

The idea of a European Social Union: a normative  
introduction

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## **Abstract**

We need a clear-cut concept with regard to the social dimension of the EU: not a European Welfare State, but a European Social Union. *Why* is it necessary? First, monetary integration requires supranational stabilization instruments: stabilization implies risk-sharing and a ‘responsibility cut’. Moreover, there is a limit to the diversity of social models that can be accommodated in a monetary union. Hence, monetary integration forces upon its members a basic consensus on the social order it has to serve. The second reason *why* such a consensus is imperative refers to the need to reconcile free movement and domestic social cohesion. The EU must become a holding environment that allows Member States to be flourishing welfare states. *What* is exactly the agenda of a European Social Union? The agenda depends on normative choices. These choices have to reconnect with the point and purpose of the European project as it originally emerged, but not in an uncritical way. On a foundational level, reciprocity within and between member states is a key normative idea. On a practical level, we must reconsider the original division of labour envisaged by the European founding fathers, in which economic policy would be supranational and social policy national.

**KEYWORDS:** European Social Union; monetary union; solidarity; social Europe

# The idea of a European Social Union: a normative introduction

## 1 Introduction<sup>1</sup>

The European Union is a union of countries that aspire to be welfare states. In all Member States, whatever their social policy tradition or level of development, there is large support for core ambitions of a modern welfare state: promoting general prosperity, sustaining social cohesion, protecting vulnerable individuals and supporting education. However different European welfare states are, their national tax and benefit systems have created, to varying degrees and with varying success, a capacity for social and economic stabilisation in periods of economic stress. These automatic stabilisers are intrinsically linked with the protection of vulnerable individuals.

The founding fathers of the European project were convinced that European economic integration would contribute to the development of prosperous national welfare states, whilst leaving social policy concerns essentially at the national level. History did not prove them wrong, at least until the mid-2000s. Yet, the experience of the protracted crisis that has hit Europe forces us to reconsider the question: how can the EU be a successful union of flourishing welfare states? Both on the left and the right of the political spectrum, despite conflicting views on the exact policy mix that is needed, many would argue that the crux is to implement the right kind of economic, financial and monetary governance at EU level. This book is inspired by a different position: yes, economic, financial and monetary policies are crucial, but they cannot be isolated from the longer-term imperative to develop a social policy concept for the EU, that is, a basic consensus on the role the EU should play and the role it should not play in the domain of social policy. The argument presented in this Chapter is not that the EU should become a welfare state itself. However, restoring the social sovereignty of the Member States, with the EU strictly confining its role to economic, financial and monetary policy, is also not an option. We need a coherent conception of a ‘European Social Union’. The project that led to the publication of this book started on the basis of this idea, which is not to say that all the contributors agree with the way I develop it here.

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<sup>1</sup> I thank Robert Jan van der Veen, Helder De Schutter, Catherine Barnard, Geert De Baere, Erik Schokkaert, Chris Luigjes, Ad-Willem Dashorst, Maurizio Ferrera, and Erik De Bom for comments and criticism. The usual disclaimer applies.

I use the notion ‘Social Union’ deliberately, for three reasons. First, it invites us to propose a clear-cut concept, in contrast to the rather vague notion of ‘a Social Europe’, which often surfaces in discussions on the EU. Second, it indicates that we should go beyond the conventional call for ‘a social dimension’ to the EU. It would be wrong to assert that the EU has no social dimension today. The coordination of social security rights for mobile workers, standards for health and safety in the workplace, and some directives on workers’ rights, constitute a non-trivial *acquis* of fifty years of piecemeal progress. The EU also developed a solid legal foundation for enforcing non-discrimination among EU citizens. The notion of a European Social Union is not premised on a denial of that positive *acquis*. The next steps can build on that *acquis*. However, the next stage of development must respond to a new challenge, which is about more than ‘adding a social dimension’. Third, the emphasis on a *Social Union* is not a coincidence. A European Social Union is not a European Welfare State: it is a union of national welfare states, with different historical legacies and institutions. As explained below, a union of national welfare states requires more tangible solidarity between those welfare states as collective entities. But its primary purpose is not to organise interpersonal redistribution between individual European citizens across national borders; the main mechanisms of solidarity which the EU now needs to develop are between Member States; they should refer to insurance logics rather than to redistribution, and to support for social investment strategies. I will touch upon specific aspects of social policy for which we may have to rethink the practical application of the subsidiarity principle, both within Member States and at the level of the EU. Yet, a ‘union of welfare states’ would apply subsidiarity as a fundamental organising principle. Solidarity between Member States necessitates a degree of convergence, but convergence is not the same as harmonisation. More generally, the practice of a Social Union should be far removed from a top-down, one-size-fits-all approach to social policy-making in the Member States.

The core idea of this introductory chapter can be summarised as follows: a Social Union would support national welfare states *on a systemic level* in some of their key functions and guide the *substantive development* of national welfare states – via general social standards and objectives, leaving ways and means of social policy to the Member States – on the basis of an operational definition of ‘the European Social Model’. In other words, European countries would cooperate in a union with an explicit social purpose – hence, the expression European Social Union.

A Social Union, so conceived, is not only desirable but necessary – unless we would drop the idea that the integration project concerns welfare states with at least some shared

aspirations. To make that analysis is not to say it leads to only one definitive version of a European Social Union: depending on the normative judgements that are brought to bear, a Social Union may be a more ambitious or a less ambitious project; it can be based on different conceptions of social justice. Nor is it to say that an operational concept of a European Social Union is already on the table. We are in uncharted territory: important issues have to be clarified. An exercise in clarification has to start from three sets of basic questions. *Why* would a Social Union become an existential necessity for the European project, if that was not the case sixty years ago? *What* does it add to the agenda of the EU? And *how* would that agenda be implemented?

Sections 2 and 3 focus on the *why* question, bringing together the contributions by Deakin, De Grauwe and Ji, Andor, Feenstra and Barnard in this volume combined with arguments which I have developed elsewhere in more detail.<sup>2</sup> In his contribution to this volume, Deakin returns to the Single European Act of 1986: the deepening of the internal market implied a step change in levels of labour and capital mobility. To prevent a regression in social standards, a pan-European floor of social rights would have been a logical corollary, but such a floor of rights did not emerge in the 1990s, except for health and safety at work. My emphasis in this chapter is on two successive developments, which clearly *necessitate* a basic consensus on the European Social Model today, whatever reservations there might have been at the time of the Single European Act: on the one hand, the consequences of monetary unification (notably the need for stabilisation, as explained in Section 2), on the other hand, the consequences of enlargement (notably the need to reconcile free movement and domestic social cohesion across a heterogeneous set of Member States, as explained in Section 3). My argument, at this point, is not that these developments force upon the Member States a unique, well-defined conception of social justice. To put it more bluntly, a basic consensus on the European Social Model may well be a consensus that does not correspond to my personal conception of social justice. The argument is that the debate about the future of our social model has now inevitably shifted, in part, to the European level, for functional reasons. However, that debate is not totally open-ended if we reconnect with the original inspiration of the founding fathers of the European project: the ambition to reconcile upward convergence in prosperity across the Member States with internal social cohesion in each of the Member States (my rendering of the founding fathers' belief), delineates the contours of the debate.

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<sup>2</sup> See F. Vandenbroucke, 'The Case for a European Social Union. From Muddling Through to a Sense of Common Purpose', in B. Marin, (ed.), *The Future of Welfare in a Global Europe* (Ashgate, 2015).

In Section 4, I argue that we need a ‘theory of justice for the European Union’, that is, a conception of justice that is based on a specific understanding of the point and purpose of the Union as a multi-tiered polity. Therefore, we must revisit the original inspiration of the founding fathers and the political legitimacy that was intrinsic to the European project. I believe these political legitimacy arguments are compelling and should appeal to people with a variety of political opinions. But it would be intellectually incorrect and politically counterproductive to consider the founding fathers’ inspiration as dogma or to present arguments on political legitimacy as hard science. We must justify a return to ideas of the founding fathers and examine whether their ideas can be sustained or need amendment. We should not deny that we enter the realm of political choices.

Thus, the discussion of the *why* question starts with functional observations, indicates issues that must be addressed at the European level, and then ventures into the political. The answer to the *what* question – what is the agenda of a European Social Union? – definitely implies political choices. A key normative issue informing our political choices is how we define and demarcate ‘European solidarity’: defining and demarcating solidarity sets the agenda for a European Social Union. I explain this in Section 4. Section 4 does not provide definitive answers; it explores the issues at hand with reference to contemporary theories of distributive justice that offer a useful framework to conceptualise solidarity, insurance and redistribution. Section 4 connects with the contributions by De Schutter and Ferrera in this volume. In order to focus on the underlying normative debate, my discussion of De Schutter’s position takes it for granted that economic integration results in upward convergence of prosperity across Member States (which means that the optimistic hypothesis of the founding fathers is at least partially vindicated). I add a short Section 5, in which I briefly qualify that hypothesis. I conclude in Section 6.

This introductory chapter focuses on the *why* question and on the normative foundations of the *what* question. It does not elaborate upon the *how* question, but different chapters in this volume touch upon the *how* question (Deakin, Martinsen, Bekker, de Buck and Cerutti, Pochet and Degryse, and, from a legal perspective, Feenstra, De Baere and Gutman, Kornezov, Lenaerts and Gutiérrez-Fons). The emphasis on the legal constellation is not happenstance: a fundamental difficulty for a ‘European Social Constitution’ (using Ferrera’s expression, in his description of the different components of a European Social Union in this volume) resides in the legal legacy of the initial division of labour created by the founding fathers: the Union’s competences had to serve the purpose of economic integration, whilst leaving social policy concerns to the national level. However, as the reader will see, the

assessment of the current legal constellation differs among the scholars who contributed to this book, with some being more optimistic than others (compare, for instance, the contribution by Kornezov with the one by and Lenaerts and Gutiérrez-Fons). However, the difficulty is not just in the nature of the European Treaties, but also in the legal constellations of the Member States, as Van der Schyff points out in his contribution.

Since this chapter is about normative foundations, it does not develop policy proposals.<sup>3</sup>

## **2 The incomplete monetary union**

### *2.1 Traditional textbook analysis revisited*

A Social Union is not only desirable but necessary, unless we drop the idea that the integration project concerns welfare states with at least some shared aspirations. The ‘necessity’ argument is partly based on the *functional* implications of a monetary union. These functional implications are twofold. First, a monetary union requires systemic support for the member states, in the form of a fiscal stabilisation capacity. Second (but related), there is a limit to the diversity of national social systems that can be accommodated in a monetary union; therefore, monetary unification implies guidance with regard to the substantive developments of national welfare states in some specific domains. On the national level, stabilisation is a key feature of welfare states; stabilisation is generated by tax-and-benefit systems, in particular by unemployment insurance. Hence, there is an intrinsic link between our conception of automatic stabilisers at the Eurozone level and our conception of the EU’s role in social policy. This link necessitates a careful discussion, which goes beyond the brief of this chapter; here, I focus on some essential insights.

Well-known economic theory explains the benefits and drawbacks of monetary unification in terms of trade-offs. Members of a currency area are confronted with a trade-off

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<sup>3</sup> Policy proposals are discussed in some of the chapters that follow. See also F. Vandenbroucke with B. Vanhercke, *A European Social Union. 10 Tough nuts to crack*, (Friends of Europe, Brussels, 2014), available at: <http://www.friendsofeurope.org/quality-europe/10-tough-nuts-to-crack/> [15 December 2016]; F. Vandenbroucke and D. Rinaldi, ‘Social inequalities in Europe – The challenge of convergence and cohesion’, in Vision Europe Summit Consortium (eds.), *Redesigning European welfare states – Ways forward* (Gütersloh, 2015), available at: <http://www.delorsinstitute.eu/011-22215-Social-inequalities-in-Europe-the-challenge-of-convergence-and-cohesion.html/> [15 December 2016]; F. Vandenbroucke, ‘Automatic stabilisers for the Euro area and the European Social Model’, Tribune, Notre Europe Jacques Delors Institute, 22 September 2016, available at: <http://www.delorsinstitute.eu/011-23652-Automatic-stabilizersfor-the-Euro-area-and-the-European-social-model.html> [12 December 2016].

between symmetry and flexibility. Symmetry refers to movements in output, wages and prices. Flexibility relates to wage flexibility and interregional and international labour mobility, which determine a country's internal adjustment capacity in case of an asymmetric shock. Less symmetry necessitates more flexibility: the less symmetry there is between the countries of a single currency area – in productivity growth – the greater the required capacity for internal adaptability in order for the monetary union to be beneficial. In this traditional textbook analysis 'adaptability' is understood mainly in terms of labour mobility and/or wage flexibility. There is a second trade-off: if asymmetric shocks can be absorbed through fiscal transfers between the member states, then the need for internal flexibility is reduced. Fiscal transfers make it possible to alleviate the plight of countries hit by a negative shock. Obviously, fiscal transfers, even if they are not permanent but only temporary and reversible, require a readiness to organise solidarity among the members of the monetary union.

