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**European Social Policy: Progressive Regression**

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## Abstract

European social policy changed with the evolution of European and global capitalism, the scope and shape of European-level international institutions, the size and heterogeneity of “Europe” as a polity, and the politics of the European national welfare state. The paper outlines the long-term trajectory of European social policy, from the intended absorption of national welfare states into one united, federal welfare state to a selective updating of national social policies by European social policies; to multi-level coordination of national systems by special European institutions; to European soft law helping national “modernization” on the “Third Way”; to exposure of national systems to international economic competition as an incentive for “structural reform”; and to subordination of social policy, national and European, to the defense of a common hard currency through fiscal consolidation – from, in other words, federal social democracy to competitive “adjustment” of national social protection and social life to global markets.

**Keywords:** Europe, European integration, European social policy

## Zusammenfassung

Die europäische Sozialpolitik entwickelte sich zusammen mit dem Wandel des europäischen und globalen Kapitalismus, der Reichweite und Gestalt europaweiter politischer Institutionen und der Größe und Vielfalt von „Europa“ als politisches System sowie der Politik des europäischen Wohlfahrtsstaats auf nationaler Ebene. Der Aufsatz zeichnet die langfristigen Entwicklungslinien der europäischen Sozialpolitik nach, von der beabsichtigten Absorption der nationalen Wohlfahrtsstaaten in einen gemeinsamen, föderalen europäischen Wohlfahrtsstaat; zu selektiver Modernisierung nationaler durch europäische Sozialpolitik; zu Mehrebenenkoordination nationaler sozialpolitischer Regime durch spezialisierte europäische Institutionen; zu europäischem Soft Law zur Unterstützung nationaler „Modernisierung“ auf dem „Dritten Weg“; zur Öffnung nationaler Systeme für internationalen wirtschaftlichen Wettbewerb als Anreiz zu „Strukturreformen“; schließlich zur Unterordnung von Sozialpolitik, auf nationaler wie europäischer Ebene, unter die Verteidigung einer gemeinsamen harten Währung durch fiskalische Konsolidierung – von, in anderen Worten, bundestaatlicher Sozialdemokratie zu wettbewerblicher Anpassung nationaler Formen des sozialen Schutzes und des sozialen Lebens an globale Märkte und die von ihnen ausgehenden Zwänge.

**Schlagwörter:** Europa, europäische Integration, europäische Sozialpolitik

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## European Social Policy: Progressive Regression

Lectures that start with definitions often turn out to be on the more boring side. I have to take that risk because the way I intend to treat my subject requires various upfront clarifications to escape from the multiple and more often than not intended ambiguities of key terms in a field that is, by nature, heavily politicized. To make up for this, I will make an effort to present, I hope, a somewhat original account of the historical trajectory, rather than the legal specifics, of European social policy as it has evolved into its present condition. Moreover, at the end I will suggest a number of conclusions, based on that trajectory, on what the ongoing conflicts in the European social policy arena, or what is left of it, may presage for the future of “Europe”<sup>1</sup> and of the relationship between contemporary capitalism and market-interventionist democracy.

What is “European social policy”? There are two questions here: One, what is meant when social policy is called “European”; and two, how exactly must social policy be defined when considered in a European context? On the first question, it appears that there are three different ways in which social policy may be, or be imagined to be, “European.” One is what is sometimes called the “European social model,” which refers roughly to what national social policies in Europe, or European national welfare states, are seen to have in common: a common denominator, or some kind of an average, of national “social models.” A second meaning, to be kept apart from this, refers to the social policies, whatever they may comprise, of the European Union, above and on top of national social policies. Here, European social policy may serve to supersede, regulate, coordinate, perhaps protect, perhaps restructure the social policies of EU member states, adding a new, supranational layer of social policy on top of extant national social policy regimes. And third, European social policy may, as a federalist social democracy, absorb and replace – in other words, “integrate” – national welfare states to build a unified, European welfare state with identical social policies for Europe as a whole.

Before I continue, a few brief comments seem to be in order. Obviously, European social policy in the second meaning, as social policy of the European Union, may shade into European social policy in the third, federalist meaning, as a state of transition from a national to a supranational location of social policy. A comparable effect would result if regulatory social policy “from above” were to succeed in enforcing identical outcomes

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Keynote Address at the 50th Anniversary Conference of the Social Policy Association, Durham University, July 10–12, 2017. Extended version. I am grateful to Ruth Dukes for bringing me up to date on the latest developments. All remaining errors are mine.

1 When I put “Europe” in quotation marks, I mean the Europe of the politicians and bureaucrats. In their jargon, the civilization of Europe with its different but related cultures is identical with the political-bureaucratic construction housed in the Berlaymont in Brussels. I passionately reject that identification.

on national social policies regardless of continuing differences in, still national, institutions. I will return to this possibility below. As to the “European social model” concept, it would appear that this always had little if any empirical validity given the wide divergence in institutions, policies and politics across European countries – certainly today, after the accession of Scandinavia, Greece and, in particular, the former Communist states of Eastern Europe.

Now on what is, and is not, social policy. I need to use a broad brush here, also because of the significant institutional differences between EU member countries with respect to the allocation of social policy functions to state, semi-state, or non-state institutions, for example concerning social security and wage-setting. Keeping this in mind, by social policy I mean the entirety of authoritative political interventions designed to limit if not eliminate the vulnerability of wage earners and their families, or generally of less well-off citizens, in relation to the vagaries of markets in a dynamic, private-capitalist economy, in effect ensuring legitimacy for the system of wage labor and managerial rule over the labor process. As we have learned, such legitimacy can be procured in essentially two ways, by partially exempting actual and potential wage earners from market pressures – here we may speak of social protection by way of de-commodification – and by enabling them to obey market signals more profitably, through public support for private adaptation to changing market conditions. Neither approach, the one setting limits to the market, the other supporting compliance with it, is inherently fail-safe, although for different reasons. Also, the two may in certain instances be difficult to distinguish, and indeed all social policy regimes more or less entail both kinds of measures, to different degrees and for different purposes.

Obviously, I am aware that this is very general. That is how it has to be, however, if one is to talk about social policy so far above ground level. The price one pays for this is that specialists on any of the unending number of social policy instruments will at any point of the story find exceptions or cases that simply do not fit. This is appropriate as long as the main thrust of the argument remains intact. Social policy responds to a wide variety of political demands from a wide variety of interests, so it cannot be and typically is not of just one kind. Moreover, social policy-makers normally do not act according to a grand design or a consistent logic that would make their decisions coherent. What is and is not the broad trend of social policy at a given time reveals itself only from a distance, and then only if one lets exceptions be exceptions and refuses to allow a few disobedient facts ruin a good theory.

