ECONSTOR
Make Your Publication Visible

A Service of
ZBW Leibniz-Informationszentrum Wirtschaft
Leibniz Information Centre for Economics

Scharpf, Fritz W.

Working Paper

The European Social Model: Coping with the challenges of diversity

MPIfG working paper, No. 02/8

Provided in Cooperation with:
Max Planck Institute for the Study of Societies (MPIfG), Cologne

Suggested Citation: Scharpf, Fritz W. (2002) : The European Social Model: Coping with the challenges of diversity, MPIfG working paper, No. 02/8

This Version is available at:
http://hdl.handle.net/10419/44265

Standard-Nutzungsbedingungen:

Die Dokumente auf EconStor dürfen zu eigenen wissenschaftlichen Zwecken und zum Privatgebrauch gespeichert und kopiert werden.

Sie dürfen die Dokumente nicht für öffentliche oder kommerzielle Zwecke vervielfältigen, öffentlich ausstellen, öffentlich zugänglich machen, vertreiben oder anderweitig nutzen.

Sofern die Verfasser die Dokumente unter Open-Content-Lizenzen (insbesondere CC-Lizenzen) zur Verfügung gestellt haben sollten, gelten abweichend von diesen Nutzungsbedingungen die in der dort genannten Lizenz gewährten Nutzungsrechte.

Terms of use:

Documents in EconStor may be saved and copied for your personal and scholarly purposes.

You are not to copy documents for public or commercial purposes, to exhibit the documents publicly, to make them publicly available on the internet, or to distribute or otherwise use the documents in public.

If the documents have been made available under an Open Content Licence (especially Creative Commons Licences), you may exercise further usage rights as specified in the indicated licence.

WWW.ECONSTOR.EU

Mitglied der Leibniz-Gemeinschaft

MAX-PLANCK-INSTITUT FÜR GESELLSCHAFTSFORSCHUNG
MAX PLANCK INSTITUTE FOR THE STUDY OF SOCIETIES

MPIfG Working Paper 02/8, July 2002

The European Social Model: Coping with the Challenges of Diversity

Fritz W. Scharpf (scharpf@mpifg.mpg.de), Max-Planck-Institute for the Study of Societies

Prof. Fritz W. Scharpf is Director at the Max Planck Institute for the Study of Societies, Cologne.

Abstract

European integration has created a constitutional asymmetry between policies promoting market efficiencies and policies promoting social protection and equality. National welfare states are legally and economically constrained by European rules of economic integration, liberalization, and competition law, whereas efforts to adopt European social policies are politically impeded by the diversity of national welfare states, differing not only in levels of economic development and hence in their ability to pay for social transfers and services but, even more significantly, in their normative aspirations and institutional structures. In response, the "Open Method of Coordination" is now applied being in the social-policy field. It leaves effective policy choices at the national level, but tries to improve these through promoting common objectives and common indicators and through comparative evaluations of national policy performance. These efforts are useful but cannot overcome the constitutional asymmetry. Hence there is reason to search for solutions which must have the character of European law in order to establish constitutional parity with the rules of European economic integration, but which also must be sufficiently differentiated to accommodate the existing diversity of national welfare regimes. The article discusses two such options, "Closer Cooperation" and a combination of differentiated "framework directives" with the Open Method of Coordination.

Zusammenfassung

Die Europäische Integration hat eine konstitutionelle Asymmetrie zwischen marktschaffender Politik und soziale Sicherheit und Gleichheit fördernder Politik erzeugt. Sozialstaatliche Politik auf der nationalen Ebene wird beschränkt durch Marktintegration, Liberalisierung und das europäische Wettbewerbsrecht. Zugleich scheitert aber eine einheitliche europäische Sozialpolitik an Unterschieden in der wirtschaftlichen Leistungsfähigkeit noch mehr an der Verschiedenartigkeit der normativen Erwartungen und der institutionellen Strukturen der nationalen Sozialsysteme. Als Antwort darauf wird nun die "Offene Methode der Koordinierung" in der Sozialpolitik angewandt. Die Methode belässt die Wahl der Policy auf nationaler Ebene, versucht aber gleichzeitig, diese durch die Definition gemeinsamer Ziele und Indikatoren sowie durch Erfolgsvergleiche zu verbessern. Diese Bemühungen sind zwar nützlich, können jedoch die konstitutionelle Asymmetrie nicht beseitigen. Es lohnt sich deshalb, nach Lösungen zu suchen, die den Status europäischen Rechts haben, um so konstitutionellen Gleichrang mit dem europäischen Recht der wirtschaftlichen Integration zu erreichen. Diese Lösungen müssen aber zugleich ausreichend differenziert sein, um die legitimen Unterschiede nationaler Wohlfahrtsregime zu respektieren. Dieses Working Paper beschäftigt sich mit zweien solcher Lösungsmöglichkeiten: "Vertiefte Zusammenarbeit" sowie eine Kombination differenzierter Rahmenrichtlinien mit der Offenen Methode der Koordinierung.

Contents

1 Social Europe: The Road Not Taken
2 European Constraints on Welfare States
3 The Dilemma of Social Europe
4 Can the Open Method of Coordination Overcome the Dilemma?
4.1 What OMC Can Do
4.2 What OMC Cannot Do
4.3 The Vulnerability of Best-Practice Models
4.4 A Positive Example
5 Can Social Europe be Europeanized?
5.1 Closer Cooperation?
5.2 Combining Framework Directives with OMC?
6 Conclusion
References

1 Social Europe: The Road Not Taken

Why is it that concern about the "European Social Model" has risen so dramatically in the last decade? Or why is it that efforts to promote employment and social policy at the level of the European Community have come so late and seem so feeble in comparison to the success stories of the Single Market and the Monetary Union? In approaching an answer, I find it useful to begin with another, historically counterfactual question: Where would we now be if, in the 1956 negotiations leading to the Treaties of Rome and the creation of the European Economic Community, French (Socialist) prime minister Guy Mollet had had his way? Mollet, supported by French industry, had tried to make the harmonization of social regulations and fiscal burdens a precondition for the integration of industrial markets. But since he had even more pressing concerns to fend for - opening European markets for French agriculture, support for former French colonies - what he got in the final package deal was merely the political commitment of other governments to increase social protection nationally (Moravcsik 1998, 108-150; Küsters 1980; Loth 2002).

So what if Mollet had won on all counts? Could attempts to harmonize social policies have succeeded or would they have blocked European integration altogether? We cannot know, of course, but we do know that in the mid 1950s European welfare states were still rudimentary in quantitative terms and structurally much more similar than they became during the following decades. Moreover, the Original Six included only member states whose welfare states had been shaped by the Bismarck model of work-based social insurance.[1] Thus, harmonization would not have been hopeless - much less difficult, at any rate, than it would now be in the face of much greater quantitative and structural heterogeneity among the present Fifteen, let alone in the EU after Eastern enlargement.

If a commitment to harmonization in 1956 could be assumed, it seems plausible that the process of European integration would have been driven by the same political demands which, under conditions of increasing affluence, pushed the rapid expansion of national welfare states in the following high-growth decades. It would have been a highly political process, in which normative disputes and class conflict would have played a significant role and in which it would also have been necessary to define the line of demarcation

between the spheres of market competition and protected social and cultural concerns at the European level. If these conflicts could be resolved, the outcome would have boosted political legitimacy and facilitated European political integration among the Original Six - but it would also have made subsequent rounds of enlargement considerably more difficult.

In any case, what could not *have* happened was the political de-coupling of economic integration and social-protection issues which has characterized the real process of European integration from Rome to Maastricht (Scharpf 1999, chapter 2).[2] It allowed economic-policy discourses to frame the European agenda exclusively in terms of market integration and liberalization, and it ensured the privileged access of economic interests to European policy processes. Even more important, however, was the constitutional asymmetry following from the selective Europeanization of policy functions. At the national level, economic policy and social-protection policy had and have the same constitutional status - with the consequence that any conflict between these two types of interests could only be resolved politically, by majority vote or by compromise. The same would have been true in the European Community if Guy Mollet had had his way. As it was, however, once the European Court of Justice had established the doctrines of "direct effect" and "supremacy," any rules of primary and secondary European law, as interpreted by the Commission and the Court, would take precedence over all rules and practices based on national law, whether earlier or later, statutory or constitutional. When that was ensured, all employment and welfare-state policies at the national level had to be designed in the shadow of "constitutionalized" European law.

