

# Four Models of Protecting Citizenship and Social Rights in Europe: Conclusions to the Special Issue ‘Rethinking the European Social Market Economy’\*

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## Abstract

This article offers a synthesis of and conclusion to the contributions included in the Special Issue ‘Rethinking the European Social Market Economy’. Based on different understandings of citizenship in the European Union and the roles of the EU and its member states in providing social protection arrangements, it develops a typology of four models of the EU’s role in social protection. It then discusses the contributions to this Special Issue in light of this typology and draws a number of overarching conclusions.

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

## Introduction

In this conclusion we offer a synthesizing perspective on the idea of a social market economy in the European context. The contributions to this Special Issue have offered a variety of different frameworks and approached the desirability and feasibility of such a social market economy from different disciplinary angles. In order to systematize these contributions, we need a unifying framework, which will be offered in the first two sections. Section I starts with a discussion of the opposition between social protection and the free market, which lies at the heart of the idea of a social market economy (see also Introduction). We argue that how social protection arrangements oppose and complement the market cannot be understood without an ideal of citizenship and social rights, and how these relate to markets. Section II then presents a framework of four different models of the role of the EU in social protection. The debate over Social Market Economy Europe is essentially a debate over which model is best suited for the future of Europe.

In the remainder of this conclusion, we seek to deepen understanding of the clash between these models, through an overview of the considerations each of the papers has brought to the table: the philosophical (section III), historical-political (section IV), and legal dimensions (section V). The final section concludes by reflecting on what the contributions imply for the conceptualization and further development of the notion of a ‘European social market economy’.

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## I. The Market versus Social Protection: Understanding the Opposition

Before offering our framework of four different models of what it means to have a social market economy in Europe, we first need to explain what these models have in common. Each of them offers a different way of combining ‘the free market’ with ‘social protection’ within the European context; however, as mentioned in the Introduction, the opposition of these two terms is rather vague. Let’s unpack how we can understand the relationship between the market and social protection.

One intuitively attractive definition of the notion of social protection is that it consists of arrangements offered by a public institution that would not exist if the society was organized along the lines of a ‘pure’ market economy. Thus defined, the notion of social protection relies on a counterfactual claim. It requires us to exercise our imagination in thinking about what society would look like in the absence of social protection. A problem with this exercise of the imagination is that it is unclear whether a society could exist *without* social protection at all. In a pure market economy, who would care for the sick, who would educate our children? In the absence of arrangements supporting these functions, would a society (hence also its markets) not simply collapse? Put in different terms, social protection is often defined in terms of a *constraint* on a pure market system (if only because protection arrangements are most often paid out of taxation, hence felt as a constraint on taxpayers’ ability to spend their pre-tax income in the market). However, the functions social protection arrangements fulfill can be conceptualized as *enabling* conditions for markets to exist.<sup>1</sup> Yet, other arrangements (like the criminal justice system, or property rights protection) are also enabling in this sense, but not normally classified as offering social protection. The definition above cannot tell us what differentiates *social* protections from other enabling conditions. Another problem of this definition is that – in the absence of public institutions – markets would probably offer some level of social protection themselves; for those who are able to pay. After all, some countries do have market-based systems of health care, education etc. One may not like the unequal distributive results of such a pure market economy, but that is a different matter.

The lesson of considering this first definition, then, is that social protection cannot be opposed to the free market in a counterfactual sense, since part of what social protection does is to enable the market itself, and part of how it is done may be through ... markets themselves. Nonetheless, the intuition persists that if there is any use to the concept, it must be to ‘counterbalance the market’. How to understand that?

The Varieties of Capitalism (VoC) literature, with its central dichotomy of Coordinated Market Economies (CME) versus Liberal Market Economies (LME), may seem to offer an alternative. Here we find that at the heart of the definition of what it is to be a CME, there is a ‘non-market’ element: ‘In coordinated market economies, firms depend more heavily on non-market relationships to coordinate their endeavors with other actors and to construct their core competencies’ (Hall and Soskice, 2001, p. 27). The non-market element in this literature refers to the way firms co-ordinate their behaviours with others.

<sup>1</sup>For a defence of labour market policies in the European context as enabling conditions for the market, see Deakin and Browne, 2003. For a defence of the efficiency of non-market arrangements, see Heath, 2006. It should be noted that a definition of social protection as ‘anything necessary to compensate for market failures’ would suffer from the same defect. The categories of market failure are very broad, and compensating for market failure is a market-enabling just as much as a market-constraining exercise.