De Grauwe and Ji add two important qualifications to the traditional textbook analysis in their contribution to this volume. First, they argue that EMU should not only be equipped with a capacity to mitigate asymmetric shocks, but also with a capacity for intertemporal stabilisation, i.e. a capacity to smooth economic volatility over time, rather than only between countries. Smoothing business cycles over time requires the possibility to increase public debt in downturns, and decrease public debt in boom periods. In short, EMU needs to be equipped with a budgetary union that can also issue common bonds. Second, they argue that the trade-off between what budgetary union can achieve and what flexibility (or, 'structural reform' to increase flexibility, in the EU's jargon) can achieve depends crucially on the nature of the economic shocks. De Grauwe and Ji argue that when shocks are the result of business cycle movements, the way to deal with them is by stabilisation efforts, not by structural reforms for more flexibility. They also provide evidence suggesting that the biggest shocks in the Eurozone were the result of business cycle movements.

## *2.2. Automatic stabilisers in a multi-tiered polity*

Analytically, the case for a euro area stabilisation capacity is compelling; politically it is an uphill battle in today's Europe. We therefore need a comprehensive exploration of different scenarios and a thorough understanding of how they can fit into the broader challenge of developing a European Social Union. In this volume, Andor presents arguments in favour of a European unemployment benefit scheme. I elaborate on this particular proposal, because it highlights issues of social convergence and issues of solidarity that are important to my

overall argument in this chapter. One should note that the basic proposal comes in different variants: a European unemployment benefit scheme could either be a ‘genuine’ European unemployment insurance or a system of ‘reinsurance’. The difference between a genuine European unemployment insurance and reinsurance is twofold. First, in a genuine European scheme, individual citizens who are short-term unemployed receive an individual benefit from a European fund, whilst a model of reinsurance would operate with lump sum budgetary transfers between a European fund and Member States. Second, in a model of reinsurance, Member States would receive transfers on the basis of a trigger (based on the deviation of current short-term unemployment in the Member State from its past trajectory in that same Member State); in a genuine European unemployment scheme, there would be no trigger for the scheme to start disbursing money (any short-term unemployed individual in a participating Member State receives a benefit, independent of the level or growth rate of short-term unemployment in that Member State).

Unemployment insurance raises well-known issues of moral hazard. In essence, moral hazard occurs when a person (or an institution) takes more risks because someone else (or another institution) bears the costs of those risks. Moral hazard means that the insured individual can manipulate the liability that the insurer incurs, by influencing the frequency and/or the importance of the insured risk. In other words, the risk is influenced by behaviour and choice – or, in the case of institutional actors, influenced by deliberate policies – rather than being purely exogenous and beyond control. Moral hazard can be reduced by a careful design of the insurance policy, but it can never be totally excluded: it is inevitable, to some extent, in any context of insurance. The possibility for Member States that benefit from a European unemployment benefit scheme (whether it takes the form of a genuine European unemployment insurance or reinsurance) to become lax with regard to the activation of the unemployed and (re)employment policies at large, generates an obvious risk of institutional moral hazard; this risk cannot be dismissed out of hand. Therefore, the quality of national activation policies is a matter of common concern in a group of countries organising a common unemployment scheme in one or other way. This caveat about institutional moral hazard is important for our thinking about fiscal stabilisation at the European level, but we should be aware that moral hazard is, in any system of insurance, a price to pay to obtain risk pooling and stabilisation. Hence, the objective is to mitigate the trade-off between stabilisation capacity and institutional moral hazard: for desirable levels of stabilisation capacity, institutional moral should be minimised.

In this respect, we can draw lessons from the experience with unemployment insurance and activation policies in existing multi-tiered polities, such as the United States, Canada, Germany, Switzerland, Austria or Belgium.<sup>4</sup> Studying multi-tiered systems leads to interesting conclusions with regard to institutional moral hazard in an eventual European unemployment benefit scheme. First, such a scheme should incorporate financial mechanisms to avoid permanent transfers and minimise the possibility for any country to be, on average, a net beneficiary of the scheme. Second, in addition to such financial mechanisms, in order to fight different forms of institutional moral hazard when unemployment risks are pooled at the European level, Member States should comply with minimum requirements with regard to both the ‘activation quality’ and the ‘stabilisation quality’<sup>5</sup> of their unemployment benefit system. That is the reason why a European unemployment benefit scheme requires a significant degree of convergence in the national regulation of unemployment, both in the genuine model and the reinsurance model. However, the governance method and the flexibility with which convergence is pursued in these models are very different, and the way in which they can respond to the challenge of institutional moral hazard also differs.<sup>6</sup> Reinsurance not only allows more flexibility and offers more scope to mitigate the risk of institutional moral hazard; it also seems a less complicated option. Politically, the reinsurance option may be more true to the idea that a European Social Union should be a ‘union of welfare states’, rather than a European welfare state.

It is by now generally accepted that design failures of EMU made it unstable and fragile: it lacked not only a banking union, but also a mechanism for fiscal stabilisation, as recognised by the Five President’s report on *Completing Europe’s Economic and Monetary Union*.<sup>7</sup> Both with regard to banking union and fiscal stabilisation, the Five President’s Report signals an acute awareness that the EU needs to organise more solidarity in the Eurozone. The

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<sup>4</sup> F. Vandenbroucke and C. Luigjes, *Institutional moral hazard in the multi-tiered regulation of unemployment and social assistance benefits and activation. A summary of eight country case studies* (Centre for European Policy Studies, 2016), available at: <https://www.ceps.eu/system/files/SR%20No%20137%20Moral%20hazard%20in%20multi-tiered%20reg%20of%20UB.pdf> [15 December 2016].

<sup>5</sup> The extent to which incomes are smoothed when an unemployment shock occurs determines the stabilisation quality of unemployment insurance; the generosity of short-term unemployment benefits and the coverage of the system are key parameters in this respect. Segmented labour markets in which a significant part of the labour force is poorly insured against unemployment reduce the stabilisation quality; Deakin underscores the problem of labour market segmentation in his analysis of the Eurozone’s problems.

<sup>6</sup> See Vandenbroucke, n3 above.

<sup>7</sup> The report, published in June 2015, was drafted by the Presidents of five major EU Institutions: the European Commission, The European Council, the European Central Bank, the Eurogroup and the European Parliament. See J.C. Juncker, ‘The Five Presidents’ Report: Completing Europe’s Economic and Monetary Union, report in close cooperation D. Tusk, J. Dijsselbloem, M. Draghi and M. Schulz’ (2015), available at: [http://ec.europa.eu/priorities/sites/beta-political/files/5-presidents-report\\_en.pdf](http://ec.europa.eu/priorities/sites/beta-political/files/5-presidents-report_en.pdf) [30 March 2016].

organisation of solidarity requires mutual trust. Solidarity on the basis of mutual insurance is a rational option, but even the most rational individuals will not engage in mutual insurance, if they do not trust each other sufficiently. In the context of a European unemployment benefit scheme the ‘minimum requirements’ mentioned in the previous paragraph are key to create trust. But European solidarity requires mutual trust with regard to the quality of the social fabric in the Member States in a more general sense, including with regard to their capacity to deliver on competitiveness and sound public finances. Exposure to market forces has not in itself produced ‘discipline’ in the monetary union with respect to competitiveness and public finance. On the contrary, we witnessed asymmetrical developments and divergence, rather than symmetry and convergence. Relative competitiveness deteriorated significantly in some countries and improved in other countries, thus creating huge economic imbalances in the Eurozone. Since the invisible hand of the market does not deliver, EMU needs a visible hand that pursues symmetry, notably with regard to wage increases. Moreover, Member States need labour market institutions that can coordinate wage increases: the visible hand must be effective.

### 2.3. Wage coordination and the social model

Arguing that a visible hand is necessary, does not mark a departure from current EU *principles*, but rather from current *practice*. The Six-Pack and the Macroeconomic Imbalance Procedure<sup>8</sup> are deliberate attempts to strengthen the visible hand of European policy makers. But current practice has put a one-sided emphasis on adjustment in Member States with current account deficits and has not addressed the role of Member States with surpluses. Symmetry should be organised instead around a common benchmark, for instance, a ‘golden

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<sup>8</sup> The Six-Pack is a set of European legislative measures, bundled into a ‘six pack’ of regulations introduced in 2010-2011, to introduce greater macroeconomic surveillance. The Macroeconomic Imbalance Procedure was part of the Six-Pack; it is a specific surveillance mechanism that aims to identify potential risks early on, prevent the emergence of harmful macroeconomic imbalances and correct the imbalances that are already in place. For the legal basis of the Six-Pack, see: Regulation 1173/2011 of the European Parliament and of the Council of 16 November 2011 on the effective enforcement of budgetary surveillance in the euro area, [2011] OJ L 306/1; Regulation 1174/2011 of the European Parliament and of the Council of 16 November 2011 on enforcement measures to correct excessive macroeconomic imbalances in the euro area, [2011] OJ L 306/8; Regulation 1175/2011 of the European Parliament and of the Council of 16 November 2011 amending Council Regulation (EC) No 1466/97 on the strengthening of the surveillance of budgetary positions and the surveillance and coordination of economic policies, [2011] OJ L 306/12; Regulation 1176/2011 of the European Parliament and of the Council of 16 November 2011 on the prevention and correction of macroeconomic imbalances, [2011] OJ L 306/25; Council Regulation 1177/2011 of 8 November 2011 amending Regulation (EC) No 1467/97 on speeding up and clarifying the implementation of the excessive deficit procedure, [2011] OJ L 306/33; and Council Directive 2011/85/EU of 8 November 2011 on requirements for budgetary frameworks of the Member States, [2011] OJ L 306/41.

rule' linking national wage increases to national productivity increases. Such a golden rule would avoid both excessive wage moderation in some countries and excessive pay increases in other countries. A further desirable departure from current practice is to acknowledge the positive results from coordinated wage bargaining within Member States, as Deakin emphasises in his contribution to this book. Instead of encouraging the decentralisation of collective bargaining, the EU should take steps to encourage and facilitate bargaining coordination; this presupposes a positive stance vis-à-vis social dialogue at large, one which has been little in evidence in recent years (on social dialogue in the EU, see the chapters by De Buck and Cerutti and by Pochet and Degryse in this volume).

Bearing in mind these observations on the importance of adequate unemployment insurance and the positive role of coordinated bargaining and social dialogue within Member States and across the Eurozone, we can now return to the long-term trade-off between symmetry and flexibility that is seen as essential to the sustainability of a monetary union. De Grauwe and Ji argue that flexibility is not the right answer to business cycle shocks affecting the monetary union; nevertheless, flexibility of labour markets is important to deal with permanent shocks of an exogenous nature. Even if they have been less prominent in recent times, according to De Grauwe and Ji's data, permanent shocks cannot be excluded. What kind of flexibility is needed then, to facilitate the necessary reallocation of labour and capital? Flexibility is a container concept. A 'high road' to labour market flexibility can be placed in opposition to a 'low road' to labour market flexibility. The high road is based on a highly-skilled and versatile labour force, adequate unemployment insurance and activation and training policies that facilitate transitions. The low road is based on mere labour market deregulation and easy hiring and firing. At first sight, it might be thought irrelevant which of these flexibility models are adopted as pillars of a sustainable monetary union: i.e. they can be seen as functionally equivalent models as long as the outcome is economic adaptability. However, apart from the social costs that are attached to certain types of flexibility, not all systems of labour market regulation deliver equally well with regard to wage coordination and the quality of unemployment insurance. The members of the monetary union should perform well in each of these dimensions of labour market regulation. The way in which labour market flexibility, wage coordination and unemployment insurance are combined in national labour market institutions is a matter of common concern in a monetary union: these choices cannot be relegated totally to the national domain. That does not mean that the EU should counsel Member States in detail on the organisation of their labour markets. But there is a limit to the social diversity that can be accommodated in a monetary union, not with

regard to the institutional details of labour markets, but with regard to their basic features. This is not to say that the EU can *impose* limits to national diversity; the degree of convergence that is desirable can be promoted by more or less flexible approaches to governance (this is a domain in which the EU is acquiring considerable experience; see Bekker's contribution in this volume on the flexibility of the actual European Semester in the governance of unemployment, wage-setting and pensions).