Initially, it is true, that shadow was so light that it was hardly noticed. In the sixties, the integration of industrial markets did not exceed the level of a customs union, whereas in agriculture, where integration went further, the de-coupling of economic and social concerns was avoided and Common Agricultural Policy was directly dealing in some way[3] with the social problems it induced. In general, however, national systems of social protection could and did expand rapidly, just as France had been assured by her partners in Rome. In doing so, however, they also diverged structurally - and heterogeneity increased dramatically in the 1970s with the accession of Denmark, Britain and Ireland, three definitely non-Bismarckian welfare states.

The shadow of European law began to matter very much in the 1980s, however, when in response to widespread apprehensions of "Eurosclerosis" economic integration was greatly deepened and widened by the Internal Market program and the Single European Act, and it came to matter even more when the Maastricht Treaty committed member states to create the European Monetary Union in the 1990s. The Single Act had introduced qualified-majority voting, minimal harmonization and mutual recognition to remove the non-tariff barriers of nationally differing product standards; it required the liberalization of hitherto protected, highly regulated and often state-owned *service public* industries and infrastructure functions, including financial services, air, road and rail transport, telecommunications, and energy; and it extended the reach of European competition law to all national policies that could be regarded as distortions of free competition. Going even further, Monetary Union eliminated all national control over exchange rates and monetary policy while the Stability and Growth Pact imposed rigid constraints on the public sector deficits of its member states.

2 European Constraints on Welfare States

In their own terms, the efforts to complete the Internal Market and Monetary Union have succeeded beyond expectations. At the same time, however, the advance of economic integration has greatly reduced the capacity of member states to influence the course of their own economies and to realize self-defined sociopolitical goals. In order to appreciate the magnitude of the change, it is useful to remind oneself of the policy instruments which, in various combinations, were routinely used by many member states only a decade or two ago, and which are now ruled out by European law. Thus Monetary Union has not only deprived member states of the ability to adjust exchange rates in response to economic problems, but it has also replaced national monetary policy by ECB interest rates which - since they must necessarily respond to average conditions in the Eurozone at large - will be too high for economies with below-average rates of economic growth and inflation and too low for countries above the average. Hence they will further impede the recovery of sluggish economies and add to inflationary pressures in countries with high growth rates (Enderlein 2002). Yet while the inevitable misfit of European monetary policy increases the need for compensatory strategies at the national level, member states find themselves constrained in their fiscal policy by the conditions of the Stability and Growth Pact - which will punish countries suffering from slow growth, but can do nothing to discipline the governments of overheating and highly inflationary economies. At the same time, the Internal Market removed legal barriers to the free mobility of goods and services, and it eliminated controls of capital movements which had persisted well into the 1980s. European liberalization and deregulation policies have eliminated the possibility of using public-sector industries as an employment buffer; they no longer allow public utilities and the regulation of financial services to be used as tools of regional and sectoral industrial policy; and European competition policy has largely disabled the use of state aids and public procurement for such purposes.

In short, compared to the repertoire of policy choices that was available two or three decades ago, European *legal* constraints have greatly reduced the capacity of national governments to influence growth and employment in the economies for whose performance they are politically accountable. In principle, the only national options which under European law remain freely available are supply-side strategies involving lower tax burdens, further deregulation and flexibilization of employment conditions, increasing wage differentiation and welfare cutbacks to reduce reservation wages. At the same time, governments face strong *economic* incentives to resort to just such strategies of competitive deregulation and tax cuts in order to attract or retain mobile firms and investments that might otherwise seek locations with lower production costs and higher post-tax incomes from capital. By the same token, unions find themselves compelled to accept lower wages or less attractive employment conditions in order to save existing jobs. Conversely, welfare states are tempted to reduce the generosity or tighten the eligibility rules of tax-financed social transfers and social services in order to discourage the immigration of potential welfare clients.

3 The Dilemma of Social Europe

It is no wonder, therefore, that countries and interest groups that had come to rely on social regulations of the economy and generous welfare-state transfers and services are now expecting the European Union to protect the "European Social Model" and thus to re-establish the constitutional parallelism of economic ("market making") and social-protection ("market correcting") interests and policy purposes that had existed at the

national level before the take-off of economic integration - and which would have existed at the European level if France had had her way in the Treaty of Rome. So why not return to the agenda of 1956 by trying to combine the policies creating and liberalizing European markets for goods, services and capital with the European harmonization of market-correcting social regulations and taxes?

In purely economic terms, that would still be feasible, and the much maligned Common Agricultural Policy demonstrates that it is possible in practice as well. While there is presently much public commotion about the destabilizing consequences of "globalization," that would not prevent the creation and protection of Social Europe. The world economy is still much less integrated, and WTO rules are much less constraining, than is true of the Internal Market, and there is of course no global monetary union that would rule out currency adjustments and independent monetary policy at national or European levels. At the same time, the European Union is much less dependent on imports and exports than its individual member states, and with the creation of the Monetary Union it has become much less vulnerable to the vicissitudes of international capital speculation. Hence macroeconomic management, industrial policy and the social regulation and taxation of business activities, which have become economically constrained at the national level, would still be feasible policy options for the European Union. So would be the harmonization of national welfare-state policies on the basis of Treaty amendments having the same constitutional status as the provisions creating the Internal Market and the Monetary Union. This was indeed the promise of the "Social Dimension" which Jacques Delors had promoted along with the deepening of economic integration. In reality, however, the road not taken by the Original Six in 1956 was no longer open for the Fifteen in the 1990s.

It is foreclosed not by external economic constraints but by the diversity of European welfare states. There are, first, differences in economic development which had increased greatly after Southern enlargement. At the end of the 1990s, per-capita GNP in purchasing power parities was about twice as high in Denmark as it was in Greece and, excepting Slovenia, it was three to six times higher than in the Central and Eastern European accession states (Kittel 2002, table 1). Thus, social transfers and public social services at a level that is considered appropriate in the Scandinavian countries could simply not be afforded by Greece, Spain or Portugal - let alone by the candidate countries on the threshold of Eastern enlargement. If that were all, however, it might still be possible to define harmonization by reference to relative standards reflecting differences in the ability-to-pay of member states at different stages of economic development (Scharpf 1999, 175-180). Yet even though Britain and Sweden may be similarly wealthy, they could still not agree on common European policies regarding the welfare state or industrial relations.

What matters here is the divergent development of welfare-state institutions and policies that began in the 1950s and reached its high point in the early 1970s (Esping-Andersen 1990; Scharpf and Schmidt 2000a; 2000b; Huber and Stephens 2001). After its first enlargement in the 1970s, the European Community included countries belonging to each of the Esping-Andersen's (1990) "Three Worlds of Welfare Capitalism," with Denmark representing the "Scandinavian" model, Britain and Ireland the "Anglo-Saxon" type, while the Original Six conformed to the "Continental" pattern. Southern enlargement in the 1980s and Northern enlargement in the 1990s increased and solidified this heterogeneity (Ferrera et al. 2001; Begg et al. 2001). These groups of countries differ not only in the average levels of total taxation and social spending but also in the relative weights of various taxes and social security contributions on the revenue side, and of

social transfers and social services on the expenditure side (Scharpf and Schmidt 2000a, tables A 23 - A 28). Of even greater importance than these operational differences, however, are differences in taken-for-granted normative assumptions regarding the demarcation line separating the functions the welfare state is expected to perform from those that ought to be left to private provision, either in the family or by the market (Esping-Andersen 1999; Scharpf 2000; Huber and Stephens 2001; Ferrera et al. 2001).