What I will do in the main part of this paper is show how European social policy changed over the *longue durée* of European “integration,” together with the evolution of the capitalist political economy over half a century, with changing power relations between capital and labor, changing European and national politics, and a continuously growing number of member states adding to “Europe’s” economic and institutional heterogeneity. As we will see, that trajectory followed very much the general trend of capitalist political-economic development in this period, sometimes driven by it, some-

times reinforcing it, but certainly never holding it up or reversing it. For simplification I will distinguish between five stages, beginning with the first two decades of the postwar era, when social policy was embedded in the “mixed economies” (Shonfield 1965; Shonfield and Shonfield 1984) of the state-administered (Brown 2015) national capitalisms of “Europe’s” six founding members (Stage One). From there, after the UK, Ireland and Denmark had joined in 1972, European social policy emerged as a political arena in its own right, with the objective of building a federally unified, labor-inclusive European-wide social protection system, not least in response to the labor militancy of the late 1960s and early 1970s (Stage Two). By the end of the 1970s, however, the political winds had turned, and European social policy, soon with twelve member states after the accession of Portugal, Spain, and Greece in 1986, was sidelined in favor of efforts to “bring capital back in.” “Europe,” now under the Single European Act, focused on “the completion of the Internal Market,” while its social policy switched from a statist to something like a “corporatist” mode (Stage Three). This culminated in the Maastricht Treaty, which came into force in 1993 and envisaged the introduction of a common currency under European Monetary Union. In 1995, Austria, Finland, and Sweden joined, increasing the number of member states to 15.<sup>2</sup>

Next, beginning in the mid-1990s, European social policy had to be made compatible with supranational promotion of “structural reforms” in national welfare states, to make them “fit for the market.” In “Third Way” manner, this was to transform social protection *from* the market into enabling *for* the market (Stage Four), preferably relying on soft law rather than binding regulation. The change reflected the advancing transformation of the class-political settlement that underlay the postwar political economy, and the corresponding progress of the neoliberal revolution which was to lead, for the time being, to the establishment of European Monetary Union (EMU). In the first decade of the twenty-first century, this completed the conversion of the postwar welfare state into a “competition state,” or of the postwar tax state into the debt state of the 1980s and 1990s and then the “consolidation state” (Streeck 2017b; a). This period lasted until the financial crisis of 2008, when “Europe” comprised twenty-five member states and moved into the economic and political impasse of today. In the wake of the crisis of European Monetary Union in and since 2010 (Stage Five), European social policy became submerged in and subordinated to other policy concerns, in particular the expansion of the Internal Market and the restoration of “sound money” through fiscal consolidation.

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2 Up until the mid-1990s my account follows essentially that in Streeck (1995a), where with hindsight I find nothing major in need of revision. While some of the paper’s analytical parts need (and allow for) sharpening in light of the experience with monetary union, the essay correctly outlined in an early stage the contours of the “neo-voluntarist” mode of governance that came to full fruition only a decade or so later. It is interesting that, just like Streeck and Schmitter (1991), it remained almost unnoticed by mainstream European integration research, which continued to stick to its inherited neo-functionalist-cum-euphoric intellectual frame.



Figure 1 The evolution of European social policy

Stage	Time	Organizations	Treaty	Member states	Policy model
One	Until about 1968	ECSC, Euratom, EEC	Rome	6	Mostly national "mixed economy"; in core sectors (steel, coal mining) social policy embedded in supranational industrial policies
Two	Until about 1985	EC	Rome	9	Labor-inclusive supranational welfare (super-)state Supranational etatism
Three	1986 to 1995	EU	Single European Act Maastricht	12 15	Supranational regulation and coordination of national welfare states; multi-level polity Supranational (quasi-)corporatism
Four	1996 to 2008	EU, EMU	Maastricht Amsterdam  Nice	15 15  25	Neo-voluntarism Competition state: competitive (national) solidarity Governance by soft law under market pressure
Five	2009 to ?	EU, EMU	Lisbon	27 28	Neoliberal "structural reform" Supranational reinforcement of national consolidation state Legal limitation of social policy under the "four freedoms" of the Internal Market

I will now elaborate on the history of European social policy in those five stages (Figure 1), a history intertwined with the evolution of European and global capitalism, the changing scope and shape of European-level international institutions, and the evolving politics of the European national welfare state.

### Stage One: State-administered mixed economy

The story of European social policy begins in 1957 with the European Economic Community (EEC) – the "Europe of the Six" – which had been preceded by the European Coal and Steel Community (ECSC) from 1951. The ECSC was a technocratic planning instrument, designed by French civil servants on the model of *planification*, for the then "key industries" of coal mining and steel-making especially in France, West Germany, and Belgium. Its main purpose was to prevent Germany from once again using its *Montanindustrie* to rebuild its military power. In addition, the ECSC was to ensure coordinated management of industrial change in the two sectors that were essential to their national economies while being organized by powerful and historically strike-prone trade unions. The EEC, starting in 1957, added to this the idea of a "common market" for the six countries, initially realized only with significant exceptions. (It would take until 1992 for what in the 1980s was called "the completion of the Internal Market" for goods, services, labor and capital.) The EEC also made arrangements to enhance the



mobility of workers between the six countries by abolishing discrimination on working conditions and social security benefits based on nationality, essentially to open Northern labor markets for, mostly, Southern Italian surplus labor.

Otherwise, social policy did not play much of a role.<sup>3</sup> Trade unions were firmly entrenched in core industrial sectors, and national governments were eager to remain on good terms with them and avoid labor conflicts. Generally this was a period of rapid economic growth, rising wages, and near full employment, while markets were still far from fully integrated. Social policy was considered a national affair, to be taken care of by a growing economy driven, in part, by the Common Market. German ordoliberals, who had lost out at home against Social Catholicism and trade union “cartelization” of the labor market, were trying to resume their battle at the European level, with a project to found the common market on a legally-based competition regime that would ultimately render government intervention in most sectors illegal. (In the long run, over half a century, they would triumph.) Member states pursued their social policies independently, which they could do without suffering competitive disadvantage since their economies were still fundamentally national.

Not entirely fitting this pattern were two clauses in the Treaty of Rome that had been inserted on the insistence of France. One was that pay for women and men should by law be the same in all member countries; the other, that one task of the Community should be the “harmonization” of member states’ social security systems. The two provisions reflected a concern on the part of the French government that the social security system France had inherited from its *front populaire* period (1936 to 1938) would impose a disadvantageous cost burden on the French economy, as would the legal entitlement of women to equal pay that stemmed from the same era. It rapidly turned out, however, that under the conditions of a fast-growing mixed economy and a rapid catch-up on the part of other European countries, that concern was unjustified. Moreover, while equal pay for women was unenforceable in France itself, “harmonizing” national social security systems turned out to be so fraught with difficulties, both technically and politically, that, even though it remained in the Treaty, it was never even attempted. Decades later it was to become a so-called treaty base for a European Commission seeking new subjects for a new, short-lived, social policy activism.

## **Stage Two: Accommodating labor militancy**

The first wave of European social policy, beginning with the Paris Summit of 1972 and the Social Action Programme of 1974 (Dukes 2014, 137–45), was in large part a response to the labor unrest of 1968 and 1969. In the early 1970s the unofficial strikes

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3 On the following see Dukes (2014, 130ff.).

and the rise of labor militancy at the end of the preceding decade were felt to indicate a need to revamp social policies and collective bargaining regimes to restore industrial and political peace. The effort was led by centrist and center-left governments including that of Wilson and Heath in Britain, Pompidou in France, the left wing of the Italian Democristiana, and the German social-liberal coalition under Willy Brandt. Since Germany appeared to have contained the industrial disorder of the 1960s better than other countries, it was widely believed among policy-makers that European countries could and should learn from Germany, basically how to share power in order to keep it, and how to restore profitability through concessions to workers and unions. The European Community, by then about to be enlarged to include the UK, Ireland, and Denmark, was seen as the right instrument for a supranational modernization of national European social policy regimes.

