to one conclusion. This conclusion is that in an environment of spatial and temporal discontinuities as well as class and religious divisions and the pervasive threats and challenges resulting from them, any "winner-takes-all strategy" does not lead to stable and viable solutions.

People can flee unbearable threats and conflicts, and they have done so in the history of nineteenth and twentieth century Europe by the tens of millions, with most of them turning to the Americas. But entire societies and states cannot escape by relocating into insular situations or virgin lands. They are trapped in an environment of discontinuity and contest. Nor can they hope to cope with this environment of discontinuities (the most important of which come in terms of nations, social classes, and religious belief systems) by imposing upon it a lasting ("millenarian") and spatially all-inclusive ("imperial") order. The two "totalitarian" regimes that European history has seen in the twentieth century have served to demonstrate, through the disasters they have caused and the eventual defeat they have suffered, the validity of this impossibility theorem. If discontinuities, conflicts, and diversities (of interests, of identities, of ideas) can neither be escaped from through "exit" nor repressed through state terror, the only remaining option is to institutionalize some viable form of coexistence of classes, states, and identities. This is the lesson on the learning of which both the history and the territorial situation of Europe have put a high premium since the Westphalian peace settlement—the lesson of bridging, regulating, and constraining domestic and international conflict while at the same time recognizing the legitimacy and inescapability of diversity. There is a European way in which "diversity itself is handled" and institutionally transformed into "ordered, limited, and structured diversity."10

European states to the west of the Iron Curtain have, in the course of the second half of the twentieth century, accomplished a great deal in institutionalizing a viable balance between these conflicting challenges. Not only have they created a security regime that makes international war among European States a virtual impossibility.11 They have also, each in their specific national and path-dependent version, managed to reconcile the dilemmas of social order, thereby sharpening a distinctive profile of European political economies. The horns of these dilemmas (seventeen of them in my counting, but we can probably think of more) are well known: equality versus efficiency, collective bargaining versus individual contracting, cooperation versus conflict, rights versus resources, wage moderation versus distributive conflict, supranationalism versus intergovernmentalism, social partnership versus class conflict, proportional representation versus majoritarianism, constitutionalized basic rights versus parliamentary sovereignty, associational collectivism versus individualism, social security versus competitiveness, politics versus markets, modernism versus postmodernism, citizenship versus communitarian politics of difference, consensus versus conflict, corporatism versus pluralism, and status versus contract.

II. STATUS, STANDARDS, PROTECTION

There is a wealth of research which was conducted in the 1990s on comparative capitalism. In fact, the designation of a political economy as "capitalist" (essentially meaning the dominant role of private firms whose activities are steered by market prices and based on property rights as the institutional locus of production, and the presence of labor markets and the labor contract as the key mechanisms of income distribution) has come to be seen as a universally applicable and hence rather uninformative label. After all, and after the demise of state socialism, what else, other than "capitalism," can we expect to find as the organizing principles of economic life in "modern," as well as in modernizing, economies? The emphasis has shifted to the plural: capitalisms instead of capitalism, and the distinguishing historical contexts, institutional features, and record of productive and distributive performance of those varieties of capitalism.

"Capitalism," once viewed as a single species of social and economic organization, is now being rather conceptualized as a zoo full of different species. Of how many species, and different in what respects? The most fine-grained classifications come by sector of industry, country, and decade, that is, combine cross-sectional and longitudinal comparative perspectives. Here, the focus is on, say, US railway capitalism in the second half of the nineteenth century, or French biotech capitalism in the last decade of the twentieth. At the other end of the continuum, you have the coarsest distinction of liberal versus "nonliberal" capitalisms, meaning the Anglo-American versus the European (and Japanese) cases of technologically advanced capitalism.12 Intermediate classifications follow the convention of "methodological nationalism" by focusing upon national economic regimes and their pervasive path dependencies, or they

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10Crouch 1999, p. 404.
11Again symptomatically, the only exception to this rule occurs at the margin of Europe, namely the tension over territorial issues that exists—though, it seems, solidly under international control—between the two NATO members Greece and Turkey.
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subdivide the various capitalisms by regional groups of (for example, Scandinavian) countries or political regime types (democratic versus authoritarian). I wish to stick here as closely as possible to the distinction of global regions or continents, looking at "the" European model in contrast to the Anglo-American and (only marginally) the Japanese ones.

One defining feature of (Continental) European capitalism and the social order resulting from it is the prominence of state-defined and state-protected status categories. In each of the above seventeen pairs of concepts, Continental European capitalism (CEC) tends much more toward the first alternative than does Anglo-Saxon capitalism. By "status" I mean a positive and statutory (as opposed to merely tradition-based) bundle of rights and duties, standards, licenses, mandates, legally prescribed procedures, entitlements, subsidies, and privileges which are attached to virtually every participant in contractual economic transactions and the collective actors representing and governing these participants. The status regime tells you where you stand in relation to others, what to do, what not to do, and how to do it. As a consequence of these status-based constraints, some economic transactions which might otherwise be voluntarily entered into are ruled out in the name not just of non-economic concerns of moral order (such as the ban on child labor or on trading illegal drugs), but in the name of long-term and collective economic interest itself. The measure of the strength of the status component of a capitalist economic system is the degree to which partners to contracts are endowed with non-negotiable entitlements and duties, as well as the degree to which obligations to third parties not immediately involved in economic transaction are stipulated and enforced by law.

This rule of voluntary transactions being constrained by status categories applies to the entire range of economically relevant institutions, including banks and financial markets; trade unions, employers' associations, and the practices of wage determination and income distribution; the regulation and protection of the commercial sector and small enterprise; agriculture; the networks of transportation, energy, and communication; vocational training and tertiary education; the role and mission of central banks; the professions; corporate governance; international trade, tariffs, and migration; the tax system; state controlled and state-subsidized patterns of housing and the real estate market, as well as urban and regional development, including the conservation of physical resources; social security and other welfare state institutions; public sector employment; company level labor relations; property rights, both in things and in ideas, and their adjudication; and the governance of research, development, and innovation.13

For instance, and as a rule of thumb, in the US you get paid for what you actually do, while in Europe you get paid for what you can do according to some certificate obtained through formal training. Similarly, in the US your level of pay will most often be determined by individual or company-level contractual agreements, while in most European systems trade unions and employers' associations are assigned the collective status right of determining an entire industry-wide pay regime through collective bargaining. In the latter case, the level and kind of rewards is tied to regulatory rules of training and licensing which logically precede the market and are relatively immune from market forces. The individual pursuit of economic gain is "embedded" (this being one of the key terms of the comparative capitalism literature, a term dating back to Polanyi14) in a set of formal (that is, legislated) and informal (moral and culture-bound) institutional patterns which constrain the permissible range of economic transactions, as well as types of participants in contractual interaction. The degree of embeddedness is the greater the more specific and constraining the rules are that limit the pursuit of individual gain in markets (beyond, that is, what general legal rules of criminal and civil law prohibit anyway). Embeddedness refers to the degree to which contractual relations are premised upon a non-negotiable status order governing economic activity, akin to what has been termed "decommodification" by Esping-Andersen and others.15

While constraining and distorting the short-term economic outcomes that would result from "free" markets, that is, markets exclusively driven by short-term and individual cost and price considerations and voluntary contracts, embeddedness is designed, or at any rate invariably defended and justified, in terms of three standards of collective rationality. These supra-individual rationality standards are temporal, social and functional; they emphasize future-and-past-regardingness, other-regardingness, and the attention to collectively beneficial, though often non-obvious, functions and side effects they perform.