- All three groups of countries provide means-tested social assistance to the needy, publicly financed primary and secondary education, and some form of collectively financed health care.
- In Scandinavia and on the European continent, however, the state also provides work-based and earnings-related social insurance that is meant to secure the standard of living of average-income families in case of unemployment, sickness, disability and in old age, whereas in Anglo-Saxon welfare states, workers with average and higher incomes are expected to rely primarily on private provisions for these eventualities.
- Finally, only the Scandinavian welfare states are providing universal and high-quality social services for all families and needy individuals, freeing wives and mothers from family duties while at the same time providing the public-sector jobs that have raised female participation in the labor market to record levels. In Anglo-Saxon, Continental and Southern-European countries, by contrast, these caring services are mainly left to be provided in the family or by the market.
- Differences of similar significance are also characteristic of the industrial-relations institutions of EU member states (Crouch 1993; Ebbinghaus and Visser 2000).

These structural differences have high political salience. They correspond to fundamentally differing social philosophies which can be roughly equated with the social philosophies and the postwar dominance of "liberal," "christian democratic" and "social democratic" political parties (Esping-Andersen 1990; Huber and Stephens 2001). In any case, however, citizens in all countries have come to base their life plans on the continuation of existing systems of social protection and taxation and would, for that reason alone, resist major structural changes. Voters in Britain simply could not accept the high levels of taxation that sustain the generous Swedish welfare state; Swedish families could not live with the low level of social and educational services provided in Germany; and German doctors and patients would unite in protest against any moves toward a British-style National Health System. Thus uniform European solutions would mobilize fierce opposition in countries where they would require major changes in the structures and core functions of existing welfare-state institutions, and member governments, accountable to their national constituencies, could not possibly agree on European legislation imposing such solutions.[4]

Political parties and unions promoting "Social Europe" are thus confronted with a dilemma: To ensure effectiveness, they need to assert the constitutional equality of social-protection and economic-integration functions at the European level - which could be achieved either through European social programs or through the harmonization of national social-protection systems. At the same time, however, the present diversity of national social protection systems and the political salience of these differences makes it practically impossible for them to agree on common European solutions. Faced with this dilemma, the Union has opted for a new governing mode, the Open Method of Coordination (OMC), in order to protect and promote Social Europe.

4 Can the Open Method of Coordination Overcome the Dilemma?

The new governing mode was established - *avant la lettre* - by the Maastricht Treaty (Arts. 98 - 104 TEC) for the purpose of coordinating national economic policies through "Broad Economic Policy Guidelines" and recommendations of the Council (Hodson and Maher 2001) and it was again used by the Amsterdam Treaty for developing a coordinated strategy for employment (Arts. 125-128 TEC). Without creating a new Treaty base,[5] the Lisbon Summit then introduced the generic label of OMC and resolved to apply it not only to issues of education, training, R&D and enterprise policy, but also to "social protection" and "social inclusion."[6] While procedures differ among these policy areas, all of them share two essential characteristics:

- Policy choices remain at the national level and European legislation is explicitly excluded.
- At the same time, however, national policy choices are defined as matters of common concern, and efforts concentrate on reaching agreement on common objectives and common indicators of achievement.
- Moreover, governments are willing to present their own plans for comparative discussion and to expose their performance to peer review.
- Nevertheless, coordination depends on voluntary cooperation, and there are no formal sanctions against member states whose performance does not match agreed-upon standards.

The Open Method was most fully specified for the European Employment Strategy (EES) which came to be known as the "Luxembourg Process." Its core is an iterative procedure, beginning with an annual joint report to the European Council which is followed by guidelines of the Council based on proposals from the Commission. In response to these guidelines, member governments present annual "National Action Plans," whose effects will then be evaluated in the light of comparative benchmarks by the Commission and a permanent committee of senior civil servants. These evaluations will feed into the next iteration of joint annual reports and guidelines, but they may also lead to the adoption of specific recommendations of the Council addressed to individual member states. In any case, however, "the harmonization of the laws and regulations of Member States" is explicitly excluded from the measures the Council could adopt (Art. 129 TEC). In other policy areas, procedures may be less formalized and less demanding, but the essential characteristics are the same.

The Open Method has already become the focus of much attention in the literature (e.g., Goetschy 1999; 2000; Hodson and Maher 2001; Begg et al. 2001; de la Porte and Pochet 2002a), but most academic[7] assessments are still speculative and preliminary. An official evaluation by the Commission (which, however, will be based on national studies commissioned by each member government) is presently under way. It will be interesting to see if the closer look will change the rather skeptical view expressed in last year's White Paper on European Governance (Commission 2001; Scharpf 2001), but for the time being there is no sense in trying to anticipate the findings of this investigation. Instead, I will use what is presently known about the objectives and the design of the Open Method in the areas of employment and social policy to discuss the question of whether these could, assuming optimal implementation, overcome the basic dilemma of Social Europe as I defined it above. In other words, could the Method of Open Coordination generate solutions that are less vulnerable to the legal and economic challenges of European economic and monetary integration while still maintaining the legitimate diversity of existing welfare-state institutions and policy legacies at the

national level?

4.1 What OMC Can Do

While respect for national diversity seems to be ensured through the essential voluntarism of the method which leaves effective policy choices to the member states, the first question raises issues which are generally ignored in a growing literature that seems to focus exclusively on the beneficial effects of the Open Method. The emphasis there is on policy learning through information exchange, benchmarking, peer review, deliberation and blaming and shaming (e.g., Trubek and Mosher 2001; Begg et al. 2001; Esping-Andersen et al. 2001; Visser and Hemerijck 2001). All this may be true as far as it goes. While national governments remain responsible for the adoption of specific policy solutions, they are required to focus on jointly defined problems and policy objectives, and to consider their own policy choices in relation to these "common concerns." Moreover, by exposing their actual performance to comparative benchmarking on the basis of agreed-upon indicators, to peer review and to public scrutiny, the process does in fact provide favorable conditions for "learning by monitoring" (Sabel 1994), and it may also contribute to shaming governments out of "beggar-my-neighbor" strategies that would be self-defeating if everybody did adopt them.

It is also true, however, that the expected benefits of OMC depend crucially on the willingness of those national actors who are in fact in control of policy choices to get themselves involved in processes of European coordination (Coron and Palier 2002; Jacobsson and Schmid 2002). If that is the case, European recommendations may be used as powerful arguments in national policy discourses; if not, National Action Plans may simply reflect the status quo of national policy routines while the innumerable rounds of meetings in Brussels will merely educate national liaison officers who have no influence at home. But these are not the main reservations. Even if the willingness to learn could be generally assumed, it is still necessary to ask what type of policy choices could optimally be learned under OMC conditions.

4.2 What OMC Cannot Do

In this regard, a look at the four "pillars" of the employment guidelines adopted in the Luxembourg Process is quite instructive. Apart from *Equal Opportunities*, which has a base in the commitment of the original EEC Treaty to gender equality, the other three pillars all refer to the type of supply-side policies which are favored by neo-liberal economists and which are fully compatible with maximal economic integration. Thus *Employability* is about improving the skills and increasing the work incentives of the unemployed, *Entrepreneurship* is about removing red tape and other barriers to entry affecting start-up businesses; and *Adaptability* is primarily about the deregulation of employment protection. Similarly, when the Lisbon Summit adopted a commitment to "Modernizing the European Social Model,"[8] its primary focus was, again, on education and training, skills and life-long learning - which is also the main approach toward its goal of *Social Inclusion*.[9] The one exception from this supply-side emphasis appears to be the commitment to "Modernizing Social Protection" which, apart from admonishing member states "to ensure that work pays," appears to be mainly worried about the fiscal "sustainability of pension systems" (COM (2000) 622 final).[10] Recent research confirms the impression that a major motive for creating an "Open-Method" process for pension reform was the concern that otherwise the Economic Policy Committee and

