

Rethinking the European Social Market Economy: Introduction to the Special Issue*

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Abstract

This contribution offers an introduction to the Special Issue ‘Rethinking the European Social Market Economy’. It places the Special Issue against the background of the debate on free markets versus social protection in the European Union and the inclusion of the notion of ‘social market economy’ in the Treaty on European Union. It sketches the meaning and development of the social market economy concept, and introduces the key questions underlying this Special Issue and the contributions included in it.

Keywords: Economic constitution; European integration; social market economy; social justice; social policy

I. The Contested Nature of ‘Social Europe’

‘Free Trade Europe’ versus ‘Social Europe’

The nature and aims of European integration are contested. Whereas some argue for a European Union (EU) that focuses on free markets and trade, others maintain that the EU will only be viable if it includes more extensive social policies. Because of rising opposition to further European integration, this debate has become more pronounced in recent years, to an extent that touches upon the very foundations of the EU. Eurosceptics, both on the left and on the right side of the political spectrum, have lamented the perceived loss of social protection and the erosion of welfare states that they claim is a result of European integration. They argue that as a predominantly free-market project, the EU has undermined the ability of member state governments to provide social protection to their citizens.

These criticisms have played important roles in the rise of euroscepticism over the past decades. In the debate leading up to the 2005 referendum in France on the proposed EU ‘constitutional treaty’, concerns over the loss of the French social model as a result of the EU’s ‘neoliberal’ character played a central role (Hobolt and Brouard, 2011, p. 312). In the wake of the financial crisis, movements such as Syriza in Greece and Podemos in Spain rose on platforms that called for an EU that gives more attention to social concerns. Similarly, right-wing eurosceptics, such as France’s Marine Le Pen and the Netherlands’ Geert Wilders, have put great emphasis on the erosion of national social welfare arrangements, alongside their criticism of the loss of ‘national identity’, in the process of European integration. It is partly in response to these developments that the European Council held a special Social Summit for Fair Jobs and Growth in Gothenburg

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on 17 November 2017, at which a ‘European Pillar of Social Rights’ was proclaimed (European Commission and Government Offices of Sweden, 2017; European Parliament, Council and Commission, 2017).

In parallel, calls have also been made to move towards an EU that focuses on its supposed ‘core business’ of market integration and liberalization. This was one of the leading themes in former British Prime Minister David Cameron’s plans for a future EU as was set out before the UK referendum on leaving the EU (Cameron, 2013). It is also at the core of one of the five scenarios (‘nothing but the single market’) and an important implication of another scenario (‘Doing less more efficiently’) presented in the European Commission’s White Paper on the Future of Europe (European Commission, 2017a; see also European Commission, 2017b, p. 23).

Far from a simple issue between Northern and Southern Europe or a clash between member states, the debate over the shape of the EU runs through member states and crosscuts traditional political party families, with calls for an EU that restricts itself to its ‘core task’ of creating a free market and calls for a more ‘social’ Europe playing important roles in providing social protection. The old controversy between ‘free trade Europe’ and ‘social Europe’ is therefore alive and kicking – and the stakes are probably higher than they were ever before.

Overcoming the Dichotomy?

Framing the debate in terms of a ‘free trade Europe’ versus a ‘social Europe’ assumes a clear dichotomy between the two models, which presents an either–or choice. This dichotomy can be questioned. Intellectually, it raises the question of whether free trade and social protection are indeed incompatible and represent two mutually exclusive models. Practically speaking, mutual exclusivity between the two models is highly undesirable, as it implies there is no way to overcome, or at least manage, the deeply entrenched political and social controversies at the heart of the EU.

The EU Treaties themselves suggest that the two models are (or should be) compatible. Article 3(3) of the Treaty on European Union seeks to balance the two objectives by including both economic and social aims under the banner of a ‘social market economy’ – a concept that was introduced in the defunct Constitutional Treaty and then made it into the Lisbon Treaty. This, then, would be the golden formula to unify the two opposing conceptions: an EU that is both social and a market economy.

Unfortunately, the concept of a ‘social market economy’ mainly solves the tensions between its constituent elements by obscuring them. Though the formula may sound appealing it hardly gives any guidance as to what the EU should do, or refrain from doing: what are the limits of market integration, what kind of (social) policies should the EU strive for and, ultimately, what should a well-functioning social market economy look like.[†] As a result, the notion of social market economy merely begs the question what it means and how the different values underlying it are to, and in fact can, be balanced.

