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After the Global Economic Meltdown

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A Chance for a more Social Future?

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Henning Meyer
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THE FINANCIAL CRISIS and the looming recession are the top themes on the political agenda and will probably remain the crucial issues for quite some time to come. With the economic and financial crisis came a mood for change. It was this mood for change that helped Barack Obama to take the last steps on his voyage to the White House.

And also in Europe, citizens know that the current turmoil represents the end of an era and the dawn of a new one. But what will this new era look like? There is widespread confusion and concern about the shape of the remodelled social and economic system of the future.

With this issue, we would like to start structuring the current debates and help to develop a clearer picture of a possible future; a future that is more socially, environmentally and economically sustainable than the past we have just left behind.

Poul Nyrup Rasmussen and Stefan Collignon go right to the heart of the crisis in their contributions. What policy changes are needed in view of the economic meltdown? What does the economic crisis mean for social democracy as a political philosophy? These are the crucial questions answered by Rasmussen and Collignon.

The second part of the journal features the start of a new debate on the issue of Social Europe. Is there a Social Europe? If yes what is it? We provide our own definition and start a debate around an interview with the renowned social scientist Fritz Scharpf.

We conclude this journal issue with articles on public services in Europe and an essay on the interesting question of why we were so interested in the US Presidential election and at the same time pay relatively little attention to our elections here in Europe.

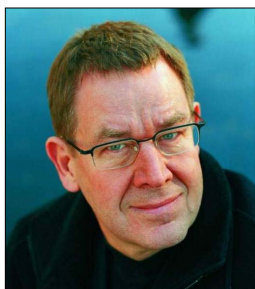
This is the last issue of 2008. We hope we can kick-start the political discussions outlined above and take them to the next level with a new structure and new partnerships in 2009. Stay tuned for more Social Europe!

A handwritten signature in black ink, appearing to be 'Fritz Scharpf', written in a cursive style.

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How Europe can tackle the financial crisis



Poul Nyrup Rasmussen

President of the Party of European Socialists, and author of the report on financial market reform recently adopted by the European Parliament

THE FINANCIAL CRISIS – and looming recession – is a defining moment and a huge challenge for social democracy in Europe.

To those far-leftists who take pleasure in the troubles of capitalism I say it is ordinary, hard-working families who are worried about their pensions, their savings, their homes and their jobs. It is not the rich who are at risk but the hard-earned standard of living of ordinary families. We must act decisively to protect ordinary citizens, now and in the longer-term. This is our task and we must be fully focused on it. It is a task which needs to be tackled in three major phases:

- stabilising the immediate crisis
- taking action to ensure that as the financial crisis turns to economic downturn, recession does not bring large-scale unemployment
- reforming the financial markets, with new and better regulation to reduce the risk of further financial crises

Time will tell if October's government interventions – led by Gordon Brown – will be enough to stabilise the financial markets and save our citizens' hard-earned money in wobbling banks. What seems clear is that Gordon Brown's approach of bringing owner capital to boost liquidity is a far more promising – and fairer – approach than the Bush administration's initial plan

to simply relieve the banks of their bad debts.

But calming the financial climate has to be followed up immediately with action to stop the coming recession. European governments need to give the economy a boost by investing in jobs. We have already seen a commitment from the UK's Labour government to do precisely that. Other governments should, and probably will, follow their example. While it is not easy to invest government money at a time when tax revenues may be going down and welfare payments are likely to increase, if money can be found to save the banks then money must be found to create new jobs. If the crisis has taught us anything it is that the market cannot do it alone. Government intervention in the economy is necessary to avoid misery – and the risk of recession creating widespread unemployment is truly miserable for ordinary citizens.

In any case, there are multiple benefits from investing in green growth – renewable energies and energy efficiency. Insulating houses and other buildings is labour intensive (and so creates jobs), contributes to the fight against climate change, saves money wasted on lost energy, and reduces heating bills for the poor. Other investments in public transport, education, new technology, and public services such as childcare and provision for the elderly would all make our societies better for all as well as contributing to economic growth. Investments would be more effective if they were coordinated

‘While working closely with US Democrats and others – as the PES has been doing over the last 18 months – we cannot afford to wait for global agreement on regulation’

across Europe, and carried out, where possible, simultaneously. Greater economic policy coordination – within the Eurozone and beyond - would also help. To assist growth EU member states should be encouraged to use fully the flexibility allowed in the revised Growth and Stability Pact. The Globalisation and Cohesion Funds should be used flexibly to boost growth. A new smart green growth strategy for Europe could create millions of new jobs in the coming years.

The third phase of tackling the crisis is new regulation of the international financial markets. Here I believe Europe, as the world’s largest economy, can and should take the lead. While working closely with US Democrats and others – as the Party of European Socialists (PES) has been doing over the last 18 months – we cannot afford to wait for global agreement on regulation. More or less everyone agrees that we do need new and better regulation. The question is what regulation and covering who?

Today’s financial crisis is the result of excessive and risky debt, combined with incredible greed and conflicts of interest, made worse by the lack of transparency in our money markets. These are the problems that need to be tackled. The PES has been asked by its prime ministers to draw up a roadmap towards new regulation. Already representatives of our socialist and social democratic parties have agreed that European reform should be based on seven pillars:

1. Universal legislation covering all financial players. Many investment

banks and prime brokers, and all hedge and private equity funds are exempt from the rules of transparency and disclosure that apply to the rest of the market. As they account for around two thirds of all new debt, it is obvious they need better regulation if we are to avoid new debt crises. Supervision across the financial markets must also be reinforced. President Sarkozy – as President of the European Council – and European Commission President Barroso have finally confirmed to me in the European Parliament that they agree to this demand.

2. A new high standard of transparency and disclosure including debts, amounts of fund and sources of funds, identification of large shareholders, executive pay and bonuses for all similar financial actors including private equity and hedge funds
3. Compulsory ‘capital requirements’ for all financial players, like those that already apply to banks and insurance companies. This means that to reduce extreme risk taking and excessive debt all financial players need to have and keep a certain amount of capital, corresponding to the risk they take
4. Rules to prevent excessive borrowing – including big excessive debt caused by big private equity through ‘leveraged buy outs’ - and to protect viable companies from too much capital being paid out to shareholders or to service debt
5. Limits on pay and remuneration, and mechanisms to ensure that earnings reflect losses as well as profits
6. New rules to prevent conflict of interests

7. Protecting workers interests such as by ensuring that employees are informed and consulted during all takeovers including leveraged buy-outs and by obliging pension funds to inform employees how their pensions are invested

These seven pillars could form the basis for a new European financial market that is cost efficient, transparent, competitive and finances in an effective way the long-term investment needs of the real economy.

Many but not all of these proposals are contained in my legislative report adopted recently by the European Parliament, and passed with the agreement of conservatives and liberals who until the crisis struck argued that the market was already adequately regulated! This type of report is always a compromise, so my report did not contain everything that we social democrats wanted. For example, we proposed a publicly owned European Credit Rating Agency which would offer genuinely impartial advice on credit worthiness, a system of registration and authorisation for managers of hedge and private equity funds and a common European Financial Supervisory Body. All three proposals were rejected by the conservatives and liberals.

Another reform which I believe is necessary is to end the loophole of off-shore tax avoidance. It has always been wrong that investment fund managers working in the EU can register off-shore simply to avoid tax. It is even less acceptable when taxpayers' money is being used to save the financial market. The least we can expect is that the industry now pays its tax dues like everybody else. It has been calculated that the tax revenues lost through off-shore tax avoidance could pay for the Millennium Development Goals to be implemented.

There is a clear need to renew the architecture of world financial governance. There are important issues to be

resolved about the future role of the IMF, the World Bank, the Financial Stability Forum, and modernising the whole Bretton Woods structure. That is why I took the initiative to write a letter in May, signed by nine former prime ministers, to President Sarkozy calling for a world financial conference – similar to the world financial summit he has been recently calling for.

But reforming global financial architecture is a long road. Europe, with Gordon Brown in the lead, were frontrunners in the first actions to tackle the immediate financial crisis, to avoid a meltdown of our banks. Now Europe has to continue taking the lead by implementing clear regulation of our financial markets. The EU, as the world's biggest economy, can take a lead in framing its financial markets with sounder regulation. The EU can do so in cooperation with the US and others so as to move in a common direction, converging over time. That is why the Party of European Socialists opened talks with US Democrats on financial market reform more than a year ago and established a 'Financial Market Reform Network' with US and Japanese Democrats in June this year.

The times ahead are tough. But we can take courage. The solution to the crisis is social democratic. The world needs more than ever before a modern social democratic deal between the market and fair rules for social justice. Conservatives who for years said that what the market needed was less rules, less regulation, less 'red tape' do not know what to do now the market has failed them. Social democracy has the potential for renewed relevance. We must move decisively to show we have workable answers. If we succeed we can move from better international financial markets to a better globalisation.

The Dawn of a New Era: Social Democracy after the Financial Crisis



Stefan Collignon

Professor of Political Economy at S. Anna School of Advanced Studies, Pisa and President of the Scientific Committee of Centro Europa Ricerche (CER), Rome

A NEW ERA IS dawning. The financial crisis of 2008 is not the end of capitalism. Capitalism dates back to the Medici revolution, which invented modern banking, but since then it has gone through many different regimes and articulations. The 2008 crisis marks the end of the Reagan-Thatcher counter-revolution. Neoliberalism and monetarism are dead. Even Nicolas Sarkozy now calls for the re-foundation of capitalism.¹ This does not mean that thousands of policy-makers are not continuing to implement old recipes, helplessly watching their loss of control over events. Antonio Gramsci once said a crisis is when the old is dead, but the new not yet born. With the election of Barack Obama new paradigms in policy-making become possible. Yes, we can reconcile markets and social justice; we can invent a new social model for

Europe. We can integrate the real and financial economy. But how? European social democrats were able to shape various epochs to different degrees. How can they adapt to the new situation? Those who are in government or wish to form it will have to become the architects of the new Europe after having served as fire brigade in the crisis.