ECOFIN might unilaterally impose their own views on how to constrain the run-away deficits of public pension systems (de la Porte and Pochet 2002b). It seems fair to say, therefore, that pension reform came on the European agenda at least in part as a spillover from Monetary Union and the Stability Pact and their concern with the soundness of national fiscal commitments.[11]

In short, the selection of policy goals confirms the expectation that, under the constitutional priority of European law, policies promoted through the Open Method of Coordination must avoid all challenges to the *acquis* of the Internal Market and of Monetary Union. Even when responding to OMC guidelines, therefore, member states continue to operate under exactly the same legal and economic constraints of economic integration which limit their policy choices when they are acting individually. In order to appreciate the severity of these constraints, it is useful to think of policy options that are not, and could not be, on the agenda of OMC deliberations. Thus, if unemployment rises in the Eurozone generally, Luxembourg EES guidelines could not recommend lower ECB interest rates; if unemployment rises nationally, EES recommendations could neither relax the deficit rules of the Stability and Growth Pact nor the competition rules on state aids to depressed regions or industries. Similarly if expenditures on health care are rising, OMC could not recommend price controls or "positive lists" for pharmaceuticals; and if social services are being eroded by fiscal constraints, there is no chance for guidelines promoting either a concerted increase of taxes on capital incomes or failing that, the re-introduction of effective capital exchange controls.

The short of it is that optimistic or pessimistic assessments of the maximum potential for policy learning that could be achieved through the Open Method depend very much on the authors' estimates of the range of options that are still available at the national level under the constraints of an internationalized economy. In the literature on the comparative political economy of welfare states, this question has become the subject of a large and controversial theoretical and empirical literature (Sinn 1993; Tanzi 1995; Garrett 1998; Swank 1998; Alber and Standing 2000; Scharpf and Schmidt 2000a; Pierson 2001; Huber and Stephens 2001). It is fair to conclude that these studies by and large do not provide empirical support for expectations of a general "race to the bottom," but emphasize the path-dependent resistance of welfare-state regimes to the downward pressures of economic competition. Moreover, comparative research did identify several instances of successful policy learning and creative adjustment through which some countries were able to maintain or achieve international competitiveness and high levels of employment without sacrificing their social-policy aspirations (Hemerijck and Schludi 2000; Scharpf 2000; Huber and Stephens 2001).[12]

4.3 The Vulnerability of Best-Practice Models

It should be noted, however, that particularly successful countries usually had the benefit of favorable economic and/or institutional preconditions (Schwartz 2001), and that there are in fact more countries that are stuck in economic difficulties or that had to impose significant cutbacks on welfare-state transfers and services and to accept a considerable increase in social inequality and insecurity. Moreover, most of the studies cited look at the longer-term effects of "globalization," rather than at the more recent impact of the completion of the Internal Market and the Monetary Union in Europe. It is important to point out, therefore, that some of the most successful solutions are potentially quite vulnerable to the seemingly inexorable deepening and widening of the reach of European competition law.

Thus, the Scandinavian system of universal social services and egalitarian social protection was generally treated as a best-practice model by Esping-Andersen and his collaborators in their report to the Belgian Presidency on the "New Welfare Architecture for Europe" (Esping-Andersen et al. 2001). Moreover, in our own comparative study of Work and Welfare in the Open Economy (Scharpf and Schmidt 2000a), we concluded that in terms of economic competitiveness and fiscal viability, Scandinavian welfare states were quite secure - noting that if there should be reason for concern, their potential vulnerability would be political, hinging on the continuing willingness of citizens to pay comparatively very high rates of personal income taxes. In a different line of research, finally, it was shown that the broad political support presently enjoyed by the Scandinavian welfare state depends critically on the universalism of high-quality and publicly provided social services from which middle-class families benefit directly as well as indirectly through high levels of public-sector employment for married women (Svallfors 1997; 1999; Rothstein 1998).

But now let us assume that European competition law should be invoked to liberalize these "markets" by opening them to commercial service providers - as it has been used to crack the monopoly of public placement services and to expose national health insurance systems to reimbursement claims for unauthorized dental services or spectacles obtained abroad,[13] and as it may next be used to allow private financial services to compete with public pension systems (Leibfried and Pierson 2000). Let us further assume that in order to ensure a "level playing field," the opening of social-service markets would be accompanied by the requirement that private providers must receive public subsidies per client that match the budget allocations received by their public-sector counterparts, but would still be free to charge additional user fees.

If that should happen, the Scandinavian welfare state might evolve toward a very "American" future through a vicious cycle: Once well-to-do clients should gravitate toward private, but publicly subsidized, "premium" services, financial constraints would reduce the comparative attractiveness of public providers that would still need to serve poorer neighborhoods and "unprofitable" rural areas - with the consequence that the political support of middle-class voters would rapidly erode. Just as is true of education and health care in the United States, the end might then be a two-class system where tax-financed public institutions could provide no more than minimal services for those who cannot afford to pay for private day care, private schools, private health insurance, or private long-term care for the elderly.

This has not happened yet, and it may not happen soon. But as was true of dental care abroad, retail price maintenance for books, public transport, or publicly owned banks, the only thing that stands between the Scandinavian welfare state and the market is not a vote in the Council of Ministers or in the European Parliament, but merely the initiation of Treaty infringement proceedings by the Commission or legal action by potential private competitors before a national court that is then referred to the European Court of Justice for a preliminary opinion. In other words, it may happen any day now. Once the issue reaches the ECJ, the outcome is at best uncertain. In principle, at any rate, the Commission and the ECJ have been treating such conflicts by the logic of a lexicographic ordering: In consequence of the doctrines of "supremacy" and "direct effect," any requirement deduced from primary or secondary European law will override any national policy purposes, no matter how substantively important or politically salient in the national context.

If these legal constraints cannot be challenged, OMC may still help member states to discover more intelligent and effective ways of adjusting to the economic pressures of integrated product and capital markets. Within these limits, I would certainly not deny the usefulness of policy learning. Under the circumstances, it is indeed the one best hope for employment and social policy in Europe (Vandenbroucke 2002). But even if all this is granted, it remains true that the European Social Model that could at best emerge from these learning processes can only be a model of "competitive solidarity" (Streeck 2000). Whereas the welfare state was once about limiting the reach of market forces and about the partial "decommodification" of labor (Esping-Andersen 1990), the agenda of "Social Europe" as it must be defined through the Open Method, is about optimizing the adjustment of social protection systems to market forces and fiscal constraints and about facilitating the "recommodification" of the labor potential of persons who are threatened by "social exclusion" - which is understood to mean primarily exclusion from the labor market. If this is considered insufficient, Open Coordination by itself will not be enough.

4.4 A Positive Example

There is of course no sense in considering the deconstruction of the Internal Market and the Monetary Union. But what one might and should demand is a balancing of market-enhancing and market-correcting concerns at the European level, instead of the lexicographic ordering that presently prevails. This is not impossible, and there have indeed been cases where the Commission and the Court did strain the market logic in order to allow nationally salient solutions to stand - the compromise reached over book-price maintenance in Germany or the cautious treatment of the Swedish alcohol monopoly (Kurzer 2001) are cases in point. But in the absence of a countervailing logic derived from values or goals institutionalized at the European level, such exceptions cannot be relied upon. What would be needed instead is illustrated by a recent ECJ decision in the field of environmental policy that upheld a German statute requiring electricity networks to buy, at prices considerably above the market level, electricity that is generated (in Germany!) from renewable sources.[14]

When the EU had started to liberalize energy markets, it was widely feared that exactly these types of "green" policies would now be ruled out as protectionist distortions of competition, and the Court did in fact assume that the legislation in question constituted a potential barrier to trade under Art. 28 (ex 30) TEC. It also noted that environmental protection is not specifically listed among the allowable exceptions in Art. 30 (ex 36) TEC. In other words, from the one-sided perspective of European internal-market and competition law, the German statute is about as bad as it could be: It amounts to a restraint on trade, it discriminates against foreign suppliers, and it does not serve one of the recognized purposes that could justify barriers to trade. Nevertheless, in a surprising reversal of past decisions (Gebauer et al. 2001), the Court let the statute stand. In reaching this outcome, the decision treated the environmental purpose of the statute as a justification supported by European law - pointing (1) to international agreements on climate change to which the EU had become a party, (2) to Treaty provisions defining high levels of environmental protection as a policy goal of the EU (Arts. 6 and 174 TEC), and (3) to the fact that the liberalizing directive itself had made some allowances for environmental protection (Directive 96/92, Art. 8,3), and that the Commission had already drafted a directive promoting the use of renewable energy (200/C 311 E/22).