Whatever the governance method, neither flexibility nor fiscal transfers, nor systems of wage coordination or unemployment insurance, are socially neutral choices. Hence, the long-term trade-offs implied by monetary unification force upon the participating countries a consensus on the social order on which the monetary union is based. Although its proposals remain rather vague and timid in this respect, the Five President's report illustrates a growing recognition of this fact. The report refers, for instance, to the need for European 'standards for labour markets', which should combine security and flexibility. In March 2016, the Commission emphasised the need for social convergence, when it launched the 'European Pillar of Social Rights'. The initiative was specifically linked to the Eurozone: the Commission communication noted that 'the Pillar is conceived to be established within the euro area, but would also be open for other Member States to join on a voluntary basis'.<sup>9</sup> The *First preliminary outline of the European Pillar of Social Rights* mentions, for example, the role of unemployment benefits in economic stabilisation, next to the role of benefits in fighting poverty and creating security. The *outline* observes that '[i]n some cases the coverage of unemployment benefits is very low due to strict eligibility requirements. The duration of benefits in some Member States, as well as the enforcement of conditions for job search and participation in active support are a concern.' The *outline* proposes the following principle: 'Action to support the unemployed shall include the requirement for active job search and participation in active support combined with adequate unemployment benefits. The duration of benefits shall allow sufficient time for job search whilst preserving incentives for a quick return to employment.' Obviously, this statement is very general. Minimum requirements with regard to the stabilisation quality of national unemployment benefits would need to be more precise in terms of the minimum coverage that is required and the generosity of benefits for short-term unemployed. However, the debate on the European Pillar of Social Rights provides an opportunity to elaborate upon this theme; well-formulated general principles with

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<sup>9</sup> COM(2016)127 *Launching a Consultation on a European Pillar of Social Rights* (Strasbourg, 8 March 2016).

regard to unemployment benefits should be linked with incisive benchmarking of Member States' performance in this domain.

In his contribution to this volume, Deakin gives the Pillar a cautious welcome: 'As a restatement of social rights it is less than adequate, but this is not its main purpose. It should be understood as a much overdue attempt to reintegrate social policy into the evolving process of economic and monetary union'.<sup>10</sup> He notes that the Pillar is, as yet, unclear with regard to the relationship between means and ends. I agree and I would add that the expression 'rights' creates expectations: if the perception is that the Pillar is merely a replay of earlier initiatives based on soft coordination, without tangible consequences, the initiative will frustrate expectations and create a backlash. Hence, the European Commission should clarify how the Pillar will feed into the European Semester on one hand, and its legislative agenda on the other hand.

#### *2.4. Preliminary conclusions*

In this Section, I have presented arguments for a degree of social convergence across the welfare states that belong to the European Union, in particular among the members of the monetary union and with regard to some key features of their social systems. To state that there are limits to the social diversity that can be accommodated in a monetary union implies – as the other side of the coin – that social diversity is not per se in contradiction with monetary and economic integration. In his contribution to this volume, Joerges emphasises this other side of the coin: the European project should not only recognise the legitimate diversity of the members' social systems, but that diversity can be beneficial. In Joerges' view, '[t]he threefold commitment of the Union to respect the democratic autonomy of its Member States, to strive for a curtailment of external effects of their policies and to further targeted fair co-operative problem-solving would in all likelihood be more favourable to the generation of solidarity in the Union than the kind of 'we-pay-and-you-obey' strategy which the European crisis management has established and legalised'.<sup>11</sup> The idea of a European Social Union indeed rejects the notion of a one-size-fits-all supranational welfare state model. However, if there are limits to the diversity in social systems that can be accommodated in a monetary union, there is no escape from the conclusion that a basic consensus on our social model is necessary: a consensus on the convergence that is needed on one hand, and the

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<sup>10</sup> S. Deakin, 'What follows austerity? From Social Pillar to New Deal', in this volume.

<sup>11</sup> C. Joerges, 'Social justice in an ever more diverse Union', in this volume.

diversity that is legitimate and possibly beneficial on the other hand. Only playing the sovereignty card is trading in illusions, as Crouch explains well in the context of a more general debate on the future of our social model and the role of social and political actors.<sup>12</sup> Obviously, establishing such a basic consensus necessitates a degree of ‘political union’ and democratic accountability, a point also emphasised by De Grauwe and Ji in their discussion of the stabilisation problem. This is by no means an easy goal.

### **3 Integration and social regulation in the EU28: a balancing act**

Some arguments in favour of an active social dimension to the EU transcend the Eurozone problematic, as they apply to the EU as a whole. A well-known argument holds that economic integration without social harmonisation induces downward pressure on social development in the most advanced Member States. Although in the past the spectre of large-scale social dumping has never materialised, in the enlarged EU of today blatant cases of illegal working conditions and exploitation do occur, resulting from the interplay of lacunae in the domestic implementation of social and employment protection in the Member States, reduced legal sovereignty of the Member States, and the absence of common social standards in a very heterogeneous entity. Fears of social dumping, but also welfare tourism, are causing considerable social and political tensions with regard to labour migration. These discussions will not be easily resolved, but a crucial condition for European public opinion to accept migration is that cross-border mobility should fit into a regulated social order, it must not undermine that social order.

#### *3.1. Free movement and the spectre of social dumping*

The question of to what extent Member States can uphold social standards in a context of free movement is particularly relevant with regard to minimum wages. In Member States such as Germany and Sweden, trade unions traditionally resisted state regulation of minimum wages: they considered that to be the domain of collective bargaining and a no-go area for public authorities. Thus, they applied a domestic principle of subsidiarity. The *Laval* judgment by the European Court of Justice<sup>13</sup> suggests that that traditional position may be unsustainable: the Court argues that only *predictable* systems of minimum wage protection

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<sup>12</sup> C. Crouch, *Making Capitalism Fit for Society* (Polity Press, 2013).

<sup>13</sup> ECJ, judgment of 18 December 2007 in *Laval un Partneri*, C-341/05, EU:C:2007:809.

can be imposed on foreign companies that post<sup>14</sup> workers: Member States must create a legal context in which only generally applicable minimum wage protection has to be respected by foreign service providers. This means that social partners should reconsider traditional positions on subsidiarity within welfare states, which means that they should reconsider the respective roles of social partners and public authorities, or, reconsider the relation between nationwide collective bargaining and local bargaining. The actual responses in Sweden and Denmark to the *Laval* case reaffirm the autonomy of collective bargaining, but introduce conditions for the exercise of collective action: collective agreements can be enforced only through collective action against foreign service providers if they correspond to existing nationwide collective agreements and do not define conditions beyond the hard core of the Posting of Workers Directive.<sup>15</sup> Hence, the Swedish and Danish domestic responses also change the rules of the game in terms of the subsidiarity of the national versus the local level. Politically, the upshot of such developments might be that the case for a pan-European framework with regard to the concept and regulation of minimum wages becomes more plausible too: both at the domestic and the European level, we might have to reconsider the application of subsidiarity principles.

Together with the *Viking* judgment<sup>16</sup> (which did not concern the free movement of services, as in *Laval*, but the freedom of establishment), the *Laval* judgment however raises a more fundamental problem than merely the requirement of ‘predictability’ of minimum provisions. Prior to these decisions, the Court had attempted to respect the original settlement contained in the Treaty of Rome that social policy was largely a matter for domestic law. It had deployed a number of techniques to protect national social policy from the application of the (hierarchically superior) economic provisions on the internal market. However, in *Viking* and *Laval* the Court applied its internal market case law with full vigour. The moment collective action was found to be a ‘restriction’ and thus in breach of EU law, the social interests were on the back foot, having to defend themselves from the economic rights of free movement. The Court has made it difficult to defend the social interests due to its strict

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<sup>14</sup> A ‘posted worker’ is an employee who is sent by his employer to carry out a service in another EU Member State on a temporary basis. Posted workers are different from EU mobile workers in that they remain in the host Member State temporarily and do not integrate in its labour market, as they maintain an employment contract with an employer in their home (‘sending’) country. In contrast to posted workers, EU mobile citizens who work in another Member State and have an employment contract with an employer in the latter Member State are entitled to full equal treatment with nationals in access to employment, working conditions and all other social and tax conditions.

<sup>15</sup> M. Blauberger, ‘With Luxembourg in mind ... the remaking of national policies in the face of ECJ jurisprudence’ (2012) 19 *Journal of European Public Policy* 109.

<sup>16</sup> ECJ, judgment of 11 December 2007 in *International Transport Workers' Federation and Finnish Seamen's Union* (‘*Viking*’), C-438/05, EU:C:2007:772.

approach to justification and proportionality. Moreover, because the Court applied the freedoms to an area expressly excluded from EU competence (strikes) it created a legislative vacuum. It potentially struck down the national rules but the EU could not deal with the problem created by the Court given the absence of express competence for the EU to act. This is one aspect of the so called social deficit in the EU, as Barnard and De Baere put it.<sup>17</sup> It is not impossible to solve this problem; Barnard discusses different solutions, of which a reform of the proportionality principle seems the most promising one.<sup>18</sup>

Feenstra returns to the *Viking/Laval* conundrum in his contribution to this volume. He argues that the *Laval* regulatory conundrum is not as big as some have argued (but, see the importance attached to these judgments in the contributions by Deakin and Martinsen). However, there is one matter that gives pause for concern in Feenstra's review. Articles 49 and 56 TFEU are directly effective and apply both to Member States and trade unions, but the Posting of Workers Directive leaves considerable regulatory margin to the Member States on matters concerning public policy provisions. Trade unions cannot avail themselves of that same public policy derogation. According to Feenstra, '[t]he approach of the Court imposing on trade unions the same limits the Court imposes on Member States' authorities while refusing to entrust trade unions with the task of determining the nature of the public social order appears at odds with the different regulatory instruments (including the implementation of Directives by social partners) used in Member States to attain public policy objectives'.<sup>19</sup> Unlike *Laval's* regulatory conundrum, the question how to balance economic freedoms and fundamental social rights (the *Viking* conundrum), appears far from resolved. Feenstra argues that the proportionality principle is, in principle, an appropriate tool to balance between the economic and social rights of the EU, provided the EU follows a different, alternative approach than the very strict application of proportionality in *Viking*.

### 3.2.2 Reconciling openness and domestic cohesion

Fundamentally, the challenge is to preserve the regulatory capacity of national governments and social partners, whilst allowing labour migration and the cross-border delivery of services. Space forbids discussion of the issue of 'welfare tourism' and the comprehensive

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<sup>17</sup> C. Barnard and G. De Baere, 'Towards a European Social Union. Achievements and Possibilities under the Current EU Constitutional Framework' (2014) *Euroforum Policy Paper*, 14.

<sup>18</sup> C. Barnard, 'Free Movement and Labour Rights: Squaring the Circle?' (2013) *University of Cambridge Faculty of Law Legal Studies Research Paper*, 23/2013.

<sup>19</sup> S. Feenstra, 'How can the Viking/Laval conundrum be resolved? Balancing the economic and the social: one bed for two dreams?', in this volume.

analyses by Scharpf and Höpner and Schäfer on the impact of the four freedoms and mobility on European welfare states. Unlike these authors, I do not believe that the institutional architecture and the internal heterogeneity of the EU lead systematically and *irresistibly* to greater economic liberalisation, unchecked mobility and the erosion of solidarity. Reconciling mobility and the four freedoms on the one hand with the internal cohesion of national welfare states and industrial relations on the other hand is a complex challenge, but it is not an insurmountable one. It requires a ‘balancing act’, which is feasible. In other words, there is room for politics in the EU arena. A less pessimistic assessment of the potential for such a balancing act, is probably associated with a different understanding of the social meaning of cross-border mobility. In contrast with Scharpf, Höpner and Schäfer, Caporaso and Tarrow<sup>20</sup> argue that the Court of Justice has attempted to embed the transnational market in Polanyi’s terms within its (the Court’s) understanding of legitimate social purposes, by acting as a regulatory arbiter between international openness and domestic social cohesion. Both international openness (under certain conditions) and domestic social cohesion can be understood in terms of social justice. In the same spirit, De Witte<sup>21</sup> develops a subtle account of ‘transnational solidarity’ in the EU. On the basis of a broad notion of reciprocity De Witte aims to accommodate cross-border mobility and domestic social cohesion within welfare states; I briefly return to this in the next Section. In this view, the balancing act is between different dimensions of social justice.<sup>22</sup> That is not to say that *Viking* and *Laval* are satisfactory examples of such a balancing act; the challenge is to make the balancing act satisfactory.

Ferrera formulates the difference between the approach inspiring this book and the scholarly tradition set by Scharpf as follows: our approach would allow for ‘a fruitful re-framing of some classical issues that in the last two decades have dominated debates on the ‘social deficit’ of the EU as an institutional and political construct, such as the asymmetry between negative and positive integration, market-making and market-correcting, EU (economic and legal) powers and national social sovereignty. If Social Europe is a composite construct that cannot be reduced to a single component and thus has to live with inherent

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<sup>20</sup> J. Caporaso and S. Tarrow, ‘Supranational Institutions and the Transnational Embedding of Markets’ (2009) 63 *International Organization* 593.