European social policy in this initial phase may be explained as a social-democratic project to save the postwar settlement between capital and labor by updating its institutions. A major part of it was to encourage centralized collective bargaining between strong unions and employer associations, at national but also, in a longer perspective, supranational European level. For the latter, one needed politically unified European trade unions and an equivalent, cooperative organization of employers. The European Commission did its best to help European trade unions overcome the long-standing division between communist and social-democratic confederations, and it was to some extent successful at this. But otherwise collective bargaining reform efforts were futile. National structures and traditions were too firmly established to be uprooted. Strike rates remained high in the 1970s, and inflation differed dramatically between countries, in particular between Germany on the one hand and Italy, France, and the UK on the other.

In any case, industrial relations reform on the German model lost its urgency when the U.S. Federal Reserve ended inflation worldwide by raising interest rates to a level that was bound to cause high unemployment, in the U.S. and abroad. Shortly thereafter, Britain under Thatcher followed suit. With a non-accommodating monetary policy, unions lost the capacity to strike or extract concessions from governments which, after the Thatcher and Reagan experience, were no longer worried about unemployment standing in the way of their re-election.<sup>4</sup>

Another leg of the social-democratic project was worker participation, both on the boards of large firms and on the shop floor. Here too, the idea, at least originally, was to learn from Germany. For many years the European Commission tried to pass a directive on company law obliging member countries to introduce parity “co-determination”

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4 Collective bargaining reform ceased to be an issue for European social policy for a long time, and when it returned under monetary union, it took a very different political direction, toward decentralization and individualization of wage-setting. While European trade unions, especially their federations at European Union level, claimed to continue to pursue wage coordination across national borders, this remained rhetoric and still is, even within EMU (Schäfer and Streeck 2008; Seeliger 2017).

on the boards of publicly held companies. The respective proposals, repeatedly amended, met with robust resistance among European employers. They were, however, also opposed by various trade unions outside Germany, which were afraid of being forced into collusion with the class enemy or of compromising long-established rights to autonomous collective bargaining.

Throughout the 1970s, in parallel with continued efforts to legislate at the European level, countries as different as Germany, Sweden, and the UK considered different models of national regimes of company-level workforce participation. Ultimately, some countries, like Germany and Sweden, managed to pass national reform measures, while others, notably Italy and the UK,<sup>5</sup> remained unsuccessful. At European level, legislative proposals for co-determination became progressively less ambitious. In the end they covered only firms desiring to be incorporated in European as opposed to national company law, offering different models of workforce representation for firms to choose from, conditional in part on extant regimes in their home countries. With everything removed that might have weakened the domestic position of employers, or subjected corporate governance to interference under European law by workforces and unions, a European Company (*Societas Europaea*, SE) was established in 2004, as an option for multinational European firms seeking incorporation in European rather than national law.

Parallel attempts to institutionalize worker voice on the shop floor, at the point of production, suffered a similar fate.<sup>6</sup> Here too, initial European proposals to harmonize national systems at the highest level met in some countries with national initiatives to introduce, firm up, or expand extant worker participation regimes. In the end only national legislation was passed, and only in a few countries. At the European level, a proposal by the Commission, the draft “Vredeling directive,” had to be withdrawn in 1986, after a long struggle, under unprecedented pressure from business.<sup>7</sup> For the first time, employers were represented by American law firms, which used the opportunity to set foot in Brussels, to remain there in formidable force until today.

In the first half of the 1980s at the latest, the European Union’s efforts to create a European system of labor relations accommodating strong unions and thereby continuing the postwar labor–capital accord began to look like a holdover from a social-democratic era that had at national level long come to an end. Employers in particular had

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5 In the UK in 1977, the Committee of Inquiry on Industrial Democracy, also known as the Bullock Committee, recommended the introduction by legislation of worker representation on company boards. While its conclusions found the support of the TUC, the Callaghan government fell two years later, ending all prospects of mandatory power-sharing in large firms.

6 There was little if any coordination between legislative efforts on workforce representation in corporate governance and in the workplace. This was not surprising, since the same held true in most national systems where the two were being discussed at the time.

7 In its initial version, the draft directive would have required all firms, national and multinational, above a certain (small) size to set up arrangements for far-reaching worker participation in management.

become dissatisfied with a “Europe” they identified with an outdated social partnership approach to the contemporary European economy and its problems of low profitability and slow growth. With Keynesianism on the way out and monetarism on the horizon,<sup>8</sup> with Thatcher firmly in the saddle and Mitterrand turning to “supply-side” economics and neoliberal institutional reform, they no longer saw a need to make concessions to a weakening and increasingly disorganized working class. Moreover, as “globalization” became a realistic prospect, older “Fortress Europe” ideas lost out inside UNICE, the European peak association of industry.<sup>9</sup> Even French capital began to look to the free market world outside Europe, where it was no longer necessary to make concessions to domestic workforces that could just as well be disciplined by market pressures as by collective representation, and at lower cost.

Its worker participation initiatives failed and national social policy regimes resistant to European intervention, the European Commission began to seek new fields for a social policy of its own that were less contested between business and labor and not yet occupied by national policy. It found two: health and safety, and equal opportunity for women in the labor market.<sup>10</sup> With respect to the former, national business associations and trade unions shared an interest in low-quality competition being eliminated by high mandatory health and safety standards for Europe as a whole. Moreover, the machine industry in particular lobbied for harmonization at the highest level, as this would make parts of the installed fixed capital in European industry obsolete. As to equal opportunity, the rapid rise in the number of women in the labor market that had begun in the 1970s had not yet been reflected in national social policy regimes, which resulted in a gap in regulation through which the Commission could hope to make inroads in national social policy. Here, European legislators were able to draw on the equal pay provision in the Treaty of Rome as their legal base (see above). They also enjoyed the support of employers seeking an expanded labor supply, not least by having governments put pressure on employment “insiders,” as represented by male-dominated trade unions wary about labor market liberalization. In the 1980s in particular, a series of directives on both health and safety and equal opportunity were passed in Brussels in a flurry of legislative activism. Soon, however, this came to an end as gaps in regulation were closed, shared interests of employers and unions were exhausted, and national social policy regimes had caught up with the times.

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8 In fact, dominant since 1974 in the “European social model” country, Germany.

9 UNICE stood for Union des Industries de la Communauté européenne. In 2007 the organization was renamed BusinessEurope.

10 On this see Streeck (1995a, 400f.), where gender equality and health and safety figure as two instances of “encapsulated federalism” in European social policy, resulting sometimes in “harmonization at the highest level.”

### Stage Three: Bringing capital back in

In the aftermath of the battle over Vredeling and against the background of the apparently endless fight over worker representation in corporate governance, “Europe” had fallen into disrepute among European business, as reflected in Thatcher’s untiring denunciation of the EU as bureaucratic, anti-competitive, and even socialist. This began to change when, having come to power in 1981, the French socialist government under Mitterrand and his Finance Minister, Jacques Delors, hoped to use “Europe,” after the failure of their initial “Keynesian” economic program, as an international lever for a national turn to neoliberal reform (Amable 2017). For this it was necessary to revive the integration process, in a direction that both required and contributed to renewed business confidence in it. One motive was certainly to preserve European integration as a tool for France to bind Germany into a French-dominated continental order. More immediately, however, the intention was to use a reconfigured European Community, renamed the European Union to advertise a new beginning, as an external constraint on the French political economy, in particular its trade unions and the Communist Party.