A new perspective for Europe's left needs to integrate economic and political norms and values into a coherent project for society. Since World War II, three paradigms have dominated political and economic thinking in the world. In the East, Marxism rejected markets and democracy; in the West, Keynesianism laid the foundations for social democracy and political liberalism, while Friedman's counter-revolution developed a neoliberal ideology from the theories of monetarism.

Friedman's anti-Keynesian revolution was not primarily directed against the welfare state, although he did think that 'most hardship and misery in the United States today reflect government's interference'.² His more fundamental attack sought to establish the superiority of the market economy over centralised planning. In this he was right. Today, after Deng

'With the election of Barack Obama new paradigms in policy-making become possible. Yes, we can reconcile markets and social justice; we can invent a new social model for Europe'

Xiaoping and the fall of the Berlin Wall, we are in one sense, all Friedmanians.³

But this concession does not warrant the adoption of the erroneous monetarist paradigm. Friedman did understand that money was crucial to the functioning of a market economy. So did Marx. But they both remained confined to the classical economic paradigm, whereby markets are places for exchange of 'real' goods, while money was simply a veil that covered the reality. Until today socialists all too often keep making the same mistake. Marx drew the radical conclusion that capital and therefore money must be abolished. Not surprisingly, the 'new' economy of communism resembled the old: resources were allocated by hierarchy, and not by contracts between free and equal individuals; markets and consumer choice were suppressed.

Friedman and his followers took another track: if money was a veil, it could distort. Inflation was the main cause of distortions. Monetary policy therefore had to ensure price stability so that markets remained transparent and efficient. Only in the absence of inflation would prices send out the right signals to firms and consumers. Perfect competition would push profit maximising entrepreneurs to provide optimal welfare. Markets' 'invisible hand' (Adam Smith) would then yield a unique equilibrium towards which the economy would naturally gravitate. There was no role for governments or regulation.

This paradigm did not recognise the important role that money has in *creating* markets

and in ensuring that the promises stipulated by financial contracts are fulfilled. It ignored that our real economy was characterised by oligopolistic and not by perfect competition. The problem with neoliberalism was less that it advocated unfettered markets; it was that it did not understand how markets work in reality. The truly alternative economic paradigm of a monetary economy was first elaborated by John Maynard Keynes; it has subsequently been fine-tuned by Joseph Stiglitz and others⁴: money is credit, a bridge to the future, and not a veil. Tomorrow's reality is determined by today's promises. Because the human condition is characterised by fundamental uncertainty, money is a precautionary instrument to secure access to goods, services and resources in a risky world. Therefore money is a constraint to our actions in the present and in the future. And competition means striving for money, income and profit. It is frequently distorted by information asymmetries and does not necessarily lead to the unique equilibrium of welfare where everyone is better off.⁵ In this perspective, economic policy must aim at reducing uncertainty and insecurity. The financial crisis has reminded us all: without financial stability markets collapse. But more importantly, the generalised uncertainty in the economy as a whole, including prospects for effective demand and employment, will reduce growth, jobs, income and wealth.

The legitimacy of Keynesian macroeconomic policies and the modern welfare state were derived from this insight. But

they became dysfunctional when the neoclassical-Keynesian synthesis started using fiscal policy as if money did not matter. The vulgarisation of Keynes opened the gate for Friedman. A misguided view of markets led to the deregulation of financial institutions. Believing that money served mainly as means of exchange in goods markets rather than as the ultimate asset for the extinction of debt justified the creation of liquidity, which has fuelled the enormous financial bubble in the American economy. Fortunately, the European Central Bank has been more careful, but does it operate from different intellectual foundations? Today, we need a new paradigm for economic policies that links markets to security, that renews the promise of modernity and progress; a paradigm that marries economic freedom to social justice, equality to solidarity. After having extinguished the fire of the present crisis, we need to build a house that is fireproof.

Economic paradigms shape political norms and values. The French revolution has defined modernity by the twin values of *liberté* and *égalité*; later, the Commune de Paris added *fraternité*. With the Declaration of Human and Civil Rights it enshrined individual rights as a protection against authoritarian rule and the tyranny of majority. Emancipated citizens became the sovereign in the modern state. Free and equal individuals would conclude the 'social contract' of the republic by which they determined the laws that were applicable to themselves. The political division into a 'liberal right' and an 'egalitarian

left' follows different interpretations of the modern world: Liberalism gives priority to individual freedom, socialism to equality. Both are children of modernity. But let us understand that how we interpret the world is how we change it.⁶

The modern vision of society serving individuals stands in clear contrast to the conservative, anti-enlightenment view,⁷ whereby society is a hierarchically structured whole in which each individual has a pre-assigned role and status and to which they have to surrender. The conflict between these three political paradigms has dominated European history for over 200 years. At times, *liberalism* entered into an alliance with conservatism and became 'neoliberal' and nationalistic; modernity was preserved in 'political liberalism', which recognised the equality of citizens as democratic right holders. On the other side, socialists fell for communitarian conservatism when equality did no longer mean recognition of the other as an equal in all her or his diversity, but rather the surrender to conformism and hierarchy. But true *social democracy* is a modern and progressive force: it embraces individualism by fighting for human and civic *rights*; it breaks up the barriers of traditions and customs; it seeks the emancipation from community by developing the freedom of individuals; and it recognises that individual freedom is only possible when the formal equality of legal rights has a material substance in wealth. This is why individuals need the state not only as a set of rules and regulations, but as a system of rights. Access to food, clothing, shelter,

'The financial crisis of 2008 is an opportunity to rethink the shortcomings of the neoliberal paradigm'

and medical care have become human rights that can only be realised through the democratic use of power in a state of law (*Rechtsstaat*). Regulating financial markets today may be necessary to overcome the economic crisis, but it is not sufficient as a new paradigm for a Social Europe.

The emergence of modern social democracy cannot be separated from the existence of market economies and therefore from the institutions of money and finance. Modern social democracy has gone beyond Marxism, without forgetting that capitalism endogenously produces injustice. For the political norms of modernity will only be recognised as valid and legitimate in a society where contracts are concluded by market participants who interact as free and equal partners. These political norms give priority to freedom and equality over fraternity, to contractual relations of solidarity over the patriarchal hierarchy of community and they emphasise democracy as the only system which allows individuals to control the collective as free and equal citizens. Thus, the modern state is democratic and not authoritarian, because it returns power and sovereignty to citizens who are the collective owners of public goods, of the *res publica*. No doubt, reality often looks different. Power relations over-

rule norms of freedom and equality. But norms may be valid even when they are not facts. Indeed, the never-ending struggle for freedom and equality, which has defined social democracy for 150 years, draws its legitimacy from the discrepancy between modern norms and values and their non-realisation in the real world. It was this insight that led Eduard Bernstein 100 years ago to call for the pursuit of a more practical, piecemeal movement towards a socialist state within the context of a parliamentary democracy. And Jean Jaurès acknowledged it by saying: 'The Republic is the humus of socialism'. Today a European democracy must become the humus of Social Europe.

The financial crisis of 2008 is an opportunity to rethink the shortcomings of the neoliberal paradigm. The financial problems were not caused by 'excessive greed', as moralistic conservatives would argue. Instead, the romanticised version of markets and money that Friedman and his followers adhered to did not allow policies to deal with the systematic interaction between the monetary and 'real' economy. They deregulated markets and pushed structural reform agendas that slowed down productivity growth instead of raising it. They did bring inflation down, but then flooded the world with

liquidity that fueled asset price bubbles. Keynes would have taught them long ago that production depends on credit, and credit on trust, and trust on reputation. This world of beliefs becomes a house of cards, when reputation sustains speculation, a fickle lightning in the darkness of uncertainty. The crisis has taught us painfully what happens, when trust disappears. Ordinary workers lose their jobs because bankers are scared. Financial stability requires rules and regulations that focus bankers' minds on assessing the validity of investment projects and whether they can yield profits to service debt.

Modern economic theory emphasises the role of information and uncertainty. A new political paradigm must integrate these insights when it defines a framework for market regulation. And the modern rules for monetary policy lay the base. Inflation is dysfunctional for efficient market economies. As Friedman saw correctly, it makes 'noise', meaning that producers and consumers cannot easily identify the significance of price signals. The Maastricht Treaty has therefore correctly assigned the objective of maintaining price stability to monetary policy in Europe. But this is only a necessary requirement for the existence of efficient markets; it is not sufficient. Access to information is at least as important. If information is asymmetric and non-transparent, because some people know and others do not, markets cannot operate optimally. Adverse selection and moral hazard, which may be rational at the level of individual decisions, will produce

outcomes that *reduce* welfare for everyone. These informational asymmetries also dominate monopolistic competition, which may yield many market equilibria and not only one optimal solution as Adam Smith believed.

