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European Social Citizenship

The Future of Social Citizenship in the EU

Edited by

Maurizio Ferrera

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2. What Justifications for EU Social Rights and Social Policy¹

Maarten Keune

2.1 Introduction

In recent years, in particular since the adoption of the European Pillar of Social Rights (EPSR) there has been a considerable expansion of European social rights, social policy and related modes of financing (Keune and Pochet, 2023; Kilpatrick, 2023). The nature, implementation and outcomes of much of this expansion have been analysed in the EUSOCIALCIT Flagship Report The State of European Social Rights and Social Citizenship (Keune, 2024). The present report is more forward-looking and offers a series of proposals and recommendations as to how to further strengthen Social Europe. Expanding Social Europe is however contested terrain and there has been an on-going debate about the reasons why the EU should or should not be involved in social rights and social policy. Indeed, in the decade before the adoption of the EPSR there was very little advancement in these areas as the Barroso Commissions did not see much of a role here for the EU. And since the conception of the EU the development of Social Europe has experienced significant ups and downs.

This raises the question why the EU should be involved in the production of social rights, what the possible rationales or justifications are for the EU to take up this role. This question is all the more relevant since there are a number of reasons for this role to be limited at best. Three such reasons stand out: the fact that the Treaty includes only restricted EU competences in the social area; the importance of the subsidiarity principle in the EU; and the continued differences of opinion between the EU member states on the need for EU social rights and social policy. The latter reason may have become less important after Brexit, with the United Kingdom being the main traditional opponent of the expansion of Social Europe, but major political disagreements remain present among the 27 EU members.

Still, over time, a significant social *acquis* has developed with an increasing number of social Directives, recommendations and other soft law instruments (Aranguiz, 2022a). And with the paramount role the EPSR has acquired in recent years, the ambition of the EU seems to be to continue to enlarge the social *acquis*. Six justifications for the expansion of the body of EU social rights can be identified in the literature and political debate (see Table 3). These justifications can be divided in two groups: those that see EU social rights as an end in itself and those that see EU social rights as a means to an end.

¹ This chapter is to an important extent based on section 2 of Vandenbroucke, Keune et al (2021) and further develops the arguments of that section.

They all have their own objectives related to EU social rights. In the remainder of this chapter these justifications and their objectives will be discussed.

Table 3. Six rationales for EU social rights

	EU Social Rights as end in themselves			EU Social Rights as a means to and end		
Rationale for EU social rights	Redressing imbalances	Immanent critique	Self-standing normative approach	Functionalist	Increase legitimacy of polity building	Responding to people's demands and preferences
Objective	Adequate social rights	Adequate social rights, upward convergence	Adequate social rights, upward convergence	Improve functioning economic integration	Strengthen the legitimacy of the EU polity under construction	Strengthen legitimacy and cohesion

Source: Author's elaboration

2.2 EU social rights as an end in itself

This first set consists of three approaches that consider the creation of EU social rights an important goal in itself and necessary to guarantee adequate social rights to EU citizens. The first of the three argues for the redressing of negative integration while the other two are normative approaches, one an immanent critique of the EU itself and the other a self-standing normative approach. The latter two consider EU social rights as key to achieving upward social convergence in the EU, one of the key aims of the EPSR.

2.2.1 Redressing negative integration

A first set of arguments for EU involvement in social rights claims that European economic integration has reduced the ability of national actors to maintain strong welfare states with high social standards (Scharpf, 1998; Crouch, 2013). The Single Market, the Euro and the Stability and Growth Pact (SGP) weaken national welfare states by fostering wage and tax competitions between countries and limiting public expenditure. There is not a similar level of social integration to offset the negative impact of economic integration, and therefore, social standards are not guaranteed through EU social policies. Rather, there is a 'constitutional imbalance' (Garben, 2018) or a 'structural asymmetry' (Scharpf, 2010) between 'the market' and 'the social' in the EU legal order. Moreover, it is argued that this imbalance is reinforced by the case law of the CJEU, the austerity policies promoted by the EU in the context of the financial crisis, and by initiatives like the Better Regulation agenda- all of which prioritize the market over the social (Scharpf, 2010; Kilpatrick, 2018; Garben and Govaere, 2018).