To bring capital back in, Jacques Delors, moved to the Presidency of the European Commission, focused his first term (1985–1990) on what came to be called “the completion of the Internal Market,” which he scheduled for 1992. This was a project very much to the taste of the British government, as it involved “negative” rather than “positive” integration achieved by EU-wide economic deregulation (Scharpf 1996). Already on the horizon was the next liberalization project, European Monetary Union (EMU), which was to complete the completed Internal Market (Mody 2018). To reassure the unions, the Commission held out the prospect of a “social dimension” to be attached to the Internal Market once it was fully in place. Arguing that one cannot “fall in love with a market,” Delors (he had not met Jeff Bezos!) claimed that the stability of the Internal Market would ultimately depend on it being embedded in a proper social welfare state, which even business would at some point have to realize.<sup>11</sup>

For progress on these fronts, Delors first had to clear away the rubble of old-style European social policy with its social-democratic bias. Above all, this meant ending the conflict over the European firm and its workers’ rights to participation and representation, without antagonizing either business or labor. On both corporate governance and workplace representation, this was achieved by limiting European legislation to

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11 For his functionalist economic sociology Delors was greeted at the 1988 TUC conference in Bournemouth by a rousing rendition of “Frère Jacques.” In getting the support of the British unions and the Labour Party, not just for his Internal Market but for “more Europe” in general, Delors was helped by Thatcher’s simultaneous attacks on the EU and the TUC. Later, it became expedient for the TUC leadership, having given up its initial opposition to “Europe,” to exaggerate the significance of European social policy for British workers at the time and, even more so, in a better future. Internally this served to justify the TUC abandoning voluntarism in industrial relations in favor of demands for pro-union legislation under a Labour government, something that British unions had long considered to be against their most sacred principles.

multinational firms willing to be covered by it; by allowing firms a wide range of choice between different legal arrangements to accommodate different structures and idiosyncrasies; and to some extent by blocking firms from using European law to evade existing obligations under national law. Concerning workplace representation in particular, the Works Councils Directive of 1994, which was to put to rest the fierce battles over Vredeling, required large firms with establishments in more than one European country to negotiate with a multinational delegation of their workforce over the creation of a supranational representative body – a “European Works Council” (EWC) – with legal rights to information and consultation but not co-decision-making. Details, procedural as well as substantive, are highly complex, also because the Directive was written not to disturb or supersede existing, highly divergent national arrangements. Today, EWCs above all offer workforce delegates from different countries an opportunity to meet regularly, not just with management but also with each other, to exchange information and, perhaps, coordinate activities. How effective EWCs are for workers is still being debated and seems to differ between countries, sectors, and firms. Managements seem to use EWCs mostly as forums to build workforce identification with the firm as an international organization and its business strategies.<sup>12</sup>

Institutionally, the social dimension was to be vested in a second channel for European social policy-making, as created by the so-called Social Chapter attached to the 1992 Maastricht Treaty.<sup>13</sup> The Chapter, from which the UK opted out,<sup>14</sup> came with a “Social Protocol” that provided for a privileged role in European social policy for the “social partners,” the European confederations of business and labor. It built on an informal institution called social dialogue, involving the Commission, UNICE and the ETUC, that had been set up by Delors early in his presidency and was hailed by himself, the European Trade Union Confederation, and the social-democratic Left as the beginning of an era of true pan-European tripartism. Under the Maastricht Treaty, if business and labor at European level agreed on a social policy proposal, the Commission had to adopt it as its own and submit it to the European legislative process. If what in Britain had once been called “the two sides of industry” failed to reach agreement, the Commission had the option of proposing legislation independently. There was, however, no obligation

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12 Worker participation under European company law, in the so-called *Societas Europaea* (SE), was settled in 2001 with a Council Directive complementing the Directive on the SE (see <http://de.worker-participation.eu/Company-Law-and-CG/Company-Law/Overview-of-Directives/SE-Directive-Worker-involvement-in-the-European-Company-Societas-Europaea-2001-86-EC>). This came after long negotiations chaired in the end by the Belgian politician and billionaire industrialist Viscount Etienne Davignon. For the unions, especially the German ones, the main concern was to prevent firms under strong domestic worker participation regimes from emigrating into the European regime.

13 For precise detail and the practical consequences of the legislation see Dukes (2014, 125–30, 138–55).

14 Only until 1997, when the newly elected Labour government returned to the flock. The basically symbolic nature of European social policy is confirmed by the fact that the end of the opt-out had no noticeable effect on the rise of inequality, the decay of collective bargaining, and the deterioration of employment conditions in the UK in subsequent years.



to do so. As a political arena, the procedure took the place of the EC's Economic and Social Committee (ECONSOC), which in principle decided by majority vote. Since ECONSOC included representatives of national and municipal governments in addition to the Commission, business and labor each held only one quarter of the vote. This resulted in business sometimes being outvoted, which contributed to its discontent with "Europe" although ECONSOC was deeply inefficient anyway. By comparison, the new tripartite procedure gave business a *de facto* veto on European social policy, as long as it succeeded in lobbying the Commission to abstain from starting legislation on its own in the event of disagreement between the social partners.

Although the Social Protocol had been a major bone of contention in the debates on the Maastricht Treaty, in the end it produced very little legislation. Almost all of it either spelled out minimum standards that the vast majority of member states already met, or it built bridges between national systems through European-level institutions that left national institutions untouched, like the compromises over worker representation in multinational European firms. Three directives on Parental Leave (1995), Part-time Work (1997), and Fixed-term Work (1999), passed under the tripartite Protocol procedure, were followed by five bilateral agreements implemented and monitored by the social partners directly, on Telework (2002), Work-related stress (2004), Harassment and violence at work (2007), Inclusive labor markets (2010), and a "Framework of action" in youth unemployment (2013).<sup>15</sup>

By the mid-1990s it might have appeared that Delors had managed to build around the European Commission what Falkner (2016, 277) euphorically called a "corporatist policy community" – a supranational layer of "social partnership" bringing together the peak organizations of business and labor and generating European-level policies and institutions for a multi-level social policy regime. European Union officials may have expected to use the new European institution for more than just making national institutions mutually compatible and codifying their commonalities. What they overlooked, however, or repressed for the sake of Euro-optimism, were older insights that tripartite corporatism works only with a legal or political obligation for employers to negotiate in good faith; with trade unions having a right and a capacity to strike; or with a government credibly threatening to legislate on its own in case corporatist bargaining gets deadlocked (Dukes 2014). This was not, however, overlooked by Delors, who subsequently was careful not to upset the EU's new relationship with capital by sanctioning employers for "strategic inactivity" on social policy. Considering employers' *de facto* lock on new European social policy initiatives, what some celebrated as a new European-level corporatism turned out to be that in appearance only, not in substance.<sup>16</sup>

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15 See also Falkner (2016).