In a way, the concept of a European social market economy mirrors the approach taken in post-war Western European welfare states, which combined a firm commitment to a

[†]This lack of guidance concerning key trade-offs was exemplified in Jean-Claude Juncker’s Opening Statement to the European Parliament in 2014, in which he defined the leading principle of the social market economy as ‘prosperity for all’ and claimed that this ‘must be the maxim followed in both economic and social policies alike’ (Juncker, 2014).

free market economy with extensive social protection regimes. This was a formula that enjoyed broad support in European societies and politics, directing political controversies towards debates over the precise shape that this market-based welfare state should take, rather than the fundamental underlying compromise itself.

This settlement formed part of the post-World War II (Western) international economic order. John Ruggie (1982) characterized this order as ‘embedded liberalism’, which combined international economic liberalization with domestic social policy interventions. To some, this is also the dominant idea behind European integration, in which social policies remain firmly within the remit of the member states, underpinned by the increased economic development flowing from European market integration.

This formula seems to offer a way out of the ambiguities and contradictions arising from the notion of the EU as a social market economy by assigning the two constitutive elements of the formula to different levels: the EU for trade liberalization and the member states for social protection. The viability of this approach has been underscored by studies such as Peter Katzenstein’s (1985) *Small States in World Markets* and Geoffrey Garrett’s (1998) *Partisan Politics in the Global Economy*, which argued that small, open economies tend to have more elaborate social protection systems. This bolsters the claim that domestic social protection and international trade liberalization can co-exist and even reinforce each other.

Others, however, have challenged the notion that increased international market liberalization and domestic social protection arrangements go hand in hand (Brady *et al.*, 2005). Some even contend that increasing market liberalization within the EU, which goes well beyond the level of integration ever achieved at the global level, tends to undermine domestic social arrangements. This, in turn, would necessitate the build-up of social protection arrangements at the EU-level itself. As Fritz Scharpf (1999, 2009) has argued, the EU suffers from a fundamental imbalance in this respect: whereas the EU has been very successful in its programme of negative integration, reducing barriers to trade by circumscribing domestic law, it is much less well equipped to adopt measures of positive integration, building up sets of EU law and policies to tackle issues. According to Scharpf, this has had a particularly negative effect on welfare state arrangements, which have been put under pressure at the domestic level without a concomitant rise of arrangements at the EU level. This institutional asymmetry leads him to conclude that ‘the EU cannot be a social market economy’ (Scharpf, 2009).

This debate raises a range of normative, conceptual and empirical questions about the shape the ‘European social market economy’ should take, has taken and could take. In this Special Issue, we seek to analyze these questions, to shed more light on the ways in which free markets and social protection can be balanced in the European Union. In doing so, we bring together contributions from different disciplines, which each focus on an important aspect of or question related to the notion of a European social market economy.

II. The Concept of a ‘European Social Market Economy’

To set the stage for these contributions, it is useful to sketch the roots and further development of the concept of a ‘social market economy’ and the way this concept has entered the EU Treaty. Historically, the social market economy concept is closely linked with

German Christian-Democratic thinking, and more specifically with the strand of thinking known as ‘ordoliberalism’ (cf. Hien, forthcoming; Joerges and Rödl, 2004; Young, 2014). Nonetheless, during the first stages of European integration, leading German ordoliberals were highly sceptical about the regionally oriented institutional form of European co-operation, as shaped by the European Coal and Steel Community (ECSC) in 1951 and the European Economic Community (EEC) in 1957 (Siems and Schnyder, 2014, p. 384). Neither had they been fans of the Marshall-plan. These German ordoliberals were the defenders of free enterprise anchored in framework treaties, with a primary focus on guaranteeing respect for property and contract, protecting free competition and honouring monetary prudence.