<sup>21</sup> F. De Witte, *Justice in the EU. The Emergence of Transnational Solidarity* (Oxford University Press, 2015).

<sup>22</sup> Despite all the problems with these judgments, especially with the *Viking* judgment, it should be recognized that by opening up cross-border provision of services greater employment opportunities are created for workers from Eastern European countries.

tensions, there is no single ‘asymmetry’ or ‘deficit’ to which weaknesses can be imputed. Likewise, there is no single instrument or solution that can remedy such weaknesses’.<sup>23</sup>

In the final chapter of this book, Barnard offers a sobering analysis of the Brexit vote in the UK. She confronts us with two discomfoting questions: what might have made a difference, and what would have made no difference? Barnard calls for a balancing act between openness and domestic cohesion that is much broader than merely regulating the rights of employees in cross-border situations and remedying the *Viking/Laval* conundrum and related issues. Migration has put pressure on the social fabric of the UK, not only in precarious segments of the labour market but also because of shortages in the provision of public services. In short, ‘EU migration created pressure on domestic provision. Domestic policy let down the local population; EU social policy could not respond’.<sup>24</sup> Obviously, the imbalance has been generated by UK domestic policies, and not by EU policies per se: the decision not to apply a transition period for intra-EU migration after 2004, the lacunae in public services, the choice for austerity in a non-Eurozone country... were all *made in the UK*. However, Barnard’s point is that those who would have wanted to call upon the EU to prevent or remedy such a situation, could not find resources at the EU level: the EU was a promoter of the austerity idea; the EU did not put pressure on Member States with regard to the adequacy of public services; the EU lacked the competences to translate nice principles on inclusive labour markets into practical rights. With regard to the latter – a broad approach to fairness in employment regulation – Barnard wryly concludes that ‘the emperor had no clothes’.<sup>25</sup> In other words, even if one might think (as I do) that domestic UK policies were to blame for the Brexit vote, the EU’s policy stance and discourse did not offer tangible support for the Remain case: the EU’s current framework is guilty by passive neglect, so to speak. The conclusion that follows is twofold. First, the EU should be guided by principles that guarantee a balance between domestic social cohesion – broadly understood – on the one hand and freedom of movement on the other hand; balancing principles of free movement and social principles underpinning welfare states should be part and parcel of the basic social consensus guiding the EU as a Union of welfare states. Second, the EU cannot afford a delivery gap with regard to those principles: the emperor needs clothes, that is, effective governance and the necessary competences to translate principles in practice.

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<sup>23</sup> M. Ferrera, ‘The European Social Union: A missing but necessary ‘political good’’, in this volume.

<sup>24</sup> C. Barnard, ‘(B)Remains of the day: Brexit and EU social policy’, in this volume.

<sup>25</sup> *Ibid.*

#### 4 The founding fathers' inspiration and the meaning of justice and solidarity

The foregoing discussion shows that we have to combine two perspectives on the meaning of justice in Europe: a pan-European notion of justice and justice within welfare states. Given the increasing role of migration and mobility, entertaining a purely domestic view on social justice and solidarity is increasingly anachronistic in today's Europe. We need a theory of justice for the European Union. My thesis is not, merely, that the EU's initiatives and actions should be informed by consistent concerns about social justice: that is obviously the case. The argument I want to submit is more specific: we need a conception of justice that is based on a specific understanding of the point and purpose of the European Union as a multi-tiered polity, with at least three sets of principles: principles to be applied between Member States as collective actors, (common) principles to be applied within Member States, and principles for regulating the mobility of citizens across Member States. This argument also resonates in the contributions by Joerges and Ferrera to this volume<sup>26</sup>, which is not to say that I would agree with their take on it. Developing such a tiered conception of justice is indeed far from self-evident and leads us into uncharted territory, as I hope to illustrate in this Section (without being exhaustive or pretending to give any definitive answers).

The present Section consists of four Subsections. The first Subsection sets the scene by sketching in a summary and relatively benign way what we might consider – with hindsight – the social inspiration of the founding fathers of the European project. The second Subsection connects with contemporary political philosophy and defines some key concepts (solidarity, insurance, redistribution). The third Subsection sets out questions and difficulties one encounters when one tries to relate the founding fathers' inspiration, the role of subsidiarity and free movement on one hand, to a notion of supranational distributive justice, as discussed in contemporary political philosophy, on the other hand. The fourth Subsection sketches a more fundamental normative puzzle that emerges from this brief exploration.

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<sup>26</sup> Andrea Sangiovanni has developed a thought-provoking understanding of solidarity in the European Union which also explicitly distinguishes principles applying within Member States from principles applying between Member States, and introduces a notion of 'reciprocity'. See A. Sangiovanni, 'Solidarity in the European Union' (2013) 36 *Oxford Journal of Legal Studies* 1. There is a congeniality between my approach and Sangiovanni's deliberately 'realist' approach (I also borrow the expression 'point and purpose' from him), but there are also differences. Space forbids to pursue this here. In short, I attempt to develop bridges with theories of justice that Sangiovanni might consider as 'idealist' and thus not fit for purpose. Sangiovanni's subtle account of solidarity in the EU seems premised on a notion of 'cooperative justice', whilst I think the normative foundation should be in conceptions of distributive justice. I also think the reference to a Dworkinian insurance device has less purchase in the context of constraints on Member States, created by the EU, than Sangiovanni seems to assume.

The reader should note that I do not want to conflate ‘justice’ and ‘solidarity’: solidarity is a specific dimension (one might say, a component) of justice. Solidarity is also a multifaceted notion. For the purpose of this chapter, I propose to define solidarity rather narrowly as follows: solidarity is a readiness to share resources, with the aim to compensate individuals for (disadvantageous) circumstances for which we do not hold them responsible. I need a slight detour in the realm of theories of justice to situate that definition in well-rehearsed conceptions of justice. What follows focuses on matters of distributive justice, and thus is incomplete: I am fully aware of the fact that important debates, such as on European citizenship or on the way in which conceptions of justice would shape our view on employment relations, are not integrated in my exploratory exercise in this Section.

#### *4.1 Setting the scene: the founding fathers’ social inspiration*

The European integration project has been described as a ‘convergence machine’. Convergence was not just a result, it was also a pre-condition for continuing European integration: its ‘output legitimacy’ was based on the simultaneous pursuit of *economic progress*, on the one hand, and of *social progress and cohesion*, on the other hand, both *within* countries (through the gradual development of welfare states) and *between* countries (through upward convergence across the Union). Since 2008 we observe exactly the opposite: growing inequalities within a significant number of Member States and divergence across the Eurozone. Europe is becoming more unequal, both within and between Member States.

The founding fathers of the European project who prepared the Treaty of Rome optimistically assumed that growing cohesion both between and within countries could be reached by supranational economic cooperation, together with some specific instruments for raising the standard of living across the Member States (which were later brought together in the EU’s economic, social and territorial cohesion policy). Economic integration was to be organised at the EU level, and would boost economic growth and create upward convergence; domestic social policies were to redistribute the fruits of economic progress, while remaining a national prerogative. The specific social dimension of the EU would, in essence, be confined to the coordination of social security rights for mobile citizens and to the gradual development of anti-discrimination legislation. Admittedly, after sixty years of piecemeal developments, the European social *acquis* encompasses other important policy areas that were shifted from the national to the EU level, such as health and safety standards at work. But

redistributive policies, education policies and the development of social security remained – at least in theory – firmly anchored at the national level.

With hindsight (and in a slightly benign interpretation), one may say that the founding fathers of the European project created two perspectives on social cohesion: a pan-European perspective and a national perspective. How would we understand this ‘dual perspective’? Can we understand it in terms of solidarity (or different solidarities)? Solidarity within national welfare states is well-known territory. It refers to social insurance, income redistribution and the underlying balance of social rights and obligations. As already indicated, the founding fathers did not believe that integration would diminish the potential for national solidarity, so conceived. On the contrary, they were confident that welfare state actors and institutions would redistribute the produce of economic integration, that is to say more economic growth, fairly within the Member States, in tune with social preferences in each state. Their belief was the exact opposite of the idea that international openness – or globalisation – is doomed to create not only winners, but also losers. On the basis of this (benign) interpretation, it is normatively relevant to revisit the founding fathers’ inspiration: can the EU be a model of cooperation that contradicts an overly pessimistic view on the consequences of international openness, and, if so, how?

The founding fathers wanted upward economic convergence and cohesion on a European scale. They also wanted to give individual Europeans the right to improve their own lives by working in a Member State other than the one of which they are nationals, with no discrimination on the basis of nationality. Gradually, patients acquired the right to benefit, under certain conditions, from medical care in other Member States than their state of residence. How should we qualify this vision? Apart from redistributive aspects of the common agricultural policy, and a limited degree of cross-country redistribution in favour of less-developed regions through structural funds in the context of the so-called cohesion policy), the founding fathers’ approach was not redistributive. Nor was it about the mutual insurance of risks. In other words, they did not envisage the organisation of solidarity as we normally understand it, which implies mixtures of redistribution and insurance (I define these concepts in the next Subsection). Historically, the founding fathers’ approach predominantly implied *fair access to opportunities*: trade and investment opportunities for countries joining the EU and personal opportunities for all their citizens wanting or needing to be mobile. One might also say that, in pursuing cohesion, it was motivated by *inclusion* on a pan-European scale.

However, the consequences of monetary unification force upon the Union a classic notion of solidarity in coping with *shared risks*. Whatever the solutions that are proposed to a variety of problems besetting the monetary union (a banking union; a more efficient organisation of the European Stability Mechanism (ESM) and pre-established rules with regard to sovereign default and debt restructuring; a fiscal capacity at the Eurozone level, possibly associated with a reinsurance of national unemployment insurance schemes or a genuine EU unemployment insurance scheme), these solutions always entail the ex ante organisation of solidarity mechanisms.<sup>27</sup> In short, a polity that initially emerged as an ‘opportunity structure’, motivated by the aspiration of growing cohesion, is in need of mutual insurance and effective solidarity. Thus, a dual perspective on solidarity, national and pan-European, seems the logical consequence of developments that started more than sixty years ago. In fact, one might consider such a dual perspective on solidarity to be the defining normative feature of the European Social Model of the future: the European Social Model is not simply a summary description of a set of co-existing national social models; it also describes the way these national welfare states interact with each other – or are supposed to interact with each other – in Europe.

This dual perspective on solidarity is inherently complex and multifaceted. Monetary unification necessitates forms of solidarity which have been, so far, a no-go area in European politics, such as a Eurozone stabilisation capacity and fiscal transfers. Simultaneously, enlargement to the east created significantly more tension between the goals of upward convergence and domestic cohesion: what is seen by the new Member States as ‘the dynamics of upward convergence’, is seen as social dumping by others. In addition, the principle of non-discriminatory access to social benefits and services in all Member States for mobile citizens has become increasingly controversial.

Given the complexity of this dual perspective on solidarity, superficial rhetorical references to European solidarity will not suffice to revamp the European project’s political legitimacy. We have to be able to explain what European solidarity means, in terms that are both understandable to ordinary citizens and embedded in sound normative principles.

#### *4.2 Normative foundations in contemporary theories of justice*

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<sup>27</sup> In the context of the Eurozone crisis management since 2008, we witnessed successive episodes of ex post solidarity, which came about most often after protracted and difficult negotiations. For that reason and for other reasons, ex post solidarity is less efficient than the establishment of ex ante solidarity mechanisms.

The rigorous definition of sound normative principles has been the point and purpose of academic theories of justice. Is it possible to build bridges between, on one hand, the original inspiration of the pioneers of the European project, and, on the other hand, the vast academic debate on social justice as it developed since the 1970s?