There are various interpretations of how to redress this imbalance and ensure coherence between national and EU policies. One interpretation prioritizes the protection of national welfare states and

suggests that this is best achieved through less - rather than more- Europe, for example, by abandoning monetary integration (Höpner, 2018; Scharpf, 2016). A second view argues that this imbalance can be largely tackled by increasing the role of EU social policies. In this respect, the adoption of the EPSR has been an important advancement (Garben, 2019). Furthermore, additional and stronger social rights can potentially be fostered by a Social Compact that would imprint the importance of social policy on the courts and the legislature and would therefore lead to more balance in EU legislative action and court decisions (Barnard, 2014). At the same time, there is widespread skepticism in this approach concerning the EU's capacity to remedy the observed imbalance through EU social rights alone. They can reduce the observed imbalance to some extent and strengthen the legitimacy of the integration project, but there need to be important changes in European economic governance as well to safeguard the effective functioning of national welfare states and maintain high social standards (Keune and Pochet, 2023; Garben, 2019). For example, these changes might include measures to avoid corporate tax competition, reduce market governance or lessen the restrictions on debt and deficits in the EMU architecture.

2.2.2 Immanent critique

The starting point of an immanent critique is a 'crisis diagnosis' that the EU fails to deliver on its own 'point and purpose' and that it does not achieve some of the stated objectives of the European project. To reach these objectives, or to realize the respective underlying principles of the EU, new or improved policies at the EU level are essential. It is argued that improving the current unsatisfactory state of affairs requires the development of social rights at the EU level. These EU social rights are the expression of shared objectives with regard to the EU's social model and of the need to develop supranational social rights to effectively advance these objectives. One such fundamental objective is the pursuit of social cohesion within and between EU countries. In practical terms, this would mean the reduction of inequalities within and between countries (Vandenbroucke, 2017). This prompts the following question: can we expect inequality within and between Member States to be reduced without an EU role in the realm of social rights? Vandenbroucke (2017) argues that in an integrated market that fosters the mobility of capital and people, Member States have a shared responsibility for the social situation in each state and that the redistributive capacity of the Member States has to be protected by supranational policies, including social policy: 'A union of welfare states needs collective action with regard to principles of taxation of mobile factors (corporate taxes, wealth taxes). And it must see to it that the openness, which creates opportunities across the whole union, does not diminish the internal redistributive capacity of national welfare states. Therefore, openness must be embedded in principles of reciprocity, within and between welfare states' (ibid.: 40). The immanent critique approach hence asks whether existing policies are sufficient to achieve the EU's fundamental objectives or if the EU needs to pursue additional policies, in this case policies developing social rights. Achieving such social rights, however, requires a strong sense of common values and of common objectives between the Member States. In recent years, the EPSR has marked a new step towards such common values and objectives.

2.2.3 A self-standing normative approach

A self-standing normative approach argues that considerations of international social justice justify the development of social policy at a supranational level, and more precisely, the development of social rights. Supranational social rights can achieve social justice in ways that Member States alone cannot. This argument is initially developed independently of the existence of the EU and its 'point and purpose'. At the same time, it can consider the EU level to be an (or the) appropriate level to develop such social rights, hence EU social rights. The literature on international social justice focuses predominantly on issues of distributive justice. Distributive justice is achieved 'when entitlements to economic goods are allocated to people as they ought to be' (Van Parijs, 2007, 638). This then depends on the reigning views on the criteria for certain persons (or groups) to receive and others to provide distributive support, and the boundaries of the group within which redistribution takes place (Vandenbroucke, 2017). Distributive justice has traditionally been a domestic matter, discussed at the level of nations or cities; however, with the on-going globalization of communication and economic activity, the debate has increasingly become about international distributive justice, based partly on the argument that increasing global interdependence and interconnectedness demand global solidarity (Van Parijs, 2007). The same can be argued for EU integration. Here we can ask the questions: 'To what extent are Member States responsible for their nation's social situation, and to what extent can they count on pan-European solidarity?' (Vandenbroucke, 2017).