This literature focuses on collaborative instead of competitive relationships between firms and other actors (banks, labour unions, suppliers). Whatever the merits of the Varieties of Capitalism literature, for purposes of defining a social market economy, this focus on firms is less helpful, since it is about non-market ways of interacting within the system of economic production, not about social arrangements protecting citizens against the vagaries of that system itself. Moreover, the element of ‘co-ordination’ pitched against market competition is again non-discriminating: criminal justice systems also arise through co-ordinated behaviour of a group (such as a nation), pooling resources to provide such services. Of course a CME might be an environment in which such protections also flourish (the two might be compatible), but such a coincidence does not help us in understanding the core characteristic of social protection itself.

Esping-Andersen’s framework of the three worlds of welfare capitalism offers a third possible definition of social protection. In his definition, the aim of welfare states is to de-commodify, to ‘emancipate individuals from market dependence’ (Esping-Andersen, 1990, p. 22). The focus here is on providing a counterbalance to one specific market: the labour market. The aim of welfare states is that citizens ‘can freely, and without potential loss of job, income, or general welfare, opt out of work when they themselves consider it necessary’ (Esping-Andersen, 1990, p. 23). This definition is problematic for other reasons. For one, its focus on the labour market highlights certain aspects of social protection (such as income protection), but seems less relevant for other aspects. For instance, education does not seem to be primarily about making sure people can opt out of work. If anything, it prepares them for the labour market (as well as civil life in general). A second problem is that social protection can also consist of regulations of the labour market (such as health and safety standards, minimum wages, trade union protections), which do not aim to increase the ability to opt out of work, but to make the workplace itself a fairer institution. It would be remarkable to adopt a definition which rules these forms of regulation out by definitional fiat. Third and related, the purpose of de-commodification has met with strong ideological resistance, and over the last decades the welfare state has been largely re-purposed – for better or worse – to enhance labour market participation wherever possible.

While the first two definitions – focusing on social protection as ‘whatever markets cannot offer by themselves’, or as ‘co-operative relationships outside of the market’ – are insufficiently discriminating, Esping-Andersen’s definition of social protection is too specific. The reason for this is that he introduces a normative ideal (emancipation from the labour market), which is – in the several ways outlined above – not open enough to different types of social protection arrangements. The lesson of this is that to be sufficiently discriminating, we do need to posit a normative ideal, which then maps onto a coherent set of institutional arrangements designated as offering social protection. But to be sufficiently inclusive of actual social protection arrangements, we need a normative ideal which is broader and less controversial. To solve this conundrum, we propose that a definition of ‘social protection’, must consist of two parts: (i) a broad normative ideal of why social protection is needed, which allows for several competing understandings, and (ii) a diagnosis about the market’s inability to (completely) realize that ideal. Only these two elements in tandem can generate a useful definition of social protection. Moreover, we propose a specific understanding of both of these parts.

In the European context, the normative ideal is generally formulated in terms of a list of *social (and human) rights*, like rights to housing, health, education, equal treatment etc.

These rights themselves embody an ideal of *citizenship* (and rule of law) (Marshall, 1950).<sup>2</sup> Defining the categories of citizenship and social rights, their content and scope, and the policies necessary to implement them, is a politically controversial exercise, but we think these two crucial concepts themselves are necessary as a focal point for understanding what social protection is about. Any political differences about the exact understanding of what it is to be a member of a polity (citizen) which grants you social protection, or what it means to be entitled to certain social rights, presuppose an underlying agreement that these two concepts define the playing field.<sup>3</sup> Hence the meta-level question is *who* should have the definitional power over what social protection arrangements should contain and imply. This leads to the question of the role of the European Union and its member states.

The second, non-market element of our definition, lies in the idea that markets can never fully realize the ideals of citizenship; hence the indispensability of government. This inability is best cashed out in terms of *inequality*. For example, while markets can provide health care to some, they cannot provide it to all on equal terms; and the latter is what citizenship may entail. To be sure, there are many understandings of what ‘equal terms’ would mean, (only think of the debates between ‘equality of opportunity’ versus ‘equality of outcomes’). But this only points to the fact that some notion of equality is – as embedded in the notion of equality in citizenship – necessary to understand the task which social protection must perform, both *ex ante* and *ex post*, against the inequality-generating tendencies of markets. Which notion of equality one favours is a political matter up for debate between different political views of welfare state policy. Our definition here too allows and encapsulates a variety of political interpretations. This definition has the virtue of capturing not just those elements of the welfare state normally classified as public services delivered directly by public institutions, but also those regulations imposed on market actors to correct for what would otherwise be unjustifiably unequal outcomes.<sup>4</sup> The definition is closely aligned with definitions of social protection focusing on compensating for ‘social risks’ or ‘social needs’ – cashing out which the latter are requires the conceptions of citizenship and social rights mentioned above.

With these definitional matters clarified, we now proceed to defining different models of social protection. On the assumption that some level of social protection is necessary (hence leaving out pure *laissez-faire* policies), what are the options?