A modern paradigm for social democracy must use the intellectual advances of recent years. The theory of monopolistic competition has shown that 'market failures' are virtually all-pervasive in ordinary market transactions.⁸ The reasons are multiple, some related to information asymmetries, some to the existence of externalities. The former have dominated the financial sector. The latter are particularly relevant for political decision-making in Europe. The more decisions are decentralised, the higher the likelihood that 'coordination failure' will prevent individual actions to achieve social welfare. For example, while relocating jobs may be good for one company, it can devastate a region. These market failures justify government interventions. Socialists have known this for over 150 years. They have claimed the nationalisation of the means of production, they have taken strategic participations in companies, and they have regulated markets. But unfortunately, the logic of information economics also applies to governments and can cause 'government failure'. Thus, the traditional interventionism of 'market socialism'⁹ has not necessarily produced better results than the neoclassical economics of liberal-conservatives. In fact, both camps frequently use the same analytical tools. This has undermined the confidence in the ability of

social democratic governments to correct market and government failures. A modern social democratic paradigm must rethink government action in informational terms: How can governments structure incentives for individuals and firms? How can information become more accessible? How can inequalities (asymmetries) in access to information be overcome for workers at the workplace, for consumers in markets, for citizens in the public sphere?

A new social democratic paradigm must start with the recognition that freedom and equality is founded in market economies. In modern societies wealth is created by the strength, creativity and dynamism of free and equal individuals who are guided in their behaviour by information and trust. Markets are the institution that can facilitate the flow of information, provided there are rules that maintain trust. But once wealth is created, it is not necessarily distributed in a way that people will consider as fair. This may justify corrections. As manifested in the recent financial crisis, rules for transparency and regulations that minimise informational asymmetries can be remedies for market failure. But which rules are acceptable? Standards of fairness and justice, which apply to everyone, can only emerge from free and open public debates about what is in the collective interest. They require an institutional framework within which each citizen has an equal right to make a contribution. Once that is in place, citizens can deliberate together about the objectives they wish to achieve collectively. They do

not have to agree about concrete policies, but they need to achieve a consensus that the democratic institutions are fair by offering equal rights to every citizen.

The aspect of democracy is of particular importance for a new social democratic paradigm in Europe. For decades, governments have behaved as if they were benevolent planners that were implementing 'the right policies' in order to make people happy. But few questions were asked *what* it is that made people happy. This does no longer work. The debate about a European Social Model is also a debate about the content of happiness, about how people want to live: how much personal comfort are we ready to sacrifice for saving the planet? Do the rich not feel happier when 'wealth is spread around' (Barack Obama)? Do they not live more secure lives when crime rates are lower? And are crime and poverty not correlated? Does fairness not affect the subjective quality of everyone's lives? These and many other questions will only find an answer after long drawn out debates and public deliberation. We increasingly find that citizens' input into the policy-making process is a value in itself that raises individual happiness.

This brings us to the issue of policy-making in Europe. For years Europe stood for peace and prosperity. But this association is increasingly put into question. Peace is taken for granted and neoliberal policies are proclaimed to be the only road to prosperity. But many citizens only find that their income is stagnating, real wages falling, jobs insecure, new employment nowhere to be

found, while top executives make fortunes. These citizens have no choice over policies. They have to accept what governments and their bureaucracies negotiate on their behalf. Not surprisingly, the approval rate of the European Union has slowly and gradually been falling. It stands today around 50%, while it was closer to 75% twenty years ago. The recent referenda in France, Netherlands, and Ireland all have signaled discontent with the way the European Union is run. Some political leaders may wish to argue it away and blame their predecessors for negative votes, but they are missing a simple fact: if citizens in the European Union are dissatisfied with a particular set of practical policies, the only means they have to oppose them is to turn against the European Leviathan 'in Brussels'. Europe's institutions stifle political controversy and partisanship. Citizens have little to no choice between alternative policy packages. Yes, every five years they can vote for the European Parliament; but who believes seriously that it makes a fundamental difference to *their* lives? The Commission President is selected like the pope: in smoke-free secretive meetings between chiefs who are not accountable

to the people. The assembled heads of governments have all kinds of interests but cannot, by definition, represent the *general* interest of the European Union. This Europe is the opposite of what the founding fathers had in mind when they embarked on European unification.

Without doubt, the continuous interaction between 'community method' and intergovernmentalism has contributed to the rapid progress in European integration. Governments have delegated crucial national policy competencies to the European level, such as the European Commission or the European Central Bank, because they were aware of the benefits this produced for their citizens. They often were right. But European policy-making has now reached a degree of depth and interdependence where nation states alone can no longer sufficiently legitimise policies that do not grant citizens their ultimate right of sovereign. As long as democracy remains confined to the nation state, European institutions will not be able to muster support for the policies they pursue. Europe must 'dare more democracy', to take up Willy Brandt's famous formula. But here again, new thinking for the new age is required.

'For years Europe stood for peace and prosperity. But this association is increasingly put into question. Peace is taken for granted and neoliberal policies are proclaimed to be the only road to prosperity'

The growing conservative creed in Europe is that a European democracy is not possible because there is no European *demos*. What the advocates of this belief really mean is that national collective identities prime over the concrete interests of individual citizens. Instead of being able of pondering reasonable arguments whether a particular policy is in their interests and then making a decision all together, citizens are assumed to fulfill the stereotypes of 'their countries' and they must surrender to what governments decide in their name. At best it is democracy *for* the people, but not *by* the people. The conservative policy consensus that emphasises cultural identities of communities may help governments to legitimise their policies *at home* ('we are defending you'), but it prevents consensus and legitimacy at the European level. It is the opposite of what Jean Monnet described as the purpose of European integration: 'We do not create coalitions of governments, we unite human beings'.

The renewed awakening of nationalism is a direct consequence of the dominance of neoliberalism. It has become a barrier to democracy in Europe. By shrinking the public sector, neoliberal policies have broadened the scope for private and reduced the space for democratic decision-making. But many privatising decisions and actions have direct or indirect consequences for all. These unintended consequences arise in the form of negative spillovers and externalities, because, as we have seen, markets frequently fail to coordinate behaviour optimally. What is

done by one group of companies or individuals may be seen as a welfare loss by many others. So what to do? The conservative response is to appeal to morality, customs and communitarian identity. They argue, individuals should conform to what the prevailing and conventional sense of 'proper' behaviour. Deviation is sanctioned. But in Europe, communitarian identity means national identity and national interest. This confinement prevents minority dissent from crossing borders and forming majorities. Pan-European alliances are blocked because individuals are identified with their country and have to surrender to their governments' interest. Jacques Delors once gave a beautiful example when monetary union was hotly debated: 'Few Germans believe in God, he said, but all believe in the *Bundesbank*'. Yet, Germany's former chancellor Helmut Schmidt had always been a vocal critique of the *Bundesbank*, just like the German trade unions. Thus, according to the communitarian logic, Helmut Schmidt was not a German.

In a modern democracy citizens are the *demos*, the sovereign. Together individuals make up their minds, about what policies they consider as optimal. They have an interest in doing so, *because they are all affected by the policy decisions*. Hence, the question of which policies should be decided at the European level will be answered by looking at who is affected and by measuring the scope of the externalities. With democratic institutions, public deliberation will lead to policy solutions for what citizens consider best for themselves.

Citizens will accept the chosen solution, even if in minority, because they had an opportunity to participate and contribute to the preference-building process. But Europe does not have democratic institutions in this sense. Policy decisions reflect a consensus among governments and their bureaucracies, not among citizens. Public debates do not usually take place across the European Union, but only in the isolated honey combs of nation states. Nor is there any public choice by citizens. Like in pre-modern monarchies, governments negotiate policies with governments and states are the sovereign, not citizens. Of course, exceptions exist. The European Parliament has responded to public criticism of the so-called Bolkestein Directive on services. But as a rule, citizens are treated as spectators in a football match: they are supposed to support the local club with applause, but certainly not as owners of public goods that they all own jointly.

If Europe's social democracy wants to meet the challenge of moving into a new era, it needs to become the advocate, the carrier and the implementer of a proper European democracy.¹⁰ From the beginning, social democracy was internationalist, treating citizens as the sovereign, while conservatives thought of them as cattle.¹¹ Today, European social democracy must fight for individuals' freedom to take political decisions at the European level. They must acknowledge that European citizens are *equal citizens* with equal *rights to decide what they consider their best interests*. European democracy

means, European citizens will be able to elect a European government that will make laws that are applicable to all citizens because they are all affected by them. This is the opposite of the conservative approach to policy-making, which was recently articulated by the French president suggesting that France should assume the presidency of the European Union for a number of years. By contrast, the German Social Democratic Party (SPD) has

made an important step in the right direction when it adopted the *Grundsatzprogramm* in Hamburg in 2007, which states: 'Our model is a political union granting all European citizens democratic rights of participation. The democratic Europe needs a government answerable to parliament on the foundation of a European constitution.'¹² The SPD clearly understood that there will be no Social Europe without a proper European democracy. It is now

necessary that all democratic parties in Europe unite behind this project.

A new era of human fulfillment, social justice and democratic progress is within reach, if social democrats in Europe draw the conclusions from the failures of the previous economic and political paradigm. But it is also clear that this redefinition of aims and purposes is necessarily a European venture. Europe remains the most exciting project of our times.

Endnotes

¹ European Parliament (2008), 'L'Europe doit porter l'idée d'une refondation du capitalisme mondial. Ce qui s'est passé, c'est la trahison des valeurs du capitalisme, ce n'est pas la remise en cause de l'économie de marché', 21 October, <http://www.euractiv.com/fr/services-financiers/sarkozy-presente-refondation-capitalisme/article-176573>.

