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TOWARDS AN "EU SOCIAL MODEL"
CHALLENGES, INSTITUTIONAL OPPORTUNITIES AND PERSPECTIVES

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L'idea alla base di questo approccio è che sia non solo desiderabile ma istituzionalmente possibile muovere verso forme di politica «civile», informate a quel «pluralismo ragionevole» che Rawls ha indicato come tratto caratterizzante del liberalismo politico. Identificare i contorni di questa nuova «politica civile» è particolarmente urgente e importante per il sistema politico italiano, che appare ancora scarsamente preparato ad affrontare le sfide emergenti in molti settori di policy, dalla riforma del welfare al governo dell'immigrazione, dai criteri di selezione nella scuola e nella pubblica amministrazione alla definizione di regole per le questioni eticamente sensibili.

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TABLE OF CONTENTS

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welfare state, social policy, european integration, poverty, social inclusion

ABSTRACT

TOWARDS AN "EU SOCIAL MODEL"

CHALLENGES, INSTITUTIONAL OPPORTUNITIES AND PERSPECTIVES

Can Europe reconcile the logic of "opening", which drives economic integration, with the logic of "closure", which underpins nation-based welfare arrangements? Can the clash between the two logics be turned into a "happy marriage", i.e. into an institutional engine for further expanding and strengthening the life chances of its citizens? This paper argues in favour of a positive answer and discusses possible pathways towards the happy marriage scenario. Sections 1 and 2 set the stage of the argument by illustrating the programmatic contrast and growing tensions between the welfare state, on the one hand, and the EU, on the other. Section 3 outlines a possible strategy of institutional reconciliation. It argues that the key for a successful reconciliation lies in a more explicit and effective "nesting" of the national welfare state within the overall spatial architecture of the EU. Sections 4 and 5 try to identify and discuss some possible building blocks (and even some ongoing developments) which may promote the formation and consolidation of the new architecture and thus activate a virtuous nesting scenario, in which the economic and the social spaces of Europe will be able not only to co-exist without colliding, but also to re-enforce each other. Section 6 concludes.

TOWARDS AN "EU SOCIAL MODEL"
CHALLENGES, INSTITUTIONAL OPPORTUNITIES AND PERSPECTIVES*

1. INTRODUCTION

By the end of 2010 the welfare state will have celebrated its centennial in several Member States. A genuine European invention, public protection schemes were introduced to respond to the mounting "social question" linked to industrialisation. The disruption of traditional, localised systems of work-family-community relations and the diffusion of national markets—based on free movement and largely unfettered economic competition within the territorial borders of each country—profoundly altered the pre-industrial structure of risks and need. The regulation of the new national labour markets by establishing common standards, rights and obligations (through labour laws, unemployment and more generally social insurance, national labour exchanges etc.) was one of the fundamental institutional and political responses that European states gave to the big "social question" with which they were confronted.

In his ground-breaking historical analysis of modern citizenship, T.H. Marshall suggested that the evolution of the national welfare state involved a two-fold process of fusion, and of separation (Marshall 1950). The *fusion* was geographical and entailed the dismantling of local privileges and immunities, the harmonisation of rights and obligations throughout the national territory concerned, and the establishment of a level playing field (the equal status of citizens) within state borders. The *separation* was functional and entailed the creation of new sources of nationwide authority and jurisdiction as well as new specialised institutions for the implementation of that authority and that jurisdiction at a decentralised level. The development of national markets, accompanied by the creation of new "social" entitlements and public protection schemes, triggered off—at least in liberal democracies—a phase of unprecedented economic growth and social progress, while strengthening at the same time the political loyalty of citizens and the overall legitimacy of the state.

* This paper builds on previous work, partly carried out with Stefano Sacchi; I am grateful for the fruitful collaboration.

To a large extent, the present historical phase is witnessing the emergence of a new (a "second") social question in Europe, which is reproducing under new guises the double challenge of fusion and separation already experienced between the XIX and the XX centuries. Historical parallels are always slippery and can be misleading when taken too literally, yet they may serve a useful heuristic function. As was the case one hundred years ago at the domestic level, the Europeanisation ("fusion") of national markets through freedom of movement and competition rules is (already has been) a tremendous trigger for growth and job creation in the EU's economy, enhancing life chances and welfare for European citizens. But it is also a source of social and spatial disruptions. Again, economic "fusion" requires the introduction of some common social standards, rights and obligations through "separation", i.e. a socially-friendly institutional re-articulation of the novel Europeanised space of interaction.

We can think of at least three reasons which make such a socially-friendly re-articulation desirable[1]. First, the re-articulation is needed in order to secure a fairer, more equitable distribution of life chances for EU citizens, both within and between Member States. This is the "social cohesion", or "social justice" rationale. Unless one believes in a naive version of the trickle-down effect of growth, the pursuit of economic prosperity through efficient and open markets should be accompanied by an agenda for social progress, resting on key values (such as "social justice and protection, equality between women and men, solidarity between generations and protection of the rights of the child"—now enshrined in art. 3 of the Lisbon Treaty) which are widely shared and deeply rooted in Europe's political cultures. While there can be no doubt that this agenda includes areas and policies which legally come under national jurisdiction, it should be equally clear that the EU can play an important role, both directly (by exercising its legal powers to sustain and complement national social justice agendas) and indirectly (by "mainstreaming" social cohesion/justice considerations within its entire array of policies). Second, a more social EU is desirable in order to improve the very functioning of the internal market, and thus generate more growth and jobs (this is the "economic efficiency" rationale). A wealth of political economy research has in fact shown that social policies can play an important role not only as redistributive instruments, but also as "productive factors" (Fouarge 2003). Thirdly, and possibly most importantly, a more social EU is needed in order to secure continuing support for the integration process itself on the part of increasingly worried national electorates (this is the "social and political legitimacy" rationale). There is indeed growing evidence that the EU is now perceived as a potentially dangerous entity by a majority of its citizens, as a threat to national labour markets and social protection systems, as a "Trojan horse" serving the malevolent interests of globalisation. As noted above, post-war social protection systems have built extraordinary bonds between citizens and their national institutions, bringing about a very robust form of allegiance, based on the institutionalised exchange of material