## II. Four Models of the EU’s Role in Social Protection

In this section, we identify four analytical models of social protection, each offering a different view of the precise relationship between the EU and its member states. Hence the focus of our four models is *not* to identify different – more generous, more modest, more

<sup>2</sup>Grounding social rights in an ideal of citizenship is not uncontroversial. Other theories would ground social rights in what it is to be an autonomous person (Rothstein, 1998) or a flourishing person (Nussbaum, 1997). For a book-length discussion of ‘reasons for welfare’, see Goodin, 1988.

<sup>3</sup>One may think that this displaces the mystery: in traditional lists of constitutional rights, what differentiates the category of social rights from those of economic, political and civil rights? After all, all of these together describe an ideal of citizenship, not just the element of social rights. A full answer to this requires more theory than can be offered here (see Claassen, 2018).

<sup>4</sup>Claus Offe comes close to the same result in his discussion of the European Model of Social Capitalism (see Offe, 2003; see also Scharpf, 2010).

conditional or unconditional – social protection regimes (as Esping-Andersen’s and similar typologies of welfare state regimes do). Rather, the focus is to offer a menu of different options of *who* decides about these regimes in a multilevel polity such as the European Union. This focus on the institutional design of the EU’s multilevel polity fits the different (multidisciplinary) dimensions concerning the operational framing of the EU’s social market economy, which is central to this Special Issue.

Following the logic developed in the previous section, the models vary along two dimensions:

- Who formulates the normative ideals for social protection? This dimension concerns the question at what level the normative aims and objectives of social protection arrangements are defined: the member state level or the EU level? This is essentially a question about citizenship: are European citizens primarily citizens of their member state or citizens of the EU? In the former case, it is up to the member states to define the appropriate level of social protection and social protection arrangements. In the latter case, it is up to the EU to make these decisions.
- Who provides social protection arrangements? Are member states the main providers of social protection arrangements or is it the EU? At one extreme, citizens obtain social protection from their member state governments, at the other extreme, the EU itself provides these arrangements.

Combined, these two dimensions yield four possible roles for the EU in social protection, which are shown in Table 1:

1. *The Passive Spectator Model.* In this model, social protection is a national prerogative, and the role of the EU is that of a passive spectator: it sits and watches as the nation states offer social protection to their citizens and does, essentially, nothing. However much the nation states integrate economically, social protection arrangements are defined and offered on a national level. Since nation states have different cultures, traditions and ideals of citizenship, they are best equipped to determine the precise quality and quantity of protections to be offered. The politically controversial nature of social protection leads, according to this model, to a subsidiarity-based argument to provide it at the lowest possible level, where citizens’ preferences and views about the matter are more homogeneous than at the European level. If the EU has an effect on social protection arrangements in member states (be it positive through increased economic growth or negative through competitive pressures), it is up to the member states to deal with those effects. This model conforms to Ruggie’s (1982) description of the post-war international economic order as

Table 1: Four Models of the EU’s Role in Social Protection.

		<i>Who decides on the normative ideals for social protection?</i>	
		<i>Member states</i>	<i>European Union</i>
Who provides social protection arrangements?	Member states	Model 1: Passive spectator	Model 3: Guarantor of social rights
	European Union	Model 2: Patron of nations	Model 4: Protector of citizens

one of ‘embedded liberalism’, which combined co-ordination of international economic liberalization with domestic social policy interventions. One salient question for this model is whether it is feasible given current levels of economic integration. To the extent that it is not, defenders of this model would have to defend rolling back economic integration itself.

2. *The Patron of Nations Model.* In this model, the starting point is the same as in the previous model: nation states should in principle be the ones deciding on levels and forms of social protection. However, this does not mean the EU can restrict itself to a role of passive spectator, for the fact of market integration may lead to problems in the integrity of national protection systems. For example, when labour market competition puts pressure on national wages, the effect of markets spills over into social policy. Hence the role of the EU must be more active: to make sure that whatever level of protection a member state chooses, it can attain that preferred outcome. This will require supra-national measures that compensate for any loss of ability on the part of member states to uphold their preferred social protection arrangements. The levels and shape of social protection arrangements are still defined at the domestic level, but the EU creates the conditions for member states to be able to bring their choices into effect.

This takes the form of compensating for the side-effects of negative integration (such as the removal of trade barriers). An example is the current (legal) regime for cross-border health care, which grants citizens the right to obtain health care in other member states but sets limits to this right in order to protect the integrity and financial stability of national health care systems. Another example would be the EU sanctioning immigration limits between member states as a response to labour market pressures. Regional funds also fit into this model, as they are a form of transfer between member states with a view to increasing territorial ‘cohesion’, thereby allowing member states to cope with the social effects of the internal market.