13A linguistic reflection of the pervasive role of status categories in Continental European capitalism is the ubiquitous presence of collectivist and organism nouns that usually do not have an equivalent in the English language. They refer to collectivities that are endowed with status rights and the members of which recognize themselves and each other as partaking in these rights and

socioeconomic identities. Examples from the French and other Roman languages include the terms with the suffix "-at" (or Spanish "-ado," as in salariat, artisanat, and patronat, not to forget proletariat). In German there is the suffix "-schaft" (etymologically akin to the suffix in citizenship) which is widely and frequently attached to virtually every socioeconomic role and collective unit. Examples include Studentenschaft (student body), Wirtschaft (the collectivity of employers/investors), Ortschaft (municipality), Bauernschaft (the farming community), Belegschaft (the work force of a company), Beamtenchaft (the civil service), Gewerkschaft (trade union), and numerous others, most famously Gesellschaft and Gemeinschaft. The use of this suffix suggests the internal coherence and external recognition of pre-given, supra-individual, and non-contractual properties of all members of the group as a corporate unit, comparable to the suggestion evoked by the ending of brotherhood (as used in the early North American trade union movement). While the German "schaft" always denotes a collectivity of the bearers of some status, the English equivalent "-ship" denotes individual instances of belonging or sharing in group properties, as in citizenship, scholarship, craftsmanship, or membership. To be sure, there is another "collectivizing" suffix in the English language, namely "-ry" (as in citizenry, yeomanry, soldiery, judiciary etc.). But it connotes just the belonging of individuals to a social category, without implying some recognition as a collective body with ascribed status rights.

14Polanyi 1944.

15Esping-Andersen 1990.
To illustrate, using the case of trade unionism. If trade unions are strong due to a strong status in wage determination assigned to them by law (or even constitutionally, as in Article 9 of the German Basic Law), and if they represent the work force of entire sectors of industry rather than that of individual companies, chances are comparatively greater that they will develop some awareness of and consideration for the consequences their demands and strategies entail for the employment prospects of workers in general, as well as for the rate of inflation and their industry's competitiveness. As a consequence of this organizational set-up, they become more readily "other-regarding" than company unions, due to their narrow concern for the maximization of nominal wages of a small percentage of the industry's or nation's overall work force, could ever afford to be. Similarly, and in the temporal dimension, the institutionalization of a "skill rent" as a wage component which is being paid regardless of actual job requirements will encourage the acquisition and continuous upgrading of skills, thus creating, unlike the conditions prevailing in highly mobile "hire-and-fire" labor markets, a reservoir of skills which will economize on transactions costs and increase the duration of job tenure due to workers' enhanced flexibility. Thirdly, high wages and high skills will provide, as a desirable functional side effect, a powerful incentive to employers to utilize possibilities for labor-saving technical change, thus increasing the efficiency and competitiveness of production.

Taken together, economic status rights will not only protect economic actors (employees, farmers, artisans, small and medium-sized business, banks, the professions etc.) from adverse market impacts; they can also contribute to overall and long-term (economic as well as non-economic) outcomes that are superior to pure market transaction with its blindness to the interests of others, to externalities, and to the past or future. If there is anything distinctive about the "European" model of capitalism, it is the insight, congealed in a myriad of economic institutions and regulatory arrangements, that the interest of "all of us" will be served well if the pursuit of the interest of "each of us" is to some extent constrained by categorical status rights. This antithesis has been captured by conceptual pairs such as "share holding" versus "stakeholding," or "efficiency" versus "X-efficiency," or "the productivity of rules," which, although constraining market forces, will eventually and counter-intuitively (to some) be rewarded by the market outcomes.

However, it must be noted that the relationship between a market-constraining, state-sponsored order of status and standards, on the one hand, and measures of economic performance (growth, employment, productivity, competitiveness, stability) is at best a curvilinear one. "Too little" regulation will turn out to be as counterproductive in its consequences as "too much." There is no valid presumption of "the more the better." It has been said, as a general characterization of institutions, that they are like the force of gravity in that they prevent us from flying, but allow us to walk upright. Institutionalized status arrangements, in other words, open up valued options and at the same time preclude others. This suggests the notion of an optimum level of non-market ingredients and status rights, with further increases of these ingredients beyond the optimum leading to sclerosis and rigidity.

But this notion of rationally optimizing an institutional arrangement by defining the best mix of state-sponsored status components and contractual voluntarism is clearly a "hyper-rationalist," and ultimately a meaningless project. This is so for three reasons. First, it is not self-evident who should be authorized to define that point of equilibrium, as conflicting values (for example, security versus efficiency) are involved and trade-offs are essentially contested. Who, after all, is competent to determine how much allocative inefficiency is "worth" how much gain in dynamic efficiency, with a compelling answer becoming even harder to find if the choice is not just between short-term and long-term efficiency, but between either of these and values such as security, equity, or social justice. Moreover, any "optimal" mix may be short-lived, as optimality is contingent upon changing conditions and competitive relations within the global economy. Second, even if such equilibrium could be authoritatively defined, it is not clear how the blueprint could be implemented against the well-entrenched political resistance of those who stand to lose from even incremental change. Third, the mode in which institutions do change is not so much the intentional action of designers as it is the combined and interactive effect of external shocks, contingencies, and challenges, on the one hand, and shifts in the configuration of hegemonic ideas, on the other.

Philosophies of how best to organize economic life and its institutional framework come in many national, as well as ideological variants. They differ concerning the agents which are envisaged as the bearers and guardians of status rights (collective actors, as in "societal corporatism" versus the benevolent developmental state versus the paternalistic company) and the ideological values associated with a socially controlled market economy (with social democratic proponents emphasizing inclusion, security and empowerment of workers versus anti-individualistic values of conservatives and Christian socialists). Countries with European-style embedded capitalism also differ in their economic performance. The underlying claim that embedded and constrained versions of capitalism work "better" than their liberal and "pure" counterparts holds true in some cases and periods, but not in others. Sometimes (as in the 1980s), continental European capitalisms perform better than liberal ones; at other times

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16Leibenstein 1976.
17Cf. Streeck and Yamamura 2001, p. 4.
III. CHALLENGES TO THE EUROPEAN MODEL

There are basically two modes in which economic institutions can change. They can lose intrinsic support or they can fail in their instrumental role of achieving desired outcomes. First, according to a model of institutional decay, institutions change if they fail to generate the widely shared support and universal recognition on which they depend. Institutions lose their moral grip on actors, the capacity to orient their preferences and expectations. Relevant actors defect, as it were, from the congruent behavioral routines and habits that institutions require for their viability. Or rival alternative institutions emerge that pose a challenge to existing ones, and compatibility problems result which necessitate compromise and dilution. As a result of either defection or confrontation, institutions cease to "make sense," or are perceived to become "too costly" and their maintenance "not worth the effort." They are seen to become incompatible with new contexts, and thus become vulnerable to path-departure, dismantling, and innovation. The other model of institutional change follows a natural selection model. Institutions change or are abandoned because they are seen to fail in generating expected or promised outcomes. While both of these explanatory models can coincide—actors withdraw their loyalty and support because of perceived failure—such coincidence is by no means axiomatic. For as much as actors can stay loyal (for example, by adjusting their outcome expectations downwards) even in the face of manifest failure, the inverse case can also be observed: actors defect not because outcomes are seriously and consistently disappointing, but because institutions have depleted the kind of plausibility and bindingness that makes them something to be "taken for granted."

A second intuition and (perhaps debatable) generalization is this. The two styles of capitalism, embedded European and "pure," (or "market liberal"), Anglo-Saxon, are tied to each other in an asymmetrical relation of entropy. That is to say: It is much more likely that a European-style capitalism transforms itself into a liberal model than that the Anglo-Saxon model becomes "Europeanized" (in much the same way as, to quote Walensa, it is easier to make a fish soup out of an aquarium than the other way round). "Embeddedness" is a condition that is more easily lost than gained, due to its dependency upon supportive dispositions of a cognitive as well as moral kind.