[1] For a more expanded discussion and references see Ferrera and Sacchi (2009).

benefits for electoral support. The EU, conversely, has been rather weak in terms of identity and allegiance building. If voters' anxieties vis-à-vis markets and competition are not alleviated, if voters are not convinced that "the EU cares" (through direct and indirect action, or non-action), the integration process as such may be seriously de-legitimised and jeopardised by xenophobic sentiment and neo-protectionist demands voiced by those social groups that are most directly affected by economic opening—and the economic crisis has undoubtedly intensified this challenge.

The institutional re-articulation which is required in order to build a stronger social EU (better: a fully fledged "EU social model") is much more complex and difficult than the organisational separations that took place within the nation states about a hundred years ago. In late XIX century Europe, social rights emerged on a *tabula rasa* (or at least almost *rasa*): there was not much to "fuse" and there were wide margins for creating *ex novo* in terms of social policies. In today's Europe the institutional material to be integrated is very thick and very solid in the welfare realm, and decision making rules at the EU level are inherently biased against efforts of positive integration. But there is an even more fundamental obstacle: the institutional clash between the logic of closure, which underpins nation-based social programs, and the logic of opening which drives the integration process. By its very nature, the welfare state presupposes the existence of a clearly demarcated and cohesive community, whose members feel that they belong to the same "whole" and that they are linked by reciprocity ties vis-à-vis common risks and similar needs. Since the XIX century (or even earlier in some cases) the nation-state has provided the closure conditions for the development of an ethos of social solidarity and redistributive arrangements within its geographical territory. By contrast, European integration is clearly guided by a logic of "opening", aimed at fostering free movement (in the widest sense) and non discrimination by weakening or tearing apart those spatial demarcations and closure practices that nation-states have historically built around themselves, especially in the social sphere.

Finding a well-designed and viable institutional response to Europe's "second social question" means, essentially, to address the clash between the logic of closure and the logic of opening. Can Europe reconcile these two logics and transform the encounter between nation-based welfare and EU-based economic unification into a "happy marriage", i.e. into an institutional engine for further expanding and strengthening the life chances of its citizens? This paper argues in favour of a positive answer and discusses possible pathways towards the "happy marriage" scenario. Section 2 presents the main argument by illustrating the programmatic contrast and growing tensions between the welfare state, on the one hand, and the EU, on the other. Section 3 outlines a possible strategy of institutional reconciliation. It argues that the key for a successful reconciliation lies in a more explicit and effective "nesting" of the national welfare state within the overall spatial architecture of the EU. The final two sections try to identify and discuss some possible building blocks (and even some ongoing developments) which may promote the

formation and consolidation of the new architecture and thus activate a virtuous nesting scenario, in which the economic and the social spaces of Europe will be able not only to co-exist without colliding, but also to re-enforce each other.

2. THE CHALLENGE: CLOSURE VS. OPENING

As has been shown by a large scholarship in sociology and political science[2], welfare state formation can be seen as the last phase or step in the long term historical development of the European system of nation states: the step through which territorially bounded political communities came to introduce redistributive arrangements for their citizens, thus transforming themselves into self-contained and inward-looking spaces of solidarity and inaugurating novel and original models of state-mediated social sharing.

While this transformation was being completed within each domestic arena, during the so-called *Trente Glorieuses*, a new institutional development took off in the inter-state or supranational arena: the process of European integration. Even though originally meant to "rescue the nation-state" (Milward 2000) by boosting economic growth, with hindsight we now realise that the Rome Treaty pulled a strong brake on the long-term dynamic of nation- and state-building in Europe.

The original Treaties envisaged a division of labour between supranational and national levels: the Community was to be instrumental in opening up markets and helping achieve otherwise unattainable economies of scale, so as to fully exploit Europe's (initially, the Six's) economic potential. Member states could use part of the extra surplus in the institutionalised exchange of social benefits—flowing from their national welfare institutions—for "anchoring" support on the part of their domestic political communities. "Keynes at home, Smith abroad", as Robert Gilpin aptly dubbed this kind of embedded liberalism arrangement (Gilpin 1987, 355). This justified the weakness of the social provisions in the Rome Treaty: from equality of treatment for men and women to the coordination of social security regimes, all the social provisions and articles contained therein were instrumental in the dismantling of non-tariff barriers to trade and the creation of a higher economic order featuring unconstrained economic trade flows. However, this supranational liberal order rested upon, or rather was embedded into national welfare states that were to be equally unconstrained in terms of social regulation capabilities, and in particular would not be constrained by the supranational authorities. This division of labour implied separating jurisdiction between the supranational and national levels, thus establishing "mutual non-interference" between market-making and market-correcting functions. European competition law and the four

[2] I have reconstructed and discussed this strand of scholarship in Ferrera 2005. One of the most prominent Founding Father of this tradition is of course Stein Rokkan (Flora 1999).

freedoms were not supposed to impinge upon Member States' sovereignty in the social sphere (Giubboni 2006).