16 On this see the early diagnosis by Streeck and Schmitter (1991). Schäfer and Streeck (2008) provide an extensive postmortem of "Korporatismus in der Europäischen Union," including the attempt to support European-level "class corporatism" with "Social Dialogue" at sectoral level. In addition to employers' and the Commission's "strategic passivity," they point to the general organizational weakening of trade unions at national level and their organizational and politi-



In fact, the much-celebrated tripartite channel of European social policy-making soon fell into disuse as employers refused to cooperate and the Commission waited for the social partners to come up with joint initiatives, or found itself blocked by a divided Council. To keep the social protocol alive, the ETUC signed several agreements with UNICE that were substantively irrelevant, in that no member country needed to change its laws upon their enactment; it thereby contributed to the shift of European social policy to symbolic politics. Examples include not just the bilateral agreements on matters such as telework but also the directives on Parental Leave (1995 and 2010) and Working Time (2003).<sup>17</sup> European legislation was furthermore constrained by the fact that among the three countries that joined the Union in 1995 was Sweden, with its strict tradition of autonomy of industrial relations from political and legal intervention. To protect that tradition, Swedish unions insisted on European legislation allowing them to implement European social policy by collective agreement instead of national legislation. For this reason and others, European-level social policy activism dried up almost completely soon after the much-advertised Social Protocol had taken effect.<sup>18</sup>

Probably the most substantial piece of European social policy legislation in this period was the Posting of Workers Directive, passed in 1996 outside the Social Protocol, on an issue central not just to unions and employers but also and in particular to member states. “Posted workers” are sent by their employer to work in a country other than that of their employment. If wages and conditions in their home country are inferior to the host country’s, this may in the Internal Market for services give foreign firms from a country with low labor standards a competitive advantage, which may in turn undercut the receiving country’s labor market regime. It would also result in different national employment conditions co-existing in one country (“legal pluralism”), detracting from the sovereign power of national states to determine the law of their land. This was, unsurprisingly, first recognized by France, which reacted swiftly with national legislation obliging foreign European firms providing services in France to abide by French labor standards. The EU, not to be left out, followed suit by passing a directive allowing member countries by and large to make their labor regime binding on all firms operating on

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cal heterogeneity at European level, and to the rise of large firms and the European Roundtable of Industrialists as important players on the Brussels scene circumventing traditional, more “corporatism-prone” business associations. Another factor they mention is the growing number and heterogeneity of member states, which frustrated efforts to reach unanimity or a qualified majority on social policy in the Council. See also Streeck (1995a, 412).

17 The Working Time Directive was particularly attacked by the British government. Perhaps for this reason it tends to be held up by British trade unions and centrist Labour leaders as an example of helpful and beneficial EU legislation for British workers, who would otherwise be subject to a much harsher working time regime. Given the many exceptions and opportunities for opting out that the Directive offers, this is vastly overstated. On this, and generally the tendency among some trade unionists in Britain to overstate the relevance of EU labor law for British workers, see Davis (2018).

18 “By 2015 even the European Commission was arguing that the Social Dialogue could do with a new start” (Falkner 2016, 278).

their territory, including non-national ones (Eichhorst 2000).<sup>19</sup> In subsequent decades, as market liberalization proceeded, the Posting of Workers Directive remained a live issue, undermined by CJEU decisions like *Laval* (see below)<sup>20</sup> and tightened up in response to avoid industrial strife in receiving countries and protect the sovereignty of member states over their respective “labor constitutions.”<sup>21</sup>

### Stage Four: Europe on the Third Way

With the completion of the Internal Market, the supply-side turn of the second Delors Commission, which was laid out in a White Paper in 1993,<sup>22</sup> and the run-up to monetary union, the desire of national governments for “Europe” to free them from domestic institutional “rigidities” and political constraints soon got the better of the social dimension.<sup>23</sup> Gone were the days when “Europe” was to become a supranational welfare state integrating, and improving on, member countries’ national welfare states. Less ambitious subsequent efforts at regulating national social policies from above in order to harmonize, and in the process raise, levels of national social protection soon ran out of steam as well, as did more or less successful attempts, like in company law and workplace representation, to complement national institutions with supranational ones. As European social policy became increasingly symbolic, apart from where it was used in defense of national sovereignty against undesirable side-effects of market integration, such as in the case of the Posting of Workers Directive,<sup>24</sup> the stage was set for competition in the European Internal Market to be utilized by national governments, with European support, for a neoliberal restructuring of their political economies.

The late 1990s and early 2000s were the era of the “competition state” (Jessop 2004). With “globalization” on the advance, governments began to consider it their most important task to make their countries more “competitive” in global markets by making them more competitive internally. This did not preclude governments and, occasionally, employers seeking alliances with trade unions, where these were still strong enough to be either helpful or obstructive. However, the aim now, rather than under postwar dem-

19 Given the diversity of national industrial relations systems among what then were already 15 member states, implementing the new directive required highly complex political and legal maneuvers. Eichhorst (2000) maintains that most of the legal substance in the directive had long been international law under the Rome Convention.

20 CJEU stands for Court of Justice of the European Union. This is the former European Court of Justice (ECJ) that appears under this name in earlier literature. I use the new name throughout.

21 The concept is from Dukes (2014).

22 Under the title of “Growth, competitiveness, employment: The challenges and ways forward into the 21st century” (COM[93] 700, December 5, 1993).

23 On the following see also Menz (2015).

24 On the symbolic as well as “nationalist” nature of the Posting of Workers Directive, see Streeck (2000b).

ocratic corporatism, when tripartism was to establish and secure bargained compromise between the conflicting interests of capital and labor, was to forge a common strategy for economic prosperity in competition with other countries by making domestic political economies more “flexible.”<sup>25</sup> What was left of the “European social model,” if anything, was that (some, not all) governments and employers refrained from head-on attacks on unions and the core labor force represented by them.<sup>26</sup> Instead they began to re-orient what had formerly been social policy toward objectives such as “flexicurity” and “employability.” The promise was that job loss would not mean prolonged unemployment but rather issue in, ideally in no time, re-employment. The task of public policy was to provide for a smooth transition from one job to the next, as well as help workers build the flexible “human capital” necessary for success in the changed labor markets of the neoliberal era. Also part of the package was deregulation at the lower end of the labor market, opening up low-wage jobs both to enable and compel workers who had been drawing unemployment benefit to take up employment. Competition state labor market policy revolved around notions like “activation” and “social investment,”<sup>27</sup> promising increased employment opportunities for those ejected from the welfare state through public assistance with acquiring the requisite skills for upward mobility once in employment. With the rise to power of the Labour Party under Tony Blair, the new approach became generally known as a “Third Way” between the “rigidities” of postwar state-administered capitalism and the “flexibility” of a free market economy of the Reagan and Thatcher kind.

Third Way reforms took place at national level, dealing with national institutional legacies and aiming to improve national competitiveness. The role of “Europe” and European social policy was limited to assisting with the slow, or not so slow, transformation of national social policy into a post-Keynesian, neoliberal direction, for example by spreading ideas like “flexicurity” and urging member states to voluntarily adopt “best national practices.” Supranational policy tools included comparative “benchmarking” of national performance; the promulgation of minimum standards low enough not to be a burden on national governments;<sup>28</sup> and information on presumably effective

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25 I have early on called this “competitive solidarity,” to identify a fundamental change in the nature of the “European social model.” See Streeck (2000a; 2001).

26 Apart from omnipresent revisionist rhetoric in the 1990s and thereafter, accusing unions of representing only “insiders” at the expense of “outsiders,” who allegedly had to be protected by governments abolishing “rigid” protections for the core workforce.

27 On social investment being unable and indeed unwilling “to swim against the neoliberal tide,” see Leibetseder (2018, 597).