2.3 EU social rights as a means to an end

The second set consists of three approaches that regard EU social rights as a means to an end, allowing to achieve certain key economic or political objectives. The first is a functionalist approach regarding the relationship between social rights and the functioning of economic integration, the second focuses on legitimizing polity building and the third on responding to citizens' demands and preferences.

2.3.1 The functionalist approach

This first approach follows a functionalist logic: certain functional demands for social rights emerge from the on-going integration process in the economic sphere, i.e. from the completion of the Economic and Monetary Union but also from the Single Market and the four freedoms. It is argued that certain EU social rights are indispensable for economic integration to work. They should guarantee a certain degree of convergence in the social models of the Member States to reduce the diversity or improper functioning of national labour markets and welfare systems (Vandenbroucke, 2017). This argument appears in a number of analyses from the European Commission, which may partly explain the Commission's renewed interest in social rights and social policy. For example, the 5-presidents' report states that: 'For EMU to succeed, labour markets and welfare systems need to function well and in a fair manner in all euro area Member States. Hence, employment and social concerns must feature highly in the European Semester. Unemployment, especially long-term unemployment, is one of the main reasons for inequality and social exclusion. Therefore, efficient labour markets that promote a high level of employment and are able to absorb shocks without generating excessive unemployment are essential: they contribute to the smooth functioning of EMU as well as to more inclusive societies.' (Juncker et al, 2015, 8).

One proposal that corresponds with this argument is to remedy some of the instability of the EMU setup through a common unemployment insurance system in which Member States share (part of) the costs of short-term unemployment insurance (De Grauwe and Ji, 2017; Andor, 2014; Vandembroucke, 2020). Such a system would strengthen certain social rights, while the main objectives would be to act like an automatic stabilizer and strengthen the EMU's resilience against financial and economic shocks (Andor, 2014). This approach starts from the assumption that all Member States will suffer from an economic downturn at some point. The common unemployment insurance system would 'provide a limited and predictable short-term fiscal stimulus to economies undergoing a downturn in the economic cycle' (ibid.). This would help to uphold domestic demand and therefore economic growth in the EU and would help prevent 'repeating vicious circles of downgrades, austerity and internal devaluation in the eurozone' (ibid.). The closest to such a system was the temporary Support to mitigate Unemployment Risks in an Emergency (SURE) programme set up during the COVID-19 crisis, providing cheap loans of €98.4bn in total from the EU to Member States to finance the preservation of employment. And indeed, there have been calls to make the SURE programme a permanent one (e.g. Corti and Alcidi, 2021, Müller et al, 2022).

2.3.2 Social rights as a necessary element of polity building

This approach builds on the state-building school of political development (Bartolini, 2005; Ferrera, 2005, 2017), which argues that the EU is, to some extent, replicating the process of polity-building that nation states went through starting in the sixteenth century (Ferrera, 2017). Polity building and the preservation of a polity over time involve three constitutive elements: bounding, binding and bonding (Ferrera, 2023). Bounding refers to boundaries or borders, i.e. the external exclusion and internal confinement. These are constitutive of polity in that they bring it into existence as a recognizable space, with distinctive features. Binding concerns legitimacy in terms of authority norms (who can rule) and evaluative norms (what authorities can do, including their accountability to the social effects of policies). Bonding refers to 'the "warm" and caring dimension of both spatial closure and vertical authority' (Ferrera, 2023, 114) and the fraternisation among the members of the polity, connecting them to an 'imagined community' of fellow subjects or citizens and creating a common identity. These identities are tightly coupled to organized solidarity, building diffuse support and loyalty vis-à-vis the polity by giving all members both symbolic and material stakes in the polity (Ferrera, 2023). Starting from the bounding, binding, bonding analysis, Ferrera (2018) argues that:

[A] territorially organized collectivity cannot survive and prosper without the diffuse support of its members, i.e. a set of general and positive evaluative orientations towards the collectivity as such and its authority structure, providing diffuse support capable of motivating compliance beyond self-interest. Historically, organized solidarity has played a key role in political legitimation by nurturing positive feelings about the effectiveness and fairness of the territorial government. Just like external security and internal peace, the welfare state has gradually established itself as a basic political good, i.e. an instrument serving the purpose of facilitating social cooperation, managing conflicts, sustaining generalized compliance and thus, ultimately, 'keeping the polity together.

(Ferrera, 2018, 2-3).

Extending this argument to the EU, Ferrera argues that there is a ‘free-standing political justification’ for fostering bonding in the EU through EU social policies and expanding the EU’s role in social rights (*ibid.*). This would be crucial for the legitimacy, long-term survival and prosperity of the EU and for strengthening the bonds of its citizens and stabilizing it as a collective association/community (Ferrera, 2017).

2.3.3 Responding to citizens’ demands and preferences

A final argument legitimizing EU social rights argues that these can be a response to the demands and preferences of EU citizens and hence play a key role in fostering the legitimacy of the existence and activities of the EU and in counteracting Euroscepticism. Indeed, the EU confronts growing Euroscepticism, exemplified by the growth of anti-EU political parties, which threatens to undermine the stability of the Union (e.g. Treib, 2021). And public opinion data suggest that a large part of the EU population supports a role for the EU in the production of social rights (Gerhards et al, 2016; Eick, Burgoon, and Busemeyer, 2023). Increasing the body of EU social rights could possibly increase citizens’ support for the EU, which, in principle, could also affect their voting behaviour, reducing support for Eurosceptic parties. Recent research underlines for example that awareness of EU social policy programmes tends to result in more support for the EU (Natili et al, 2023). One condition for this would however be that the visibility of EU social policy is increased, it often remains ‘invisible’ to the citizen (*ibid.*).

2.4 Discussion

All six approaches present some compelling arguments for a role for the EU in social rights, with the exception of the Scharpf and Höpner version of the redressing negative integration approach that calls for less rather than more Europe. All other approaches make a case for more EU social policy, as an end in itself or as a means to an end. They differ substantially in the extent to which they offer specific substantive prescriptions or rather general principles or ideas. The redressing imbalances approach and the functionalist approach offer specific prescriptions on the type of rights needed to redress negative integration or foster economic integration. The other four rather offer general principles or ideas for the involvement of the EU in social rights but without a priori offering specific substantive proposals. Hence, there are six points of view from which we can consider the rationale for EU social rights, which all offer important (but by themselves insufficient) insights.

All six approaches can be of relevance depending on the policy area and the social, economic and political conditions of particular moments in time, and one is not better than the other. Also, they are not mutually exclusive. For example, the Minimum Wage Directive (2022) is first of all argued to have the objective of achieving decent living and working conditions for workers and citizens, as well as upward social convergence in this sense. This is a normative way of legitimizing the Directive, based on an immanent critique. However, the European Commission also sees clear links between higher minimum wages and economic objectives. It has argued that appropriate minimum wages support

aggregate wage growth and, as a result, domestic demand, increasing the resilience of the economy (European Commission 2020, 4). In this way, improving minimum wages is also aimed at improving the functioning of economic integration. However, while the approaches might overlap in aspects of their practical conclusions, there are important tensions between the various approaches concerning their level of analysis and scope, the primacy they give to social rights and the guidance they provide in terms of what EU social rights are required.

It can be concluded that the rationale for EU social rights will be found somewhere at a crossroads of these six approaches; together, they constitute the field of play. Rejecting one-dimensional approaches opens up the space for politics and a historicised analysis of the social role of the EU.