² Friedman, Milton (1997), 'Is Welfare a Human Right?', in, Leube, K.R., *The Essence of Friedman*, Hoover Press Publication, Stanford.

³ On 31 December 1965, *Time* magazine put John Maynard Keynes on the cover and quoted Friedman as saying, 'We are all Keynesians now'. Later, Friedman said he was quoted out of context. 'In one sense, we are all Keynesians now; in another, no one is a Keynesian any longer. We all use the Keynesian language and apparatus, none of us any longer accepts the initial Keynesian conclusions'. (See <http://eh.net/pipermail/hes/2002-July/002319.html>).

⁴ Stiglitz, Joseph, Bruce Greenwald (2003), *Towards a New Paradigm in Monetary Economics*, Cambridge University Press, Cambridge.

⁵ The European Constitutional Treaty has recognised this reality by stipulating (Art. 1-3): 'The Union shall offer its citizens an area of freedom, security and justice without internal frontiers, and an internal market where competition is free and undistorted'. President Sarkozy subsequently eliminated it from the Lisbon Treaty. Should Europe seek unfree and distorted competition? Should it favour one country or interest over another? This is surely not compatible with a modern left-wing policy agenda.

⁶ In his 'Theses on Feuerbach', Marx proclaimed: 'The philosophers have only interpreted the world in various ways; the point, however, is to change it.' This separation between a world of thought and a real world echoes the classical economic paradigm, whereby goods and services are the 'real economy' and money is a veil.

⁷ For an excellent analysis of anti-enlightenment philosophy and its drift to fascism, see Sternhell, Z. (2006), *Les Anti-Lumières. Du XVIIIe siècle à la guerre froide*, Fayard, Paris.

⁸ Cowen, Tyler, Eric Crampton (2002), *Market Failure or Success. The New Debate*, Edward Elgar, Cheltenham.

⁹ I borrow the term from Stiglitz, Joseph (1990), *Whither Socialism?*, MIT Press, Cambridge MA.

¹⁰ For detailed analysis and proposals see Collignon, Stefan, Christian Paul (2008), *Pour la République européenne*, Odile Jacob, Paris.

¹¹ Charles de Gaulle famously once said: 'Les français sont des veaux.' But *quod licet bovi, non licet jovi*: A conservative, authoritarian politician may think that way, a political philosophy that claims the equality of men cannot be.

¹² <http://www.parteitag.spd.de/servlet/PB/show/1734195/Hamburger%20Programm%20engl.pdf>

The ESM

What is the European Social Model?

THE EUROPEAN SOCIAL Model (ESM) in its most basic sense is best understood as a Europe-wide shared political value and aspiration based on the notion of ecological and social sustainability. It acknowledges that the conservation of human livelihood and the protection from life risks – such as ill health, unemployment and old age – are indispensable requirements for a good society. The implementation and degree of realisation of the European Social Model varies across the European nations. Yet there are some key ESM elements:

- A developed and interventionist state representing the primacy of democratic politics over markets
- Free and compulsory education

- A fair distribution of life chances by equal access for everybody to continuing education, training and skills development throughout life
- A robust welfare system that provides effective social protection to a considerable degree for all citizens, but especially for those most vulnerable
- The limitation and repression of economic and other forms of inequality
- A key role in the institutional configuration of the ESM is played by the ‘social partners’, especially the unions and other agencies promoting social and environmental interests
- Active protection of the environment by setting an appropriate incentive structure paying special attention to the threats of climate change

Each element of the ESM has to go along with the overall aim of expanding prosperity and the creation of decent jobs. The European Social Model thus represents a distinctive composition of strong democratic statehood, educational, environmental and social policies, and a responsive political economy.

‘The only solution is to refuse to comply with ECJ rulings’



Fritz Scharpf

Director emeritus of the Max Planck Institute for Social Research in Cologne. He has carried out pioneering research in areas such as governance in Europe, the employment systems of European countries, and federalism in Germany

Fritz Scharpf spoke to Cornelia Girndt, editor of *Magazin Mitbestimmung* in Cologne

IN RECENT JUDGEMENTS undermining the right to strike and compliance with collective agreements, the European Court of Justice (ECJ) has dealt a fresh blow to hopes for a ‘Social Europe’. Political scientist Fritz Scharpf explains the reasoning behind rulings from Europe’s highest court – and explores what can be done to oppose them.

Herr Scharpf, why do you think trade unions and social democrats are so enthusiastic about the European Social Model, given that so many social rights are now being restricted?

They are enthusiastic because they are deluding themselves.

So is there actually a European Social Model at all?

It may have been possible to talk about a European Social Model when you were comparing the EU 15 with the USA, but even that is not sustainable now the EU has 27 member states. In fact, however, Britain’s welfare state and industrial relations are constructed in an entirely different way from Sweden’s and both differ from Germany’s.

Thus even if we just look at the ‘old’ member states and leave on one side the member states with weaker economies, which

cannot afford the same levels of social protection, the differences are still so great that it would never have been possible to agree on a single European Social Model either through harmonisation or minimum standards. The debate in Germany has not yet fully recognised this.

But surely everyone can see that the German system is under competitive pressure?

Both politicians and trade unionists in Germany hope that in this great big economic area in Europe it will be possible to create a social system that will be pretty similar to the one we used to have in Germany. They also see it as a block that could stand up to the Americans and, possibly be a defence against the Chinese. That is what Germany’s Social Democratic Party hopes. But it is a false hope because a political agreement on a single European Social Model is implausible. In fact, it’s worse than that: hoping for a Social Europe actually prevents politicians from taking the action that is still possible at national level.

The governing coalition in Germany, between christian democrats/christian socialists and social democrats, wants to

‘Where national differences are seen as representing impediments to basic freedoms, it is no longer enough to point out that they were considered appropriate, all things considered, by a democratically accountable legislature’

keep legislation that preserves the influence of the state of Lower Saxony on Volkswagen, something the ECJ has ruled against and the EU’s Competition Commissioner has opposed.

Political parties across the spectrum in Germany have always accepted the principle that foreign suppliers should not be treated less favourably than domestic ones within the European single market.

However, the European Court of Justice and the European Commission have gone far beyond simply upholding this principle. They argue that the internal market should be a liberal market with no impediments on the exercise of ‘basic freedoms’ – that is, freedom of establishment and the free movement of services, persons, goods and capital.

And what constitutes an impediment on these freedoms in the internal market?

In the view of the ECJ and the European Commission, simply having differences between national systems constitutes an impediment on the free movement of services, goods and capital in cases where a provider from one member state wants to operate in another. And they intervene against these even

where the rules themselves are neither protectionist nor discriminatory. The ECJ can use the most minor difficulty of exercising a basic freedom as a pretext to scrap an important element of national law. This radical approach to the integration of the single market has only become clear very recently.

And what are the implications? Will the member states with well-developed welfare and employment relations systems gradually be pushed in an economically liberal direction by the actions of the ECJ and the Commission?

European capitalism is enormously varied. The UK’s completely liberalised model contrasts with Sweden’s, while both differ from the continental European model found in Germany. That model includes social partnership and employee involvement at company level. State participation in key businesses, such as Volkswagen, was also part of that model. It is entirely natural in that context that legislation may require compliance with collective agreements: that in public procurement the state requires its suppliers to observe collectively agreed terms and conditions of employment.

How, then, does the ECJ arrive at the point where it is demanding that the German government and German workers abandon compliance with collective agreements?

Where national differences are seen as representing impediments to basic freedoms, it is no longer enough to point out that they were considered appropriate, all things considered, by a democratically accountable legislature. They now need additional justification in the light of general criteria defined by the ECJ. The question then is whether, for example, Germany’s model of employee involvement could in any way impede the free movement of capital across the EU and, if so, what generally valid argument could justify that national speciality.

Was it the intention when the integrated single market was being created that a type of capitalism which is politically coordinated and has a social underpinning should be seen as a burden?

The six founding member states signed treaties in the 1950s that established basic freedoms and the right to free competition. The governments of the time could not, however, have intended those principles to be interpreted in a way that does away with national differences. Nor could they ever have imagined them making the operation of German savings banks impossible or getting rid of the obligation to comply with collective agreements in Germany. This radical liberalisation is the result of judicial interpretation, not the consequence of politically accountable legislation.

How can European law be so separate from political decision-making?

It is important to make a distinction here between two things. On the one hand, there are ECJ jurisprudence and the Commission's treaty violation procedures; they can create new law through interpretation without the involvement of political actors. And on the other hand there are the EU's political institutions, the Council and the European Parliament, which will consider and adopt EU legislation. They are the focus of the cross-party enthusiasm for Europe that seeks to create a European economic and social area through directives and regulations. This is a political process in which the Council of Ministers – representing national governments – has always been involved and in which the European Parliament now also plays a crucial role. In principle, progress in EU political legislation can only be achieved where the 27 member state governments more or less agree – and that has not exactly become easier since the latest enlargements in central and eastern Europe. We can only hope that Europe will increase its capacity for political legislation which has been the purpose of constitutional reform.

EU constitutional reform is currently on hold, but does it have anything to do with ECJ judgments or the row about shareholding restrictions in Volkswagen?

No. There is no link between constitutional reform and the Court's jurisprudence or the Commission's powers to prosecute treaty violations. It is the

Commission's job to take any member state it believes is breaching European law to the ECJ. It does not have to ask anybody, neither the Council of Ministers nor the Parliament.