28 See also in this context the various charters of “social rights” proclaimed since the 1980s by the Commission or the Council or attached to the treaties, for example the Charter of Fundamental Rights of the European Union that was incorporated in the Treaty of Nice (2000). The Charter is to apply only “to the institutions and bodies of the Union with due regard to the principle of subsidiarity and to the Member States only when they are implementing Union law” (Article 54). The most recent such document is the “European Pillar of Social Rights” of November, 2017, general enough in substance to be acceptable to countries as diverse as Sweden and Bulgaria. Ultimately the “European Pillar” may enable citizens as individuals to take their

policies as used in other European member states. European social policy, to the extent that it still took place, relied mostly on soft law, in a “neo-voluntarist” (Streeck 1995b) framework of “governance” like, for example, the so-called Open Method of Coordination (OMC),<sup>29</sup> euphemistically celebrated as mutual learning and joint policy experimentation.<sup>30</sup>

With the accession of most of Eastern Europe in 2004, which raised the number of member states to twenty-five, this could hardly have been otherwise. By the early 2000s the European Union had become far too heterogeneous for an integrated European social policy, compared to the nine countries that in the 1970s had tried to re-conceive the then European Community as a nascent supranational welfare state. Liberalization, more or less politically cushioned, was now the one and only political formula on which all member countries could agree, given the incessant market pressures from the EU’s Internal Market as well as from outside “Europe.” Positive integration on a common “European social model” had become impossible, as no such model could have found a majority in the Council or the Parliament. At the same time, reversing liberalization was also ruled out by the EU’s implicit constitution, with its high majority thresholds and the *de facto* constitution-writing powers of the CJEU.<sup>31</sup>

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national governments to the CJEU for violation of their European “social rights.” Creation at the European level of individual entitlements vis-à-vis member states resembles CJEU jurisdiction granting citizens of EU member states (“European citizens”) full social benefits, for example child benefit, in other member states, thereby “opening up” national social policy systems to non-nationals from “Europe.” In more generous countries this may result in social rights being cut back on also for national citizens.

- 29 Introduced by the Treaty of Amsterdam (1997) and later applied in the European employment strategy and on social inclusion, pensions, consumer care, immigration, asylum, education and culture, and research. Its use has also been suggested for health as well as environmental affairs. The OMC involves yearly non-binding policy guidelines for member states, which must report to the Commission and each other on how they have dealt with the guidelines. The reports are discussed in meetings of delegates from member states. Recently the OMC was integrated in the so-called European Semester, a complex arrangement for budgetary coordination and control. See Falkner (2016, 276–77).
- 30 Streeck (1995a, 423–31) describes neo-voluntarism as a (then still) possible “post-welfare state social policy regime for Europe,” characterized by “cohesion by exemption,” “unity by subsidiarity,” “governance by recommendation, expertise, explication, and consultation,” “governance by choice,” and “homogeneity by diffusion.” Its subsequent supersession by factual coercion under market pressures and legal pressures under EMU crisis policies was not anticipated at this point.
- 31 While in his structural analyses he agrees with this diagnosis, Barbier, *The Road to Social Europe* (2013), hopes to revive European integration, including European social policy, by cultural integration, as a way of refreshing the legitimacy of the EU. Cultural integration is to be achieved through a policy of multilingualism laying the basis for European multiculturalism. The aim is to avoid Anglophone monoculturalism, which Barbier believes is unable to generate political legitimacy. Barbier himself has doubts whether his program (149ff.) is sufficiently realistic.

### Stage Five: Social policy submerged

Today, a decade after the global financial crisis, European social policy as a political project has disappeared from sight, even in the Third Way mode of national welfare state reform suggested to member countries by supranational European institutions and assisted by them. This does not mean that there is no social policy in the European Union anymore. Nor does it mean that social policy has ceased to be contentious; quite to the contrary, battles over social protection within the European state system have intensified. Two things have changed, however. One is that conflicts over European social policy are now being fought in a confrontation between “populist” defenders and Europeanist “reformers” of national welfare states – the latter including institutions of supranational “governance,” like the European Commission, the CJEU, and the ECB, that are still more or less set on the pre-2008 course of neoliberal European market-building. The other is that such battles have become relocated to and integrated in other policy fields – such as monetary, fiscal, and immigration policy – that claim priority for their objectives over those of traditional social policy. (A summary of how the subjects and objectives of European social policy evolved, until they were absorbed in and subordinated to other political concerns, is given in Figure 2.)<sup>32</sup>

Examples abound of the progressive subordination of social policy to more recent European policy concerns. One is the rising claim to priority of European competition law over the domestic policies of national welfare states. Inventive policy entrepreneurs have repeatedly invoked treaty limitations on “state aids” to force national governments to end subsidizing non-profit service providers so that private firms can compete with them on a “level playing field.”<sup>33</sup> Although the courts may not necessarily rule in their favor, the doors remain open for another try later. National welfare states that refuse

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32 The state of European social policy six years after the financial crisis is reported by Falkner (2016, 274): “By the end of 2014, there were more than 80 binding norms (regulations and directives), with more than 90 related amendments and geographical extensions ... Post-2010 data, however, shows a particularly large number of acts adapting or refining existing social standards, rather than setting fully innovative EU policies. By 2015, the most significant projects for new regulation ... have ended in stalemate and may be withdrawn, while the new employment and social affairs Commissioner ... did not announce any fresh legislative initiatives on taking office.” Moreover, little if anything is known about the real effects of European acts and measures on the ground, in national systems, an issue rarely, if ever, discussed in the europhoric research literature. An exception is Falkner et al. (2005), an in-depth comparison of the impact of several EU social policy directives. As summarized by Falkner (2016, 279), it found “major implementation failures” as several countries “frequently privilege their domestic political concerns over the requirements of EU law. A further group of countries neglects these EU obligations almost as a matter of course. Extending this ... analysis to newer member states from Central and Eastern Europe shows that EU standards all too often remain a ‘dead letter’” (ibid., 279).

33 A recent case is private nursing homes for the elderly suing the German *Bundesland* of Lower Saxony over its financial assistance to non-profit nursing homes. Interestingly, the issue is not whether such assistance is allowed under the treaties – it is no longer – but only whether it had been granted sufficiently long ago that it would be protected under a grandfather clause.

Figure 2 Subjects and objectives of European social policy

Stage	Time	Subjects	Objectives
One	Until about 1968	Managing overcapacity in steel and coal Enabling employment of foreign workers	Industrial peace
Two	Until about 1985	European industrial relations: worker participation and collective bargaining Equal employment opportunities Health and safety	Restoration of postwar settlement Supranational harmonization of social policy at the highest level
Three	1986 to 1995	The European firm: workforce representation in corporate governance and in the workplace Posting of workers Working time Parental leave	Bringing capital back in Reconciling unions with the Internal Market Building a supranational layer of "social partnership" Connecting national industrial relations and social policy regimes through European institutions
Four	1996 to 2008	"Employability" "Flexicurity" "Social investment" Minimum standards	Encouraging national governments to reform national social policies to adjust to international ("global") competition
Five	2009 to ?	Fiscal consolidation Individualization and juridification of social rights Minimum as maximum (CJEU)	Making social rights, policies, and institutions compatible with and supportive of free-market liberalism Restructuring national systems of social policy and industrial relations to satisfy the requirements of monetary union (EMU)

to submit their public services to private markets are thus operating under a sword of Damocles that can fall upon them any time.