In other words, since the national statute was seen to be serving *European* policy purposes, the issue could be framed as a conflict between two equally legitimate

European goals, rather than between European legal requirements on the one hand and the idiosyncratic (and legally irrelevant) policy purposes of a member state on the other. Having framed the issue in this fashion, the Court then had to strike a balance, in view of the specific circumstances of the case at hand, between the relative importance of a merely "potential" restraining effect on trade[15] on the one hand, and the real environmental benefits of the program. There is no question that "Social Europe" would stand on safer legal grounds if the Court and the Commission could be required to apply a similar balancing test to potential conflicts between European internal-market and competition law and national policies promoting employment and social protection.

5 Can Social Europe be Europeanized?

It is tempting to think that the "Europeanization" of social-protection purposes could be achieved by simply adopting a Treaty amendment which, in parallel to the formula protecting environmental purposes in Article 6 TEC,[16] might perhaps read as follows:

"Employment and social protection requirements must be integrated into the definition and implementation of the Community policies and activities referred to in Article 3, in particular with a view to promoting social inclusion."

However, the differences between the environmental and social policy fields should not be underestimated. Environmental protection has become a fully developed domain of European policy whose coverage is by now nearly as inclusive as the environmental regimes of the most active member states. It is true that the German form of subsidizing the use of renewable energy was still breaking new ground but, as the Court did point out, even this sub-field was about to be cultivated by EU directives. By contrast, European "hard law" in the fields of employment and social-protection policy remains limited to minimum standards, and for the reasons discussed before, the Open Method of Coordination could not be used to create European legislation. The question is, therefore, if other governing modes could be employed or designed to achieve this purpose while still respecting the diversity of politically salient national solutions.

5.1 Closer Cooperation?

At first sight, a plausible candidate might be the option of "Closer Cooperation" (Title VII TEU) through which groups of member states could avail themselves of EC procedures to adopt and implement legislation that pertains only to members of the group (Art. 44 TEU). If this route were open, European social policy could take advantage of the fact that in spite of increasing differentiation it is still possible to identify groups of EU member states with roughly similar welfare-state institutions and policy legacies which face similar challenges, suffer from similar vulnerabilities, and tend to share similar political preferences (Scharpf and Schmidt 2000a; 2000b). As a consequence, resistance to the harmonization of welfare-state reforms ought to be considerably lower among the more homogeneous members of each group than it is within the European Union as a whole.

Unfortunately, however, the conditions specified in the Amsterdam Treaty were so restrictive that Closer Cooperation has not yet been used at all.[17] If the Treaty of Nice should ultimately be ratified in spite of the initial rejection in Ireland, some of the present constraints will be relaxed. Nevertheless, the requirement that there must be a minimum

of eight member states forming a group (Art. 43 g TEU) would still rule out the use of Closer Cooperation for either the Scandinavian or the Continental or the Southern groups of welfare states. Moreover, the Nice Treaty also tightened precisely those substantive constraints which the harmonization of social-protection rules would have to challenge: Cooperation must respect the *acquis* and may neither affect the Internal Market nor impede trade or distort competition among member states (Art. 43 c, e and f TEU). Thus, if these conditions are taken literally, the state monopoly of social services in Scandinavian welfare states could still not be defended through legislation based on Closer Cooperation.

But why this seeming hostility against Closer Cooperation? One reason, surely, is the fierce defense of the *acquis* by the Commission - and the dominance of economic integration and liberalization discourses within the Commission. But why should governments - which could overrule the Commission in the process of Treaty reform - share that aversion? One of the reasons, I suggest, is a case of unfortunate "framing." Regardless of the variety of terms that have been used since the early 1970s - "variable speed," "variable geometry," "concentric circles," "two tiers," "core" or most recently, "pioneer group" - the notion of differentiated integration has always been associated with the image of greater or lesser progress along a single dimension from less to more integration, and with the formation of solid blocks within the Community (Ehlermann 1984, 1998; Giering 1997; Walker 1998; Búrca and Scott 2000). The idea was that an "avant-garde" of member states that were able and willing to move ahead of the others toward tighter integration should be allowed to do so - which immediately mobilized the opposition of all others who resented being assigned to the rear guard and relegated to second-class citizenship in Europe. Alternatively, objections to Closer Cooperation may be based on the suspicion that rich member states might form a club of their own in order to escape from the obligations of solidarity and from the side payments exacted by the beneficiaries of "cohesion" programs whenever advances of European were on the agenda.

In a rational debate, these suspicions would of course not apply to the solutions proposed here. In social and employment policy, Closer Cooperation would be issue-specific. Rather than creating of solid blocks of countries, it would result in overlapping clusters. Thus Britain, the Netherlands, Italy and the Scandinavian countries could join forces in trying to reform their tax-financed national health systems in ways that are compatible with the increasing mobility of patients and the potential competition of service providers, whereas another group consisting of France, Belgium, Luxembourg, Germany and Austria would seek their own solutions to similar challenges facing countries with compulsory health insurance systems. In seeking to protect the provision of universal social services, the Scandinavian countries might form a group that is also joined by France, whereas in reforming Bismarckian pension systems, Sweden ought to join a group of Continental welfare states that probably would not include the Netherlands, and so on.

These solutions, clearly, would not imply either a two-class Europe or a renunciation of solidarity. If they are nevertheless rejected, the reason appears to be a more abstract but deeply held conviction that European integration would, or at any rate should, lead to greater uniformity - of political preferences, legal rules and administrative practices - among formerly diverse member states. From this perspective, Closer Cooperation appears as a regression from the ideal, a backward move toward disintegration and "Balkanization," that all good Europeans must resist.[18] What would be needed instead is a recognition of legitimate diversity within the European Union even in policy areas where strictly national solutions are no longer sufficient whereas uniform European

solutions could not be agreed upon - and would not be legitimate, if they were imposed by majority vote (Scharpf 2002).

5.2 Combining Framework Directives with OMC?

In the current debate on a European constitution, assertions of legitimate diversity are likely to be misunderstood as demands for limiting European competencies or as references to the principle of "subsidiarity." It needs to be emphasized, therefore, that at the present state of economic integration, the aspirations of "Social Europe" can no longer be realized through purely national solutions. In the *horizontal* relationship among policy areas, European social law is necessary in order to provide a legal counterweight to the supremacy of Internal Market and European competition law. At the same time, moreover, European social law also has an important role to play in the *vertical* dimension in order to control the beggar-my-neighbor incentives which will tempt individual member states once they will seriously begin to adjust their social-policy regimes to the constraints and competitive pressures of the Internal Market and the Monetary Union.[19]

Under present conditions, there is no question that such legislation could not be uniform. But even in a longer-term perspective it makes no sense to consider either the Scandinavian or the Anglo-Saxon welfare states as an avant-garde with which others ought to catch up. Their divergent shapes reflect legitimate differences of social philosophies and normative aspirations. Hence instead of striving for uniformity, European social law should allow different types of welfare states to maintain and develop their specific institutions in response to different understandings of social solidarity; it should allow the Bismarckian welfare states on the European continent to seek common solutions to their common problems; and it should support Southern countries as well as the accession states of Central and Eastern Europe in developing economically and politically viable institutions of social protection without being required to conform to a uniform European blueprint (Müller 1999; Müller et al. 1999). So if the mode of Closer Cooperation should remain unavailable, it seems important to investigate other potential courses leading toward the goal of differentiated Europeanization.