According to the pioneers, European integration would promote the simultaneous pursuit of social cohesion both within countries and between countries. In practical terms, the upshot would be the reduction of *inequalities* between and within Member States. Therefore, I start from the premise that promising academic resources for our purpose are to be found in the realm of what is called ‘distributive justice’. Loosely put, theories of distributive justice typically focus on the distribution of entitlements to economic goods; obviously, the ultimate objective is not the distribution of economic goods per se, but the well-being of citizens. In democratic societies, any plausible conception of distributive justice reflects the idea that the members of a society should regard each other as equals and therefore owe each other a justification by which they can, as equals, accept any inequality in the entitlements which their societies define. This general statement about equal concern obviously needs elaboration. In the development of egalitarian theories of distributive justice, two debates have attracted considerable attention: first, what is the role of responsibility; second, what are the boundaries of the society to which the principles of distributive justice apply: should we entertain a domestic or a supranational perspective on distributive justice?<sup>28</sup>

What role should personal responsibility play in our normative evaluation of inequalities in outcomes? Are we in favour of ‘equality of opportunity’ or ‘equality of outcome’? Philosophical proponents of equality of opportunity argue that one should make a distinction between circumstances for which we do not hold people responsible (for instance, their family background, innate talents) and choices for which we hold them responsible (for instance, the effort with which they put their talents to work). Issues of responsibility dominate many political debates. To what extent are individuals responsible for their individual social situation, and to what extent should they be able to rely on solidarity? To what extent are Member States responsible for their nation’s social situation, and to what extent can they count on pan-European solidarity? To structure our thinking on these thorny

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<sup>28</sup> Another crucial issue, which has attracted considerable attention concerns the metric of well-being (‘equality of what?’): I do not address this here.

issues, we can build on ‘responsibility-sensitive egalitarianism’, an approach developed in the 1980s and 1990s in the slipstream of debates on Rawls’ Theory of Justice.<sup>29</sup>

#### 4.2.1 Responsibility, insurance and distribution

Responsibility-sensitive egalitarian justice<sup>30</sup> provides a framework for defining normative benchmarks to assess whether a given distribution is ‘just’ or ‘unjust’.<sup>31</sup> That framework is flexible since it can capture different normative perspectives, depending on where one locates the ‘responsibility cut’, i.e. the threshold that determines for which factors individuals are held responsible and for which factors there is compensation. Traditionally, social security schemes apply an explicit responsibility cut: unemployment or sickness benefits are granted on the basis of people not being responsible for their economic inactivity. However, responsibility-sensitive egalitarianism also applies to dimensions of the social contract outside of traditional social risks covered by social security. For instance, we may hold each other responsible for the effort we deploy in our working life, but not for what we achieve (or fail to achieve) due to innate intelligence, socioeconomic background, gender or origin. A social contract based on such a definition of the responsibility cut will not compensate people for differences in working hours or career length, but it will try to neutralise the impact of socioeconomic background and innate talent (and, obviously, fight disadvantage on the basis of gender or origin). Both childcare and education policies as well as income redistribution will be at play, but, ideally, income redistribution should not compensate for differences in hours worked. In contrast, if the social contract holds people responsible for their innate

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<sup>29</sup> Some classic philosophical references on equality of opportunity, responsibility-sensitive egalitarianism and ‘luck egalitarianism’ are R. Dworkin, ‘What is equality? Part 2: Equality of resources’ (1981) 10 *Philosophy and Public Affairs* 283; R. Arneson, ‘Equality and equal opportunity for welfare’ (1989) 56 *Philosophical Studies* 77; G. Cohen, ‘On the currency of egalitarian justice’ (1989) 99 *Ethics* 906 – and for an influential critical position: E. Anderson, ‘What is the point of equality?’ (1999) 109 *Ethics* 287. Important monographs with a more economic perspective are J. Roemer, *Equality of opportunity* (Harvard University Press, 1998); and M. Fleurbaey, *Fairness, responsibility and welfare* (Oxford University Press, 2008). A recent survey of the literature can be found in J. Roemer and A. Trannoy ‘Equality of opportunity’, in A. Atkinson and F. Bourguignon (eds.), *Handbook of Income Distribution* (Elsevier, Volume 2A, 2015).

<sup>30</sup> One should note that I use the ‘equality of opportunity approach’ and ‘responsibility-sensitive egalitarian justice’ as synonyms. Hence, in my usage, the equality of opportunity approach is also a normative framework with a flexible character.

<sup>31</sup> I do not want to say that responsibility-sensitive egalitarian justice suffices as a normative basis for social policy-making. In fact, I believe social policy needs a combination of responsibility-sensitive egalitarian justice and compassion (F. Vandenbroucke and K. Lievens, ‘Wederkerigheid: niet vanzelfsprekend, wel hard nodig’, in P. Janssens (ed.), *Voor wat hoort wat. Naar een nieuw sociaal contract*. (De Bezige Bij, 2011); F. Vandenbroucke, ‘De actieve welvaartsstaat. Een Europees perspectief’, Den Uyl Lecture, Amsterdam, 13 december 1999, available at: [http://www.canonsociaalwerk.eu/1999\\_actieve\\_welvaartstaat/1999Vandenbrouckeactievewelvaartstaat.pdf](http://www.canonsociaalwerk.eu/1999_actieve_welvaartstaat/1999Vandenbrouckeactievewelvaartstaat.pdf) [12 December 2016].

talent, there is no *principled* reason for income redistribution if socioeconomic background conditions would be fully neutralised due to child care, education, etcetera (which is, obviously, an important ‘if’). If we do not hold individuals responsible for anything or if we think that policy makers do not have the tools to identify personal responsibility, we are simply back in a straightforward equality of outcomes-approach. The more characteristics one includes in the set of responsibility variables, the further one moves away from equality of outcomes.

The responsibility-sensitive egalitarian framework can therefore be seen as an intellectual device that makes it possible to bring together these different perspectives under one coherent structure. It must not be confused with one single perspective.<sup>32</sup> The responsibility cut is often seen as drawing a line between unchosen circumstances and individual choice. If the framework is predicated on a notion of choice that presupposes freedom of will, it obviously becomes liable to the objection that with such notions one ventures into unending philosophical disputes, with no agreement in sight. However, the location of the responsibility cut, or what we *hold* people responsible for, is not a metaphysical question in this context, but an unavoidable subject matter of the social contract: we cannot interact as human beings without holding each other responsible for at least something. This holds for relations between individuals, but also for relations between collective actors, like nation states.

In Section 2 I argued that the EU is in need of more solidarity and I referred to proposals for mutual insurance at the Eurozone level, without providing clear-cut definitions of these concepts. The responsibility-sensitive egalitarian strand in contemporary political philosophy is interesting for our purpose, because it allows us to fit in notions of solidarity, insurance and redistribution in a coherent normative framework. In that framework<sup>33</sup>,

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<sup>32</sup> Often, equality of opportunity is defined as follows: individuals are not responsible for their socioeconomic background, but are responsible for everything else (including their innate intelligence); ‘equal opportunities’, *so conceived*, implies that we are satisfied when socioeconomic background has as little influence as possible on later life outcomes of individuals. This is not *the* theory of equality of opportunity; it is only a specific instance that fits into the theoretical framework on the basis of a specific responsibility cut. In yet other words, a low degree of intergenerational mobility suggests that ‘equal opportunities’, *so conceived*, are not realised; however, a high degree of intergenerational mobility is not in itself sufficient to conclude that more demanding notions of equality of opportunity are satisfied. When developing practical policies, we also have to take on board the following observation: achieving greater equality of opportunities without tackling inequalities in outcomes can be very difficult. This holds specifically in the family context: equality in outcomes among parent generations can be of instrumental importance for achieving equality of opportunities in the generation of the children, see A.B. Atkinson, *Inequality. What Can Be Done?* (Oxford University Press, 2015); OECD, *In It Together: Why Less Inequality Benefits All* (OECD Publishing, 2015). This raises complex normative questions: to what extent is equality of outcomes needed and, hence, legitimate, as an instrument to achieve equality of opportunity, even if ‘on first principles’ our interpretation of equality of opportunity does not lead to full equality of outcomes?

<sup>33</sup> I do not wish to say that this is the only possible definition of solidarity.

solidarity means that we share resources, with the aim of compensating individuals for (disadvantageous) circumstances for which we do not hold them responsible. Depending on the circumstances for which we do not hold individuals responsible, two different types of solidarity can be conceptually distinguished: *insurance* and *redistribution*. Pure insurance means that we compensate individuals for risks that cannot be foreseen at the level of the individual, but can reasonably be calculated at the level of a homogeneous group (a group of individuals with identical risk profiles). In practical terms, since individual risk profiles are identical, the expected net present value of benefits cashed in by a pure insurance mechanism is, for all individuals, equal to the net present value of their contribution to the scheme. Insurance is, by definition, about future risks.

Redistribution occurs when individuals are different with regard to the circumstances for which we do not hold them responsible. The prime example of redistribution is progressive taxation, which redistributes (inter alia) from economically talented individuals to economically less-talented individuals: progressive taxation compensates (in part) the disadvantage of having less economic talent; redistribution follows from the fact that individuals differ with regard to talent.<sup>34</sup> In terms of the motivation and disposition of the participating individuals, redistribution is seen as a more ‘demanding’ form of solidarity than insurance. Well-organised insurance can readily be understood as a matter of enlightened self-interest: the expectation is that, in the end, everybody wins. So conceived, redistribution is, *prima facie*, not a matter of enlightened self-interest. In practice, insurance and redistribution very often get mixed up, and this creates the true cement of national welfare states. For instance, sickness benefits are redistributive across individuals when some individuals have a higher risk of sickness than others. In addition, sickness benefits might be redistributive because of minima and maxima that apply to the benefits, whilst contributions are proportional to income. Given differences in skill levels, unemployment insurance normally embodies redistribution from the high-skilled to the low-skilled. A presumption (which, admittedly, has not been tested empirically, and which I do not elaborate upon) of the analysis that follows is that is probably easier to persuade European citizens about cross-border insurance mechanisms than about cross-border redistribution (Hooghe and Verhaegen refer to this assumption at the end of their chapter in this book).

These definitions can be extended to relationships between public authorities: we can use ‘inter-institutional solidarity’ for mechanisms that imply transfers between public

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<sup>34</sup> Progressive taxation also compensates income differences that follow from ‘bad luck’, and thus incorporates an insurance dimension too.

authorities (say, governments of nation states); the transfers are triggered by circumstances defined at the level of those nation states. In contrast, ‘interpersonal solidarity’ specifically focuses on mechanisms of insurance or redistribution that imply transfers of resources between individuals; the transfers are triggered by individual circumstances.

#### 4.2.2 The boundaries of justice

We can now turn to the second debate that has exercised academic theorising on justice: what are the boundaries of justice? This question is well rehearsed in the literature on global justice. The logic of responsibility-sensitive egalitarian justice implies that it has no national boundaries: if an individual is worse-off than other individuals because of the place where he is born and lives – say, a very poor country – this fact is certainly a circumstance rather than a choice. From that perspective, it is *prima facie* very hard *not* to apply principles of egalitarian justice on a global level. Nevertheless, whether or not principles of egalitarian justice apply on a global level has been the subject of intense debate in contemporary political philosophy. Just as with responsibility-sensitive egalitarianism, the debate on ‘international distributive justice’ also developed, to a considerable extent, in reaction to (in defence of, or against) Rawls.<sup>35</sup> Fundamentally, international distributive justice is about the boundaries of the solidarity circle: who are the members of ‘our’ solidarity circle?

In a survey paper on international distributive justice, Van Parijs argues that the mere existence of national borders is a sufficient condition for the demands of egalitarian justice to kick in on a global level. *Prima facie*, this is a convincing argument. Borders imply that people are being prevented, by virtue of where they happen to be born, from taking advantage of opportunities open to people born elsewhere. These coercive rules have a major effect on people’s lives. Thus, the existence of national borders creates a constraining ‘global basic structure’, which – just as is the case for the ‘basic structure’ of national societies in Rawls’ theory – must be the subject matter of a conception of justice. Subsequently, Van Parijs argues that national welfare states should be ‘demoted from the framework’ (of our normative thinking) ‘to the toolbox’:

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<sup>35</sup> The literature on international distributive justice is large, with important early contributions by Barry, Rawls, Beitz, Pogge, Nagel and others. I understand this domain of philosophical debate as Van Parijs defines and discusses it, and as it is also discussed in the Stanford Encyclopedia of Philosophy. See: Van Parijs, ‘International Distributive Justice’, in R.E. Goodin, P. Pettit, T. and Pogge (eds.), *A Companion to Contemporary Political Philosophy* (Blackwell, Volume 2, 2007); Stanford Encyclopedia of Philosophy, International distributive justice, entry available at: <http://plato.stanford.edu/entries/international-justice> [12 December 2016].

Suppose we adopt such a minimalist conception of what is necessary and sufficient for the demands of egalitarian justice to kick in. Under present conditions – with a global basic structure that has become the subject of a global conversation –, global distributive justice should then evidently be given logical priority over domestic distributive justice. It would not follow that states and nations ought to vanish, that borders ought to be erased or peoples dissolved. *But they must all be demoted from the framework to the toolbox.* Instead of seizing them in a desperate attempt to halt the irresistible globalisation of our sense of justice, we must urgently think about how they can best be constrained, reconfigured and empowered in the service of distributive justice for a global society of equals.<sup>36</sup>

If we accept that argument, it obviously also holds for the EU, which must be part of the toolbox rather than of the framework. In this view, both national welfare states and the EU are merely an instrument to implement international distributive justice, the ultimate aim of which is a global society of equals. However, given the difficulty of implementing truly *global* justice, we might conceive of the EU as a ‘laboratory’ for the implementation of international distributive justice. I will adopt this view (which is basically Van Parijs’ view, and also inspires De Schutter’s contribution in this volume) as a starting position for the next Subsection, to explore some of the challenges with which this view is confronted.