This did not last. Firstly, since the 1970s international political economy conditions have changed, and the embedded liberalism compromise has floundered. Moreover, and more importantly still as regards European integration, the Community legal order has been constitutionalised (Weiler 1999). The supremacy of Community law over domestic legislation has, along with direct effect, torn the initial division of labour to pieces: if Community law trumps national law, then provisions geared to foster free movement and unconstrained competition (i.e., the Treaty provisions) trump social regulation, as enshrined in national constitutions and laws, and ECJ judges, contrary to national constitutional judges, will be constrained in balancing economic and social interests whenever these clash (Scharpf 2009). To be sure, the ECJ has not always operated as a "market police force", and has on several occasions granted some degree of "immunity" against European market law to national welfare institutions and practices. However, absent a Treaty "hook", it has done so on the grounds of judicial doctrines that lack a stable legal anchoring and may well be overridden in other rulings or legislative acts.

The de-bounding and opening logic of European integration has raised increasingly severe problems for the welfare state, as it has put in question two central tenets of this institution: the territoriality principle and the principle of compulsory affiliation to state-controlled insurance schemes. More specifically, through the four freedoms, competition rules and the rules of coordination of national social security systems, the EU law has launched two basic challenges to nation-based welfare:

- a challenge to its territorial closure, through the explicit prohibition of (most) cross border restrictions regarding access to and consumption of social benefits and to some extent also the provision of services. The nationality filter has been neutralised for admission into domestic sharing spaces and some core social rights (such as pensions) have become portable across the territory of the whole EU;
- a challenge to the very "right to bound", i.e. the right of each national welfare state to autonomously determine who can/must share what with whom and then enforce compliance through specific organisational structures backed by coercive power (e.g. setting up a compulsory public insurance scheme for a given occupational category).

These challenges have manifested themselves gradually and incrementally over time, affecting in different ways and with different intensity the various risk-specific schemes and the various tiers and pillars of provision in different countries (Martinsen 2005 and 2005a). So far the two challenges have not caused major organisational upheavals. But during the last two decades the institutional status quo has been explicitly and directly attacked on several occasions in some of its

foundational properties: for example the link between legal residence and the right to enjoy means-tested social assistance benefits or the public monopoly over compulsory insurance (cf. Box 1).

Box 1: The effects of EU law on national social spaces: some examples

- Nationality/citizenship no longer a legitimate instrument of "closure" in the access to social benefits → Equal treatment for all "legal residents"
- Increasing top-down harmonisation of criteria for obtaining "legal residence"
- Compulsory membership to public social insurance schemes ("monopoles sociaux") legitimate only if certain conditions apply
- Patients legally residing in a EU Member State can seek medical care abroad at the expenses of national schemes
- Liberalisation of "second pillar" pension schemes
- Right to industrial action/strike and application of collective agreements challenged if clashing with freedom of movement (Laval, Viking, Rueffert cases)
- Closure rules in higher education challenged if clashing with freedom of movement

During the last couple of decades, Member States have been investing a lot of energy in cushioning their social protection systems against challenges stemming from European law, e.g. by not complying with rulings, agreeing among themselves to change European law, or even failing to introduce new social programs that could subsequently become the object of European court action. This may well be one of the reasons why such issues have not yet come to the fore of public debate in Europe and remain confined to restricted insider circles: their potentially disruptive outcomes have so far been (relatively) buffered by Member States' reactions. But how long can this last? What risks are involved in terms of social and political consensus?

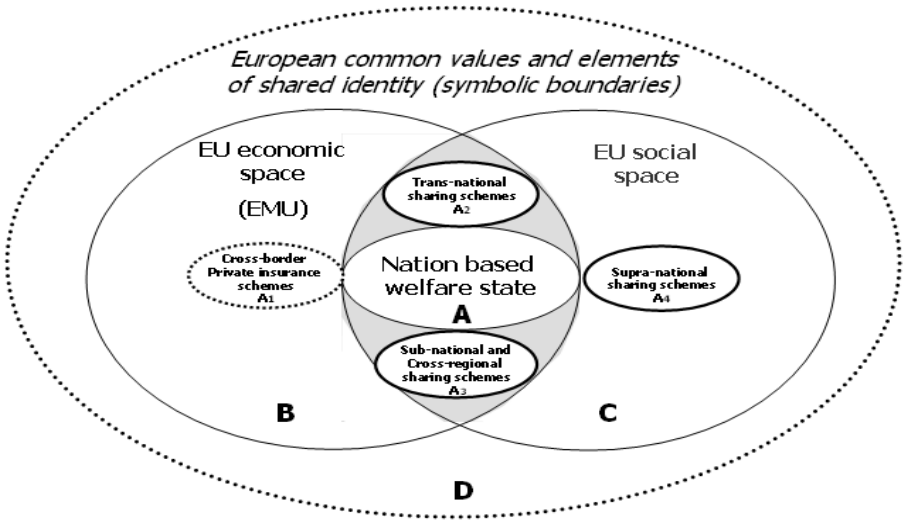
The new situation of social "semi-sovereignty" (a term originally coined by Leibfried and Pierson, 1995) has already prompted in recent years a growing politicisation of the "opening" issue and, in some countries more than others, of the integration process as a whole. The most evident manifestation of this politicisation occurred in the Spring of 2005, during the campaigns for the French and Dutch referendums, which rejected the Constitutional Treaty (and the Irish referendum on the Lisbon Treaty held in June 2008 has confirmed that popular fears about "opening" have certainly not abated). Not surprisingly, questions regarding the social sharing dimension (Who shares what, and how much? Is it appropriate for the EU to interfere in such decision? More crucially still, is the EU undermining national welfare arrangements and labour markets?) have been playing a central role in this process of politicisation, while national governments find themselves increasingly sandwiched between the growing constraints imposed by the EU on the one hand and the national basis of their political legitimacy on the other—a legitimacy which remains highly dependent on decisions in the social protection domain.