IV. THE CHALLENGE OF EUROPEAN INTEGRATION

As noted above, the distinctive feature of European capitalisms has evolved under the impact of the "logic of discontinuity." This logic has necessitated the adoption of some state-sponsored status order that protects, according to precepts of a "social" market economy and "organized," "embedded" and "regulated" capitalism, economic agents from some of the impact of the "anarchy of the market," while (ideally) at the same time improving market outcomes. The various institutional patterns I have mentioned before are designed for (or can be justified in terms of) the accommodation of conflicting interests, cooperation, bargaining, consensus, the limitation of conflict, and sustainability.

European integration is a project and partial accomplishment which, in the light of these considerations, allows for two interpretations which are radically contradicting each other. On the one hand, it can be seen as (and was certainly envisioned by its early protagonists to eventually become) a framework of cooperation and regulation that completes at the transnational plane what had been accomplished at the level of member states, namely, a regime of fair and peaceful competition that rules out not only international war in Europe, but also hostile economic rivalries, thus establishing, through "positive" integration, a supranationally embedded political economy which serves the interests of all parties involved evenly. But on the other hand, it can also be seen as a strategy of institution building and extensive as well as intensive market enlargement that involves not the transposition of the more benign aspects of European capitalisms to the transnational level, but, to the contrary and through "negative" integration, its demolition at the national level, and thus as a device that paves the way for the ultimate triumph of market liberalism on the European Continent by enforcing upon member states the adoption of regimes of privatization, deregulation, and fiscal austerity. According to this pessimistic reading of the impact of the new Europeanized political economy (as defined by the parameters of the Single Market, EMU, and eventually Eastern Enlargement), member states will be deprived of their capacity to maintain the kind of protective arrangements and status order that each of them had built up in the course of their national history. According to this latter reading of the integration process, the Europeanized political economy will significantly deviate from the type of European capitalism that prospered under the protection of national regimes.

It is too early to pass definitive judgment on which of these diametrically opposed interpretations/predictions will come closer to the truth. According to the first and optimistic reading, we would have to expect an effective supranational regime of social protection and status rights to be established at
the European level. According to the pessimistic reading, we would expect social
and economic insecurity to become more intense; the difference between
integration winners and integration losers to widen across social classes, sectors
of industry, and regions; social exclusion to become more common; the capacity
of national governments to maintain their protective status arrangements to
become more limited and precarious, as intensified tax competition dries up fiscal
resources and the strict stability regime of the European Central Bank (ECB)
penalizes budget deficits; nationalist and xenophobic anti-European reactions
to play an increasing role in electoral politics; and the horizons of solidarity
and cooperation to shrink to relatively small sub-national (that is, regional,
sectoral, and corporate) units rather than expand to the inclusive level of an
all-European polity and regime of social protection. In sum, and as Michael
Dauderstädt, a leading expert of the Friedrich Ebert Foundation, the German Social
Democratic think tank, has recently put it in an unpublished memorandum: "Will European integration protect or destroy the 'European
social model'? And if the latter, he goes on to speculate, 'it could . . . turn out to be political dynamite when important social groups perceive that their interests are endangered by European policies or rules.' Similar concerns about the "social quality" of Europe, even more so than related ones about the EU's "democratic deficit," rank very high on the research agenda of Europeanists as
well as in the normative debates on the future of the integration process. After
market integration has largely been accomplished, "social" integration is
becoming the key issue.

V. SOCIAL PROTECTION IN A LIBERAL MARKET SOCIETY

A liberal society consisting of contract-making individuals presupposes a
rudimentary institutional framework that endows the prospective players with
requisite universal status rights of "citizenship," or the meta-right to have rights.
In most elementary terms, every ten-year-old must be a fourth-grader, and every
citizen has access to a court. It also presupposes means-tested income support
for the worst-off, as well as incentives that supposedly will help them to help
themselves. The source of these universal status rights of citizenship is a law-
making and law-enforcing liberal state, in the absence of which the very notion
of a "contract" becomes insubstantial, or the mere equivalent of private promise-
making. Law enforcing and contract enforcing mechanisms are needed as
exogenous prerequisites to get the liberal game started.

But once it has started, a second type of problem emerges, that of enabling
people to stay in the game. This is the perspective of the social democratic
critique of market liberalism. The critique starts with the observation that the
game of free contract-making is not self-sustaining, but inherently precarious and
potentially self-subversive. This precariousness is due to the ambiguities inherent
in the concept of freedom itself. Elaborating on the insights of German labor
lawyers and legal sociologists writing in the Weimar Republic—most notably
Hugo Sinzheimer and Franz L. Neumann—four meanings of the concept of
freedom, as applied to a liberal market economy, can be distinguished:

1. The right (including the possession of the legal prerequisites just mentioned)
to enter into contractual agreements;
2. The right to use the tool of free contract-making for the purpose of achieving
distributive outcomes according to one's assets, skills, and preferences; but
also
3. The right to adopt strategies which are designed to dispossession others
of their freedom to stay in the market and enter into contracts; an example
would be the formation of cartels designed to drive competitors out of the
market; a sub-case of this use of freedom for the dispossession of others of
their freedom applies in labor markets, where investors' or managers' prerogative of adopting labor-saving technical, organizational and
locational change can involve a corresponding loss of market opportunities
for workers;
4. The right to enter into a special kind of contracts, namely labor contracts,
which by their nature constrain the long-term freedom of further contract-
making of those entering into the contract as wage workers.

The latter argument needs elaboration. It runs, briefly, as follows. What
workers sell to employers for a wage is not just their present labor power, but
more or less significant parts of their freedom to sell anything to anyone in the
future, or their long-term earning capacity. Wage earners deplete their earning
capacity without being able, like capital, to accumulate in compensation for this
loss: depletion without accumulation. To be sure, the outcome of losing one's ability to sell anything is involved, as an ex post contingency, in any contractual
economic activity in reasonably competitive markets. Who knows, after all,
whether I, the self-employed businessman, can sell what I have to offer in the
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loss: depletion without accumulation. To be sure, the outcome of losing one's ability to sell anything is involved, as an ex post contingency, in any contractual
economic activity in reasonably competitive markets. Who knows, after all,
whether I, the self-employed businessman, can sell what I have to offer in the
market; a sub-case of this use of freedom for the dispossession of others of
their freedom applies in labor markets, where investors' or managers' prerogative of adopting labor-saving technical, organizational and locational change can involve a corresponding loss of market opportunities
for workers;

But once it has started, a second type of problem emerges, that of enabling
people to stay in the game. This is the perspective of the social democratic
critique of market liberalism. The critique starts with the observation that the
argument needs elaboration. It runs, briefly, as follows. What
workers sell to employers for a wage is not just their present labor power, but
more or less significant parts of their freedom to sell anything to anyone in the
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depletion of earning capacity and alternative sales options—and hence of the actual option to enjoy the freedoms of type (1) and (2) in the future. This depletion is caused by the conditions that labor power is not a "thing," but an inseparable part of human beings and their life course. Labor power is unique among all economic resources in that it cannot be inherited by others. Labor power, unlike capital, cannot, by its own means, offset depletion through reinvestment of profits and accumulation. It cannot, as capital can, rejuvenate itself by continuously starting, as it were, a new life cycle, thereby perpetuating its own earning capacity—unless, that is, wages reach a level that allows savings and investment which in turn yield a significant and continuous stream of non-wage income, in which case the worker would gradually cease to be a wage worker.

The conclusion seemed obvious to the Weimar social democratic political theorists: If freedom (1) and (2) are to be maintained as the organizing principle of a liberal social order, then the freedom-demolishing freedom of type (3) must be checked (either through anti-trust legislation and supervisory authorities or through the state's selective granting of cartel and monopoly privileges according to some notion of the public interest). Perhaps most importantly, freedom (4) must be compensated for by arrangements that control and partly neutralize the depletion of earning capacity of workers. Once labor power is "commodified," that is, becomes subject to contractual exchange in the same way as other commodities, it must also to some extent be "decommodified," that is, compensated for the depletion of its wage-earning capacity in terms of status rights and entitlements that flow from other sources than market transaction and sale.