#### *4.3 Supranational justice, subsidiarity and openness*

In this Subsection, I take it that the EU would be a laboratory for international distributive justice and that principles of distributive justice would apply between citizens at the EU level. Below, I will use the expression ‘supranational justice’ as a short-cut for this laboratory idea.

##### 4.3.1 Two observations on global justice and the organisation of interpersonal solidarity

Contrary to what is sometimes thought, global justice does not imply that interpersonal solidarity – resource sharing between individuals – must always be organised at the highest possible level, without a specific role for nation states. There are two different reasons why this is not the case. Both reasons can be seen as applications of a specific subsidiarity

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<sup>36</sup> Van Parijs, n35, p. 652 (emphasis added).

principle: you should do at the lower level what can be done at the lower level without loss of efficiency.<sup>37</sup> First, there is, to some extent, scope for subsidiarity in the *practical implementation* of global justice<sup>38</sup>: global justice can be organised by a mix of interpersonal solidarity within nation states on one hand and inter-institutional solidarity between nation states on the other hand, without any ‘loss’ in terms of ideal global justice. Second, whether we need to organise solidarity at the highest possible level, from the point of view of global justice, depends on background conditions: *prima facie*, it seems that global justice requires global solidarity mechanisms only if nation states are *different from each other* in a relevant sense. In contrast, if that is not the case, no inter-institutional solidarity is needed; interpersonal solidarity at the nation state level suffices, at least *prima facie* (I will qualify this argument below).<sup>39</sup>

In the domain of pure insurance, we find the most straightforward application of the first observation (there may be scope for subsidiarity in the implementation of global justice): any efficient sharing of risks among a (sufficiently large) group of individuals can be implemented in either one or two stages, with the same final outcome for every individual. Take, by way of example, a pay-as-you-go pension scheme in a country that is subdivided in regions. It is possible to re-insure regional pension schemes on the national level for economic and demographic shocks hitting the regions: this might do as well as a truly national pension scheme.<sup>40</sup> This example can be extrapolated to the supranational reinsurance of national insurance systems. The subsidiarity applied in such a two-tiered supranational scheme is first of all a matter of practical organisation, but – in the context of insurance – it might also allow participating nation states to vary the details of the interpersonal insurance mechanism within their nation state, according to their preferences. Subsidiarity, so conceived, does not diminish global solidarity. The idea of organising a Eurozone reinsurance for national unemployment insurance mechanisms of Eurozone countries is an example of such an approach. Whilst Andor, De Grauwe and Ji discuss it as a functional response to a

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<sup>37</sup> There is not a unique definition of subsidiarity; this is one definition among others.

<sup>38</sup> My emphasis, here, is on the implementation of policies, not on the definition of policy objectives.

<sup>39</sup> Note that these arguments should be distinguished from pragmatic arguments for subsidiarity on the basis of existing attitudes: such arguments accept a ‘loss’ in terms of ideal global justice (which is unattainable given existing attitudes) in order to settle for a second best solution (which is attainable on the basis of existing attitudes). A pragmatic argument for subsidiarity, based on existing attitudes, is that there is insufficient ‘fellow feeling’ at the global level to sustain global justice.

<sup>40</sup> For an elaboration of this example with regard to pension policy, in the context of Belgian federalism, see J. Drèze, *On the interaction between subsidiarity and interpersonal solidarity* (Re-Bel, Volume 1, 2009), available at: <http://www.rethinkingbelgium.eu/rebel-initiative-ebooks/ebook-1-subsidiarity-interpersonal-solidarity> [12 December 2016]. For an application of this type of argument to the EU level, see J. Drèze A. Durré and J.F. Carpentier, ‘Fiscal Integration and Growth Stimulation in Europe’ (2014) 80 *Louvain Economic Review* 5.

design flaw in the Eurozone, a two-tiered system of unemployment insurance can also be seen as a way to improve solidarity (with regard to the risk of short-term unemployment) by enhancing it to a supranational level; thus, it is an improvement in terms of justice. The design challenges touched upon briefly in the previous Section can be reconsidered and reformulated in terms of responsibility-sensitive justice: Eurozone Member States would insure each other against unemployment shocks for which they do not hold – as a matter of convention or social contract – individual Member States responsible; thus, they would organise true solidarity. As explained in Section 2, any insurance device must address moral hazard (the fact that the insured agent might influence the liability which the insurer has to pay by deliberate behaviour, whilst the insurance contract is premised on the convention that the insured agent is not responsible for the event that creates the liability); but insurance – and solidarity – is impossible if there is an obsession with the risk of moral hazard and a desire to eliminate it completely.

The second observation (global justice requires global solidarity only if nation states are different from each other in a relevant sense) entails a more complicated normative discussion. Suppose, for the sake of the argument, that there is a perfect correlation between the economic and demographic risks hitting a set of nation states: an inter-state insurance against economic and demographic risks affecting their pension systems would not add any value.<sup>41</sup> Or, suppose for the sake of the argument, that we have a set of nation states with identical average income levels and identical income distributions: there would be no reason to organise income redistribution across borders to implement egalitarian objectives. The argument is not purely theoretical: one might say that a European strategy of upward convergence, if it delivers, gradually creates a situation where income redistribution across Member States becomes unnecessary; in such a scenario, only income redistribution within the Member States is needed. Upward convergence, if it delivers, can be seen as a slow but politically feasible strategy to obtain at least one precondition for what the global egalitarian wants (applied to the EU), that is, that the average prosperity within Member States is equalised Member States.

#### 4.3.2 Is upward convergence sufficient?

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<sup>41</sup> This statement is made on a high level of theoretical abstraction. De Grauwe and Ji discuss the relevance of synchronisation and non-synchronisation of business cycles in the context of a European unemployment insurance scheme on a more concrete level of analysis, and argue that a pan-European approach might be useful also in case of synchronisation.

Suppose, for the sake of the argument, that we can rely on economic integration to produce upward convergence, and that this finally leads to an equalisation of average prosperity levels (I will qualify that hypothesis, which is far from evident in today's Europe, in Section 5). Would we then leave the design of redistributive policies to national governments? Can we rely on national preferences with regard to redistribution and apply subsidiarity, without any concern, at the supranational level, for distributive justice? Two objections can be made against such a view. The first objection does not accept subsidiarity with regard to distributive preferences, or at least qualifies it. The second objection accepts subsidiarity with regard to distributive preferences, but questions the actual capacity of welfare states to implement redistributive policies in an integrated market.<sup>42</sup>

The first objection is, in my understanding, implicit in De Schutter's contribution in this volume, who argues that redistribution should be 'Europeanised'. Basically, De Schutter argues that the welfare of an individual (say, his income) should not depend on the level of economic prosperity of his country. Hence, he proposes that at least the funding basis of national welfare states should be subject to a pan-European redistributive scheme. Consider a scenario in which average welfare state funding is equalised via pan-European fiscal transfers, but preferences within some Member State X are such that there is hardly any redistribution of these funds towards the least advantaged in country X. I think it follows from De Schutter argument that this is incompatible with his ideal of European distributive justice: his argument that redistribution should be truly Europeanised, leaves no room, so I think, for subsidiarity-based national deviations that would contradict the objective of improving the position of the least advantaged.<sup>43</sup> The difficulty with that position, so it seems to me, is twofold. First, on a pragmatic level, De Schutter's description of the problem implies that we can isolate 'redistribution' as a separate function of welfare states, i.e. that we are able to make a neat distinction between the overall national architecture of welfare states (including employment policies, education, child care...) and their redistributive outcomes. In fact, it is

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<sup>42</sup> This objections are not per se mutually exclusive. If the first objection is not a flat denial of subsidiarity, it is not inconsistent to justify European supranational initiatives in the domain of distributive justice on the basis of a combination of both objections.

<sup>43</sup> There are two reasons why this is incompatible with De Schutter's rationale. First, it seems hard to justify that an individual's position is dependent on the preferences for redistribution of his fellow citizen, but not dependent on the level of average prosperity attained in his country (which may also be a result of preferences). Second, it seems implausible that European citizens in other countries would be ready to transfer money to this Member State X, if it is not used for the stated aim, to wit, helping the least advantaged. Therefore, I understand De Schutter's position as follows: preferences for redistribution that exist at the nation state level are not relevant from a fundamental normative point of view. Obviously, De Schutter would accept that this principled, normative point of view is conditional on its acceptance in a democratic deliberation at the EU level; and, he would accept that a country cannot be forced to be a Member State of a European Union in which distributive choices are made at the pan-European level.

hard to dissociate redistribution from the overall functioning of welfare states; hence, the Europeanisation of redistribution logically entails a degree of Europeanisation of the whole welfare state edifice. Second, on a fundamental level, De Schutter's position implies that a European conception of justice (which bears on the whole welfare edifice) would trump national democratic preferences: given the historical legitimacy of the European Union and its strong emphasis on subsidiarity (not just with regard to implementation, but also with regard to social policy objectives, notably in the realm of redistribution), such a drastic move seems highly implausible. Obviously, De Schutter might respond to this that this 'realistic' concern carries little weight in a purely normative argument.

However, the idea that – notwithstanding subsidiarity – it is legitimate to fight for a certain conception of social justice at the EU level, with which Member States would have to comply, always had some traction in the European political debate: European countries were seen as sharing fundamental ('European') values with regard to the social model. Jointly defending and developing a 'European way of life' (as Habermas would have it, referring to an expression used by former French Prime Minister Lionel Jospin) was seen by many as a legitimate ambition per se, an ambition even at the heart of the European project.<sup>44</sup> Whilst the founding fathers thought that upward convergence through market integration would not contradict but facilitate the on-going development of comprehensive welfare states, driven by domestic social forces and preferences, in this view welfare state development becomes an explicit and strategic common European objective. The Open Method of Coordination (OMC) on Social Inclusion, which was launched in 2001, can be seen as an attempt to reconcile the ambition to realise a truly European social model with the traditional concern for subsidiarity, including in the domain of income distribution. OMC means that social policy objectives, including objectives with regard to minimum income protection, are formulated at the EU level, thus instantiating a European conception of justice; national diversity is accepted, both in terms of policy inputs and policy outcomes, but Member States are asked to justify their performance with regard to those principles. Thus, the OMC presupposes a commonality in objectives with regard to national distributive policies, which constitutes a conception of European justice, but without rigidly imposing these objectives. In his subtle analysis of OMC, Kenneth Armstrong sees this as an exercise in social constitutionalism:

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<sup>44</sup> Next to arguments referring to the on-going integration of markets, seeing the upscaling of employment and social policy standards as a necessary functional corollary – arguments recapitulated in Deakin's contribution to this volume.

If the function of court-led economic constitutionalism is often to prise open the nation state and require Member States to demonstrate how national policies are to be reconciled with EU economic objectives, then the function of OMC-driven social constitutionalism may equally be to put EU Member States to the test and to demand explanations of how exercises of domestic social sovereignty attain the social policy objectives and values of the Union while protecting fundamental rights. In this way, social solidarity in the name of combating poverty and social exclusion is a substantive jumping-off point to be articulated through practices of governance, but it is also an irreducible point in the sense that it cannot be avoided.<sup>45</sup>

Admittedly, the impact of this process has, qua actual impact, often been perceived as weak.

The second objection to the idea that upward convergence might suffice as a supranational egalitarian strategy starts from the opposite vantage point. Suppose we accept, in a spirit of subsidiarity, national sovereignty with regard to national distributive preferences (contra the first objection). It may be the case that the Member States' actual capacity to achieve their redistributive objectives is diminished by the impact of economic integration.<sup>46</sup> In order to rescue national sovereignty – in a real sense – we may have to scale up certain aspects of redistribution to the supranational level. Corporate taxation is an example: in order to protect national governments against a race-to-the-bottom in corporate taxation, a degree of supranational regulation (for instance with regard to the tax base) is needed. Supranational regulation of corporate taxation is an example of *systemic support* that can be provided to national welfare states by a European Social Union. Next to capital mobility, labour mobility can have a negative impact on the distributive capacity of national welfare states. Labour mobility may increase the supply of low-skilled people in certain Member States, and put pressure, in these Member States, on the working conditions of low-skilled people. Governments may counter such an impact by labour market regulation and redistributive policies. But, if people and taxable factors of production can move freely from one Member

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<sup>45</sup> K. Armstrong, *Governing Social Inclusion. Europeanization through Policy Coordination* (Oxford University Press, 2010), p. 262. On the relation between OMC and the idea of a common European conception of justice, see also F. Vandebroucke, 'Sustainable Social Justice and 'Open Co-ordination' in Europe', in G. Esping-Andersen (ed.), *Why we need a New Welfare State* (Oxford University Press, 2002). For further discussion of Armstrong's view, in relation to the idea of a European approach to minimum income protection, see F. Vandebroucke, B. Cantillon, N. Van Mechelen, T. Goedemé and A. Van Lancker, 'The EU and Minimum Income protection: Clarifying the Policy Conundrum', in I. Marx and K. Nelson (eds.), *Minimum Income Protection in Flux* (Palgrave Macmillan, 2013).