This model fits well with a normative perspective defended by Miriam Ronzoni, in which it is acknowledged that effective sovereignty has been lost for many nation states in a globalizing world, but where measures to pool sovereignty on a supranational level are done in the service of regaining national sovereignty (Ronzoni, 2012), not as steps towards a more cosmopolitan world order. Andrea Sangiovanni also captured the rationale behind this model when saying that it exemplifies a mode of solidarity distinct from ‘national solidarity’ (between national citizens): ‘member state solidarity’. The risks of integrating economically are uncertain, and unevenly distributed. To make economic integration politically feasible and desirable, the EU therefore has to provide mechanisms for member states adversely affected by integration (Sangiovanni, 2013, p. 228). In this model, member states are like individual citizens, who make politically controversial claims on each other. The EU acts as an arbiter, who must judge the different claims the member states make for compensation for adverse risks.

In both the passive spectator and patron-of-nations models, the EU only has a responsibility towards its member states, not (directly) towards its citizens. By contrast, in the next two models (the guarantor of social rights and protector of citizens models), the

EU assumes direct responsibility for its citizens and, hence, defines social rights with a view to ensuring a basic level of protection for all EU citizens.

3. *The Guarantor of Social Rights Model.* In this model, the EU determines a set of social rights for its citizens, but leaves it to member states to provide the necessary social protection arrangements. What basically happens in this model, is that the EU mandates its member states to attain certain (minimal) social rights: the normative ideal is determined at the EU-level, the actual provision is carried out by member states. Examples in the current set-up of the EU include the EU standards for occupational health and safety, which define, among other things, minimum safety standards and maximum working hours for workers. By adopting these types of arrangement at the EU level, the aims of (and to some extent also the approach to) social protection are defined at the EU level. In a further (as yet only hypothetical) example, the EU could for instance also introduce EU-wide minimum standards for social welfare benefits, educational systems or health insurance coverage, while still leaving it to the member states to implement these standards domestically. An approach along these lines has been put forward by Frank Vandembroucke (2017) in his notion of a 'European Social Union'. In Vandembroucke's words, 'a [European] Social Union would support national welfare states on a systemic level in some of their key functions and guide the substantive development of national welfare states – via general social standards and objectives, leaving ways and means of social policy to the Member States (...) In other words, European countries would cooperate in a union with an explicit social purpose' (Vandembroucke, 2017, pp. 4–5). This, then, follows the logic of setting normative standards at the European level, while leaving the provision of social protection to the member states.

4. *The Protector of Citizens Model.* In this model, social protection moves to the European level in a more comprehensive way. The EU would seek to protect individual citizens directly from market-based adversities they experience in their personal lives, bypassing the member states. Here the EU assumes the role traditionally fulfilled by the member states themselves, of a citizen-protecting institution. Introducing an EU health insurance scheme, EU-level unemployment benefits or a European-wide unconditional basic income – things far away from current realities – would be examples of operating under this model (Viehoff, 2017). This model is mostly hypothetical. Perhaps the system of income support for farmers is the best example of this model in the current set-up of the EU. The end point of this model would be that the EU does everything that the member states have historically done themselves, a complete harmonization of social policy which would require a fiscal basis incomparable to today's EU budget.

To simply talk about 'Social Europe' is, thus, a gross oversimplification. The four models offer very different scenarios which could all be described as encompassing a Social Europe. However, they rely on diverging conceptions of citizenship: the first two models are based on a traditional national conception of citizenship, the latter two rely on a notion of European citizenship. They also differ in terms of the estimations they make of the necessity of pooling social measures on a European level given current levels of economic integration. This is not to say that the models are mutually exclusive; we can imagine – and actually see – elements of all of them at work in

different areas of social policy. Whether this divergence is desirable is, of course, another matter. But these issues are vital to understanding what it would mean to build a European social market economy. We will now use these models to discuss the contributions to this Special Issue.

### III. Normative Conceptions: Social Justice Standards for Europe

The contributions of Sangiovanni, Viehoff and Claassen all deal with the issue of which social justice standards should govern European co-operation. The language of social justice is traditionally a focal point in political-philosophical discussions, and different views of justice directly inform views about citizenship and social rights, which we have put centre stage here in thinking about social protection.