The liberal state invests in schools, courthouses, and welfare/social assistance programs to set up the preconditions of the liberal game. To sustain the game, the welfare state (in any of its many versions and normative political origins) is an arrangement of compensatory decommodification. It is designed to offset the "depletion-without-accumulation" effect to which only wage labor is exposed through the labor market and labor contract. The liberal state and the (social democratic) welfare state stand in a relationship of uneasy coexistence and do not form a smooth synthesis. But contrary to a widely shared misunderstanding, neither the liberal nor the social democratic state has much to do with "equality of outcomes," neither normatively nor positively. The guiding principle of the welfare state is the security and protection of workers, not equality. Or more precisely, longitudinal equality with intertemporal redistribution of income, as opposed to cross-sectional equality with inter-class redistribution. The rights and entitlements that the welfare state provides to workers are exogenously established and enforced on the basis of statutory or even constitutional status rights, that is, rights not resulting from contractual agreements between parties and not negotiable by either of them.

The welfare state is an accumulation of status rights that must not be earned, but come as an original endowment of "social" citizenship. It can be visualized as an edifice that was erected over a period of more than one and a half centuries in what is now the OECD world. Very schematically speaking, this structure of security has three floors and a roof. Each of the floors is—and has always been since its inception—the scene of a dynamic process of ongoing remodeling, expansion, partial demolition, reconstruction, and innovation. As a result of these activities, welfare states differ widely across time and space. But the structure and function, as well as (almost) the historical sequence in which the floors were built, stay the same across welfare states, although the size and interior structure of the building and its floors differ across national welfare states. Each floor is designed to deal with a particular security concern of wage labor.

The ground floor contains provisions regulating access to labor markets and to jobs and issues of health and safety at work. Time-related measures are probably the oldest components, namely, the limitation of the work day and the prohibition of child labor. The regulation of unhealthy work environments and the hazard of accidents were further steps. The procedural regulation of working conditions, such as the speed of assembly lines, work schedules and overtime, through works councils and other forms of codetermination were later added to the structure of the first floor, as were on-the-job training programs and organizational innovations such as job rotation. Preventive health measures were also an important component of the work-related regime of safety and security, as were seniority rules and job tenure. All these measures were implemented through statutory law and a public machinery of factory inspectors and labor courts, on the one hand, and legally mandated forms of codetermination and joint decision-making between management and workers, on the other. The common denominator of the myriad of regulations to be found here is the intention, shared to some extent by workers and their organizations, policymakers, and employers, to protect workers from some of the disutility and hazards of the labor process, thereby enhancing not just work motivation and productivity, but also the long-term viability of the worker as a productive agent. This agent must be protected from conditions that would lead to the premature exhaustion and obsolescence of labor power, its physical condition, its loyalty and motivation, and its skills.

The second floor is the scene of provisions pertaining to the ("social") security of the wage worker outside of work. They consist in either transfer payments replacing wages or in social services, such as day care services. They apply to workers who are temporarily or permanently unable to sell their labor power and thus to earn income. There are two classical standard conditions which cause the non-marketable-ness of labor: recognized disability (either due to chronic health

24 Underneath the ground floor, there is also a "basement" where the non-working poor are dealt with through programs of welfare and poverty relief; this part of the building can be ignored for the purpose of the current discussion.
conditions or to old age, whichever comes first) and sickness (including physical conditions resulting from work accidents). These are covered by social security arrangements, pioneered by the Bismarckian social reforms of the 1880s. They basically consist in a state-mandated and typically state-subsidized arrangement of forced savings that generates funds out of which wages of the disabled/pensioners can be partially replaced and health/ability to work can be restored through medical treatment. Alternatively, social security can be financed out of general taxes, with less immediate implications of changing employment and demographic conditions upon the (non-wage) cost of labor. After health insurance and pension insurance, and usually much later, comes the recognition of a third risk for which wage-replacement is granted, if only for a limited period of time and after a minimum time of preceding employment, namely unemployment (though not failure to obtain a job in the first place!). A fourth "risk" pertains not to the inability to earn, but to the insufficiency of the income earned due to the presence in the worker’s household of dependent children, the additional expenses incurred in their upbringing, and the resulting loss of the household’s earning capacity. Family subsidies are partly designed (in the form of tax allowances) as compensation for relative income loss (relative to households with no or fewer children and hence greater earning capacity), partly as a flat rate reward for parent-citizens and the service to the wider community it is assumed they perform through the raising of their offspring.

On the third floor, the institutional devices are located which are intended to deal with the decline of workers’ capacity to defend their income, both in absolute terms of real income (to be defended against inflation) and in terms of relative income (to be defended against productivity increases, which shift the ratio of wages to profits in favor of the latter). The institutional pattern that serves these two purposes is trade unionism and the making of collective wage agreements, including its ultimate weapon of strike action. In order for unionism to become an "institutional" pattern (rather than a mere fact of labor walkouts and shop floor revolts), trade unions must be recognized by employers, as well as by the legal order in general, as legitimate representatives of employees' income interests. In order to gain such recognition, which typically occurs under conditions of either international war or severe economic crisis, two obstacles must be effectively overcome. As trade unions are, from an economic point of view, nothing but supply-side cartels, recognizing them as legitimate representatives means exempting them from "anti-trust" measures and the general ban of "combinations" that a liberal market economy is premised upon. Furthermore, and in order to enable them to wield the strike weapon, workers and unions must be exempt from the liability for the harm they inflict by using that weapon against employers. Also, the stronger trade unions are and the more they operate at the multi-company level, the more they will be inclined to fight, apart from higher wages, for a more compressed wage-scale in order to strengthen a sense of solidarity and commitment among their (potential) members and to boost union density. This effect of collective bargaining, which can be seen as the unions’ complement to management’s efficiency wage strategies, is today widely believed to interfere with the employment prospects of less productive workers.

Continental European labor and industrial relations systems differ from country to country in the complex ways that have been developed of endowing trade unions with these licenses, collective status rights, and employment externalities, in return for which unions are more or less strictly regulated concerning the procedures that must be observed in raising and settling industrial disputes on wages and conditions.

Finally, the roof of the building. As it is in the nature and purpose of roofs, they protect the integrity of the entire building and prevent its lower parts from being damaged. The roof metaphor serves me here to summarize a set of policies that are designed to protect and safeguard the various status-conferring and security arrangements just described. These policies, epitomized by what used to be called the "Keynesian welfare state" model, include labor market and employment policies, together with the monetary, fiscal, trade, and economic policies which are designed to promote and maintain "full" employment on which the security of those three security arrangements critically depends. This is so because in the absence of a condition of reasonably "full" employment, none of the three categories of status rights of workers—rights in the labor process, rights outside of work, and rights to defend distributive status through collective action of workers through unions—can be effectively maintained. In a severe and protracted labor market imbalance with an excess supply of labor, the market will be flooded by employment-seeking workers willing, for lack of a better choice, to forgo the protection at work; social security systems will break down under the imbalance of "too few" contributors and "too many" claimants; and trade unions will lack the organizational resources and bargaining power to raise real wages in proportion to productivity gains and redistributive goals or even defend current levels of real income.

So much seems uncontroversial among European social and economic policymakers. What is controversial, however, is the logic by which security and (full) employment are tied to each other. The majority of European social democrats argues that in order to preserve the core components of the welfare state, full employment must be restored. As a corollary to this argument, it is claimed that all three components of the welfare state arrangement, at least if appropriately revised and "modernized," will serve as effective instruments for the achievement of the goal of full employment through growth. Social protection and economic performance are tied by a loop of circular causation. Status rights, safety nets, and a strong role for trade unions are held to be necessary preconditions for labor market recovery as these security arrangements facilitate flexibility and the capacity, as well as the willingness, of workers to adjust to changing economic conditions and productivity requirements. Peaceful
industrial relations and stable political institutions were positively seen as guaranteed by the arrangement of social security, as it stabilizes domestic consumer demand and imposes a constant pressure upon investors and employers to increase productivity, thus providing an overall boost to the global competitiveness of national economies. Also, it is assumed that the institutional shell of the welfare state structure will keep class conflict from spilling over into the political arena, thus providing for the requisite measure of "business confidence."