Politically least difficult would seem to be an amendment to Art. 137, 2 b TEC that would extend the authorization of directives setting *minimum standards* from the list of employment-rated rules in Art. 137, 1 a-i TEC to include "social inclusion" and the "modernization of systems of social protection" (Art. 137, 1 j and k TEC) as well. But even though it can be shown that, contrary to many expectations, the minimum standards set by social directives on employment conditions are also requiring policy changes in high-protection countries,[20] that solution would not be sufficient here. Since such minimum requirements would have to be met by all member states, they could not provide much legal protection for the social services of Scandinavian welfare states, or for that matter, for systems of compulsory health insurance and pay-as-you-go pension insurance in Bismarckian welfare states. But what if the authorization in the Treaty were formulated more broadly, allowing directives to set differentiated standards for the stabilization and improvement of national social protection systems that take account of differences in the ability-to-pay of countries at different stages of economic development[21] and of the existing institutions and policy legacies of member states?

Since a directive, unlike regulations, is binding "upon each Member State to which it is addressed" (Art. 249, para. 3 TEC), it would indeed be legally possible to adopt

substantively differing directives for different groups of member states.[22] However, since in contrast to Closer Cooperation such directives would always have to be adopted by all member states, rather than just the members of the respective groups, transaction costs could be quite high. In any case, moreover, while conditions within each group are still similar, they are by no means uniform. The organization of the Danish labor market differs considerably from that in Sweden (Benner and Bundgaard 2000); the Dutch pension system has departed considerably from the pay-as-you-go Bismarck model that still prevails more or less intact in other countries of the Continental group (Hemerijck et al. 2000), and similar differences exist among the Southern countries (Ferrera et al. 2001). Hence to obtain even the agreement of all members in each group, legal commitments would need to be formulated at a fairly high level of generality, in the nature of *framework directives*, rather than at the level of excessive detail that has become characteristic of EC legislation.

Without more, however, this solution could give rise to one or the other of two basic objections: In order to accommodate existing diversity, framework directives could be so vague as to be without legal effect and thus incapable of directing national policy choices and of disciplining competitive beggar-my-neighbor strategies. Alternatively, if such directives were nevertheless treated as being legally binding, they would delegate exceedingly wide powers of implementation to the Commission[23] which - if supported by the Court - could practically dictate the substance of welfare-state reforms in individual member states through Treaty infringement procedures. There is no reason to think that either the Council or the European Parliament would find such solutions acceptable. Conceivably, however, both of these dangers could be avoided if differentiated framework directives were combined with the Open Method of Coordination.

In that case, the vagueness of the underlying directives would matter less, since progress toward their realization would be directed by Council guidelines, whereas member states would have to present action plans and reports on their effects which would be periodically assessed by peer review. If evaluation should reveal general problems, the framework legislation could be amended and tightened. With regard to specific implementation deficits in individual countries, moreover, the Council could not merely issue recommendations but adopt legally binding decisions or authorize[24] the Commission to initiate the usual infringement proceedings. In other words: Member states would retain considerable discretion in shaping the substantive and procedural content of framework directives to suit specific local conditions and preferences. Yet if they should abuse this discretion in the political judgment of their peers in the Council, more centralized sanctions and enforcement procedures would still be available as a "fleet in being."
Compared to the Open Method of Coordination practiced without more, this combination of governing modes would increase the effectiveness of the European Employment Strategy and of Social Europe in the *vertical* dimension. Given the legally binding character of framework directives and their potential enforcement, national policy makers could no longer afford to ignore the policy discourses of Open Coordination at the European level. At the same time, however, the benefits of the Method would be maintained: Member states could design solutions fitting their specific conditions and preferences, and any recommendations addressed to them would be "contextualized" by reference to these conditions, rather than being of the one-size-fits-all variety that often characterizes OECD and IMF recommendations (Hemerijck and Visser 2001; Esping-Andersen et al. 2001). Moreover, as Open Coordination would be organized within subgroups of member states with roughly similar welfare-state institutions and policy

legacies, one should also expect that the effectiveness of policy learning would be greatly enhanced.[25]

Even more important, however, is the fact that, in the *horizontal* dimension between policy areas, the national social-protection measures so adopted would come under the umbrella of primary European law (through an amendment paralleling either Art. 3, 2 TEC or Art. 6 TEC, as suggested above) and would be implementing secondary European law (authorized in the context of Art. 137 TEC). In that respect, therefore, they would have equal constitutional status with measures implementing the European law of the Internal Market and of Monetary Union. As a consequence, conflicts between social-protection purposes and market liberalizing purposes would finally have to be resolved through a balancing test, rather than through lexicographic ordering.

6 Conclusion

To summarize: The course of European integration from the 1950s onward has created a fundamental asymmetry between policies promoting market efficiencies and policies promoting social protection and equality. In the nation state, both types policy purposes had been in political competition at the same constitutional level. In the process of European integration, however, the relationship has become asymmetric as economic policies were progressively Europeanized while social-protection policies remained at the national level. As a consequence, national welfare states are constitutionally constrained by the "supremacy" of all European rules of economic integration, liberalization, and competition law, and they must operate under the fiscal rules of the Monetary Union while their revenue base is eroding as a consequence of tax competition and the need to reduce non-wage labor costs.

In response, there have been demands to re-create a "level playing field" by Europeanizing social policies as well. In practice, however, such attempts are politically constrained by the diversity of national welfare states, differing not only in levels of economic development and hence in their ability to pay for social transfers and services but, even more significantly, in their normative aspirations and institutional structures. As a consequence, uniform European legislation in the social-policy field did not, and could not, progress beyond the level of relatively low minimal standards that are acceptable to all member states. Instead, the Lisbon European Council decided to apply the "Open Method of Coordination" in the social-policy field. The Method leaves effective policy choices at the national level, but it tries to improve these through promoting common objectives and common indicators and through comparative evaluations of national policy performance.

These efforts appear useful as far as they go. But since effective welfare-state policies will remain located at the national level, they cannot overcome the constitutional asymmetry that constrains national solutions. Since uniform European social policy is not politically feasible or even desirable, there is reason to search for solutions which must have the character of European law in order to establish constitutional parity with the rules of European economic integration, but which also must be sufficiently differentiated to accommodate the existing diversity of national welfare regimes. Since the rules of "Closer Cooperation" are presently too inflexible to serve these purposes, the article suggests that a similar effect could be achieved through a combination of differentiated "framework directives" - which, though addressed to subsets of member states, would still have the status of European law - and of the Open Method of Coordination, practiced

within groups of countries facing similar economic and institutional challenges of welfare-state reform.

References

Alber, Jens and Guy Standing (2000) "Social Dumping, Catch-Up or Convergence? Europe in a Comparative Global Context." European Journal of Social Policy Vol. 10, No. 2, pp. 99-119.

Atkinson, Tony B., Bea Cantillon, Eric Mallier and Brian Nolan (2002) Social Indicators. The EU and Social Inclusion (Oxford: Oxford University Press).

Begg, I., Berghman, J. and Chassard, Y. (2001) Social Exclusion and Social Protection in the European Union: Policy Issues and Proposals for the Future Role of the EU (London: South Bank University, European Institute).

Benner, M. and Bundgaard T. V. (2000) "Sweden and Denmark: Defending the Welfare State." In Scharpf, F. W. and Schmidt, V. A. (eds), Vol. 2, pp. 399-466.

Búrca, G. de and Scott, J. (eds) (2000) Constitutional Change in the EU. From Uniformity to Flexibility? (Oxford: Hart Publishing).

Commission of the European Communities (2001) European Governance: A White Paper. COM (2001) 428 final, Brussels.

Commission of the European Communities (2002) A Project for the European Union: Communication from the Commission. COM (2002) 247 final, Brussels.

Coron, G. and Palier, B. (2002) "Changes in the Means of Financing Social Expenditure in France since 1945." In de la Porte, C. and Pochet, P. (eds) (2002a), pp. 97-136.