Very important in this context became the interpretation by the CJEU of the "four freedoms" of the Internal Market. Originally, it would appear, these obliged member countries to no more than to not discriminate against non-national workers, capital investors, and suppliers of goods and services. Soon, however, the Court was pressed to find in breach of the treaties any national institution that might "restrict" cross-border economic activities simply by making people voluntarily abstain from them. Interpreted this way, the "four freedoms" may override national market-containing policies of all sorts, which would require deep revisions in the institutional fabric of member states. An example with respect to corporate governance and capital mobility is Volkswagen, the largest automobile producer in the world and as a company under the particularly strong influence of labor and the federal state government of Lower Saxony. Several attempts were made by the Commission to have the CJEU declare the corporate governance regime at Volkswagen in conflict with the freedom of movement of capital, on the grounds that it might deter foreign investors from buying Volkswagen shares.<sup>34</sup> Flimsy

34 See [http://europa.eu/rapid/press-release\\_IP-04-1209\\_en.htm](http://europa.eu/rapid/press-release_IP-04-1209_en.htm) from October 13, 2004. To quote: "Traditionally, both the Bund and the Land held roughly 20% voting rights in VW, whereas nowa-



as this argument may seem, it seems to speak to the heart of market-minded CJEU judges and EC functionaries. Several times, imminent rulings threatening to declare the *Volkswagengesetz* incompatible with the Internal Market had to be averted at the last minute by political concessions and legal changes.<sup>35</sup>

Two other cases concern the relationship between national labor law and the European freedoms of establishment for firms on the one hand and of movement of services within the Internal Market on the other (Blanke 2008; Joerges and Rödl 2009; Deakin 2012). In *Laval* and *Viking*, two rulings from December 2007, the CJEU found that national rights to collective bargaining and to strike had to be weighed against the right of EU-based business firms to operate in other EU countries, and might have to take second place behind it. In *Viking*, a Finnish company operating ferries between Finland and Estonia chose to incorporate in Estonian law so as to no longer be bound by the Finnish collective wage agreement; in response Finnish trade unions took industrial action against it. In *Laval*, a Lithuanian construction firm offered construction services in Sweden paying its Lithuanian workers Lithuanian wages while refusing to sign the Swedish national wage agreement as demanded by the Swedish construction workers union. Both times, the Court ruled that European Internal market freedoms took precedence over national trade union rights.

The *Viking* and *Laval* decisions have many facets. Lawyers close to the European Trade Union Confederation emphasize that the Court for the first time recognized national collective labor rights as basic rights, whatever this may mean in practice. More importantly, however, the Court also ruled that these need not necessarily trump the “four freedoms,” and required national courts to apply a complicated test by which to decide the legality of national industrial action in the Internal Market. That test involved, among other things, whether industrial action was “proportional,” “adequate,” promised to be successful, and justified by “compelling reasons of general interest.” Although the two verdicts seem to have been moderated later in parts,<sup>36</sup> they provide national courts with powerful legal instruments by which to restrain trade union collective action in the name of market freedom.<sup>37</sup>

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days the Land is its main shareholder, with roughly 20% voting rights and 2 mandatory members of the board. The Commission considers that these provisions of the VW law make it substantially less attractive for other EU investors to acquire the company’s shares with a view to participating effectively in management decisions or controlling it, and so are contrary to EC Treaty rules on the free movement of capital (Article 56) and the right of establishment (Article 43).”

35 Recently a similar case was brought against the German tourism concern TUI by a (very) small shareholder, who claimed that company-level co-determination under German law interfered with the freedom of movement of, for a change, labor, since German TUI employees would prefer to remain employed with the German TUI rather than move to the Belgian TUI subsidiary (where they would not be allowed to vote for representatives on the company board). After some legal and political to and fro, the CJEU rejected the suit.

36 On the other hand, subsequent Court decisions, among them *AGET Iraclis* (2016), have followed the *Laval* and *Viking* line (Giubboni 2018).

37 In addition, *Laval* seemed to undermine the Swedish method of implementing European social



Immigration, as governed by “Europe” or international law, may also affect the national welfare state and function in essence as social policy. Immigration, especially of unskilled workers, may undermine collective bargaining in low-wage sectors, to the extent that it still exists there. Not only is it likely to increase the wage spread in countries where wage compression remains a political concern, it may also weaken public perceptions of poverty and inequality as a problem, and indeed allow opponents of social protection to declare acceptance of domestic inequality a commandment of global solidarity with the “really poor.” In 2004, the British government under Tony Blair allowed full freedom of movement into the UK to take effect under Internal Market rules for workers from the newly acceded East European countries, although under the treaties it could have asked for a multi-year grace period (as did the Schröder government in Germany). Adding to immigration from Commonwealth countries and of asylum seekers, this did nothing to halt the ongoing transformation of the UK into a low-wage economy with high wage and income inequality. Immigration may also exert pressure on social assistance budgets while weakening the willingness of citizens to be taxed for them, as a growing share of the expenditure may be going to newly arriving non-citizens. Including among social policy, as one must, the public provision of primary and secondary education, it also seems that immigration beyond a certain threshold gives rise to educational segregation as middle and upper-class parents extract their children from public schools that serve children of immigrants to send them to more selective public or, increasingly, private schools.<sup>38</sup>

Finally, the several “rescue operations” that took place after 2008 to secure the servicing by member states in crisis of their presumably excessive public debt tended to come with demands for “austerity” accompanied by “Swabian housewife” lessons, to the effect that nobody can spend more than they have earned. The rise of the consolidation state (Streck 2017b; a) generally put pressure on countries’ national social *acquis*, to the extent that fiscal discipline was deemed necessary to protect creditor banks’ commercial *acquis*. Not only were so-called program countries told to cut their social spending, for example on health care or retirement pensions, so as to regain the confidence of financial markets. There were also detailed demands for institutional change, including decentralization of collective bargaining, aiming in effect at de-unionization of national economies. Here, social policy came to be absorbed in fiscal stabilization policy, the latter pushed by “Europe” and the former sometimes defended and sometimes, in “pro-European” spirit, “reformed” by national governments.

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policy, in this case the Posting of Workers Directive, not by legislation but by trade union action. Foreign firms were asked to sign the full industrial agreement rather than simply pay a minimum wage. Through the back door, *Laval* seemed to turn the minimum wage under the Directive into a maximum wage. This is described by Giubboni (2018) as a general trend in CJEU jurisdiction.

38 This seems to be particularly pronounced in the case of Sweden, formerly a paragon of egalitarianism and with a broad, well-funded public sector. See Mehrtens (2014) and Haffert and Mehrtens (2015).

## Future prospects

With the financial crisis in 2008, European social policy came to be increasingly dictated, in addition to the demands of the Internal Market, by the supranational emergency legislation adopted in the (continuing) effort to save the euro. Although monetary union had been introduced without political union, precisely to preserve the sovereignty of member countries (Mody 2018), *de facto* it turned into a social policy union which imposed strict budget rules – “austerity” – and deep “structural reforms” on member countries, especially those requiring support from the hard-currency economies of the North. Crisis management tools, like the fiscal compact, the six-pack, the two-pack, and others, became in effect parts of the EU’s social constitution, like CJEU rulings that in practice can be reversed only by the Court itself.