*Market liberals* take the opposite view by claiming that in order to restore "full" (or rather, to generate "more") employment, most of the structure of protective and status-conferring institutional patterns of labor regulation, social security provisions and unions' bargaining power are obstacles to full employment which must first be *largely demolished*, thereby forcing workers to adjust to market incentives and the imperatives of efficiency and competitiveness. Market liberals do not usually believe that welfare state institutions do greatly contribute to the efficiency of production any longer after the "Fordist" pattern of mass production in relatively closed economies has largely become a matter of the past. Nor is there any reason, in their view, to fear political instability to emerge as a result of the demolition of major parts of the welfare state, at least after leftist political radicalism has also become a matter of the past.

Also, a third voice, luckily with much less resonance, is making itself increasingly heard in European politics, a voice which claims that the social security of workers (as well as the protection of citizens from violent crime), on the one hand, and efficiency of production and competitiveness, on the other, can only be reconciled if national borders are sealed to the influx of foreign people, foreign workers, foreign goods, and those praying to "foreign" gods. Since the mid-1990s, integrating Europe has seen the sometimes sudden and spectacular rise to electoral success of figures such as Pia Kjaersgaard (Denmark), Umberto Bossi and Gianfranco Fini (Italy), Pim Fortuyn (Netherlands), with Jean Marie Le Pen (France), Jörg Haider (Austria) and Carl Hagen (Norway) being among the pioneers of this new field of populist political entrepreneurship. Le Pen has described himself in the 2002 French electoral campaign as being a leftist in social affairs, a rightist in economic affairs, and a nationalist for everything else. This formula, which is designed to resolve the tension between liberal market freedom and welfare state status rights by ethno-nationalist, xenophobic, and anti-European appeals, is applied by his rightist populists colleagues as well.

As to the welfare ingredients of this formula, the protection offered is not the one accomplished through strengthening the status, security, and bargaining power of the weaker participants in labor contracts, as in the social democratic tradition. It is through granting benefits and offering paternalistic redistribution to needy members of the national community, such as single mothers, low-income tenants, and family farmers. The emphasis is on the protection of life and property against crime, and particularly crime committed by non-nationals or facilitated by open borders (such as mandated by the Schengen Agreement). What rightist populist social policies invoke are the two quintessentially non-contractual, or "communal," forms of collective life: the family (as opposed to marriage) and the ethnic nation (as opposed to the republic or, for that matter, the nascent Euro-polity). In recent years, the electoral fortune of the populist right has been growing in inverse proportion to that of the social democratic left. In some places, it has been able to accomplish the unlikely success of attracting both the support of prosperous libertarian middle class "yuppies" (with their opposition to high taxes and social spending and a taste for tightening other people's belts) and frustrated working-class elements who have lost faith in leftist policies and promises.

It is the triangle of reluctant social democrats, aggressive market liberals, and more or less militant rightist populists that forms the ideological space of political contestation and policy debates in today's EU-15.

**VI. WELFARE STATES AS NATION-STATES**

Fully developed European welfare states, with all four of their floors in place, were historically premised upon these states being nation-states. Nation-statehood is being superseded and challenged by the bundle of phenomena referred to as "globalization," of which European integration (including Eastern Enlargement) is a regional and arguably still a rather benign instance. If nation-statehood is challenged by Europeanization, as it undoubtedly is, the question is what happens in the process to the four arrangements of security.

Before addressing that question, let us clarify in structural and functional terms what we mean by a nation-state. As far as stateness is concerned, its three classical components are a (coherent) territory, a people, and an effective regime. The latter must be able to control the entire territory and population and, in order to do so, must rely on a reasonably centralized apparatus of military, fiscal, educational, administrative and legal institutions. These institutions allow for the sovereign exercise of rule, meaning both external sovereignty (the capacity to define borders and to monopolize control in relation to other states) and internal sovereignty (the capacity to enforce the regime's rules and to overcome any resistance to its rule). The capacity to defend its borders in a durable fashion and to control the inward and outward flows of people and economic resources across its borders is the hallmark of stateness. As far as, in addition, the "nation"-state is concerned, some source of cohesion is present that unites the population into a collectivity with a shared sense of its identity, its historical origin and fate, constitutive political principles, a common language and culture, and some widely recognized norm of national solidarity. Both the state's capacity to impose a system of protective status rights and the nation's sense of homogeneity and solidarity that supports such imposition and tolerates its redistributive outcomes are necessary conditions for a fully
developed welfare state. The security arrangement of welfare states has in turn been used to maintain and strengthen national solidarity when it was threatened by economic crisis, non-institutional forms of class conflict, or international war. Major breakthroughs in welfare state development have been by-products of wars and their consequences. "Welfare-warfare states" have triggered social security and service programs for veterans, workers, and the entire citizenry being prepared for, being involved in, or suffering in the aftermath of international wars.

If, as a consequence of "globalization," that is, the increase of international flows of investment, goods, information and people, the nation-state's sovereign governing capacity is declining, what happens to the welfare state and its components which were historically premised upon robust nation-states? Three familiar alternative trajectories can be envisaged, corresponding to the three types of political forces mentioned above. First, the architecture of security is gradually demolished, giving way to an (impoverished) version of the liberal equality of rights. According to proponents of this perspective, states must, due to their definitive loss of "border control" and in the face of increased factor mobility, lower the ambitions invested in the social security arrangement and retreat into a regime of market freedom which leaves the third and, in particular, the fourth of the above kinds of freedom increasingly unconstrained. Or, secondly, a populist backlash will be triggered by the repercussions of internationalization, resulting in potentially most illiberal forms of paternalistic protectionism. Thirdly, some functional equivalent of security-enhancing status rights will be transferred from the nation-state level to supranational forms of organization.

The latter is the perspective that most European integration policymakers would subscribe to. According to this perspective, Europe is currently in need of, as well as in search of, policies and patterns of political decision making that would allow the diverse welfare state arrangements that have evolved over many decades at the national levels to be transferred to the European level. The goal is being envisaged in terms of what to avoid, not what to achieve. What is to be avoided is either of the (mutually invigorating) extremes of a mere market-liberal "negative" integration and rightist-populist reactions which would amount to a backlash of positive disintegration. Yet the road "in between," that of "positive integration," leads through largely uncharted territory. "Social dumping," "race to the bottom," "beggar my neighbor" and the rise of the "competition state," a fiscally starved state that is reduced to the status of a strategically impotent "subsidiarity" (Article 5, TEC). Yet the actual possibility of member states designing and implementing autonomous policies of social protection has been severely constrained by an EU-inaugurated EMU and Single Market regime with its effective ban on autonomous policies of setting exchange rates, interest rates,

It is also widely felt by political elites that in order to maintain popular support for both the deepening of ("ever closer") European integration and the widening of its scope ("Eastern Enlargement"), Europe must present itself to its citizens as a credible project of social security and protection, and certainly not as a threat to established social status rights. At the very least, and after the EU is still evidently deficient (relative to the member state polities) in terms of its democratic legitimacy, pro-European consensus and identification among non-elites is likely to dwindle, strengthening the forces of populist re-nationalization, in case a loss is perceived to take place not just in terms of democratic legitimation, but also of social protection and security. Thus, and in order to hold together the component parts of integrating Europe and to pave the road towards wider and deeper future integration, European elites have every political reason to go beyond the negative integration of markets and proceed, visibly and credibly, towards a positive integration of a "social" Europe. The question is: does Europe have the resources and institutional devices to actually do so?