Who defines European law?

On the basis of the treaties, legal interpretation is shaped by lawyers. Neither the Council of Ministers nor the European Parliament has any say; what matters for the Commission are communications by judges, lawyers and legal academics.

And who are these individuals? The ECJ has one judge from each of the 27 member states.

There is now a large community of specialists in European law, in particular German lawyers, who interpret the treaties and directives, and this group by and large supports the line taken by the ECJ. Its interpretation of European law is not necessarily 'neoliberal' but it favours progressively greater integration and a more unified law. And this trend in legal discourse tends to level national differences.

The Laval ruling must have pleased the Latvians as much as it displeased the Swedes, though.

In representations to the ECJ there was a clear split. The older member states, with the exception of the UK, took the side of Sweden, while the newer ones took the side of Latvia (and Estonia in the case of Viking). And that also means that member states with well developed industrial relations and welfare systems will not find much support from the EU. The conflict of interests means

that there will not be European legislation to protect German legislation on compliance with collective agreements.

You have spoken of the radicalising effect of ECJ rulings. How long have you seen that going on?

The ECJ's earliest rulings, back in the early 1960s, were already based on the principle that European law took precedence even over national constitutional law. The Treaty of Rome required member states to cooperate on economic matters, but the ECJ soon interpreted it as a supranational legal framework from which economic players could directly derive individual rights against their respective member states. And these rights were deemed to override national legislation and national constitutions.

So did nobody object when the ECJ argued that European law took precedence?

The substantive issues of the first few cases were quite trivial and politicians were not really concerned about them. The governments affected contested them but when they lost, that was the end of the matter.

Why have national courts gone along with this?

Lower-level courts think European law is wonderful. Under German law, the only court that can repeal legislation is the Federal Constitutional Court. Under European law, by contrast, a single judge in a lower court can override national legislation by citing an ECJ interpretation.

Is that why, in one article, you have called the European Court

the ‘temple of European judge-made law’?

The ‘temple’ is founded on the legal principles – created by judges – of the supremacy and direct effect of European law and on the transformation of the treaty obligations of member states into individual rights for companies and citizens. A number of judgements in the 1970s substantially broadened this foundation, and now the basic freedoms are deemed not just to prevent protectionist discrimination against foreign suppliers but more broadly to provide a bulwark against any government or trade union measures that might, in some way, impede the exercise of those freedoms. The most recent judgements in the Laval and Viking cases are just the logical extension of this principle.

Does that mean that the European Court of Justice is now the highest legal authority in the European Union?

Yes, that is the case.

Why do national governments submit to the ECJ?

By announcing its disregard for the interpretation of European law, a national government would renounce its general commitment to the rule of law. And that is a taboo that no government is willing to break.

Yet in 2006, Germany’s Constitutional Court approved regulations requiring compliance with collective agreements, arguing that collectively agreed pay helped to keep social security funds in balance.

In legal terms, an ECJ ruling takes precedence over one from the German Constitutional

‘The European Court simply can’t be integrated politically in 27 member states; all it can do is to create uniform standards for European law that cut across national differences’

Court. Until a few years ago, the Constitutional Court had held that it would comply with European jurisprudence only if that was compatible with the basic freedoms guaranteed by the German constitution. It now no longer maintains that reservation.

So what should happen now?

A similar controversy is currently developing over public service broadcasting to which Germany’s Constitutional Court ascribes a political and constitutionally guaranteed role, whereas European law treats television as a commercial service. The key difference is that national judicial review operates in a public arena, within the context of open political debate and against the backdrop of a country’s specific institutional traditions and political values. Moreover, the Constitutional Court takes its place as one authority among many others, each operating within the same political system and political culture.

But can the European Court not claim the same?

The European Court simply cannot be integrated politically in 27 member states; all it can do is to create uniform standards for European law that cut

across national differences. Issues such as how the Laval judgement sits with Sweden’s political culture, for example, or how other rulings sit with Hungary’s institutional traditions cannot have the same significance for the European Court as the same issues would have for constitutional courts in the USA or Germany.

Can the Court be made to change its line of judgements?

There are two ways it could. First, one would need to get involved in judicial debates and bring legal arguments to bear on the development of jurisprudence. In fact, a minority of European lawyers is doing just that, including Christian Joerges in Bremen, along with some trade union lawyers. This group is making a strong and consistent case that the ECJ’s judgements are based on dubious legal reasoning. We can only hope that they will have some influence.

And what should the politicians do? These issues are, after all, fundamental to our economic and social order.

Governments would need to defend themselves. Yet they find it extraordinarily difficult to say that a particular ruling is an illegitimate encroachment

into areas that are the preserve of national sovereignty, that the ECJ must respect that sovereignty, and that they will refuse to comply with that ruling. There was a particularly dramatic case in Austria in which the Court showed a scandalous disregard for fundamental national interests.

You mean the Austrian attempt to limit a massive influx of medical students from Germany. The ECJ ruled that it could not.

Yes, and Austria's reaction was to threaten to veto the Lisbon Treaty. At that point, the Commission agreed to suspend treaty violation proceedings during a five-year moratorium. If a major country like Germany were to refuse to comply with ECJ rulings, maybe jointly with the Scandinavian member states, that would be a provocation that could throw Europe into a constitutional crisis.

Why a constitutional crisis? What would happen?

It would be a constitutional crisis because the entire edifice of European law rests on member states' compliance. The EU is totally dependent on member states' willingness to apply and implement European law and to assume political responsibility for it. If voters are dissatisfied, their anger is directed not against MEPs or Commissioners or ECJ judges but against their own national governments. So if a major member state were to refuse to comply with ECJ judgements, the European edifice would wobble. There is quite a lot of clandestine non-compliance but no member state has yet publicly refused to

comply and none will, unless it actually wants the EU to fail.

What is your suggestion? What can be done?

The government could declare that it considers a particular judgement to represent a case of judicial legislation overstepping the politically consented limits of European powers. At the same time, however, this government would have to announce that it would comply if the judgment were to be approved by a majority vote in the Council of Ministers. In other words, rather than merely expressing national opposition, there would be an appeal to European political authority asking if the decision of the ECJ does in fact reflect a contemporary political consensus.

In my view, that would be the only strategy that would enable us to maintain our general support for European integration while still resisting the excessively restrictive judicial interpretation of treaty clauses adopted more than 50 years ago.

While companies have huge scope for operating in a single European market, the position of workers has been systematically deteriorating – do you share that view?

Yes. It is now possible, for example, for German companies to evade the legislation on employee co-determination by exercising their freedom of establishment and relocating their legal site to, say, the UK. That, at any rate, seems to be the implication of the ECJ judgement in the Centros case.

Which has weakened employees' status more – globalisation or Europeanisation?

Globalisation creates economic pressure, but European law has severely restricted or even removed the policy options that could be used to respond to that pressure. We also have to remember that enlargement has brought low-wage economies and the economic pressure that implies into the EU. Costs in Romania or Bulgaria are actually not very much different from those in the Far East.

The reaction of the Confederation of German Trade Unions and the European Trade Union Confederation (ETUC) to the ECJ judgements has been to call for a 'social progress clause' in the EU Treaty, which would prevent basic freedoms at member state level – such as the right to strike – taking second place to market freedoms. What is your view of their demands?

The trade unions are right to oppose these judgements but I do not believe that trying to amend the Treaty would bring us much further forward. That would require the unanimous support of all 27 EU member states, which is very unlikely. Why should Latvia and Estonia be party to a decision that would not serve their economic needs?

And would it sway the ECJ?

The ECJ would not necessarily be swayed by the demand for a progress clause. If its interpretation of the Treaty is supported by just a single member state, then a Treaty amendment correcting it could not be adopted. That is exactly why I think national non-compliance is the only way forward. It is not going to be possible to create a European Social Model, but it is

possible to limit the application of European law against existing social models at national level.

Would that correct the EU's current bias to economic liberalism, that so many people complain about?

National social models would still continue to be subject to economic competition, because there is still no prospect of harmonising the taxation of company profits or capital gains. The economic pressure of tax, wage and cost competition is not going to decrease in an EU of 27 member states, but we can at least prevent judge-made law from imposing additional legal restrictions on national systems: as Christian Joerges and other lawyers have argued, the ECJ is no longer working on the basis of sound legal reasoning. It has a mission, and that mission is taking it in a direction that will not tolerate divergent national systems. And I believe that it can only be stopped politically.

Key ECJ judgements

The Laval case: The Swedish construction workers' union blocked access to a building site at Vaxholm in Sweden, where Latvian construction company Laval was involved in building a school. The union took strike action in an attempt to force Laval to comply with pay rates set down in the Swedish construction agreement, (which also help to finance the country's social security system). Laval took the case to the European Court of Justice, which ruled that the blockade and the Swedish union's demands on pay were illegal. It interpreted the Posted Workers' Directive as restricting the right to strike.

The Viking case: Helsinki-based shipping company Viking wanted to re-flag one of its ships and replace the crew with Estonians. The Finnish seafarers' union threatened strike action and the International Transport Workers' Federation (ITF) persuaded the Estonian seafarers' union to boycott collective bargaining with Viking. The company took the case to court and the ECJ ruling was that the unions' defensive and obstructive actions were unlawful; in effect, it gave companies' rights to freedom of movement and establishment precedence over everything else.