Andrea Sangiovanni's contribution to this Special Issue takes a slightly different tack from both Viehoff's and Claassen's, which are both based in the social justice literature. Sangiovanni by contrast proceeds on the meta-level of which *types* of normative ideal we should use to think about the European social market economy. He argues against a framework based on the traditional notions of legitimacy, namely input-legitimacy (democratic, proceduralist legitimation of European decisions) and output-legitimacy (standards of effectiveness and efficiency with relation to whatever goals are set). Instead, Sangiovanni argues that European peoples need to base their discussion about integration on a standard of *telic legitimacy*, which is focused on 'the goals, values and ideals an institution should serve', or, as he puts it 'we need to explain what the EU is *for*. Why is the EU worth preserving? Why not simply dismantle it?' He then argues that, given the distributional consequences of integration, so evident since the debt and refugee crises, considerations of social justice must go into such a standard but only be part of it. On this reading, the EU's point and purpose is not only to provide a set of important public goods (for example, economic, social and cultural gains from expanded trade and economies of scale, domestic and regional stabilization [especially in newly acceding states], supranational rule of law) but also to do so in a fair way. Theories of EU justice are therefore required to specify standards of fairness for evaluating the distribution of the costs (including risks) and benefits that the EU – in its attempt to provide public goods for all EU citizens and member states – promotes via its policies. As part of a conception of telic legitimacy, such standards help us to determine whether the EU deserves our reason-based respect, whether it is, that is, legitimate. In previous writings, Sangiovanni brings in the notion of *solidarity* as a way of specifying the particular form of justice that ought to prevail in the EU, defending the argument that three forms of solidarity should operate simultaneously in the EU, namely 'national solidarity' (akin to our Passive Spectator Model), 'member state solidarity' (akin to the Patron of Nations Model) and 'transnational solidarity' (akin to the Protector of Citizens Model), (Sangiovanni, 2013). Here he argues for an open debate, where solidarity is part of telic legitimacy, next to other normative goals and values.

Juri Viehoff's contribution to this Special Issue focuses on 'equality of opportunity' as a normative ideal which he claims is one of the three constitutive parts of a social market economy (the other two being anti-commodification and redistribution of income and wealth). As he states, 'an SME will structure social institutions and regulate markets in such a way that the *process* by which markets create outcome treats each

citizen fairly. This is the domain in which claims of fair equality of opportunity come into play'. He adopts a substantive version of this ideal, which goes beyond merely formal equality of opportunity (jobs and positions are legally open to all) to include actually equal chances between equally talented people to win these positions. Formal equality of opportunity is guaranteed in Europe through legal provisions. Should the EU be in the business of guaranteeing all European citizens substantive equality of opportunity, at least for those high-level jobs for which there is an international competition between European citizens? In answering that question Viehoff distinguishes a transnationalist view of social justice from an internationalist one. The transnationalist gives a positive answer, adopting what we have above called the 'Protector of Citizens Model'. Viehoff rejects this view and instead proposes an internationalist theory, which is very much akin to our 'Patron of Nations Model'. While the primary addressees of claims of equality of opportunity remain nation-states, Viehoff argues that to make good on their responsibility, nation-states need to pool sovereignty and adopt supranational measures. Especially relevant here is the fact that member states may spend unequal resources in education, so that two equally talented European citizens from different countries will not have the same chance at the same job. The internationalist position will accept different countries' preferences over spending on their educational systems versus other priorities. To soften the tension this national autonomy brings with the ideal of equality of opportunity, Viehoff argues that the internationalist will need to push for socio-economic convergence, so that countries have at least the same opportunities to spend on educational systems. Thus Viehoff's argument provides a sophisticated in-depth study of the tensions with which the Patron of Nations Model needs to deal, in one specific area of social policy.

Rutger Claassen's contribution to this Special Issue also discusses the issue of social justice in Europe, offering a Kantian perspective which he contrasts both with cosmopolitan and relational accounts of justice. Following Kant's theory in his famous essay on 'Perpetual Peace', Claassen argues that states cannot be forced to integrate with other states, given the fact that states have already created a domain of rightful relationships between citizens, in which their autonomy can be exercised. However, this does not mean that there are not duties to other states. Claassen argues that sometimes there are duties to integrate between states, and to the extent that states do not integrate, there are duties not to exploit other states and not to impose wrongful harms on them. For the EU, the upshot of this is that social justice does not require a duty for states to pool welfare state services at the European level, but they do have duties not to exploit each other's welfare systems and to assist each other in their economic development. This can, like Viehoff's contribution, best be interpreted as a defence of the 'Patron of Nations' model to the extent that this is what member states currently seem to want; although it does not exclude a move towards the more supra-national models should states be willing and able to do so in the future.

#### **IV. Historical and Political Underpinnings: Development of and Prospects for Social Market Economy Europe**

From an historical perspective, it is key to note that the 'take-off' of European integration, and its subsequent evolution in the direction of a trans-European social market economy

rooted in both supranational institutions and specific domestic contexts of the nation-states, did not come about in a vacuum. On the contrary, it was pre-1950 multilateralism among the democracies of the wider West that formed the institutional breeding space for post-war European integration. From the early 1940s, this breeding space developed gradually, first and foremost within the framework of Anglo-American co-operation, in which Bretton Woods played a central and binding role. In his contribution to this Special Issue Mathieu Segers analyses the early stages of and pre-history to the famous take off of European integration in the form of the European Coal and Steel Community (ECSC). Mathieu Segers' contribution shows that European integration, in these earliest episodes, emerged as an element in the general quest for resilient capitalism and democracy that preoccupied the western world of the 1940s.