Indeed, ordoliberals perceived the Jean Monnet-inspired pro-European variant of American planning (rooted in the New Deal) that prevailed in France, and strongly influenced the first institutions of European integration (like the High Authority of the ECSC), as undesirable ‘dirigisme’. At that moment in history they were, however, strongly on the defensive; just like their kindred spirits on the other side of the Atlantic (Burgin, 2012, pp. 87–122; cf. Hennecke, 2005, p. 171–173). According to their vision, only a free market and a process of price correction through deflation could point the way to a new sound (and more spontaneous) order, in which the ‘social component’ merely remained a *post facto* matter in cases of unjust misery – hence, exactly the opposite of the interventionist policies of planning, which were en vogue in the western world after the 1940s (Plickert, 2008, p. 144; Gillingham, 2003, p. 13).

In the context of post-War Germany, the social market economy became a concept that was explicitly presented as an alternative to socialism, social democracy and Keynesianism, with their calls for active redistribution or even economic control by the state (Nedergaard and Snaith, 2015, p. 1097; Young, 2014, pp. 277–278). Although ordoliberalism also steered clear from laissez-faire conceptions of economic governance, it placed strong emphasis on (the protection of) market freedom as the key aim of the economic order. Central (and integral) to the concept of social market economy was the notion of an ‘economic constitution’, which enshrined the economic freedoms of private actors in the economy, similar to the political freedoms enshrined in the political constitution (Gerber, 1994). Purely redistributive social transfers were not part of this conception. In terms of social policy, ordoliberals rather focused on the creation of equal opportunities within a stable and predictable economic framework; social improvements would then follow more or less automatically (Hien, forthcoming, p. 6; Siems and Schnyder, 2014, pp. 381–382; Young, 2014, pp. 283–284).

Later, and in other parts of Europe, the concept of a ‘social market economy’ acquired a broader meaning, somewhat akin to the notion of the ‘Rhineland model’ of economic organization. Rather than part of ordoliberalism in its orthodox sense, the ‘social market economy’ came to stand for the German economic model more generally (however inadequate this conflation may be; cf. Joerges and Rödl, 2004, pp. 18–19). This mirrored developments in Germany itself, in which the original ordoliberal emphasis on ensuring competitive markets was complemented by more active social policies from the late 1950s onwards (Young, 2014, p. 284). In this usage of the concept, the social market economy was not set against social democracy, but against ‘Anglo-Saxon’ free-market capitalism. In terms of the literature on varieties of capitalism, the social market economy was then linked to the model of a ‘co-ordinated’ as opposed to a ‘liberal’ market economy

(Hall and Soskice, 2001).[‡] Consequently, a ‘social market economy’ came to signify an economic order which sought to include counterweights against the excessive reign of free markets.

In this newer understanding, the concept also entered the debate in the EU. It was linked to, or at least showed affinity with, the notion of a ‘European social model’, which was promoted by the Delors Commission in the 1980s, in an attempt to define a shared heritage of social protection arrangements among the EU member states, mainly as opposed to the United States (Barbier, 2006, p. 122; Jepsen and Serrano Pascual, 2006, p. 25). In the end, the term ‘European social model’ did not make it into the EU Treaties, but its (politically perhaps less divisive) counterpart ‘social market economy’ did.

What we are left with, then, is a concept that has been used in different ways in Germany and Europe over the past 70 years or so. At its core, it denotes a model that seeks to combine free markets and social protection arrangements, in opposition to unfettered free market capitalism and more orthodox forms of socialism alike. However, depending on the context within which it was used, the emphasis moved, between a focus on the free-market element (as in the post-war German notion of an economic constitution) and a focus on the social elements of the model (when it was used to demarcate more ‘social’ continental European economic models from more ‘liberal’ Anglo-saxon ones).

All contributions in this Special Issue are written with this conceptual background in mind. Yet, given the flexibility of the concept, we refrain from providing a single, or precise definition upfront. Rather, the contributions explore various dimension of the concept, in an attempt to specify it further and to find out what those specifications would imply for the EU.