The Rüffert case: This ruling overturned German legislation requiring foreign contractors to comply with collectively agreed employment terms when accepting public procurement contracts. The ECJ ruled that a Polish construction company

could not be required to comply with the German collective agreement for the construction industry in the federal state of Lower Saxony while building a prison near the German town of Göttingen. The ECJ based its ruling on the Posted Workers' Directive, arguing that the Polish company would be bound by collectively agreed provisions on pay only if all German workers were paid on the same scale (that is, if the regional collective agreement had been declared 'generally binding') or if they were all paid a national minimum wage. Germany's highest court, the Federal Constitutional Court, had in 2006 approved legislation on compliance with collective agreements, pointing to their value in providing contributions to the German social security regime.

European Court of Justice (ECJ) and Social Europe: A Divorce based on Irreconcilable Differences?



John Monks
General Secretary of
the European Trade
Union Confederation

IN A RECENT interview with *Mitbestimmung*, Professor Fritz Scharpf, one of Europe's most prominent social scientists, spoke about the radicalising effects of the recent ECJ rulings in the Viking, Laval, Ruffert and Commission vs Luxembourg cases: 'the basic treaty freedoms are now deemed not just to prevent protectionist discrimination against foreign suppliers but more broadly to provide a bulwark against any government or trade union measures that might, in some way, impede the exercise of those freedoms'. For Professor Scharpf, this is the result of judicial interpretation, not the choice of the politically accountable. As a result, he dismisses trade union enthusiasm about the European Social Model as delusion and calls on the member states to refuse to comply with ECJ rulings. Such move would clearly weaken the position of the European Court.

The trade union movement shares Professor Scharpf's concerns about the rulings but considers that it is the balance internal market / Social Europe which must be reassessed by the legislator. The European Trade Union Confederation (ETUC) urges Europe to act urgently and strongly as workers

cannot afford giving up on the Social Model. It is indeed at the European level that a constructive response must be found so that the internal market can develop within a social framework. What the Court did must therefore be undone primarily by law.

1. The European Social Model: A Necessary Dream

The difficult relationship between the economic dimension of the internal market on the one hand and the social objectives of the Union on the other was brought under the spotlight by the recent ECJ rulings. But the question of whether the Union can actually promote a Social Model has been a constant and essential preoccupation for the trade union movement since the very beginning of the internal market.

From an early stage in the single market construction, the ETUC has been calling for a social dimension so as to prevent the Community from becoming an economic free trade zone.¹ The assumption that economic growth would automatically lead to social progress is one that the ETUC could never accept. In particular, the ETUC has been fighting, not always successfully, the idea that social policy should only be seen as a means of dealing with the social consequences of the internal market (eg: equal pay between men and women justified by the need to avoid distortion of competition) rather than as an end in itself. As companies were going to take advantage of the increased opportunities offered by an ever enlarg-

'The assumption that economic growth would automatically lead to social progress is one that the ETUC could never accept'

ing single market, fair rules of the game should be established at the European level so as not only to protect acquired workers' rights but also to develop more advantageous rights at national and European levels in the context of social progress.

It is important to underline that whilst calling for further social progress, the ETUC does not advocate a uniform model, based on maximum harmonisation of labour standards. It has always been a strong demand of our affiliates that the rich variety of national industrial relations systems is respected by the EU legislator. Rather, the Union should establish a set of minimum procedural and substantive labour standards, in particular with a view to ensuring that national social models will not undermine each other.

The European Social Model is facing important challenges both of a political and of a legal nature.

Politically, the Union is clearly suffering from a lack of impetus. The Community was founded to create a common market in services, goods, capital and labour. Freedom of movement of labour is still too often perceived as the main social dimension of the Union although it has quite different objectives from labour law. The free movement provisions of the treaty are an economic, not a social concept – although free movement of persons as such is perceived by many as an important human right. The balance between the economic dimension and the social sphere in the Union's activities is regrettably often put into question by neoliberal forces in Europe. The transition from free movement to a clear social policy dimension is therefore difficult to achieve. For instance, whilst already in 1986 the Single European Act foresaw the progressive establishment of an internal market, workers and citizens of Europe had to wait until 1999 for the entry into force of a Social Policy Chapter in the EC Treaty.

The major legal challenge, which was highlighted in the recent ECJ rulings, lies in the fact that contrary to the fundamental economic freedoms, the social dimension in the EU treaties is a complex mechanism, reflecting both the desire to develop a European social sphere as well as the need to preserve national traditions. The 'social activities' of the Union consist of a complex repartition of tasks between the Union and the member states. Whilst minimum standards are developed at Community level – for instance with regard to health and safety, information and consultation of workers – certain key fields remain firmly anchored in national legislation and practice. Article 137 EC explicitly excludes pay, the right of association, the right to strike or the right to impose lock-outs from the competence of the Community. Other areas such as social security and social protection of workers, dismissal protection and co-determination must be agreed on unanimously in the Council.

The complexity of these juxtaposed layers contrasts with the apparent simplicity of the provisions relating to the fundamental freedoms. The provisions relating to the four fundamental freedoms have been a cornerstone of Community competence since the very beginning of the single market. The logic of the fundamental freedoms is 'negative integration': restrictions to free movement arising from national law or practice are prohibited. The ECJ has developed a long jurisprudence allowing certain national impediments to remain in place only where they are justified by reasons of general interest. The rationale, nonetheless, remains radical in that such exceptions are admitted on a case by case basis and are interpreted restrictively.

Because of the specific nature of European integration with regard to social policy, national practices differ greatly from one member state to another; these differences are even

‘A series of European labour law directives have brought concrete changes to the lives of workers’

more acute since the 2004 enlargement. The question that was raised in the recent ECJ rulings is one that has been simmering for a long time. Where the fundamental freedoms collide with national labour systems, can there be a reconciliation?

The ECJ response in these four rulings is extremely worrying. The difference of national standards is in the eye of the Court an obstacle to free movement. The very existence of national labour law must therefore be justified, even if it is not discriminatory or protectionist in nature. Consequently, national social models are subordinated to European economic freedoms. It is clear that if one is to follow the ECJ guidelines, substantive parts of the national social models will be put at risk. The required justification for a collective action as well as the proportionality test developed by the ECJ in the Viking case jeopardise social partners' autonomy. In addition, the horizontal direct effect of Article 49 EC will be a powerful instrument in the hands of the employers and act as a deterrent for trade unions to exercise their fundamental right to collective action. In the Laval, Rüffert and Commission vs Luxembourg rulings, the ECJ admits in no uncertain terms that preventing unfair competition on wages by imposing the respect of minimum working conditions such as wages laid down through collective bargaining can constitute an obstacle to the free provision of services. In sum, the ECJ denies 'labour' equality of arms vis-à-vis globalising capital.

The ETUC can only share Professor Scharpf's analysis: Social Europe has taken a blow and ways to repair the

damage must be explored. But there will be no easy answer. A first and natural reaction is one of defiance towards the Union in general and the ECJ in particular. However, whilst it is indispensable that national labour legislations are better protected against the invading interpretations of the ECJ and the Commission, the ETUC warns against calling for a return to the nation state. The trade union movement cannot afford giving up on the European Social Model. European economic integration has now reached a point of no return. Leaving the internal market regressing into a free trade area would have devastating consequences on the lives of citizens and workers of Europe. One must also acknowledge the significant social improvements that have been achieved so far. Article 136 EC sets as a Community objective the improved living and working conditions, so as to make possible their harmonisation while the improvement is being maintained, and proper social protection. On this basis, a series of European labour law directives have brought concrete changes to the lives of workers (eg: equal pay, fixed-term work and part-time work framework agreements, numerous information and consultation directives, the future temporary work agency directive etc). It is also significant that the 2000 Charter of Fundamental Rights will become legally binding at the next treaty revision. It is in the interest of the trade union movement to push for further efforts to reframe the EU in a different logic than the market alone.

The ETUC is convinced that because the problem lies at the European level, the main response must also be found at the European level. The response must be such that it would prevent similar issues from arising again. Refusing to comply with specific ECJ rulings may undo the damages in the short-term but it will not serve (or save) Social Europe in the long-term. Rather, it is necessary to look at the

hierarchy of values lying at the very heart of the European construction. In other words, the European legislator must design the tools (or the constraints) that would allow European judges to develop the internal market within a social framework.

2. Working with the Judges rather than against: A Social Progress Clause

Professor Scharpf proposes that a 'political appeal' to the ECJ rulings should be put in place. A member state would not have to comply with a judgment where a majority of governments agrees that the limits of European powers have been overstepped. From the ETUC point of view, such a proposal, albeit seducing, is not an appropriate response for three main reasons:

First, division of powers between the legislative and the judicial authorities is an essential feature of democracy. It is clear that the EU has been facing a problem of judge-made law for some time. Nonetheless, granting supreme judicial power to a political institution whose decisions are often negotiated behind closed doors will be destructive for European democracy. However, an assessment of the ECJ's independence, for instance judges' nominations and access to the Court by other parties than the member states, should not be ruled out.

Secondly, where the internal market is not at stake the ECJ has shown a progressive approach to social issues (see for instance case law on information and consultation, working time, sex discrimination and more generally the ECJ interpretation of EU labour law). Member states should not be allowed to ignore such rulings.

Finally, weakening the role of the ECJ will not solve the challenges that Europe as a whole is facing. Some basic choices need to be done by the legislator to guide the Court. This is not to say that the ECJ rulings should not be criticised. Several legal experts have already pointed out the loopholes

and inconsistencies of these judgments. The EU legislator, however, should limit itself to changing the law.