As witnessed, again, by the referendum debates, the vast majority of ordinary citizens and a good number of policy makers think that the growing friction between the welfare state and the EU has or could have an easy solution: the two institutions should be put back on "separate tracks", as they were in the first couple of decades after the Rome Treaty. Anyone that has some familiarity with institutional theory knows, however, better: macro-historical trends cannot be reversed (Pierson 2004). The welfare state and the EU—which can undoubtedly be regarded as the two most important achievements of the XX century in Europe—have now encountered each other and are bound to remain on the same track of development: there is no going back to separate tracks. If, as is here argued, the logic of integration does have a high destabilising potential with respect to national social protection, then can we think of ways to mitigate this potential and imagine a strategy of compromise and "institutional reconciliation"?

3. A NEW "NESTED" ARCHITECTURE

Our answer to such question is: "Yes, we can". As mentioned in the Introduction, the key for a successful reconciliation lies in a more explicit and effective "nesting"[3] of the national welfare state within the overall spatial architecture of the EU. Figure 1 shows how the nesting between the welfare state and the EU could be achieved. Let us illustrate and discuss the underlying rationale and the various elements of this Figure in some detail[4].

Figure 1: The nesting of nation-based welfare within the EU



[3] I have discussed the concept of "nesting" and its use in the social sciences in Ferrera (2009).

[4] An earlier version of this Figure is included in Ferrera (2005). I re-propose here a slightly modified version: not only do I still consider it a useful heuristic tool, but my impression is that a number of

As can be seen, the national welfare state is placed at the very centre of Figure 1. For responding to the big social risks of the life-cycle, the broad-based national insurance schemes remain today the most efficient and equitable institutions at our disposal. These schemes must be updated and modernised, of course, in order to respond to a host of endogenous transformations (cf. below). But they must also be safeguarded as precious instruments to promote distributive equity (the "social justice rationale"), cohesion and social consensus (the "legitimacy rationale") and even a smooth and correct functioning of market transactions (the "economic efficiency" rationale).

In the wake of half a century of supranational integration, the welfare state is already inserted—as shown in the previous section—within the economic spaces of the EU: space B consists of the Economic and Monetary Union, resting on free movement provisions, competition law, the fiscal rules of the Growth and Stability Pact—and, in the Euro-zone, a common currency and monetary policy. Space B has been the very epicentre of the opening waves of the integration process. We know that such waves were well-meant, so to speak, and that they have brought unquestionable advantages from an economic point of view. The EMU project was elaborated during the 1980s and 1990s in order to respond to the threats of stagnation and Euro-sclerosis, with a view to revamping "growth, competitiveness and employment": the EU GDP is now significantly larger than it would have been without enhanced market integration. Liberalisations have made many goods and services more affordable to consumers (let us think of low-cost air fares), increasing the range of options available to them (including cross-border private insurance schemes, as shown by the Figure). In certain areas (e.g. health and safety) market integration has also brought about more consumer protection and higher labour standards. In addition, the tighter coupling between economic integration and national welfare states has prompted several countries to undertake much needed functional and distributive "recalibrations" of their social protection systems (Ferrera and Hemerijck 2003, Ferrera and Gualmini 2004).

As explained in the previous section, however, space B has also increasingly become a source of instability for national welfare state programs: its principles and policies are eroding the foundations of the "nest", i.e. those closure preconditions which are necessary from an institutional and political point of view for sustaining social solidarity over time. As convincingly argued by Fritz Scharpf, this process of erosion is largely driven by decision making rules that systematically favour negative over positive integration, but is also intensified by a sort of general pro-integration bias on the side of supranational authorities (and in particular the Court of Justice) "that treats any progress in mobility, non discrimination and the removal of national obstacles to integration as an unmitigated good and an end in itself" (Scharpf 2009, 15). In other words, the destabilising pressures of space B

developments since 2005 have made that nesting scenario more feasible, i.e. have brought it within an easier reach.

are linked to institutional and ideational dynamics that often push the logic of opening well beyond the functional and normative requirements (and overall rationale) of economic integration *per se*.

A strategy of reconciliation thus calls for the formation within the EU architecture of a second circle, which Figure 1 calls the EU "social space" and whose main function should be to safeguard or re-construct those institutional preconditions (the "boundary configuration") that underpin domestic sharing arrangements. To be sure, especially after the Amsterdam and Nice Treaties (not to speak of the Lisbon Treaty: cf. below), various important steps have already been taken in this direction: in space C we now have a Charter of Fundamental Rights, hard laws on some common labour and social security standards and soft laws on employment, social inclusion, pensions and health care. In recent years, the Spring European Councils have also agreed on a number of grand "Pacts"[5] that have reaffirmed the EU's recognition of fundamental social objectives, its commitment to the "caring" dimension of Europe. These are all steps in the right direction, but, as will be argued below, some key and strategic elements are poorly defined or altogether missing. Before discussing what is to be improved, let us however complete the description of the nested architecture of Figure 1.

As mentioned earlier, an institutional reconciliation between the welfare state and the EU implies not only mutual acknowledgement, as it were, but also some mutual concessions. A strengthened Space C can be seen as the concession that the EU makes to the welfare state, recognising the fundamental role played by nation-based sharing programs in enriching and stabilising citizens' life chances. But the national welfare state must make concessions too. First, it must learn how to live with (and hopefully take advantage of) some of the opening spurs coming from space B—a learning process that seems to be already under way, as we have seen. But the welfare state must also be ready to delegate or transfer some of its traditional social sharing functions to novel post-national forms of risk-pooling and redistribution.

More specifically, Figure 1 indicates three new possible types of sharing spaces:
1. trans-national sharing spaces, centred on specific risks and occupational sectors and resting on novel functional alignments;
2. sub- and cross-regional sharing spaces, possibly addressing a plurality of risks or social needs and resting on new territorial alignments;
3. supranational sharing spaces, i.e. novel redistributive schemes directly anchored to EU institutions and based on EU citizenship (or denizenship) alone, i.e. without the filter of national institutions and politics.