III. Outline and Aims of this Special Issue

Outline of the Special Issue

In this Special Issue, we analyze the questions underlying the debate on a European social market economy by breaking them up into three key issues. These issues form the three building blocks on which a critical and comprehensive analysis of a European social market economy should be based:

- Normative conceptions: can we develop a systematic conception of social justice at the EU-level, which may inform the debate on the role of the EU in the domain of social protection? Such a conception would allow us to move the debate from single issues to a more overarching reflection on what social Europe should look like and how this differs (or not) from conceptions of social justice at the domestic level. This question is addressed by Andrea Sangiovanni, Juri Viehoff and Rutger Claassen in their contributions to this Special Issue.
- Historical and political underpinnings: how has the political debate on (the concept of) the EU’s ‘social market economy’ developed during the process of European integration and what are the prospects for its further development? The concept of a ‘European social market economy’ is closely linked with and, ultimately, embedded in political

[‡]In terms of Esping-Andersen’s (1990) typology of welfare states, the social market economy is more difficult to locate, although arguably it fits least well with the (again, Anglo-Saxon) ‘liberal’ model.

choices and frameworks, which have evolved over time. An analysis of those political underpinnings, and the trajectory through which they developed historically is crucial for an understanding of its current state and future prospects. Such an analysis is provided in the contributions of Mathieu Segers, Laurent Warlouzet, and Maurizio Ferrera and Carlo Burelli to this Special Issue.

- Legal frameworks: what balance between free trade and social protection is embedded in the EU's 'economic constitution'? The EU is, in a fundamental way, a legal construct. The notion of an 'economic constitution' has been central in that construct. Any debate on social (market economy) Europe should therefore also analyze the way(s) in which this notion and the balance between 'social Europe' and 'free trade Europe' has been constructed in law. This legal perspective is adopted in the contributions of Niamh Nic Shuibhne, Anna Gerbrandy and Poul Kjaer to this Special Issue. To answer these questions, this Special Issue brings together scholars and contributions from different disciplines (political philosophy, history, political science and law), to allow for a dialogue that transcends disciplinary boundaries. We believe this type of interdisciplinary dialogue is crucial if we are to give meaningful answers to the fundamental questions raised in the debate on free markets and social protection in the EU.

Aims of the Special Issue

With this Special Issue, we aim to make two key contributions to the debate on a European social market economy and, more broadly, on the debate on free trade versus social Europe. First, we seek to provide conceptual reflection in an area that is in dire need of such reflection. The debate about social Europe is not just a matter of empirical and political controversies over the actual shape and possible future of the European economy. At an intellectual level, the debate is severely hampered by the lack of a conceptual framework to think and talk about what a social market economy is and what it could and should entail at the EU level. Existing scholarship on topics such as social justice, welfare states and constitutional orders tends to focus on the domestic level and sometimes also on the (general-international) global level. Reflections on what these concepts could mean specifically in the (regional) context of the EU are scarce (but see, for example, Leibfried, 2000; Scharpf, 2002, on welfare state arrangements; Neyer, 2010; Sangiovanni, 2013, on social justice in the EU).

Yet, arguably the specific context within which the debate on a *European* social market economy takes place, matters. Issues of social justice, conceptions of welfare states, and the way they are incorporated in legal frameworks are closely tied to the historical, legal, political and social backgrounds against which they operate. The EU poses at least three distinct questions and challenges in this regard.

To begin with, the EU is a framework for co-operation between states rather than a single polity in which some institution has the ultimate authority to decide on social welfare arrangements. Both normative and explanatory theories of social protection usually assume (often implicitly) that social protection arrangements are situated within a single polity, with some sort of central policy-maker. This assumption does not do justice to the realities of the EU.

In addition, the EU is built upon the legacy of (pre-)existing, highly-developed social protection arrangements in the member states. Rather than building up a social model more or less from scratch, the EU is operating in the context of member states with functioning and often highly distinct economic, welfare, health and other systems. Balancing free trade and social protection in this context is a different challenge than the one faced by domestic governments that built up social policies in the early- and mid-twentieth century.

Finally, the EU operates under specific legal and political arrangements that shape the way decisions are taken and structure co-operation among its member states. This is true both in general (as in the various institutions involved in policy-making) and in specific areas (as in the specific arrangements relating to the Economic and Monetary Union). Any meaningful analysis of social protection in the EU needs to take these arrangements into account – no matter whether they are taken as given constraints within which (social) policy-making should take place or are criticized for impeding the achievement of certain outcomes.

In consequence, the question of what citizens may expect from and owe to each other, as well as the ways in which such arrangements take political and legal shape, requires specific analysis in an EU context. This Special Issue seeks to offer such a reflection, in order to contribute to the further development of the conceptual and theoretical frameworks used to think about a European social market economy.