Yet the transition from market-making negative integration through the abolition of tariffs and other hindrances and distortions of competition to market-constraining positive integration through the adoption of a Europe-wide regime of social protection and security is a process that, if anything, will take decades rather than years to conclude. This is so because of the extraordinary complexities involved. These can be summarized in seven points:

1. The scope and level of generosity of social protection as well as the status rights of collective actors (trade unions, employers' associations) differ from member state to member state. This implies that any European social policy regime that represents an "average" between the high performers and the low performers would be vehemently opposed by either of them. It would be opposed by (for example, the Scandinavian) high performers because the political objection would apply that some of "our" social achievements are being sacrificed on the altar of European integration. But it would also be opposed by the low social protection achievers (for example, Portugal) for the economic reason that "Europe" forces "us" to become more generous, thus undercutting the competitive advantage "we" enjoy due to our lower costs of labor. The only conceivable way out of this conflict was seen to be in preventing it to emerge at the European level, a preventive measure known under the euphemism of "subsidiarity" (Article 5, TEC). Yet the actual possibility of member states designing and implementing autonomous policies of social protection has been severely constrained by an EU-inaugurated EMU and Single Market regime with its effective ban on autonomous policies of setting exchange rates, interest rates,

25Any speculation as to whether the conclusion of this process will still come soon enough to provide European citizens with reasons to support rather than to fear and oppose further integration, and thus the Union as a whole, with a measure of political legitimacy, is beyond the scope of the Present essay.
and fiscal debt, as well as controlling capital movements and movements of goods and services across their borders.

(2) The actual growth and employment performance of European economies, as well as their overall level of economic development, varies by country and, in particular, by region within countries, with the better-off countries being typically the small and medium-sized ones in the West and North of the EU territory. According to the Eurostat data base, official unemployment rates range from 2 and 3 per cent in Luxemburg and the Netherlands in 2001 to between 10 and 13 per cent in Greece and Spain. GDP per person slightly exceeds the OECD average in Belgium and Denmark, while it lags as far behind as 60 per cent (Portugal) or even 58 per cent (Greece). This implies a corresponding difference in the urgency by which national governments will be prepared to make efforts to improve their employment situation as a means to maintain their level of social protection.

(3) The institutional structure of both social security arrangements and industrial/labor relations systems differs widely among EU member states and their social policy regimes. Benefit levels vary as considerably as the modes of financing these benefits. The same applies to the institutional arrangements of wage determination. It is because each of the member states has a highly developed institutional system in place on the second and third floors of our welfare state structure, and because each of these systems has generated its entrenched interests and peculiar expectations that harmonization or convergence is so difficult to achieve as a political project and jointly adopted institutional design. Even those who agree that a "positively" integrated "Social Europe" must be created in order to compensate for the Common Market's corrosive effects upon national welfare states are unlikely to find it as easy to agree on any particular institutional blueprint according to which "Social Europe" is to be built. This difficulty does not preclude various kinds of "spontaneous," as opposed to agreed-upon, ones at the European level, adjustments and convergences that are necessitated by capital mobility and competitive pressures. A case in point is the corrosion of systems of multi-employer collective bargaining, which is being replaced by the practice of company level concession bargaining and government-sponsored emergency measures ("social pacts"). Such phenomena of de-institutionalized ad hoc crisis responses are often summarily and in an alarmist tone referred to as "race to the bottom."

(4) At the same time, quantitative and qualitative regime divergences constitute not only robust obstacles to harmonization and "positive" integration, but also considerable distortions of market competition. For instance, the Bismarckian countries which finance their social security systems largely through fixed contributions of employers and employees suffer competitive disadvantages in comparison to countries where social security expenditures are largely financed through general taxes. The presence of these distortions suggests the need for achieving a more unified welfare state regime in the interest of market integration itself, and not just in terms of some model of "Social Europe."

(5) Such harmonization is also called for as severe fiscal imbalances within national systems of social security, which are all the more likely to occur as a result of persistent high levels of unemployment prevailing in some of the member states, will force national governments to adopt fiscal measures (that is, budgetary deficits) which are in manifest violation of the Growth and Stability Pact, the fiscal and monetary regime adopted as a disciplinary device to sustain the EMU. If labor market and social protection policies are left to the member states in the name of "subsidiarity," national policy actors are likely to resort to measures (such as subsidies or budget deficits) that imply severe negative externalities (such as interest rate hikes, decline of the external value of the Euro) for other member states or for the EMU as a whole.

(6) Thus what appears impossible for reasons (1) to (3) is widely seen as desirable and even necessary for reasons (4) and (5), as well as a further one which derives from the consideration that some convergence and harmonization is also called for in terms of political integration. In order to maintain the permissive consensus supportive of "ever closer integration" and to prevent the further spread of anti-European mobilization of the nationalist and populist-protectionist sort, national social security and collective status arrangements must be protected against the perception of being jeopardized by European market integration and threatened by "social dumping" and a "race to the bottom."

(7) While everything that belongs to the ground floor of the welfare state structure (the non-discriminatory regulation of access to labor markets and jobs, the rules governing health and safety at work) is firmly established and equalized across the EU by European law, it is also well understood by now that the affordability of the various national arrangements at the second and third floors (social security and wage determination) is entirely contingent upon the solidity of the "roof," that is, the labor market performance of member states. But lacking any governing capacity and fiscal authority of its own, Commission and Council do not enjoy the authority to boost overall European labor market performance, while member state governments maintain the responsibility for labor market and employment policy in the name of "subsidiarity"—a responsibility, however, that is largely rendered nominal by the unfettered mobility of both labor and capital, on the one hand, and the constraining EMU ("Maastricht") criteria, on the other. Thus member states have the nominal authority, yet not the effective means, at their disposal to do something about the employment situation which in its turn determines the sustainability of the welfare state edifice. Could it be, then, that European institutions could avail themselves, even in the absence of the formal authority to do so, of the means

26Hassel 1998.
to shape European level labor market and employment policies, in the pursuit of which some "harmonization through the back door" would incrementally be introduced?

I am not concerned here with the substantive developments and accomplishments that the EU has achieved so far. Rather, I will focus for the rest of this paper on new methods of "coordinating" policymaking by which European policymakers have tried to accomplish what "cannot" be done (due to (1), (2), and (3)) yet still "must" be done (due to (4) to (6) and under the challenges of (7)), even if without the machinery of "direct effect" rulings and other means of authoritative making and implementing of supranational policy.

VII. "STATELESS" POLICYMAKING?

There is by now a ten-year history of the EU's attempts to cope with this configuration of constraints and challenges. It starts with Jacques Delors' White Book on Growth, Competitiveness, and Employment which reflects the member states' great difficulties in addressing unemployment and setting the stage for addressing the issue at a European level. 27 It calls for greater coordination and convergence of employment policy. At the 1994 Essen Council, the first contours of a European Employment Strategy (EES) were worked out. These were then incorporated in the "employment chapter" (Articles 125-130) of the Amsterdam Treaty on the European Communities (TEC), signed in October 1997 and coming into force in May 1999. The policy instruments provided for in this chapter are of a characteristically "soft" nature: annual review of the EU employment situation at the Council level, formulation of "guidelines" to be taken into account by member states, annual reports to be submitted by member states on their employment policies, policy recommendations addressed to member states, exchange of information on "best practices" among member states, creation of an "employment committee" advising the Council of Ministers. Immediately following the Amsterdam conference, the Luxembourg "job summit" of 1997 worked out these policy instruments in more detail and included the obligation of member states to submit "national action plans" which are subject to "multilateral surveillance." The development of this set of policy devices was continued at the Council meetings of Cardiff (1998), Cologne (1999) and, most significantly, Lisbon (2000), where the "Open Method of Coordination" (OMC) that comprises these procedures was defined for the first time. 28 As a result, the scope of policy areas to which OMC was to be applied was significantly broadened so as to include issues of "social inclusion," research policy, the formation of an "information society," "entrepreneurial policy," health and pension policy (Stockholm Council 2001), education, eastern enlargement, immigration policy, and "sustainable development." However, procedures for all these policy areas are still considerably less elaborate and specific than those applying to EES. 29

The EU has no direct way to address issues of wage determination and the distribution of incomes. In the name of "subsidarity," the determination of wages and the determination of levels of social security benefits (that is, developments on floors two and three of our welfare state structure), remain entirely a matter of national politics and institutions. But there are indirect methods of getting hold of these two strategic variables, and these have recently been explored and developed, beginning with the Lisbon summit of 2000. In model terms, wage levels and the wage structure interact with (a) the quantity of labor supply, that is, the activity rate, and, in particular, the employment rate, within the population aged 15-64, and (b) the skills of labor, with upgrading skills having a positive effect upon both individual income and employment security of workers and the overall volume of employable labor.