As Segers describes, the grand designs drawn up for post-war multilateralism, and engineered within the largely Anglo-American policy community of the 1940s shared four main characteristics. First, these plans – how far-reaching their goals might have been – remained nested in institutional forms of capitalism and constitutional democracy (for example, a radical overthrow of the existing system was never in the cards). Second, the policy-engineers involved were strongly committed to sharing societal responsibilities internationally, and promoting co-operation across national borders. In other words: it was a goal in itself to ‘multilateralize’ the policies that dominated the domestic agendas (reconstruction, economic growth, full employment, social cohesion, etc). Third, the joint western efforts in co-operation that sprang from the plan making were concentrated in technical policy domains well suited for apolitical planning: trade, finance and monetary governance. Fourth, all grand designs for the post-war capitalist order shared one primary and overarching goal: stability. Planning and multilateralism were seen as the key new instruments to realize this.

It was only from 1950 that the ‘European experiment’, which until then was a largely integral part of the general western quest, broke away somewhat and took the continental European geographical form of ‘the Six’ (France, Belgium, the Netherlands, Luxemburg, the FRG and Italy). At the same time, the US strongly pushed for Europeanization with the FRG as its linchpin. Within this setting, Ordoliberal thinking could gradually gain influence beyond the FRG and in parallel set boundaries to the ambitions of the institutional engineers of European integration. Indeed, the launch of the Schuman-plan in May 1950 happened against the backdrop of the rapidly fading promise of Atlantic Community. Crucially, this created extra momentum for a separate (continental) European effort of multilateralism in order to cope with some pressing and peculiar problems on the continent. Among these European problems the ‘German problem’ (including the issues of the Ruhr and Saar) and the management of intra-European balance of payments issues were two of the most prominent.

Segers shows how the multilateral ways in which the intra-European balance-of-payment-issues were managed have been of key importance for the institutional form and geographical shape European integration took in the 1950s: a social market economy centred around the Franco-German axis and the powerful German economy, in which the market economy (in a largely Ordoliberal way) has primacy, and ‘the social’ communicates its unique *regional* (continental) European edge and political promise.

In his contribution to this Special Issue, Laurent Warlouzet elaborates on the inherent tension between (German) Ordoliberalism and (French) ‘dirigism’ in the process of

European integration in general, and the periods beyond the 'trente glorieuses' in particular (for instance crystalizing in contradictory emphasis on either competition policy or industrial policy projects as a result of different interpretations of the Treaty of Rome). In addition, Warlouzet describes the vital meaning of this endemic tension, and its (institutional) outcomes, for the institutional evolution towards the EU's social market economy and shows that neither French dirigism nor German ordoliberalism has exclusively dominated European integration. As such, his contribution explores the origins of the mutation of the concept of the social market economy, from its ordoliberal roots, to its contemporary broader meaning.

In line with the analysis of the earliest episodes of European integration by Segers, Warlouzet concludes that German ordoliberalism, also due to its regulatory (instead of redistributive) character, has enjoyed greater influence, manifesting itself in implemented policies: competition policy and the EMU. Nonetheless, Warlouzet also notes that the influence of French dirigism has been visible first through the EEC/EU tolerance for national dirigism, yet also through certain European policies, such as support for R&D.

On the whole, however, both approaches have been mixed together over the course of European integration. In this regard, Warlouzet points to Jacques Delors' synthesis – associating market-oriented, socially-oriented and neomercantilist policies – as especially influential, because it helped the French and Germans to accept an EMU compromise (see also Warlouzet, 2018, p. 180 ff.). More broadly, the Delors synthesis helped to formulate more explicitly the European economic and social model, eventually officially encapsulated in the expression 'social market economy', which was inserted in the Treaty of Lisbon, and with a more consensual meaning than its ordoliberal roots suggested.

Moving to the current political context, Maurizio Ferrera and Carlo Burelli see significant room for a greater EU role in social protection. They argue that the development of EMU has led to a fundamental imbalance in the EU's authority structure: whereas EMU still basically 'treat[s] the Member States and their political economies as intrinsically self-determining units', the process of economic and monetary integration has led to mutual dependencies that make such 'methodological nationalism' illusory.