Crouch, C. (1993) Industrial Relations and European State Traditions (Oxford: Clarendon Press).

De la Porte, C. and Pochet, P. (eds) (2002a) Building Social Europe through the Open Method of Co-ordination (Brussels: P.I.E. - Peter Lang).

De la Porte, C. and Pochet, P. (2002b) "Public Pension Reform: European Actors, Discourses and Outcomes." In de la Porte, C. and Pochet, P. (2002a), pp. 223-250.

Ebbinghaus, B. and Visser J. (2000) Trade Unions in Western Europe since 1945 (London: Macmillan).

Ehlermann, C.-D. (1984) "How Flexible Is Community Law? An Unusual Approach to the Concept of 'Two Speeds'." Michigan Law Review, Vol. 82, pp. 1274-1293.

Ehlermann, C.-D. (1998) "Differentiation, Flexibility, Closer Co-Operation. The New Provisions of the Amsterdam Treaty." European Law Journal, Vol. 4, pp. 246-270.

Enderlein, H. (2002) "Wirtschaftspolitik in der Währungsunion. Die Auswirkungen der Europäischen Wirtschafts- und Währungsunion auf die finanz- und lohnpolitischen Institutionen in den Mitgliedsländern." Dissertation, Ms., Max Planck Institute for the Study of Societies, Cologne.

Esping-Andersen, G. (1990) The Three Worlds of Welfare Capitalism (Princeton, NJ: Princeton University Press).

Esping-Andersen, G. (1999) Social Foundations of Postindustrial Economies (Oxford: Oxford University Press).

Esping-Andersen, G., Gallie, D., Hemerijck, A. and Miles, J. (2001) "A New Welfare Architecture for Europe?" Report submitted to the Belgian Presidency of the European Union. Ms., Final version, September.

Falkner, G. (1998) EU Social Policy in the 1990s. Towards a Corporatist Policy Community (London: Routledge).

Ferrera, M., Hemerijck, A. and Rhodes, M. (2001) The Future of Social Europe. Recasting Work and Welfare in the New Economy (Oeiras: Celta).

Garrett G. (1998) Partisan Politics in the Global Economy (Cambridge: Cambridge

University Press).
Gebauer, J., Wollenteit, U. and Hack, M. (2001) "Der EuGH und das Stromeinspeisungsgesetz: Ein neues Paradigma zum Verhältnis von Grundfreiheiten und Umweltschutz?" Zeitschrift für neues Energierecht, Vol. 1, pp. 12-17.
Giering, K. (1997) "Vielfalt in Einheit - die Flexibilisierung der europäischen Integration." In Europa Institut Zürich (eds) Die Europäische Union - Wesen, Struktur, Dynamik (Zürich: Schulthess Polygraphischer Verlag), pp. 191-210.
Goetschy, J. (1999) "The European Employment Strategy: Genesis and Development." European Journal of Industrial Relations, Vol. 5, No. 2, pp. 117-137.
Goetschy, J. (2000) "The European Employment Strategy." ECSA Review, Vol. 13, No. 3, pp. 4-6.
Hemerijck, A., Unger, B. and Visser, J. (2000) "How Small Countries Negotiate Change: Twenty-Five Years of Policy Adjustment in Austria, the Netherlands, and Belgium." In Scharpf, F. W. and Schmidt, V. A. (eds), Vol. 2, pp. 175-264.
Hemerijck, A. and Visser, J. (2001) "Learning and Mimicking. How European Welfare States Reform." Ms., University of Amsterdam.
Hemerijck, A. and Schludi, M. (2000) "Sequences of Policy Failures and Effective Policy Responses." In Scharpf, F. W. and Schmidt, V. A. (eds), Vol. 1, pp. 125-228.
Héritier, A. (2001) "Market Integration and Social Cohesion: The Politics of Public Services in European Regulation." Journal of European Public Policy, Vol. 8, pp. 825-852.
Héritier, A., Kerwer, D., Knill, D., Lehmkuhl, D., Teutsch, M. and Douillet, A.-C. (2001) Differential Europe. European Union Impact on National Policy-Making (Boulder, CO: Rowman & Littlefield).
Hodson, D. and Maher, I. (2001) The Open Method as a New Mode of Governance. Journal of Common Market Studies, Vol. 39, No. 4, pp. 719-746.
Huber, E. and Stephens, J. D. (2001) Development and Crisis of the Welfare State. Parties and Policies in Global Markets (Chicago: University of Chicago Press).
Jacobsson, K. and Schmid, H. (2002) "Real Integration or just Formal Adaptation? On the Implementation of the National Action Plans for Employment." In de la Porte, C. and Pochet, P. (eds) (2002a), pp. 69-96.
Kittel, B. (2002) "EMU, EU Enlargement and the European Social Model: Trends, Challenges, and Questions." MPIfG Working Paper 02/1, Cologne.
Kurzer, P. (2001) Markets and Moral Regulation. Cultural Change in the European Union (Cambridge, MA: Cambridge University Press).
Küsters, H. J. (1980) Die Gründung der Europäischen Wirtschaftsgemeinschaft (Baden-Baden: Nomos).
Leibfried, S. and Pierson, P. (2000) "Social Policy. Left to Courts and Markets?" In Wallace, H. and Wallace, W. (eds) Policy-Making in the European Union Fourth Edition (Oxford: Oxford University Press), pp. 267-292.
Leibfried, S. and Pierson, P. (eds) (1995) European Social Policy. Between Fragmentation and Integration (Washington, D.C.: Brookings).
Loth, W. (2002) "Der Post-Nizza-Prozess und die Römischen Verträge." Integration, Vol. 25, No. 1, pp. 12-19.
Moravcsik, A. (1988) The Choice for Europe. Social Purpose and State Power from Messina to Maastricht (Ithaca, NY: Cornell University Press).
Müller, K. (1999) The Political Economy of Pension Reform in Central-Eastern Europe (Cheltenham: Edward Elgar).
Müller, K., Ryll, A., and Wagener, H.-J. (eds) (1999) Transformation of Social Security: Pensions in Central-Eastern Europe (Heidelberg: Physica-Verlag).
OECD (1994) "New Orientations for Social Policy." Social Policy Studies No. 12. Paris: OECD.