The European priorities, as promulgated above all at the Luxemburg, Lisbon, and Stockholm summits, concentrate on these two dimensions of labor supply, quantity and skills. They do so in the name of a new normative concept (or rhetoric), that of "cohesion," the promotion of "inclusion" and of fighting "discrimination." 30 The analysis behind this strategy is roughly this. If labor market participation lags behind that actually achieved in other advanced societies, parts of Europe's growth potential will be wasted, as well as transfer budgets strained. Non-participation must be due to either of two causes: people are prevented from participation, which amounts to "discrimination," or they are not motivated or capable to participate, in which case "unemployability" is taken to be the cause. Both of them add up to the pathology of economic and social "exclusion," which must be fought by strategies of "inclusion," (NAP) specifying the overall guidelines for the particular context of national policy. Third, an annual report on employment, jointly authorized by Council and Commission, is submitted to the summit of the subsequent year as a feedback, eventually leading to the revision of guidelines and NAPs and potentially including specific recommendations concerning the policies and performance of individual countries.

27For the current analysis and debate on these policy methods see: de la Porte and Pochet 2002; Goetschy 2001; Hodson and Maher 2001; and Trubek and Mosher 2001.

28In quantitative terms, the goals set at the Lisbon summit for the year 2010 is to mobilize labor supply so that an overall employment rate of 70 per cent of the population aged 15-64 for the entire EU is reached, up from the present average of 62 per cent (1999). In order to achieve this goal, female employment rates are to be increased from 52 to 60 per cent and those of the elderly workers (aged 55-64) from 37 to 50 per cent. This ambitious set of goals is argued for in terms of securing the sustainability of national social insurance systems, that is, of breaking the vicious circle (made worse by the demographic composition of aging societies) of increasing unemployment, leading to generous allowances for early retirement as a policy response, leading to an increase of non-wage social security contributions for pension funds, leading to an increase in total labor costs, leading to increasing unemployment.
strengthening social "cohesion." Inclusion refers to fighting discrimination by race, ethnicity, and nationality, as well as physical handicaps, but most importantly by gender (Article 3 (2) ECT) and by age. Integrating the underutilized supply of female labor and 55+ labor into gainful activity is therefore a key component of all EU policy documents issued by the Commissions' Directorate-General for Employment and Social Affairs and various Council directives (such as 2000/43 and 2000/78). This anti-discrimination agenda has the dual attractiveness of (a) being "egalitarian" in terms of rights and opportunities, without redistributive strings attached, and (b) being instrumental, if implemented, for the viability and sustainability of member states' public pension systems (as emphasized by the Stockholm summit, March 2001) as well as, less explicitly, inducing wage restraint and a downward stretching of the wage-scale through the mobilization of additional labor supply at the lower range of it.

Nothing, however, is mandatory, binding, or authoritative in this iterative process of formulating supranational guidelines and monitoring their implementation. Hence compliance on the part of member states is entirely voluntary, concerning both the kind of their policy priorities and the degree of effort with which they are being pursued. While it is too early to assess the effects of this mode of policymaking and to causally attribute any success to the OMC, two underlying assumptions of this method of policymaking are fairly clear. One of them is cognitive, the other motivational.

VIII. COGNITION AND POLICY LEARNING

One of the key mechanisms on which the OMC is assumed to operate is cognitive.31 The key phrases are "best practice," "benchmarking," and "management by objectives," "peer control," and "temporal standardization and disciplining." The background intuition is that "we" can benefit from learning from how others have managed to succeed. For the purpose of facilitating cross-national policy learning, a substantial fund of €100 million has been set up to conduct research on discriminatory practices and to promote the exchange among member states on how to fight them (Council decision 2000/750). But it is far from obvious which practices are actually "best," given the multitude of evaluative criteria and the trade-offs that apply to them. Extensive use of part-time employment may be the best way to create jobs and reduce unemployment, as the Dutch example suggests. But it may be far from best in stabilizing household income over the life course. And even if some standard of success is unequivocal, chances are that success is not easily attributed to individual measures and programs which are always embedded into—and whose effectiveness is contingent upon—the entire ensemble of institutions of a member state and its policy regime with its built-in priorities and constraints. For instance, some member states have a statutory minimum wage, some do not; some have a big tax component in their pension system, some rely almost exclusively on contributory schemes. Should the latter be required to imitate the "best practice" of the former? If so, successful policy learning would not just require them to adopt new "practices," but also to "unlearn" and partially demolish entrenched institutional patterns (such as the trade unions', as opposed to the legislature's, jurisdiction over wage determination in the case of minimum wages or working time).

Such "unlearning" may in fact be the main purpose of the OMC, or its hidden curriculum. The main purpose of this method of policymaking seems to be that of bringing home to member states' political elites and constituencies the need for "modernization" and "recalibration" of their hitherto adopted arrangements of social security, industrial relations, and labor market policies. The negative message that "nothing can stay as it is" does not imply, however, that what is going to replace present arrangements will be a consistent and consolidated Europeanized welfare state.

Thus OMC increases the pressure to view existing arrangements as potentially obsolete, to experiment, revise, and innovate for the sake of "more employment," on which the sustainability of both national social security and industrial relations systems depends in an increasingly competitive environment. This functionalist and productivist view of these institutional arrangements also implies that what used to be, within the framework of welfare states as relatively self-contained nation-states, exogenously established and enforced social policy institutions is now endogenized into the game itself: status, security, and solidarity does itself become contingent upon contractual voluntarism.32 Accordingly, the game is no longer a game under rules, but increasingly one about rules. The national welfare state can no longer constrain the market and impose a regime of decommodification upon the market. To the contrary, now it is being left to the market to decide which arrangements are in fact affordable and employment-enhancing, and which ones must be dropped as a competitive liability.

Needless to say, there is nothing wrong with learning, experimentation, innovation, and institutional change—in principle, that is, and as long as learning yields demonstrably superior and fairly distributed collective outcomes, as opposed to being a euphemism for a power relation in which one side is in a Position to dictate to others what to learn and unlearn. How do we tell the difference between desirable and perfectly innocent "learning," on the one hand, and the imposition of new rules mediated by the exercise of social and economic power? Let me suggest two criteria by which this distinction might be substantiated.


First, institutional innovation is driven by social and economic power relations if it is not formally legislated into being, but brought about through de facto deviations from previously observed institutional practices which, while nominally remaining intact, are hollowed out by individuals’ adjustments and moves of opting-out. The mode in which welfare state institutions change can be explicit reform and retrenchment. But it can also be inconspicuous and bargaining, workers resort to unprotected forms of pseudo self-employment in order to avoid social security dues, if not to illegal (“black”) forms of employment. Institutions change at the factual level; they cease to govern actual social and economic interaction, and unofficial, informal, as well as highly power-sensitive practices creep in instead. For instance, new patterns of “productivity pacts” and “social pacts”, which expand the bargaining agenda by making both levels of pay and volume of employment conditional upon productivity and profitability targets being met, have been introduced by employers into collective bargaining. Such concessions can be extracted from unions because multinational corporations in which such bargaining patterns have been introduced can practice wage- and productivity-related “regime shopping,” as they enjoy the option of shifting the location of production between countries.