To overcome this, Ferrera and Burelli advocate a stronger role for the EU, premised on the acknowledgement of interdependencies and solidarity between member states and viewing the EU as a complex adaptive system. Such a 'solidaristic ethos' would provide both the foundations for and the legitimation of that stronger role. Based on a survey among EU citizens, they conclude that the potential for a solidaristic ethos is a lot greater than is often assumed. However, the specific form this ethos takes varies between EU citizens (and member states). While around 24 per cent of respondents see the EU as a 'common home', which resembles 'fully fledged political communities and their sharing arrangements', 26 per cent see it as a 'playground', which 'facilitates mutually beneficial economics exchanges in the context of a juridical/market association' and a bit over 30 per cent see the EU as an 'apartment building', 'in which national peoples, with legitimate diversities, live next to each other'.

These three models seem to resemble the 'Protector of Citizens', 'Passive Spectator' and 'Patron of Nations' models, respectively. In addition, vast majorities of respondents felt the EU 'should ensure that no citizen remain without means of subsistence' and

supported an EU funded scheme to fight poverty. These are positions that fit with the Guarantor of Rights or even the Protector of Citizens model. Ferrera and Burelli conclude that stronger ‘socioemotional leadership’ on the part of European politicians might be able to capitalize on the potential expressed by this ‘silent majority’.

## V. The Shape of the Socio-economic Constitution of the EU: The Internal Market and Beyond

The contributions of Kjaer, Nic Shuibhne and Gerbrandy to this Special Issue focus on aspects of the economic constitution of the European Union: the macro-economic constitution in Kjaer’s contribution, and the micro-economic constitution in the other two (Nic Shuibhne focuses on free movement and European citizenship law; Gerbrandy on competition law). Poul Kjaer’s contribution argues that European constitutionalism results mostly from *transnational* influences and has strengthened the macro-economic autonomy of the member states *vis-à-vis* the private, particular, interests of (parts of) society. Niamh Nic Shuibhne and Anna Gerbrandy, focusing on complementary parts of the legal regime of the internal market, at the same time hint that the ‘contradictory pairs’ (Polomarkakis, 2017, p. 424) of market objectives versus social objectives bring about a lessening of the autonomous sphere of the member states *vis-à-vis* the European Union in providing for social protection. However, instead of a simple dichotomy of the ‘market versus the social’ these articles show the ‘multiplicity of challenges’ (see Nic Shuibhne’s contribution) in any discussion on the solidification of the concept of the social market economy in the economic constitution. There are challenges both of substance – in the possibility of providing balance within European substantive law – and of competence. Kjaer shows that as to substance, in the macro-economic constitution a fundamental shift has occurred from Keynesianism to monetarism. Post financial crisis, this shift has also been grafted on member states where influence of the public-law constituted state *vis-à-vis* society was more limited; arguably this has fundamentally changed the socio-economic orientation of the EU’s macro-economic constitution and the room for diversity between member states. Nic Shuibhne and Gerbrandy engage in a substantive legal analysis which shows that substance and competence are closely connected. Nic Shuibhne shows that there are glimmers of a more subtle approach to balancing social protection and market integration in citizenship case-law, in that the Court has engaged with the constitutional goal of obtaining a social market economy in its judgment in *AGET Iraklis*. Gerbrandy details that competition law, however, seems quite stoically focused on a market-logic; the complications of the digital- and platform economy might challenge this focus, though. Nic Shuibhne and Gerbrandy argue that, in citizenship law and in competition law respectively, working out legal balancing mechanisms that fit multi-level constitutionalism might be a way forward in order to do justice to a more nuanced integration of the social market economy concept in internal market law.

In legal terminology the four models, introduced in section II of this conclusion, provide for a division of competences between member states and the European Union with regards to social protection. The three contributions discussed in this section complicate this typology by adding a focus on the (interpretation of) substantive law. With European citizenship a direct relationship between the European citizen and the EU is conceived.

Thus, Nic Shuibhne shows that some of the Court of Justice's case law could be fitted to the model of the EU as Guarantor of Social Rights, though the recipients of these rights are a limited group. Gerbrandy shows that though the language used in competition law is directed at protection of European consumers (by way of enhancing consumer welfare), which looks like fitting the ideal of the EU as Protector of Citizens, the actual situation with regard to competition law and non-market interests fits better with the model of Passive Spectator. There is room for a different legal interpretation, she argues, and room to move towards a more balanced approach. This balance would better fit the Guarantor of Social Rights model. Gerbrandy and Nic Shuibhne both argue that the constitutional context provides legal argumentation for such an approach. The line of reasoning of Kjaer, highlighting the (recent) influence of transnationality on the macro-economic arrangements within the EU, is more difficult to fit in any of the models. While the 'internal' autonomy of the member states is strengthened, it is arguably (though this is outside the scope of Kjaer's argument) limited in relation to the EU's strengthened macro-economic competences. Should the EU choose to encompass strong social protection within this macro-economic sphere, it could move into a role as a Protector of Citizens; it is questionable whether the substantive shift towards monetarism does not actually do the opposite (and thus moves the EU into the role of Passive Spectator).