In the "virtuous nesting" scenario envisaged by the Figure, the spatial architecture of the EU must become more protective of the institutional core of the national

[5] Pact on "Youth policies and youth mainstreaming" (2005); Pact on "Equal opportunities and work-life balance" (2006); and Alliance on "Family policy" (2007).

welfare state, but at the same time it must make room and encourage innovation and experimentation on each of these three post-national fronts. What kind of institutional reforms, specifically, could be introduced in order to make progress in both directions?

4. A MORE SOCIAL EU: RECONFIGURING THE PATCHWORK

Let us first address the issue of how to introduce stronger protections for the core social schemes operating at the national level, enabling them to withstand the destabilising challenges originating from space B. As is well known, such challenges rest on the strongest base that the EU constitutional framework can offer: primary law, i.e. explicit and binding Treaty clauses on free movement and competition. In order to be effective, the institutional buffers which must be provided by space C should rest on an equally strong legal basis. Identifying these buffers is far from easy and requires a delicate balancing act. The general goal is however sufficiently clear: the EU constitutional framework (in the wide sense) ought to explicitly define the content and the boundaries of "social protection" as a distinct and relatively autonomous space, and specify the limits of free movement and competition rules in respect of this space.

Ever since the landmark rulings of the European Court of Justice in the 1990s (especially the *Poucet-Pistre* and *Albany* rulings, which had to adjudicate on some foundational questions regarding the balance between "opening" and "closure")[6], we know that this goal has been on the EU agenda: not only the social agenda, but also the wider agenda of broad institutional reform, and some progress has indeed been made. A detailed reconstruction of the winding road of such progress from the Single European Act to the Lisbon Treaty would fall far beyond the scope of this paper: let us therefore focus on the latter only.

The Treaty on the Functioning of the European Union (TFEU) does contain a series of provisions that could significantly strengthen space C and offer a promising basis for a (more) virtuous nesting between social welfare and economic integration. A highly competitive social market economy, full employment and social progress have been explicitly included amongst the Union's objectives. The coordination of Member States' economic policies and employment policies is now within the sphere of competence of the Union, which allows for the possible coordination of Member States' social policies as well. Fundamental rights have also

[6] In the *Poucet-Pistre* joined cases (C-159-91 and C-160-91) the Court had to establish whether the state monopoly over social insurance in France was legitimate according to EU law. In its ruling the Court found that the freedom of service and competition norms could not be invoked to justify exit from mandatory public insurance schemes. In the *Albany* case (C-67-96) the Court had to establish whether a textile company in the Netherlands was obliged to pay the contributions requested by its industrial pension fund, as envisaged by collective agreements. The Court ruled in favour of the pension fund. These cases and the political contexts under which they occurred are reconstructed in detail in Ferrera (2005).

been explicitly recognised by the Lisbon Treaty through the incorporation of a legally binding reference to the "Nice Charter". The latter contains a section on solidarity, which lists a number of rights and principles directly relevant to the social field, such as the right to information and consultation within undertakings, the right to negotiate collective agreements and to take collective action, the right of access to free placement services and protection against unjustified dismissals, and the right to have access to social security and social assistance. With the new Treaty the EU has also acceded to the European Convention for the Protection of Human Rights and Fundamental Freedoms, which shall constitute general principles of the Union's law (art. 6).

Possibly the most important innovation of the Lisbon Treaty is however the so-called "Horizontal Social Clause" (art. 9), which states that: "In defining and implementing its policies and activities, the Union shall take into account requirements linked to the promotion of a high level of employment, the guarantee of adequate social protection, the fight against social exclusion, and a high level of education, training and protection of human health". It must be added that two other "horizontal clauses" (art. 8 and 10) extend the scope of what might be called "social mainstreaming" to the reduction of inequality and the fight against discrimination[7]. The horizontal clauses and the recognition of fundamental rights mark the appearance within the EU constitutional arena of two potentially strong anchors that can induce and support all EU institutions (including the European Court of Justice) in the task off finding an adequate (and more stable) balance between economic and social objectives.

There are at least two additional provisions of the Treaty which deserve to be highlighted for their "re-bounding" potential. The first is Protocol 26 on services of general interests, included as an Annex to the TFEU (especially in the wake of Dutch, French and Belgian pressures). Article 2 of this Protocol explicitly says that "The provision of the Treaties do not affect in any way the competence of Member States to provide, commission and organise non economic services of general interests". As can be immediately appreciated, this is an important statement, that seems to grant to these services a sort of "constitutional" immunity from the opening logic of the integration process and in particular from the competition regime that pervades space B. The article is very short and its wording is not very precise. But, as specified by various Commission documents (see in particular European Commission 2008), non economic services of general interests definitely include "social services", which in turn comprise the institutional core (and also some of the periphery) of national welfare programs, namely 1) health care; 2) statutory and complementary social security schemes covering the main risks of

[7] Interestingly, the Horizontal Social Clause did not exist in the TEEC, which only dealt with equality between men and women and non discrimination. Art. 9 thus represents a genuine "social improvement" achieved during the Intergovernmental Conference, especially in the wake of effective mobilisation of the former members of the Social Europe Working Group of the European Convention (Vandenbroucke, personal communication).

life; and 3) personal social services (such as social assistance, employment and training services, social housing, childcare and long term care services)[8].