A second indicator of the role of social power in processes of institutional innovation is the degree to which collective actors are being disorganized or weakened through decentralization. As a general rule, we observe that the wider the scope of economic interaction becomes concerning trade, investment, and migration, the narrower and the less encompassing and more disaggregated become the units covered by and involved in the making of contracts and regulations. For instance, much of the focus of German labor market policies has been moved down from federal to regional to local to “civil society” to individual levels of intervention. A similar pattern applies to wage bargaining, much of which is currently in the process of being transferred from the sectoral and multi-company level to that of individual companies, if not to departments of companies and eventually productivity measures applied to individual workers. Similarly, changes are under way in many EU member states that are advocated under the innocent label of “devolution” while actually resulting in the transfer of rule-making competencies from the national to the regional level, as in the transition from “cooperative” to a more “competitive” form of federalism, as currently suggested by the more prosperous German states.

The vision of promoting policy convergence at the European level by very “soft” means is highly ambitious indeed, given the very “hard” facts of national differences and priorities. The European Commission itself, in its White Paper on “European Governance,” relativizes the role to be played by OMC in that “it adds value at a European level where there is little scope for legislative solutions.” Neither can it equal in its bindingness formal European law nor change the acquis of European law. In order to enhance its steering capacity and its potential for promoting convergence, the OMC would have to be complemented and “hardened” by legislative devices, now commonly referred to as “framework directives.” In the presence of authoritative framework directives, “national policy makers could no longer afford to ignore the policy discourses of Open Coordination,” which in the absence of such directives they are perfectly free to do. Thus Scharpf urges the “search for solutions in [the social policy field] which must have the character of European law in order to establish constitutional parity with the rules of European economic integration.” Yet it is exactly the lack of feasibility of such directive policies that gave rise to the semi-formal and para-legislative OMC approach in the first place.

Thus the thought of endowing OMC-generated rules with quasi-governmental force clearly amounts to a bootstrapping act of presupposing as given something that, if everything goes well, will be only the outcome of the dynamics of OMC, namely, some European authority of coordination. For the time being, OMC outcomes are neither formally binding (as they cannot be enforced against the will of member states’ governments) nor can they replace or alter existing acquis regulations. The basic question for political theorists, the answer to which is at the same time of immense practical significance, is this: How can voluntary horizontal cooperation generate outcomes that are equivalent in their substantive effect to vertical control through constituted political power? How can “soft law” be hardened so as to achieve the same degree of bindingness as formal directives?

The answer envisaged by OMC proponents is this. Multilateral information exchange as orchestrated and supervised by the Commission will lead to “policy learning” on the part of member states’ governments. This convergent learning process will be propelled by mechanisms such as the definition of “best practices,” the call for national action plans, specific recommendations, benchmarking, peer review, blaming and shaming, and the use of agreed-upon indicators of performance.

Yet as long as compliance on the part of national governments remains voluntary, the question remains what incentives and motives they have to cooperate. For instance, the mechanism of “shaming” will be viable only to the extent that national constituencies and audiences will actually adopt the standard of the Commission’s guidelines etc. as a yardstick for evaluating their governments’ performance. The rather heroic assumption is that national political constituencies will actually hold their governments accountable for

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34Scharpf 2002, 16-17.
35Ibid., 18.
complying with the guidelines of the Commission and the summit. That presupposes that European standards, recommendations, benchmarks are not only known to national electorates, but, beyond that, adopted as yardsticks of good policy. Why should "blame avoidance," the desire to escape being exposed as a poor performer or a laggard in "policy learning," become an overriding objective of national policymakers, given the perceived (economic as well as political) costliness of compliance? As long as "benchmarks" and standards of "good practice" are being perceived within national public spheres as little more than cloudy and ceremonial exhortations of remote Eurocrats, their role as operative yardsticks of "good policy" remains dubious. This objection applies all the more as national governments usually have a rich supply of reasons and 'excuses' ('subterfuge') to invoke as to why conditions beyond their control have hindered them in doing better, in terms of labor market performance or social security finance, than they actually have. Often enough, their scope for action is constrained by national policy networks, configurations of veto players, entrenched interests, as well as the perceived national competitive advantage of non-cooperation. Thus it is that only if the goal of overcoming social exclusion, social protection, and employment problems at the European level were firmly adopted by electorates, collective actors, and political elites at the national level that the "policy learning" dynamic and its motivational underpinnings envisaged by OMC would be likely to bear fruit.

Of course national governments, in trying to achieve the convergence of their policies with those of others through OMC, can try to escape and bypass the potential obstacles located in their national policy arena and electoral politics. Such escape would clearly exacerbate the notorious "democratic deficit" of the EU, at least as far as "input legitimation" through public debate and political representation is concerned. Yet it would arguably increase the effectiveness of policy decisions, or what Scharpf has termed "output legitimation." However, in the last analysis, any trade-off between democratic legitimation versus policy effectiveness, or between the "by the people" versus the "for the people" principle, will itself be subject to the (electoral) test of "input legitimation"—a test which an overly executive-centered method of reaching European convergence is unlikely to pass. This is particularly the case if the standards of "effectiveness" are themselves open to considerable controversy, as is clearly the case in all policy areas to which OMC is intended to apply.

In order for national policies to converge in terms of policy instruments and outcomes, conditions within member states must be fairly similar in the first place. However, there can be little doubt that there is a still increasing divergence of labor market outcomes by country and, in particular, by region throughout Europe, a condition that will be exacerbated by the round of Eastern Enlargement scheduled for 2004. The peculiarities and path dependencies of national labor market and employment policies, as well as structural and institutional conditions within member countries, have generated vast differences across countries and regions in terms of their labor market performance (for example, in terms of labor market participation rates, levels of unemployment, and average individual duration of unemployment). Dissimilarities are evident not only if we compare countries and regions within EU-15, but even more so if we compare policy areas. The supranational EU regime has been amazingly successful in homogenizing across the EU monetary and fiscal conditions, but not so the conditions of employment and social protection. The homogenization of the latter has been lagging way behind, in spite of the vast expenditures invested for many years in structural and regional subsidies. As Fritz Scharpf observes: "Efforts to promote employment and social policy at the level of the European Community have come . . . late and seem feeble in comparison to the success stories of the Single Market and the Monetary Union." This difference is to be attributed to the fact that the former policies (monetary and fiscal) are of a regulatory nature and can be effectively enforced by the Commission and the ECB within the framework of the Treaty, whereas the latter policies are redistributive and thus depend for their success on the preparedness of member state governments to sacrifice not just much of the national autonomy they enjoy according to the "subsidiarity" rule, but also, at least on the part of the better employment performers, to pay with national resources for costly European employment programs and to forgo potential competitive advantages of their national economies. Evidently and unsurprisingly, there is neither the willingness of member states to do so nor the institutional capacity of European authorities to force them to do so.

It is for this diversity of national policy priorities that, technically, the term "coordination" in OMC is a misnomer anyway. What the method is intended to lead to is cooperation, which is much harder to achieve than coordination among actors with divergent interests. In the (rare) tabula rasa case of pure coordination, all participants are interested in having a rule ("convention") in place, whatever the rule may be. The typical case of cooperation, however, is one in which preferences differ as to what the rule should be, and also the costs and efforts required for complying with that rule are not the same for all players involved, as some may have to make more painful adjustments than others.

The making of the internal market through competition law, monetary union, and fiscal constraints triumphs over the "embedding" of this market in European policies of social protection and the promotion of employment. Nor is this disparity coincidental. For it is the rapid success of "negative" integration that has caused both the still growing discrepancy of national and regional labor market outcomes and the incapacity of national governments to cope with them. To make market integration socially compatible, the voluntary adoption of
policies according to OMC is not enough. " 'Social Europe' would stand on safer legal grounds if the Court and the Commission could be required to apply a . . . balancing test to potential conflicts between European internal-market and competition law and national policies promoting employment and social protection."38 Yet the "could" in this sentence is logically as compelling as it is still purely a counterfactual.39

REFERENCES

38Ibid., p. 13.
39The text was finalized in October 2002 and takes no account of subsequent events.