As a second contribution, our Special Issue aims to incite cross-disciplinary debate on the issues related to a European social market economy. The question of how to balance free markets and social protection in the EU (as well as elsewhere) involves a complex set of issues, both normative and empirical, which no discipline is capable of answering on its own. We have therefore sought to include a range of contributions that both covers the breadth of important questions related to ‘social market economy Europe’ and allows for a sufficiently in-depth analysis of each of these questions on their own terms.

As a result, the contributions in this Special Issue can be read both as individual contributions to their specific areas and as parts of a more encompassing analysis, which tries to bring different angles together. In this way, they offer both contributions to specialized debates and introductions to those debates for scholars from other disciplines. As it turns out, different disciplines have dealt with similar questions, yet from different angles and on the basis of different traditions. By bringing them together, and synthesizing them in our Conclusion, we aim to arrive at a better-informed understanding of the balance between free trade and social protection in the EU than each of the disciplines could have done on its own.

IV. The Contributions

After this Introduction, the Special Issue opens with three contributions on social justice in an EU context. *Andrea Sangiovanni* kicks off by focusing on the link between justice and legitimacy. While the normal emphasis in EU discussions is on ‘input legitimacy’ and ‘output legitimacy’, he puts forward a new notion of ‘telic legitimacy’ as a normative basis for deciding what the EU should do and argues that solidarity forms a central component of the EU’s telic legitimacy. *Juri Viehoff* takes a different angle, reflecting on the notion of equality of opportunity, in terms of access to jobs and opportunities

across the EU. His contribution develops a robust conception of equality of opportunity for citizens within a social market economy such as the EU aspires to become. Arguing from an internationalist perspective, he concludes this may require measures in terms of equalizing educational opportunities and discusses the dilemma that this leads to in the face of member states' autonomy in this respect. *Rutger Claassen* seeks to formulate an account of European duties of social justice, as typically implemented through welfare state services. After a critical examination of existing cosmopolitan and relational theories of global justice, he develops a Kantian theory of global justice which leaves an important place for member states' self-governance, but also ties them to several duties in the European context.

Then we move to the historical development and political underpinnings of a European social market economy. The historical development of the 'European social market economy' concept is traced in two contributions. *Mathieu Segers* focuses on the decades after World War II. His article reconstructs the trans-Atlantic institutional framework within which (Western) Europe's unique social market economy could emerge. This analysis offers fresh insights in the origins of the endemic tension between the increasing urge for regional (European) policy co-ordination and the trans-Atlantic mission to promote free trade and multilateralism. This tension is at the core of the process of European integration, and set in motion decisive institutional path-dependencies in early post-war Europe, especially in trade and monetary affairs. *Laurent Warlouzet* builds on this early history of European integration and takes us to the decades between the Treaty of Rome (1957) and the Treaty of Maastricht. His article attempts to gauge to what extent the EEC in this period was influenced by a French dirigist approach and by German policies inspired by ordoliberalism. These historical analyses are complemented by an analysis of the prospects for the further development of a European social market economy. Based on an analysis of the current imbalances in the EU and a survey among EU citizens, *Maurizio Ferrera* and *Carlo Burelli* highlight the potential for developing a 'solidaristic ethos' in the EU, which could serve as the political basis for a greater EU role in social protection.

As a final set of contributions, three articles take a closer look at aspects of the EU's economic constitution. *Niamh Nic Shuibhne* analyzes the (room for restrictions on the) equal treatment of workers in light of the protection of member state finances as a legitimate public interest under EU law, and the implications this has for the EU's economic constitution. *Anna Gerbrandy* considers the place of European competition law within the more narrow context of the economic constitution. She argues that European competition law is not – or cannot be – impervious to non-economic or social concerns that raise questions of constitutional embeddedness and the legitimacy of current competition law. The contribution by *Poul Kjaer* highlights the transnational roots of national political-economic systems. Because of these roots, so he argues, the current imbalances in the EU's economic constitution are not due to the 'encroachment' of transnational arrangements on national systems (which were embedded in transnational arrangements to begin with), but to changes in the prevailing economic paradigms at both the national and the transnational level.

The Special Issue ends with a concluding article by *Rutger Claassen*, *Anna Gerbrandy*, *Sebastiaan Princen* and *Mathieu Segers*, which synthesizes the individual contributions in order to come up with a more integrated understanding of the various roles the EU could play in the field of social protection.

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