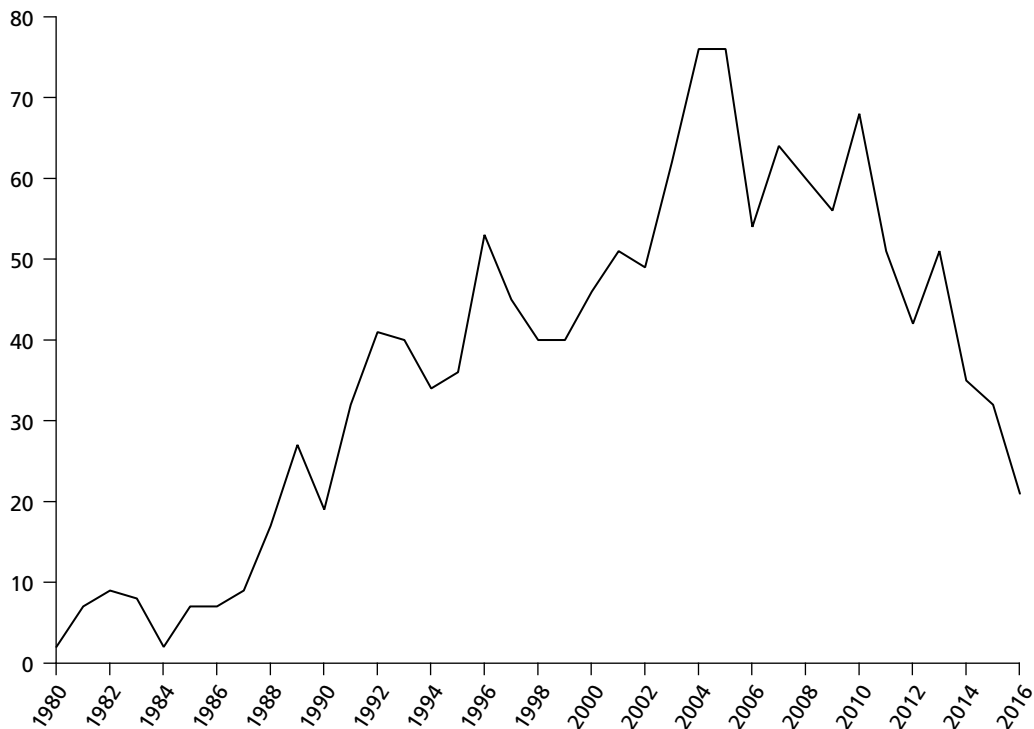
The last time European social policy as such became a subject of broad interest, in European politics, the press, and social research, was around 2004 and 2005, when the treaty on a constitution for the European Union was signed and a year later failed to get a majority in referenda held in France and the Netherlands (Figures 3 and 4). One explanation for its rejection by the French and Dutch voters was that it did not pay enough attention to social policy (one proponent of this view being the then French President, Jacques Chirac). When the draft constitution was replaced with the Treaty of Lisbon, to take effect in 2009, and even more so during the – continuing – crisis of EMU after 2010, the dominant themes in European politics became fiscal consolidation through cuts in public spending, including social policy, like the German Hartz IV legislation, and changes in collective bargaining, mostly decentralization of wage-setting, to make labor markets more “flexible” and keep wage increases moderate. By then the European Union, acting through EMU and the European Central Bank (ECB), had become an agent of “structural reform” in member states, through a battery of supranational legislation requiring balanced budgets, privatization of public services, market opening, and sometimes even pension cuts.<sup>39</sup>

Today, opposition to the EU-driven liberalization of national social policy regimes comes from a Europe-wide movement of “populists,” often right-wing, which makes it vulnerable to being morally discredited by internationalist opinion. For the latter, the only democratic alternative to “xenophobia” and “racism” is the opening of national economies to international competition, although there is no supranational social policy in Europe to compensate the losers of national liberalization, and there cannot be. Concepts like “social Europe,” the “European social model,” and the “social dimension of the Internal Market” have almost completely disappeared.<sup>40</sup> Rather than as an al-

39 See also Francesco Costamagna, “National social spaces as adjustment variables in the EMU: A critical legal appraisal” (2018).

40 In the early 2000s the German historian Hartmut Kaelble (2000; 2004) tried to keep the concepts alive, reaching far back in early modern and nineteenth century history. Recognizing considerable national diversity in spite of moderate convergence in the 1950s and 1960s, Kaelble located the Europeanness of the European social model in the supranational institutions created

Figure 3 Books on “social Europe” and “European social model”



Source: WorldCat.

ternative to unbridled capitalism, “Europe” and the “European project” are today promoted as vehicles of international friendship, peace, human rights, civilized democratic discourse, and political decency in general.

In recent years the subordination of European social policy to other policy concerns has become more visible as the prospect of an autonomous European policy of social protection has become as unrealistic as it now is. As a result, social policy – or better: its submersion and subordination – is being drawn into an intensifying conflict over “Europe” and “European integration” as a whole. The first and foremost article of faith of integration – that European law and politics must take precedence over national law and politics – is being challenged by a broad “nationalist” countermovement. Attempts to turn social policy and the welfare state into instruments for the promotion of economic competitiveness are increasingly being answered by popular demands for national governments to be held accountable again for what happens to the lives, and the ways of life, of national citizenries.

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by the EU for the coordination of national welfare states, which roughly corresponds to Stage Three of our account. The later submission of the “model” to the pressures of global competition and, subsequently, to the constraints of the consolidation state Kaelble did not see coming.

Figure 4 Journal articles on “social Europe,” “European social model,” “European social policy,” “social dimension”



Source: Scopus.

In some cases this has borne fruit. National governments, even traditionally integration-minded ones, are making concessions to voters and workers, with the Commission looking the other way and the ECB lending tacit support. Also, now that German-style immigration-by-asylum has become politically unsustainable in Germany itself, member countries are beginning to regulate immigration on their own, doing away with the chimera of an integrated European immigration regime that would let them be governed in contradiction of the will of their citizens.

Meanwhile, pressures for “structural reform” have become politically deadlocked. Greece, its bank debts settled essentially without a major, precedent-creating haircut, is left to its own devices, while even the most determined “reformers” know that Italy will never accept the sort of treatment to which the Syriza government had in the end to submit (Varoufakis 2017). The UK, for its part, is on its way out. With various British governments having led the battle against the European welfare state and the EU’s time-lagged social democratism in the 1980s, British citizens are now “reclaiming their state” (Mitchell and Fazi 2017), also and not least on the issue of immigration. While a coalition of British voters is demanding an end to the internationalist “Brussels excuse,” those still bent on “modernizing” Britain on some revamped version of the Third Way are seeking to keep their country in “Europe,” with unlikely prospects of success.

Nobody knows what will come out of all of this. European social policy came and went, changing with the capitalist economy, the power relations between capital and labor, and the size and heterogeneity of “Europe” as a polity: from the intended absorption of national welfare states into one united, federal welfare state to selective updating of national by European social policies; to multi-level coordination of national systems through special European institutions; to European soft law helping national “modernization” on the Third Way; to exposure of national systems to international economic competition as an incentive to “structural reform”; and to the subordination of social policy, national and European, to the defense of a common hard currency through fiscal consolidation – from, in other words, federal social democracy to competitive disorganization of national social protection.<sup>41</sup> Expanding and consolidating social policy by moving it upwards from member states to the EU did not work; cutting back national social policy by supranational *Diktat* did not work either, but what did work was delegating “reform” to “the market.” Today, European social policy is no longer a (“relatively”) autonomous policy field driven by interests, however weak, in conflict, however limited, with the imperatives of capital accumulation. Rather than holding up or modifying the course of capitalist development, European social policy was in its own way drawn into the general crisis of the postwar modern state system, and thereby into the global battle over a post-neoliberal order and, indeed, the future of capitalism.

What will happen to European social policy after “European integration” is wide open; it depends on what becomes of the European state system with its overextension, its widening dramatic disparities among regions and states, the growing inequality of its citizens, the vastly overdrawn geopolitical ambitions of Paris, Berlin, and Brussels, and its frustrated ambition for technocratic centralization. What seems clear, however, is that the project, reaching back to the 1970s, of a supranational European welfare state giving practical political definition to a “European social model” has come to an end.<sup>42</sup>

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41 For a similar reconstruction of the history of European social policy see Roumpakis and Papadopoulos (2017).

42 To the same effect Whyman et al. (2012, 321): “A social Europe is an impossible dream.”

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