The European construction is now stuck between the market and the social. The Court lacks the clear obligation to take a constitutional approach, which would allow for an adequate balancing between economic freedoms and fundamental social rights. The ECJ rulings infringe a number of core labour standards set out in international law (eg: ILO Freedom of Association and Protection of the Right to Organise Convention C87 and Right to Organise and Collective Bargaining Convention C98, both ratified by all the member states)². It is urgent that the ECJ repositions itself with regard to international law, which is also reflected in national constitutional arrangements. It will be necessary to raise the issue of compatibility between EU law and international standards in future case law both before the ECJ and international instances.

Furthermore, to help correcting the balance between the freedoms of the single market and fundamental rights, the ETUC is proposing that a 'social progress clause' is added to the European treaties. In the ETUC's view, the restrictive interpretations by the ECJ are not the only possible interpretation of the European treaties, which have a clear social dimension that will be reinforced by the Lisbon Treaty. A social progress clause should unambiguously clarify and establish the relations between fundamental social rights and economic market freedoms. Such a clause must be legally binding at the highest level, to ensure that it influences the decisions of the ECJ. Only a protocol, attached to the treaties, can give sufficient guarantees in this regard.

The social progress clause should contain the following key elements:

First, it should confirm that the single market is not an end in itself, but is established to achieve social progress for the peoples of the EU.

Secondly, it should clarify that economic freedoms and competition rules cannot have priority over fundamental social rights and social progress, and that in case of conflict social rights as safeguarded in international law shall take precedence.

Finally, it should clarify that economic freedoms cannot be interpreted as granting undertakings the right to exercise them to evade or circumvent national social and employment laws and practices or for unfair competition on wages and working conditions. In case of conflict with fundamental rights, the use of economic freedoms should therefore be justified so that the respect of the Community objectives can be assessed.

In sum, a social progress clause must establish a clear legislative choice that the internal market should develop within a social framework and not the other way round.

This proposal has been dismissed as being very unlikely as it would require unanimous support of the 27 member states. The ETUC believes that more than an institutional problem, it is a communication battle that is laying ahead of us. The social progress clause is in the interest of all. Non-discrimination and respect for collective bargaining is an interest and concern that all workers and their unions share in Europe, be it in the 'old' or the 'new' member states. As for companies, their survival also depends on fair competition in the single market.

'A social progress clause must establish a clear legislative choice that the internal market should develop within a social framework and not the other way round'

Finally, national labour law must also be better shielded against internal market invasion. A revision of secondary EU law may have to be envisaged, in particular with regard to the Posted Workers Directive. In sum, the ETUC is under no illusion that the recent ECJ rulings are a serious blow to the fight for Social Europe. The issues raised by these judgments reflect an identity problem that the Union has been facing for some time – a problem which goes deeper than the question of the acceptable limits to the powers of the European Court. At the last ETUC Congress in Sevilla, which took place under the slogan 'On the Offensive', the trade union movement renewed its commitment to a Europe which is 'more' and 'better'. Ways of reconciling the ECJ with Social Europe must therefore be found at European level. It is essential that the European legislator reflects on the nature and desired shape for European integration. The ETUC considers that the outcome of such reflection should lead to legal reforms, the only way to secure a democratic and sustainable response to these judgments. In particular, a social protocol should serve as an unequivocal guidance for the ECJ to interpret internal market provisions within a social framework.

Endnotes

¹ ETUC Resolution, 'The social dimension of the internal market', 6-7 October 1988.

² See also ILO Collective Bargaining Convention C154 ratified by 12 Member States, ILO Labour Clauses in Public Procurement Convention C 94 ratified by 11 Member States.

The European Social Model and the ECJ



Roger Liddle

Vice Chair of the think tank Policy Network and a former political adviser to José Manuel Barroso and Tony Blair

WHEN A SCHOLAR of Fritz Scharpf's reputation and standing speaks, pro-Europeans should listen. His warning that the European project represents a judicial entrenchment of neoliberalism needs to be treated with the utmost seriousness. But pro-European supporters of a Social Europe and the idea of a European Social Model, in the trade unions and elsewhere, should pause and think before, as a result of Scharpf's reflections, they veer across to a knee jerk Euro-scepticism, or worse still, succumb to an ignorant and populist anti-Europeanism.

The trigger for Professor Scharpf's anxiety about the nature of the EU has been a series of European Court of Justice (ECJ) judgements that give precedence to the founding economic freedoms of the European treaties over national laws and nationally based collective institutions that are judged to compromise them. The European Trade Union Confederation (ETUC) is naturally exercised by the recent court judgements where trade union collective action has been judged illegal that attempted to force contractors from the new member states to abide by collectively agreed terms in the old member states – so preventing

them from gaining advantage by using cheaper labour from their own countries.

However the details in these cases are complex; in legal cases, details matter; and I am not a labour lawyer. But there is clearly a balance to be struck case by case on these questions. On the one hand, the new member states have legitimate expectations that they can use their cost advantage to develop their economies. This principle the founding six accepted, for all its difficulties, when the Treaty of Rome ushered in the common market. It is fundamental to the processes that make globalisation highly beneficial to poor people in emerging economies. On the other hand, there is at stake the right of trade unions under national laws and practices to take collective industrial action to enforce the 'going rate' in their own jurisdiction. This right appeals to ordinary people's feelings of fairness and justice. Yet there is clearly an illogicality in permitting competition on the basis of lower labour costs in the export of manufactures, as is the basis of the single market, but using workforce muscle to snuff it out at source in the provision of services by firms from the new member states.

The purpose of the Posted Workers' Directive was to resolve

'In the last decade the EU countries with consistently the highest rates of productivity growth have been the Nordic countries which also have the most generous social provision'

this tension. Clearly if the ECJ's legal judgements are not thought to represent a fair balance between opposing and ultimately irreconcilable positions, then the first question to consider is how that Directive's provisions could in principle be strengthened under EU legislative procedures, and how the necessary qualified majority for such a step might be won. This might require a package of wider political trade-offs with the new member states with which all students of EU affairs are familiar.

Professor Scharpf's concerns however go wider than a specific case or cases. His is a challenge to the EU's constitutional and judicial order. The European Social Model was built in the post-war era on the ability of national welfare states to shape capitalism in their own distinctive national way. In his view globalisation is shifting the balance of industrial power from labour to capital. However there is room for debate both about the degree to which this is a generalised shift, as opposed to a shift within and between sectors. There is also uncertainty as to the extent to which globalisation is the cause, as against technological change and shifts in consumer demand that have led to the

decline of 'good working class jobs'.

Scharpf goes on to argue that the ability of EU nation states to take countervailing action against these trends has been constrained by what he sees as the neoliberal legal order of the European Union. One problem I have with this argument is that it totally ignores what nation states have gained as a result of the creation of an EU legal order, gains which are of crucial importance for working people. The economic benefits of the single market have significantly added to EU GDP and as a result of the growth dividend, national welfare states are better funded as a result. On the basis of the competitive strength that the single market offers, Germany is, for now at least, the largest exporting nation in the world, with all that means positively for jobs and living standards. Unlike the United States this dividend has been more broadly shared in Europe.

The single market would not be the economic powerhouse it has become without action by the European Commission and ECJ to ensure its rules are enforced and constrain national discretion on questions like state aid. This may at times be uncomfortable. But the political choice of member states has

been to surrender sovereignty in order to subject themselves to this external discipline in the belief that the greater good of their citizens, including trade unionists, is better served by this in the long run.

The existence of the single market has not resulted in member states having to dismantle their social models. True social models that have not been well attuned to job creation have been forced to reform, as in the case of Germany with Agenda 2010. But in the last decade the EU countries with consistently the highest rates of productivity growth have been the Nordic countries which also have the most generous social provision. Social justice and competitiveness march hand in hand where member states have well designed social models. In the EU as a whole, there has not been a 'race to the bottom', rather in countries like Spain, Portugal, Ireland and some new member states a 'race to the top'.

Also core EU legislation and enforcement action to create the Single Market has of course been accompanied by much 'progressive' flanking legislation and court action in fields such as the environment, consumer rights, health and safety rules and anti-discrimination as well as the achievements of the European Social Agenda itself. This progressive legal order would crumble if member states followed Professor Scharpf's advice to defy court rulings.

From a British perspective Professor Scharpf's objections to the European Court of Justice make him sound more like a right-wing national sovereigntist than a progressive defender of European social values. In

EUROPEAN SOCIETY

WILLIAM OUTHWAITE, *University of Newcastle*

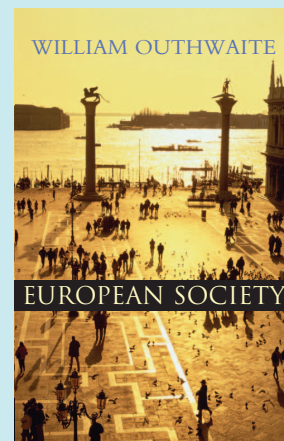
Does it make sense to speak of a European society, above and beyond its component states and regions? In this major new book William Outhwaite argues that it does. He goes beyond the study of individual states and specific regions of Europe to examine the changing contours of the continent as a whole, at a time when Europe is beginning to look and act more like a single entity.

In what we have come to call Europe there developed distinctive forms of political, economic, and more broadly social organization – many of course building on elements drawn from more advanced civilizations elsewhere in the world. During the centuries of European dominance these forms were often exported to other world regions, where the export versions often surpassed the original ones.