In sum, the three contributions highlight the complexity of challenges in making sense of the concept of a social market economy within the economic constitution of the EU. It is shown that competence and substance are intertwined and both relevant for tracing the current shape of the economic constitution and in shaping a balanced relationship between the social and the market, fitting the social market economy concept.

## Conclusion

The aim of this Special Issue was to offer a multidisciplinary perspective on the reconceptualization of the European Union's social market economy. To this end we have included different perspectives: philosophical, historical and political, and legal and set the findings of these different perspectives against four models of the role of the European Union in social protection. As the perspectives differ, so do methodologies: some of the contributions are descriptive, others are clearly normative. This means that some authors – for example the contributions of Sangiovanni, Viehoff and Claassen, but also those of Nic Shuibhne and Gerbrandy – can be read to provide thoughts on how to answer the question as to which role the European Union *should* take, while others sketch how this role has been shaped (Warlouzet, Segers), which role the EU has found for itself (Kjaer) or what might happen if we take citizen's perspectives on the EU seriously (Ferrera and Burelli).

As we pointed out in the Introduction to this Special Issue, the concept of 'social market economy' has undergone a marked shift, from an essentially conservative approach focused on competition-enhancing market regulation in immediate post-war West Germany, to a catch-all phrase for approaches that seek to protect citizens from the vagaries of unfettered competition by offering some form of social protection. The ambiguity and lack of precision of the latter meaning may be exactly why this concept made it into

the Treaty of Lisbon. In its generality, it is acceptable to a wide range of stakeholders and ideologies within the EU.

Insofar as it gives direction to the EU's aims and role, the 'European social market economy' concept does so by demarcating itself from two extremes: a more fully market-based economy (which is often associated with the United States) and a more strongly state-led economic system (which was largely discredited in EU member states during the 1980s and 1990s). In that sense, the 'European social market economy' concept fits into well-known historical trajectories in the EU, which have been based on *ad hoc* steps to overcome diverging interests rather than some preconceived blueprint or 'finalité' of where the EU should be heading.

Nevertheless, the notion of a 'social market economy' was introduced into the EU Treaties in response to real and pressing questions about how to reconcile market integration with social protection. From that perspective, it is worthwhile to take it seriously, if not as a set answer to those questions then at least as an avenue that may lead to an answer. The contributions in this Special Issue have explored possible directions this avenue could lead us into.

What the contributions show is that, both normatively and empirically, there seems to be little room for both the Passive Spectator and the Protector of Citizens models under the label of a 'European social market economy'. Normatively, the Passive Spectator model falls short of any basic notion of 'social' in the 'social market economy' concept, reducing it to a mere 'market economy'. Nevertheless, the normative claims for a fully-fledged Protector of Citizens role are also contentious. Although such claims could be made in a straightforward cosmopolitan-universalistic argument, approaches that take into account the EU's character as a co-operation framework between nation states tend to come up with more nuanced normative ideals and conceptions.

Empirically, elements of social protection permeate EU law and policies. In that sense, the EU has moved beyond a mere market-integration scheme – although the degree to which it has done so varies between markets and issue areas. At the same time, little can be found in the way of a Protector of Citizens role for the EU. Insofar as the EU plays a role in social protection, it tends to do so indirectly, not by directly taking up social protection arrangements itself. There is little reason to expect a major change in this regard in the future, although Ferrera and Burelli offer indications of latent support for such a role among some EU citizens.

This leaves us with the Patron of Nations and Guarantor of Social Rights models as the two most viable models for a European social market economy. Interestingly, these models form each other's mirror image: while in the Patron of Nations model, the EU supports its member states in attaining social objectives, in the Guarantor of Social Rights model, the member states support the EU in attaining the social objectives it has set. In reality, these models may blur into each other, as normative ideals on the EU-level are set by member states together and EU support for member state social policies may be linked to aims and standards set at the EU level. It is within this broad field of 'multilevel' social policy-making that the notion of a European social market economy will (have to) develop.

As in previous decades, this will be more of a process of search and compromise than a straight pathway towards a preconceived end goal. The future of the European Union

social market economy will be formed by contesting each element, in public debate and in shaping the legal-constitutional framework of the EU. Nevertheless, even in the process of searching and compromising, a reflection on aims, options and implications may be useful. The articles in this Special Issue hope to inform this debate by providing insights into the multifaceted, contrasting and conflicting views on both the normative ideals underpinning a social market in the European Union and a diagnosis about the market's ability, or inability, to realize that ideal.

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