The second provision of the Lisbon Treaty that deserves to be highlighted is art. 48 (TFEU). This article (which in "euro-treaty" parlance is known as the "social security emergency brake", a term apparently coined by UK negotiators) recognises to each Member State the right to suspend the adoption of a legislative proposal related to the social entitlements of migrant persons if its implications are considered to negatively affect "important aspects of its social security system, including cost, scope, financial balance or structure". If a Member State requests the suspension, the matter is referred to the European Council where the proposal can be blocked[9]. Under the pre-Lisbon status quo, Member States did have the possibility of ultimately blocking a proposal in this delicate sphere: the co-decision procedure that regulates legislation on the social security rights of migrants envisaged unanimity for Council decisions. But a blockage that can be exerted (or threatened) at the very beginning of a legislative process—as in the new art. 48 procedure—is likely to be much more effective than a blockage that is attempted at its very end, possibly after a lengthy and controversial conciliation process between Parliament and Council. Article 48 is, in other words, a second important innovation of the Lisbon Treaty that puts back into the hands of the nation state some "gating" powers in respect of its own sharing spaces and thus strengthens its capacity to respond to the destabilising potential linked—in this case—to free movement provisions.

The new provisions of the Lisbon Treaty will obviously require time, intellectual and political mobilisation, litigation and jurisprudence in order to become effective as re-balancing tools. But if we compare the current climate with that which prevailed at the time of the SEA there are some reasons for moderate optimism about the "virtuous nesting" scenario outlined in Figure 1. Could more have been achieved with the new Treaty? Certainly, yes: various interesting proposals did in fact emerge during the work of the Convention and the Treaty negotiations (from the constitutionalisation of the OMC to the introduction of qualified majority voting for the social issues on which the EU has legislative powers). Without entering into the merit of such proposals, it can be generally said that the goal of reaching a full (or at least quasi-full) symmetry between Economic and Social Europe still remains unattained[10]. For the time being, the best strategy is that of a full exploi-

[8] Steps to formalise such definitions are already under way on the side of the Commission.

[9] The European Council has four months for either referring back the draft legislative proposal to the Council (in which case the ordinary legislative procedure will continue) or requesting the Commission to submit a new proposal (in which case the act originally proposed will be considered as non adopted). There is also a simpler solution for the European Council: "taking no action", which means that the proposed act falls without the need for further initiatives. This simpler option was not envisaged by the Constitutional Treaty and has been inserted during the Lisbon negotiations. A declaration agreed by all Member States specifies that the European Council shall decide "by consensus" in the procedure envisaged by art. 48.

[10] On the persistent conditions of asymmetry and bold proposals (through political action by the European Council) for breaking the negative integration bias of the EU and in particular the European

tation of the existing building blocks for a better balancing. Three are the more obvious critical priorities in this direction. The first and possibly top priority has to do with the new "Horizontal Social Clause" of the Lisbon Treaty, which needs to be clarified in its meaning and scope and made operative as soon as possible, especially by linking it with the already existing procedural framework for the impact assessment of EU policies (see Box 2). The clause can serve as a leverage for systematically and transversally identifying and, if possible, quantifying, the social impact of all EU policies, thus encouraging (or even making possible) a better balancing[11].

Box 2: Impact assessment in the EU and the horizontal social clause

2002: The European Commission establishes a new system of integrated Impact Assessment (IA) to consider the effects of policy proposals in their economic, social and environmental dimension
2005: Better Regulation Action Plan, European Strategy for Sustainable Employment and Lisbon Strategy adopt IA
2009: External evaluation of IA → revision of the guidelines and extension of IA to all legislative initiatives
2009: Lisbon Treaty enters into force: Horizontal Social Clause
2010: European Court of Auditors presents own evaluation of IA and recommends enhancement and more publicity
2010: Belgian Presidency (2nd semester 2010) launches a debate on strengthening the social dimension within the IA in the wake of the new Horizontal Social Clause (→ generating evidence-based knowledge for its systematic implementation)

The second priority is that of working on the Social Protocol and transform its general principles into more detailed and operational regulations. The third priority is finally the introduction/strengthening of what might be called the "social complements" of the internal market (Ferrera and Sacchi 2009), i.e. positive measures that are capable of offsetting the specific negative social implications of free movement and cross-border competition as they clearly manifest themselves (as, for example, in the case of the Laval, Viking and Rueffert rulings of the European Court of Justice, which seem to have challenged three fundamental rights of the modern European institutional order, i.e. freedom of association, freedom to strike and freedom to establish and enforce collective agreements: see Bueckert and Warner 2010). Interesting proposals on this front have been recently advanced

Court of Justice, see Scharpf 2009. The European Trade Unions have proposed further amending the Lisbon Treaty with a "Social Progress Protocol" clearly stating that "Nothing in the Treaties and in particular neither economic freedoms nor competition rules shall have priority over fundamental rights (…). In case of conflict fundamental social rights shall take precedence". See Bueckert and Warneck 2010, 143-145.

[11] Under the spur of the Belgian Presidency (second semester 2010), the EPSCO Council has already started a reflection on strengthening social mainstreaming in the follow up of the Horizontal Social Clause (cf. http://www.eutrio.be/pressrelease/informal-meeting-epsco-council-social-security-and-social-inclusion).

by Mario Monti's Report on the re-launching of the internal market, especially as regards the posted workers regime and the right to strike (Monti 2010: cf. Box 3). It is to be noted that the Monti Report also calls for a strengthening of social evaluation within the Commission's impact assessment exercises.

Box 3: Workers' right in the internal market: Key recommendations of the Monti Report

- Clarify the implementation of the Posting of Workers Directive and strengthen dissemination of information on the rights and obligations of workers and companies, administrative cooperation and sanctions in the framework of free movement of persons and cross-border provision of services.
- If measures are adopted to clarify the interpretation and application of the Posting of Workers Directive, introduce a provision to guarantee the right to strike modelled on Art. 2 of Council Regulation (EC) No. 2679/98 and a mechanism for the informal solutions of labour disputes concerning the application of the directive.

But what about the other element of this scenario, i.e. the formation of post-national sharing spaces? On at least two of these fronts some signs of innovation and experimentation are already clearly visible.