<sup>46</sup> These arguments are congenial to well-known arguments, revisited by Deakin in his contribution, on the need to define a pan-European floor of social rights as a corollary to the internal market.

State to the other, this might also reduce the capacity of governments to redistribute. The low-skilled might tend to move to highly redistributive welfare states; the high-skilled might tend to move to less redistributive welfare states; capital will move where it is taxed least, etcetera: such trends might undermine the redistributive capacity of national welfare states. Whether or not such trends occur in reality, is a matter of dispute (the downward pressure of capital mobility on corporate taxation seems most evident; empirical studies learn that cross-border mobility is mainly motivated by employment opportunities, rather than by benefit systems). But, the point I want to make is that even in a setting where Member States would have achieved the same average level of prosperity, a supranational approach may be necessary to reconcile free movement on one hand and redistribution on the other hand.

Thus, this second objection to an overly optimistic reliance on upward convergence (with a view to distributive justice on a supranational level) leads us to what is probably the most complex discussion in the realm of European justice: how to reconcile free movement between Member States and the redistributive capacity of national welfare states? More fundamentally, what is the normative rationale for free movement? Space forbids a detailed elaboration of this question. Briefly put, the thesis I would like to defend is that free movement can be part of the legitimate opportunity structure of a just European polity, *if* it is accommodated by principles of reciprocity. In his analysis of what he calls ‘transnational solidarity in the European Union’, Floris De Witte formulates it as follows:

[...] if we want to reintegrate cosmopolitan dynamics within the structures of the nation state in the pursuit of social justice, the concept of reciprocity, whether understood in economic, social or political terms, might prove a good starting point, as it can conceptually accommodate relationships across borders while remaining sensitive to the preconditions for the reproduction of the welfare structures’.<sup>47</sup>

With an explicit reference to Rosanvallon’s notion of reciprocity<sup>48</sup>, De Witte concludes that ‘[R]eciprocity [...] allows for the reconfiguration of justice on the national level so as to take

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<sup>47</sup> De Witte, n21 above, at p. 17

<sup>48</sup> De Witte, n21 above, at p. 48. Rosanvallon defines reciprocity as ‘equality of interaction [...] The equilibrium on which it depends takes two forms: equilibrium of exchange or involvement’, see P. Rosanvallon, *The Society of Equals*, translated by A. Goldhammer (Harvard University Press, 2013), p. 271. He refers to Bowles’ definition of reciprocity: ‘a propensity to cooperate and share with others similarly disposed, even at personal cost.’ A readiness to contribute to society, for those who are able to contribute, seems an essential feature of reciprocity, so conceived, see S. Bowles, in collaboration with C. Fong, H. Gintis, A. Jayadev and U. Pagano U, *Essays on the New Economics of Inequality and Redistribution* (Cambridge University Press, 2012).

account of the transnational relational commitments that have emerged in economic, social, or political forms.<sup>49</sup>

One need not agree with De Witte's practical application of these concepts to concur with this fundamental idea. Giving mobile people who contribute to the social system of their host country (say, a Polish citizen working on a regular employment contract in Belgium) access to the social benefits of the host country (Belgium) is a matter of sound reciprocity for two different reasons, which are not always well understood. First of all, this principle reflects a generally accepted contributory principle within the existing national solidarity circles. Secondly, it justifies the fact that the Polish worker's employer pays the same social security contributions to Belgian social security as the Belgian worker's employer. In other words, non-discrimination in terms of social rights justifies and so sustains the principle that we do not tolerate competition between the Polish and the Belgian social security system on Belgian territory. In this way, this principle contributes to safeguarding the distributive capacity of national welfare states in the EU. Therefore, the 'deal' struck by former Prime Minister Cameron with the EU leaders to avoid Brexit, which would allow to discriminate regular Polish workers in the UK vis-à-vis British workers was fundamentally misguided.

Competition between the Polish and the Belgian social security system is exactly what happens in the context of posting of workers: a Polish worker who is 'posted' in Belgium remains integrated in Polish social security. Thus, posting is an exception to a foundational and sound principle of the European project. In order to accommodate work in other countries on short-term projects, such an exception is needed, a fortiori if one wants to develop an integrated market for services. Admittedly, the scope for this exception seems to have become

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<sup>49</sup> De Witte's account of 'transnational solidarity' is based on two arguments. First, freedom of movement, as understood in the European project, is legitimate as it enhances the freedom of European citizens to pursue their conception of the good life, beyond the borders of their nation state. Second, solidarity between non-nationals and nationals ('transnational solidarity'), upon which access to social benefits by non-nationals is based, depends on the associative or relational interaction between non-nationals and nationals. De Witte's fundamental idea is that freedom of movement must be accommodated by principles of reciprocity: he thereby entertains a broad notion of reciprocity and solidarity: reciprocity includes contributory efforts, but also goes beyond it: living in the same country can be the basis for specific solidarities, for instance with regard to access to primary healthcare. Giving non-nationals who happen to live in one's country access to primary healthcare, simply on the basis of their residence without any further condition but 'need', is not seen as jeopardising the 'preconditions for the reproduction of the welfare structures'. In contrast, giving access to social assistance, simply based on residence without further conditions, might be seen as jeopardising the 'preconditions for the reproduction of the welfare structures'. Admittedly, this account leaves a lot to be specified: it creates a framework for deliberation but does not lead straightforwardly to conclusions, as De Witte's critical account of the European Court of Justice's case law testifies. The 'preconditions for the reproduction of the welfare structures' can be understood in an economic sense (safeguarding an equilibrium between expected revenue and expenditure), but also in a political sense (safeguarding popular support). Crucially, in this account of solidarity in the EU, *reciprocity cannot be based on nationality*: the mere fact that people are 'non-nationals' cannot be the reason why they are denied access to social policies in the Member State of residence. See De Witte, n21 above.

too large, and there are important problems of inspection and control. The political debate on posting is analysed by Martinsen in her contribution to this volume. Feenstra also discusses posting in his discussion of the *Laval* judgment. Elsewhere I argue that the political debate badly needs an encompassing approach to the problem of posting and non-discriminatory access to social benefits for active non-nationals, in a spirit of reciprocity.<sup>50</sup> ‘New’ Member States such as Poland typically want as few limitations as possible on posting of workers (since a liberal posting regime is economically beneficial for them). Simultaneously, these Member States want as few limitations as possible on the principle of non-discrimination in social policy (since such limitations imply a social relapse for Polish citizens, who would lose social rights they now have). Thus, they apply two principles that are, in terms of rationale and justification, fundamentally at odds with each other, but that seem to serve their short-term interests best. Some of the ‘old’ Member States, having the most advanced welfare provision and labour market regulation, are increasingly nervous about the impact of posting on their labour markets; similarly, they feel uneasy with the debate on access to social benefits for non-nationals, who are working on regular employment contracts. What would reciprocity mean in this context? In a European negotiation on these matters, the old Member States should address the new Member States in the following way: ‘We are not in favour of discriminating your citizens in our advanced welfare states when they come to work there on regular contracts, hence we are in total opposition to the Cameron agenda. But, please, understand that we do not want to see our social system undermined by excesses in the application of posting’.<sup>51</sup> If such would be the principled approach of representatives of mature welfare states, they may strike a better deal with representatives of less developed welfare states on both issues (posting, non-discrimination), compared to a situation in which deviations from the non-discrimination principle and uncontrollable posting proliferate. If deviations from the non-discrimination principle and uncontrollable posting thrive, we will ultimately settle for an equilibrium with less social protection than in the opposite case. Everybody would lose in the end, in an archetypal example of how certain types of coordination yield Pareto-inferior solutions, compared to other types of coordination. Even for a country like the UK which seems, currently, not very worried about abuses of posting, it may ultimately be better – in terms of its national regulatory capacity – to have a controllable

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<sup>50</sup> Vandenbroucke, n6 above.

<sup>51</sup> Obviously, neither the level of child benefits nor the regulation of posting are matters for bilateral negotiations between the Dutch and the Polish government.

system of posting, rather than a free hand in the application of its in-work benefits for non-British citizens.

Although the debate about the coordination of social security and the debate on posting are now separated, Member States would be well advised to consider them from the same, principled perspective. The challenge is to find a balance between, on one hand, the need for an integrated market in services (for which posting is necessary) and the foundational principle of the EU that mobile workers should be integrated into the solidarity circle of the Member State in which they work, both in terms of wages, working conditions and social security contributions and social policy entitlements. Thus, the principle of non-discriminatory access to social benefits for active non-nationals and the concomitant integration of non-nationals into their host country's social security schemes is fundamental, not only from the point of view of reciprocity within welfare states, but also from the point of view of reciprocity between EU welfare states.<sup>52</sup>

Non-discriminatory access to social benefits for non-active non-nationals is a more complex matter. The distinction drawn between non-active and active non-nationals in the application of the non-discrimination principle is a delicate and often controversial one. Contrary to a number of observers, I believe that distinction, as highlighted in the well-known *Dano* judgment by the Court of Justice<sup>53</sup>, is legitimate. That is, in a union of welfare states, it is legitimate to delineate the access to social benefits for non-active mobile citizens by specific conditions, which reflect the nature of the social relations established between the mobile citizen and his host country. Ferrera touches upon this question in his contributions to this volume.

#### 4.4 *The normative puzzle*

In the previous Subsection, I discussed two objections against the idea that upward convergence in average Member State prosperity, if successful, suffices from the point of view of European distributive justice. The first objection – in a strict variant, exemplified by

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<sup>52</sup> Sangiovanni adds a principled argument against Cameron's Brexit deal on the basis of non-discrimination; in the same article, Sangiovanni also mentions arguments specific to the EU, based on 'demands of reciprocity among Member States cooperating in maintaining and reproducing the EU'. His reciprocity-argument refers to a scenario in which Britons working in other EU Member States would maintain access to social benefits in their host countries, whilst this would be denied to non-nationals (with EU citizenship) working in the UK. See A. Sangiovanni, 'Non-discrimination, in-work benefits, and free movement in the EU' (2016) *European Journal of Political Theory*, Epub ahead of print.

<sup>53</sup> ECJ, judgments of 11 November 2014 in *Elisabeta Dano and Florin Dano v Jobcenter Leipzig*, C-333/13, EU:C:2014:2358.

De Schutter's understanding of international distributive justice in this volume – fundamentally denies subsidiarity with regard to distributive preferences. Transferring redistributive policies from the national to the European level seems hardly a realist position; however, calls to develop a true European social model based on common principles of social justice, have been considered legitimate in the past, in so far as they have been implemented on the flexible and soft basis of the OMC, that is, with respect for diversity and substantive subsidiarity. In contrast, the second objection against the idea that upward convergence suffices, discussed in the previous Subsection, fully accepts subsidiarity; the argument is that, in an integrated market with mobility of capital and people, specific aspects of national social and taxation policy have to be regulated and even centralised in order to protect the actual redistributive capacity of the Member States. 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. This can be seen as the normative rationale, underpinning Barnard's conclusion from the Brexit saga.

One should now note that this second objection, which is motivated by our concern with cohesion within national welfare states, reveals a more fundamental normative puzzle. With reference to my starting point in this Section (Van Parijs' formulation of global justice) it can be formulated as follows. Suppose we are attracted by Van Parijs' argument that the mere existence of national borders forces us to develop a conception of global justice (because national borders create an international 'basic structure' that needs a legitimation in terms of justice), and that the EU can be seen as a promising laboratory for global justice. But would we really want to give an absolute priority to global justice over domestic justice, as Van Parijs argues, and demote national welfare states to mere 'instruments' of global objectives? Let me illustrate the consequences of this instrumental position with a stylised example. Let's assume that the EU is composed of two types of Member States, rich Member States and poor Member States; within each of these types of Member States, there are two social classes, the rich class and the poor class. Hence, we have four representative social positions: one may be poor in a poor Member State; one may be rich in a poor Member State; one may be poor in a rich Member State; one may be rich in a rich Member State. The poor in the rich countries are better-off than the poor in the poor countries. I take it that we are global egalitarians, who want to make the position of the worst-off as good as possible (a maximin principle, à la Rawls). Let us suppose that we would have to choose between two scenarios:

one (integration) in which the poor in rich countries see their social position deteriorate, while the poor in poor countries see their situation improve; another one (no integration) in which there is a status-quo. If we think national welfare states are merely instruments for a global maximin, we would choose the ‘integration’ scenario without further ado.