Pierson, P. (ed) (2001) The New Politics of the Welfare State (Oxford: Oxford University Press).
Rothstein, B. (1998) Just Institutions Matter: The Moral and Political Logic of the Universal Welfare State (Cambridge, MA: Cambridge University Press).
Sabel, C. F. (1994) "Learning by Monitoring: The Institutions of Economic Development." In Smelser, N. J. and Swedberg, R. (eds) The Handbook of Economic Sociology (Princeton, NJ: Princeton University Press), pp. 137-165.
Scharpf, F. W. (1988) "The Joint-Decision Trap: Lessons from German Federalism and European Integration." Public Administration Review, Vol. 66, pp. 239-278.
Scharpf, Fritz W. (1999) Governing in Europe. Effective and Democratic? (Oxford: Oxford University Press).
Scharpf, F. W. (2000) "Economic Changes, Vulnerabilities , and Institutional Capabilities." In Scharpf, F. W. and Schmidt, V. A. (eds), Vol. 1, pp. 21-124.
Scharpf, F. W. (2001) "European Governance: Common Concerns vs. The Challenge of Diversity." MPIfG Working Paper 01/6.
Scharpf, Fritz W. (2002) "Legitimate Diversity: The New Challenge of European Integration." Cahiers Européens de Sciences Po.
Scharpf, F. W. and Schmidt, V. A. (eds) (2000a) Welfare and Work in the Open Economy. Vol. 1: From Vulnerability to Competitiveness (Oxford: Oxford University Press).
Scharpf, F. W. and Schmidt, V. A. (eds) (2000b) Welfare and Work in the Open Economy. Vol. 2: Diverse Responses to Common Challenges (Oxford: Oxford University Press).
Schwartz, H. M. (2001) "The Danish 'Miracle'. Luck, Pluck, or Stuck?" Comparative Political Studies, Vol. 34, No. 2, pp. 131-155.
Sinn, S. (1993) "The Taming of Leviathan. Competition among Governments." Constitutional Political Economy, Vol. 3, pp. 177-221.
Streeck, Wolfgang 1995: Neo-Voluntarism. A New European Social Policy Regime? European Law Journal, Vol. 1, 31-59.
Streeck, Wolfgang 1997: Industrial Citizenship under Regime Competition: The Case of European Works Councils. Journal of European Public Policy, Vol. 4, 643-664.
Streeck, W. (2000) "Competitive Solidarity." In Hinrichs, K., Kitschelt, H. and Wiesenthal, H. (eds) Kontingenz und Krise. Institutionenpolitik in kapitalistischen und postsozialistischen Gesellschaften. Claus Offe zu seinem 60. Geburtstag (Frankfurt/M.: Campus), pp. 245-262.
Svallfors, S. (1997) "Worlds of Welfare and Attitudes to Redistribution - a Comparison of Eight Western Nations." European Sociological Review, Vol. 13, No. 3, pp. 283-304. Svallfors, S. (1999) "Political Trust and Attitudes Towards Redistribution." European Societies, Vol. 1, No. 2, pp. 241-268.
Swank, D. (1998) "Funding the Welfare State. Globalization and the Taxation of Business in Advanced Market Economies." Political Studies, Vol. 46, pp. 671-692.
Tanzi, V. (1995) Taxation in an Integrating World (Washington, D.C.: Brookings).
Trubek, D. M. and Mosher, J. (2001) "EU Governance, Employment Policy, and the European Social Model." Ms., University of Wisconsin-Madison, European Union Center, May.
Vandenbroucke, Frank (2002) "The EU and Social Protection: What Should the European Convention Propose?" MPIfG Working Paper 02/6.
Walker, N. (1998) "Sovereignty and Differentiated Integration in the European Union." European Law Journal, Vol. 4, pp. 355-388.
Working Group (2001) "European Commission: Involving Experts in the Process of National Policy Convergence." Report by Working Group 4a, June. http://europa.eu.int/comm/governance/areas/group8/report_en.pdf

Endnotes

1 In 1960 and among the Original Six, the GDP share of total public expenditures on social protection had varied by a ratio of 1.54-18.1 % of GDP in Germany and 11.7 % in the Netherlands. By 1965, further convergence had reduced that ratio to 1.17. By 1990 and for the Fifteen, however, the ratio had risen to 2.15-33.1% of GDP in Sweden and 15.4 % in Portugal (OECD 1994, tables 1a-1c).

2 The exception are rules against the discrimination of women in the labor market (one of Mollet's concerns that had made it into the EEC Treaty) and rules ensuring non-discrimination and the portability of social benefits for migrant workers (Leibfried and Pierson 1995).

3 I am of course not suggesting that the Franco-German compromise that shaped CAP - price support justified by the plight of small peasants but benefiting large producers - was efficient in either economic or social-policy terms (Scharpf 1988). But in that regard it was hardly worse than the compromise solutions that had prevailed nationally in Europe and elsewhere.

4 That did not prevent the adoption of minimum European standards on social and workers' rights either through Council directives or through agreements reached in the "Social Dialogue" of the peak-level organizations of capital and labor (Leibfried and Pierson 1995; Falkner 1998). But since such standards must be acceptable to all member states, they must not only be economically viable in the less wealthy countries, but also compatible with existing industrial-relations and welfare-state institutions - and hence relatively permissive (Streeck 1995; 1997).

5 The importance of a Treaty base is emphasized by Vandenbroucke (2002).

6 A very useful overview over all applications of OMC was provided in the context of preparatory work for the Commission's White Paper on European Governance by Working Group 4a (2001).

7 But see, the very positive view of Minister Vandenbroucke (2002) - whose role during the Belgian Presidency was essential for reaching agreement on common indicators for "social exclusion" (Atkinson et al. 2002).

8 Lisbon European Council, 23 and 24 March 2000. Presidency Conclusions.

9 Begg et al. (2001) suggest that the primary focus of policies for social inclusion should be on the "participatibility" of target groups - a term coined to parallel the "employability" pillar of the Luxembourg Process.

10 Similarly, Art. 126 TEC stipulates that the employment strategy must be consistent with the "broad economic policy guidelines" adopted by ECOFIN under Art. 99, 2 TEC.

11 This is not meant to deny that most member states had their own demographic and fiscal reasons for attempting to reform their pension systems. It is merely suggested that pension issues came on the European agenda when the Economic and Financial Committee threatened to treat them in the Broad Economic Policy Guidelines from a purely fiscal perspective (Vandenbroucke 2000).

12 Similar differences have been observed with regard to the impact of European liberalization policies on national regulations of service public sectors (Héritier 2001; Héritier et al. 2001).

13 ECJ, Kohll, C-158/96 (1998); ECJ, Decker, C-120/95 (1998).

14 ECJ, PreussenElektra/Schleswag, C-379/98 (2001).

15 Plaintiffs, after all, had been German firms, rather than foreign suppliers of electricity.

16 Minister Vandenbroucke (2002, 20) proposes a similar amendment that would add social protection to the clause on gender equality (Article 3, 2 TEC) which would then read as follows:
"In all the activities referred to in this Article, the Community shall aim to eliminate inequalities and to promote equality between men and women and shall take into account social protection requirements, in particular with a view to promoting

accessible and financially sustainable social protection of high quality organised on the basis of solidarity."
However, the parallelism to Art. 6 is also recognized here. It would be inserted as Art. 3, 3 TEC.

17 It would be more correct to say that examples which do in fact exist did not come about under the rules governing "Closer Cooperation." Monetary Union has become the most important one of these examples, but the "Schengen Area," even after it was brought under the Treaty, also does not include all EU member states, and the same is true of CESDP.

18 In its recent Communication to the Constitutional Convention, the Commission (2002, 17-18) goes as far as to invoke the "equality between the citizens of Europe" to support its campaign not only against existing "derogations" but also against "provisions of the treaties concerning reinforced cooperation."

19 Even if "races to the bottom" have not yet been reported in the literature, that should not provide much comfort. With the completion of the Monetary Union, the high non-wage labor costs of Bismarckian social-insurance countries have become major factors affecting international competitiveness in the exposed sectors. If a country should succeed in achieving major reductions, others would now find themselves forced to follow suit - with haphazard overall outcomes that might be much less desirable than what could be achieved through coordinated reforms.

20 Under the direction of Gerda Falkner, a series of projects is presently examining the implementation and the effects of five social directives in all fifteen member states. A description of the projects and draft reports are available on the home page of the Max Planck Institute for the Study of Societies, Cologne: http://www.mpifg.de/fo/multilevel_en.html#proj5.

21 This was suggested in Scharpf (1999, 175-180).

22 I owe this suggestion to a discussion with Gerda Falkner who, however, should not be held responsible for the way it is used here.

23 The solution would approximate the problematic ideal of a revitalized "Community Method" which was explicated in the White Paper on European Governance (Commission 2001; Scharpf 2001).

24 The flexibility of Open Coordination might be lost if the Commission could automatically resort to infringement proceedings whenever it saw the unity of European law threatened by differentiated national solutions. Thus it seems desirable to require authorization by a majority in the Council.

25 Even in the absence of framework directives, it would thus be useful to introduce a form of "differentiated Open Coordination" among groups of countries facing similar problems of social-policy reform. If successful, this might then work out as a "foot-in-the door" strategy toward the adoption of framework directives or even toward Closer Cooperation.

Copyright © 2002 Fritz W. Scharpf
No part of this publication may be reproduced or transmitted without permission in writing from the author.
Jegliche Vervielfältigung und Verbreitung, auch auszugsweise, bedarf der Zustimmung des Autors.
MPI für Gesellschaftsforschung, Paulstr. 3, 50676 Köln, Germany