As far as trans-national sharing spaces are concerned (space A1 in Figure 1), the most significant development is the formation of the so-called "cross-border Institutions for Occupational Retirement Provision" (IORPs). A directive adopted in 2003 has laid down the legal framework for the establishment of occupational pension funds covering workers of different Member States[12]. Closely linked, as they are, to contributions, second pillar pension schemes incorporate limited amounts of redistribution and solidarity; they still are, nevertheless, recognisable sharing spaces, with the potential for activating a modicum of "bonding" among their affiliates.

As mentioned above, the Commission's doctrine already counts second pillar pension schemes among "social services of general interest" (European Commission 2008). A number of cross-border schemes were already operating prior to the 2003 directive, mostly based in the UK. The directive has however given a significant spur to new establishments of this kind. In the years elapsed after the implementation of the directive (which entered into force in 2005), the number of cross-border pension schemes has increased from 9 to 61 (Guardiancich 2009).

These are very new developments on which reliable data are lacking and empirical research is urgently needed. It would thus be imprudent and unwarranted to make bold evaluative statements. For the time being and for the purposes of this paper,

[12] Directive 2003/41/EC of the European Parliament and the Council of 3 June 2003 "on the activities and supervision of institutions for occupational retirement provision".

it is sufficient to conclude that the institutional landscape is in flux, that a new phase of trans-national experimentations in the field of social protection has clearly dawned and that the EU seems to be providing at least some of the correct incentives and supports.

The same holds true for the other front, that of cross-regional experimentations in providing jointly some types of services (space A2 in the Figure). Here, especially in the wake of the INTERREG initiatives of the European Commission, a growing number of interesting experiences have been taking place during the last fifteen years, in the context of a wider process of sub-nationalisation of welfare provision within the domestic arenas and the activation of what has been called "competitive region building" (Keating 1998, McEwen and Moreno 2005). Virtually all these experiences include a social policy component, typically in the field of health, employment or care services and all of them have set up permanent institutional structures for the managing and monitoring of cooperation (Pancaldi 2010). The EU has recently introduced a promising new instrument, the European Grouping for Territorial Cooperation (EGTC), aimed at facilitating economic and social cohesion through cross-border, trans-national or inter-regional initiatives (Regulation 1086/2006). A host of public and non public actors are allowed to join forces and establish the EGTC through direct agreements, within a general legal framework set up by the EU—a framework which recognises legal personality to the "grouping". Though not exclusively centred on social sharing objectives, this new instrument is likely to encourage the coming together of sub-national territories belonging to different Member States and thus open up channels and opportunities for spatial reconfigurations above and beyond the established boundaries of nation states—including their social boundaries (Spinaci and Vara-Arribas 2009). The Barca Report on the reform of cohesion policies contains several insights and proposals for "place-based" measures and incentives that may facilitate this process, with a view to "socialising" the territorial agenda of the EU as well as "territorialising" the social agenda (Barca 2009). The place based approach may play an important role also for promoting and underpinning sub-national policies and social agendas. The Europe 2020 strategy could perhaps be improved in this respect, as suggested by the Committee of the Regions (2010).

What about, finally, innovation and experimentation on the third front of post-national solidarities (space A4 in the Figure), i.e. supra-national sharing schemes directly anchored to the EU? The last two decades have indeed witnessed an increasingly richer and imaginative debate on possible institutional "pioneers", such as a pan-European minimum income scheme for the needy (dubbed as Euro-stipendium by Schmitter and Bauer, 2001), a child or birth grant payable to all (or needy) newly born Europeans[13], or the establishment of a supranational social insurance scheme for migrant workers (a proposal originally put forward in the

[13] The proposal to establish an EU Capital Grant for Youth was presented by Julian Le Grand at a seminar of the Group of Social Policy Advisors to the European Commission, held in Brussels on September 8 2006. See Barrington-Leach, Canoy, Hubert and Lerais (2007).

1970s under the name of "13th state scheme" and recently resurrected by the French debate) (Lamassoure 2008)[14].

As is known, a number of redistributive funds are already operative at the supranational level for broad social cohesion purposes. None of these funds and programs qualifies, however, as a genuine pioneer for supranational social sharing. The fault line that needs to be crossed is that which separates forms of territorial or inter-level redistribution from inter-personal redistribution. Even the last addition to the long list of EU "social policy" funds, the Globalisation Adjustment Fund, has not made this quantum leap, as the Fund does not grant benefits to individual workers, but limits itself to transferring funds to the local-level collective actors that have applied for assistance (Novaczek 2007). Crossing this critical fault line will not be easy from a political and institutional point of view, as witnessed by the experience of all historical federations in the XX century (Obinger, Leibfried and Castles 2005).

A more realistic medium-term target for the consolidation of Europe's social space could be the strengthening of binding regulatory standards, and possibly the establishment of some "social snakes" (to use the jargon of the 1970s and 1980s: see Pennings 2001) forcing the Member States to loosely align themselves to a European "norm" regarding certain areas of social protection. The setting of precise and measurable targets within the Social OMCs (a goal that has already been on the agenda for some time: see European Commission 2008a) could be the first concrete step in this direction, in the wider framework of the newly launched "Europe 2020" strategy.

5. EUROPE 2020 AND ITS INSTITUTIONAL POTENTIAL

Europe 2020 must certainly be appreciated as a promising governance tool for the strategy of institutional reconciliation discussed in the previous section. A number of critics at both national and supranational level have already started to dismiss it as "cheap talk", taking it for granted that it is doomed to the same destiny of (alleged) failure of its soft and wet predecessor, the Lisbon strategy[15]. Such sweeping negative judgements are definitely unwarranted: programmatic pessimism is

[14] The Monti Report discusses this proposal in respect of occupational pensions and health insurance schemes: "The Commission should prioritise the issue of obstacles to transnational labour mobility in its forthcoming consultation on the pensions systems in Europe. In this context, an option to explore would be to develop a 28th regime for supplementary pension rights. This would be a regime entirely set by EU rules but existing in parallel to national rules, and thus optional for companies and workers. A worker opting for this regime would be subject to the same rules for its non statutory benefits wherever it goes in Europe. To makes things easier, a sub-option would be to limit the possibility to opt in this regime only to workers taking up their first work contract. This would serve as an incentive for the mobility of certain young workers, who are the keenest on international mobility" (Monti 2010, 57).