For sure, the imaginary scenarios presented in the previous paragraph would betray the EU’s founding fathers’ expectations about the impact of integration: they firmly believed that upward convergence across EU Member States would go hand in hand with sustained or even improved internal cohesion within each of the EU Member States. But if these imaginary scenarios would be a true stylisation of today’s reality of economic integration, they would create a tragic dilemma for anyone who thinks that both inequalities across Member States and inequalities within Member States matter. Let’s call the latter view a ‘dualist’ view, as it entertains a dual perspective in which both relations across Member States and relations within Member States matter per se.

This dualism is ‘non-reducible’ in the following sense. The dual perspective cannot be reduced to a single one, as it is premised on conflicting views on the size of the solidarity circle concerned: the ‘we’ to which solidarity applies is differently defined. Moreover, there is no simple trade-off between the one and the other perspective, let alone an algorithm whereby national and pan-European poverty or inequality indicators may be reduced to a single indicator. One might say that such an irreducible normative dualism with regard to social justice in the EU is intrinsic to the point and purpose of the European project, and that the attractive simplicity of the instrumental view fails to do justice to the European project. Another way to formulate the dual perspective is that a European conception of justice consists of principles that apply between Member States qua collective actors (loosely put, we want to see upward convergence across Member States, which means that we want to improve the relative position of the ‘worst-off Member State’) and principles that apply within Member States (loosely put, we want to protect and if possible improve the relative position of the worst-off within each of the Member States). However, starting from such a dualist perspective, we may end up with ambiguity and inconsistency. By way of example, suppose we want to pursue a maximin rule (the position of the worst-off individual should be as good as is possible) both at the supranational European level and at the level of the Member States: without a clear priority for either the supranational maximin rule or the national maximin rules, we are faced with contradictory objectives. In his contribution to this volume, Ferrera suggests a less ambitious supranational objective: in addition to the redistributive efforts organised by national welfare states within their respective solidarity

circles, a ‘sufficientarian’ standard would make sure that all EU citizens have ‘enough’, at least to survive. In Ferrera’s view, this would instantiate a form of organised ‘benevolence’, a necessary complement to the stern, responsibility-sensitive application of principles of reciprocity.<sup>54</sup> Ferrera’s organised benevolence would imply a degree of cross-border interpersonal redistribution; therefore, in order to be normatively consistent, i.e. not in contradiction with national distributive objectives, an elaboration on these objectives and on priorities is necessary.<sup>55</sup>

I cannot engage thoroughly with the arguments put forward by De Schutter and Ferrera in this volume. This is not my brief here. Including De Schutter and Ferrera in our project was a deliberate choice, as they exemplify two different approaches to normative theory building. Ferrera positions himself as belonging to a ‘realist strand’, ‘combining normative and sociological reasoning’;<sup>56</sup> in contrast, I would situate De Schutter in an ‘idealist strand’, in which normative ideals are seen as utopian dreaming in a bad sense only if human beings are truly *unable* to carry out the dream. According to Ferrera, ‘[i]f they aim at exerting practical effects, justificatory arguments need to be closely anchored to existing and factual states of affairs and remain highly sensitive to feasibility constraints’.<sup>57</sup> In contrast, proponents of the idealist strand might say that this realist approach risks polluting or even conflating moral judgments with empirical observations about how people actually think in today’s societies and how institutions actually function. In other words, proponents of the idealist strand, might argue that we should not conflate ‘ought statements’ with ‘is’ statements.

Whether or not we emphasise realism in contrast to idealism, my short exploration of normative arguments signals that we need a conception of justice that is based on a specific understanding of the European Union as a multi-tiered polity, with at least three sets of principles: principles to be applied between Member States as collective actors, (common) principles to be applied within Member States, and principles for regulating the mobility of citizens across Member States. In yet other words, we need an account that takes on board

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<sup>54</sup> Ferrera, in this volume, n23 above. Ferrera’s argument for ‘benevolence’ is, to some extent, congenial to my plea for compassion in Vandenbroucke, n31 above, which is premised on the idea that responsibility-sensitive egalitarian justice has no adequate answer to some relevant social policy questions.

<sup>55</sup> There is, a priori, no problem of consistency if the pan-European and the national objectives with regard to income protection in the Member States are expressed in relative terms (say, no one should have an income below 60 per cent of the median income in his Member State) and minimum income protection is not funded by cross-border transfers. For a concrete discussion of such a proposal, see Vandenbroucke et al., n45 above.

<sup>56</sup> Ferrera, in this volume, n23 above.

<sup>57</sup> Ibid.

both the intrinsic value of global justice and the intrinsic (not purely instrumental) value of existing welfare states.

## **5 Conditions for upward convergence and social investment**

In order to focus on the normative debate, my discussion in the preceding Section has taken it for granted that the initial expectation of the founding fathers with regard to upward convergence would be vindicated. Formulating it more precisely, their expectation can be reconstructed as being based on two hypotheses:

- (1) economic integration would lead to upward convergence in the average prosperity of Member States
- (2) that process would not diminish the capacity of the Member States to develop generous and redistributive domestic welfare states.

These hypotheses are, from an empirical point of view, not evident. In the contemporary debate on globalisation, many experts tend to accept that the first hypothesis holds on a global level (and thus also in Europe), but they question the second hypothesis (at least on the global level, but presumably also in Europe). My own view is that the empirical reality is nuanced and complex, with a lot of diversity in developments across welfare states; space forbids to pursue this here. In Section 4.3, I pointed out that mobility of labour and (most evidently) capital might exert downward pressure on the redistributive capacity of advanced welfare states, which would qualify the optimism of the second hypothesis. I should add that the first hypothesis (integration leads to upward convergence in Member States' prosperity) needs qualification too on the basis of our recent experience. First of all, in the Eurozone, we witnessed divergence rather than convergence over a number of years, due to design flaws of the monetary union. But even for the EU at large, it seems that upward convergence needs deliberate policies, that have implications for the orientation of national social models: Member States need adequate levels of investment in their human capital to sustain long-term convergence, and investment in human capital needs sufficiently egalitarian background conditions to be effective. Therefore, social investment policies can be seen as a matter of

common concern in today's Europe; hence, promoting and supporting social investment should be on the agenda of a European Social Union.<sup>58</sup>

## 6 Conclusions

In this introductory contribution, I have argued that we need a clear-cut concept with regard to the social dimension of the EU. *Why* do we need it? The starting point is functional: two separate developments necessitate a basic consensus on the European Social Model. First, monetary integration necessitates supranational instruments for stabilisation. Stabilisation implies, in one way or other the sharing of risks, and thus a responsibility cut (not on the basis of a metaphysical truth about individual and collective responsibility, but on the basis of a social contract, underpinning the idea of a European Social Model). Moreover, both the prevention of risks that carry externalities and the exigencies of risk-sharing, put a limit on the diversity of the domestic social models that can be accommodated in a monetary union. In other words, the monetary union forces upon the participating Member States a basic consensus on the social order it has to serve. The second functional argument that triggers the idea of a Social Union is based on the need to reconcile free movement and domestic social cohesion across a heterogeneous set of Member States: this requires a common understanding of what it means to embed 'openness' in domestic cohesion.

The EU must become a 'holding environment', that allows Member States to be flourishing welfare states. But *what* is exactly the agenda of a European Social Union? The answer to that question depends on specific normative choices. We should avoid a discourse framed in irresistible functional imperatives. As Innerarity put is: 'Politics is conditional liberty, choices in the midst of constraints. Politics is always freedom in context, even and particularly within frameworks that are as complex as the EU'.<sup>59</sup> My argument is that our normative choices have to reconnect with the point and purpose of the European project, as it originally originated, but not in an uncritical way. On a foundational level, reciprocity within and between Member States is a key normative idea. On a practical level, we have to reconsider the original division of labour envisaged by the founding fathers of the project, in which economic policy would be supranational and social policy, in essence, national. But,

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<sup>58</sup> See Ferrera's reference to social investment in this volume, n23 above, and a discussion of convergence and social investment in Vandenbroucke and Rinaldi, n3 above; and A. Hemerijck (ed.), *The Uses of Social Investment* (Oxford University Press, 2017).

<sup>59</sup> D. Innerarity, 'After the Eurocrats' Dream, the Contingence of History', Verfblog, 22 November 2016, available at: [www.verfassungsblog.de/after-the-eurocrats-dream-the-contingence-of-the-history/](http://www.verfassungsblog.de/after-the-eurocrats-dream-the-contingence-of-the-history/) [15 December 2016].

that does not mean that we opt for a European welfare state. A holding environment would develop systemic support for national welfare states, in the form of risk-sharing (rather than cross-border redistribution), regulatory prevention of unfair tax competition, active support for social investment and upward convergence, all this based on a basic consensus on the European Social Model, and embedded in common social standards, notably with regard to key labour market institutions and social inclusion. For the balancing act between openness and domestic social cohesion to be credible, such standards must have a tangible impact. So conceived, a European Social Union would be a laboratory not for international redistribution per se, but for developing policies that contradict the pessimistic determinism that often characterises contemporary debates on globalisation.

Since mere rhetorical references to solidarity will not suffice to clarify what is at stake, let alone convince citizens, we need, first of all, a robust understanding of the solidarities that should underpin such a Union. Therefore, I argued that we should valorise intellectual resources in academic theorising about social justice, which – surprisingly – are only rarely applied to the EU.<sup>60</sup> I simplified my exploration of these academic resources, by assuming that market integration leads to upward convergence in average prosperity across Member States: the question then was whether upward convergence, if realized, suffices for a European conception of justice. That optimistic assumption with regard to the consequences of market integration needs qualification (and this qualification adds to the agenda of a European Social Union), but I did not develop this part of the debate. In my discussion, I highlighted the potential of the responsibility-sensitive approach to distributive justice, to frame our thinking on European Social Union; a responsibility-sensitive approach gives a particular edge to the notion of reciprocity. However, I did not argue that responsibility-sensitive egalitarian justice is in itself sufficient as a basis for social policy making.

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<sup>60</sup> This is obviously not the first attempt to explore the ‘justice deficit’ in the European project from a normative perspective. However, whilst international distributive justice is a buoyant domain in academic normative political and social philosophy, it is rarely applied to the EU. Existing sources include the famous appeal by Habermas and the correspondence between Van Parijs and Rawls; see J. Habermas, ‘Why Europe needs a constitution’ (2001) 11 *New Left Review* 5; and his renewed insistence on the need for solidarity in Europe (yet without elaborating much on it) in J. Habermas, ‘Democracy, Solidarity, and the European Crisis’, lecture delivered at the KULeuven, 26 April 2013, available at: <https://www.kuleuven.be/euroforum/page.php?LAN=E&FILE=policy-papers> [12 December 2016]; P. Van Parijs and J. Rawls, ‘Three Letters on the Law of Peoples and the European Union’ (2013) 4 *Revue de Philosophie Économique* 7. Only recently has a more focused academic debate been instigated on the normative foundations of a ‘Social Europe’, see, for instance, P. Van Parijs, *Just democracy. The Rawls-Machiavelli programme* (ECPR Press, 2011); Sangiovanni, n26 above; see also D. Kochenov, G. de Burca and A. Williams, *Europe’s Justice Deficit* (Hart Publishing, 2015); and the contributions by, references to and discussion of work by J. Neyer, R. Forst, J. Lacroix, K. Nicolaidis and other authors in the latter volume.

We are in uncharted territory: there is no example of a union of welfare states in the world. Admittedly, there is one crucial precondition in this endeavour: to build a Social Union, we need a stronger sense of common purpose, in which a real sense of reciprocity fits in. The politics of reciprocity amongst democratically elected governments is inevitably complex. A union of national welfare states is a union of democracies; but even if these democracies maintain their sovereignty on the ways and means of social policy, they must agree on the common objectives of the union, on the responsibility cut, on the extent to which principles of responsibility and reciprocity have to be complemented by other normative principles, and on the extent to which in specific domains sovereignty has to be pooled. In itself, that constitutes a huge democratic challenge, which is not to be underestimated. However, is my contention that the problem at hand is not, first and foremost, one of a ‘democratic deficit’ in the existing EU Institutions; the problem is a ‘deficit in common purpose’. Clarifying that common purpose with regard to the social dimension of the project remains an urgent intellectual and political task.