[15] A good source for the Europe 2020 debate is Euroarchiv (www.euroarchiv.com).

itself "cheap". To begin with, significant empirical evidence signals that the Lisbon strategy has not been a failure, even acknowledging its many shortcomings and limitations, especially in respect of its over-ambitious original goals (Natali 2010). The impact of Lisbon is clearly detectable also as regards employment and social objectives (Zeitlin and Heidenreich 2009). More importantly, Europe 2020 does contain some significant improvements compared to Lisbon on the specific front which interests us, namely the relationship between Economic and Social Europe.

First, there is improvement at the ideational level (which is anything but "cheap" in political matters). As it clearly emerges from all the "soft" and "hard" acts that have launched the new strategy, its overall blueprint for a "smart, sustainable and inclusive growth" offers a wealth of normative and functional justifications for both the protection ("nesting", in our language) and the ameliorative recalibration of the nation-based welfare state. In line with a vast literature, we have noted above that welfare programmes are in urgent need of modernisation and updating in the wake of the changed structure of risks and needs (in particular demographic ageing). Three out of the seven so-called flagship initiatives ("youth on the move", an "agenda for skill and jobs", and in particular the "European platform against poverty") of Europe 2020 are geared towards this task and, if correctly developed and articulated, can provide precious ideational resources for national "puzzling" around welfare reform. A significant step forward in respect of Lisbon is that the guidelines issued by the Council for the annual cycles of the strategy will integrate the economic policy and the employment policy dimensions and—via the latter—the social policy dimension as well. Guideline 10 of the "Europe 2020 Integrated Guidelines" is entirely devoted to "promoting social inclusion and combating poverty", with the headline target "to reduce by 25% the number of Europeans living below the national poverty line, lifting 20 million people out of poverty". Looked at with realism and in a long-term perspective, it is hard not to recognise that Guideline 10 speaks an even stronger "language of rights" than was inaugurated with the Lisbon strategy—a language that testifies a further "intensification of EU engagement with European society" and a political commitment (albeit timid) to address its polarising tendencies (Daly 2006 and 2006a). Needless to say, the ideational component of Europe 2020 will be able to make a difference only if accompanied by a deliberate strategy of both "communicative" and "coordinative" discourse on the part of EU institutions, the Commission in particular[16].

Second, there is improvement at the practical, operational level. The addition of "thematic coordination" to the overall governance of the strategy (i.e. focussed monitoring on growth enhancing reforms, including welfare state modernisation, with the possibility of issuing recommendations based on art. 148 not only on

[16] According to Vivien Schmidt, discourse is the interactive process of conveying ideas throughout a political system. It comes in two forms: the coordinative discourse among policy actors and the communicative discourse between political actors and the public (Schmidt 2006).

employment but also "on other selected thematic issues", presumably including social policies), the launch of the European Semester, the institutional re-location and procedural refinement of the "Social OMCs": these are all promising innovations that can contribute to a more effective "nested" delivery of the strategy's array of policies. It is to be noted that the Horizontal Social Clause has already played a role in fostering and underpinning the operational definition of Europe 2020, especially as regards the enhancement of horizontal coordination and mainstreaming of the Lisbon common social objectives—which will be hopefully firmed up and articulated through pertinent indicators.

Referring back to Figure 1: Europe 2020 does seem to have the adequate institutional potential for steering the Union's architecture towards a more virtuous nesting, both between nation-based welfare and its wider supranational spaces and between space B (economic Europe) and space C (social Europe). Acknowledging the potential of Europe 2020 does not mean, of course, that the strategy has no weaknesses—both substantive and procedural—that ought to be addressed. With appropriate "institutional gardening" in the years to come, coupled with some political ambition, imagination, and consensus-building, Europe 2020's inclusion agenda could be used to lay the conditions not only for creating a somewhat stringent social snake binding Member States to remain within certain quantitative "bands" after reaching the headline targets (e.g. in terms of poverty levels) but also for establishing a fully fledged "European system of social protection" consisting of coordinated and correctly nested national, sub-national and post-national sharing spaces.

6. Conclusion

The national welfare state and the EU are probably the most salient and distinctive institutional legacies that the XX century has bequeathed to our continent: two institutions that have given an invaluable contribution to enriching and expanding the life chances of millions of ordinary people, in a context of economic growth, social security, cohesion and peace. The XXI century has however opened with some turbulence and tension regarding, precisely, the mutual relationship between these two institutions. As argued in the previous sections, this tension ought to (and can) be contained: the search for a strategy of institutional reconciliation must become a top priority for the political agenda and the most promising points of departure should be a rapid definitional and procedural "operationalization" of the Horizontal Social Clause, in parallel with a cleared definition of the scope and legal implications of the Social Protocol. The challenge ahead of us is that of imagining and then engaging in the actual construction of a recognisable EU social model: not just and generically "European", but a distinctive "EU" social model, resting on a well-designed and protective nesting of social sharing goals and practices (including nation-based practices) within the overall legal framework of the

Union. The prime institutional rationale behind this new model should be that of promoting a virtuous and dynamic balance between the logic of opening and the logic of closure, in order to effectively underpin the self-sustaining production of both individual opportunities and social "bonds", i.e. the two sides of life chances European style.

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