200 pages June 2008
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In the present century many features of European life remain distinctive: the European welfare or social model, a substantially secularized culture, and particular forms of democratic politics and of the relations between politics and the economy. This book provides a concise overview and analysis of these features which continue to make Europe a distinctive region of global modernity.

The book will become a key text for students taking courses on contemporary Europe, whether these are in departments of politics, sociology, literature or European Studies. It will also be of great interest to anyone living in, or concerned with, Europe today.



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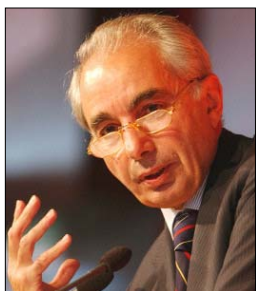
Britain the ECJ is seen as a progressive force where its rulings have made a significant contribution to equal treatment for women and other disadvantaged groups. Indeed so terrified was the British government of the ECJ's perceived progressive bent that it insisted on all manner of legal clarifications and so called opt outs before it would agree to the incorporation of the Charter of Fundamental Rights in the Lisbon Treaty. Its fear was the reverse of Professor Scharpf's that in the long run the ECJ would find legal devices to undermine the essence of the 1980s industrial relations settlement that New Labour has broadly accepted. It is impossible for both Fritz Scharpf and our cautious, business friendly Labour government to be right!

But more than these different

perceptions of the EU's legal order, Professor Scharpf's worries about Court rulings may derive from an ideological consensus that has governed the EU for more than two decades, but could now be on the verge of being modified. Jacques Delors promoted the idea of the Single Market because he recognised that in the early 1980s this was the only means to reconcile his ambition to redynamise European integration with the prevailing neoliberal consensus. With the global financial crisis of October 2008, this consensus is at the very least about to be recalibrated. Would it not be more productive to concentrate on how in this dramatic new conjuncture, EU integration might take a different road forward, instead of advocating actions that would undermine

the very institutions at European level that we now need to strengthen?

Making Social Europe European



Giuliano Amato
Former Prime Minister
of Italy

I WILL LIMIT MYSELF to a short comment, for I want to focus upon one crucial point: what the workers and their representatives can do to make Social Europe more European. It is a crucial point as no other option exists to stop the slow but inexorable decoupling which would otherwise intervene between social protection and the economic integration of our enlarged Europe.

Let me summarise the essential arguments leading to this conclusion. We enjoy speaking of a European Social Model and we have some reasons to do so, because the average social protection existing in our Union is higher than elsewhere in the world and its underpinning principles tend to be similar in most of our member states. However, we well know that historically and legally our welfare institutions are national constructions, moulded by the social and political arenas existing in each of our countries. They still remain the paramount responsibility of the member states, not of the Union. Building a single economic space and preserving fragmented social institutions can work, but only up to a certain limit. We are now experiencing the

inconvenient truth of this reality.

For years the defence of our social rules and institutions availed itself of a sort of immunity from the main rules of the common market and it was due to such immunity that the 'anti-competitive' effects of collective contracts were beyond the range of competition rules. But more recently the implications of such rules and even more of the freedom of movement in the enlarged Europe have created conflicts with national social protection systems which have dangerously shaken the immunity and its borders.

Here I could enter into technical details and also make use of good arguments to challenge the decisions of the European Court of Justice in the cases Laval and Viking, which have given rise to the current debate. However, if we look at such cases in more general terms, we are forced to understand that the basic conflict is not only between labour and companies, but first of all between the national dimension and the European one. What does this mean? It means that in the long run the national dimension is doomed to be the loser and therefore labour itself would be the loser should it remain confined within national borders.

Let us be realistic. We cannot expect our member states to open a renewed season of constitutional reform and solemnly (and unanimously) agree either upon a widened and strengthened immunity of labour related institutions or upon a European social network, even though not necessarily a complete one,

'The basic conflict is not only between labour and companies, but first of all between the national dimension and the European one'

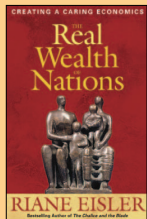
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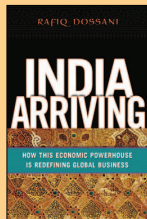
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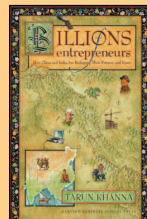
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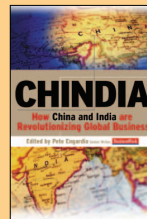
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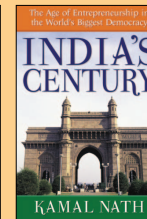
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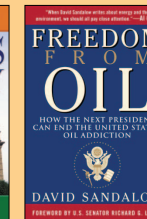
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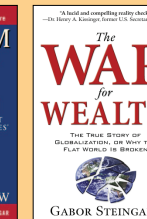
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overcoming their competencies. It is not going to happen and the experience of the Convention on the Future of Europe is very instructive. In that case, limited extensions of the European competencies in the social field were blocked under the pressure not of the UK, but of the German *Länder*.

In the long history of social rights the workers and their organisations have been the promoters of their own progress and the more they have succeeded the more they have gained instruments for not just being promoters, but also co-decision makers of the steps forward. They are historically used to playing this role at the national level. For the future they have to get accustomed to play it more and more at the European one. They can do so because the existing treaties give them the necessary means. According to Article 139 of the Treaty establishing the European Community, 'should management and labour so desire, the dia-

logue between them at Community level may lead to contractual relations, including agreements. Agreements concluded at Community level shall be implemented either in accordance with the procedures and practices specific to management and labour and the member states or, in matters covered by Article 137, at the joint request of the signatory parties by a Council decision on a proposal from the Commission.'

Laval, Viking and other cases underline the urgent need for European solutions. But workers and their organisations should not limit themselves to demanding political institutions to take care of them. They should negotiate their solutions with their counterparts, stipulate transnational agreements and activate the appropriate procedures to give such agreements legal force. Times are ripe for this kind of transnational action. It is a need, but it is also an opportunity, the opportunity to build a better Europe.

2009: A Crucial Year for the European Dimension of Public Services



Christophe Rouillon

Mayor of Coulaignes (France), Vice President of the French Mayors Association and member of the PES Group in the Committee of the Regions. He writes on behalf of the European Socialists (PES Group) in the Committee of the Regions

THIS AUTUMN OF 2008 sees public services hit head on by the current financial crisis at a time when an assessment has to be made of the public service aspect of the work of the European Commission under José Manuel Barroso and a progressive programme prepared on this subject for the European election of June 2009. In our view public services are a cornerstone of our programme for a new Social Europe, especially as we remain convinced that market forces alone cannot guarantee an adequate level and quality of public services.

What can we say about the financial crisis?

Public service funding has been facing a triple underlying threat for years, which has now got worse: local authorities are overloaded by responsibilities and are struggling to assume them financially; users' purchasing power is collapsing; nation states, which have had

their legitimacy eroded by the prevailing free market culture, have fewer and fewer means to intervene and the financial organisations which usually provide funding for municipal, county and regional councils are keeping a low profile.

In our countries, one worry is gnawing away at local authorities. The banks, led by Dexia, the local authorities' bank in France, have been luring local authorities into taking on tempting loans. Some of these have turned out to be a trap.

According to a study by the Fitch Ratings Agency, a quarter of the 105bn Euros in loans granted to French municipalities are at floating rates, based on sophisticated indexes, which are currently soaring upwards.

Some mayors are announcing that they will have to freeze projects in their towns due to the credit crunch which is driving up rates. In a country like France, though this also applies elsewhere, where 87% of public civil investment comes from local authorities, a bank liquidity shortage may be traumatic for the local economy.

Our European local authorities therefore have every right to call for more supervision, cooperation and the adoption of better regulations in the European financial sector.

'We remain convinced that market forces alone cannot guarantee an adequate level and quality of public services'

In fact it has never been so clear how much the 'economic government' which should have accompanied economic and monetary integration is cruelly lacking today. But we think that this reasoning, which applies to financial services, can apply just as much to public services.

What has the European Commission under José Manuel Barroso achieved as regards public services since 2004?

Not very much. The texts which have had the biggest impact on public services over the past five years date back to the Prodi era: the 'Services Directive' – the White Paper on Services of General Interest – and the 'Monti Package' resulting from the Altmark judgement on the notification rules for state aid. The last Commission communication on services of general interest in November 2007 was even downgraded to the status of an appendix to another communication on the internal market, with such a low added value that the European Parliament did not even consider it worthwhile to issue a report on it!

That is why we hope that the 'ostrich policy' as regards public services will end after the European election of 2009.

For that to happen, the socialist family must set out its ambitions in the Party of European Socialists (PES) Manifesto for the European elections. We are delighted that it already contains the call for framework legislation on public services but some additional suggestions can probably be made to give the call more substance.

The current context, where the need for regulation of the market economy is once again

gaining in credibility, is certainly a favourable one. Let us make the most of it!

As local and regional socialist and social democrat elected representatives, we too are more than ever convinced that market forces alone cannot guarantee an adequate level and quality of public services, especially as the public authorities are deeply involved at all levels in providing, regulating, organising or — to varying degrees — funding or supporting such services.

Now, as the new Protocol on Services of General Interest appended to the Lisbon Treaty confirms, it is not up to the EU to interfere in the provision of these services. However, to consolidate the public authorities' perimeter for action at national, regional and local level and ensure the legal consistency of powers and definitions within this perimeter when the liberalisation of various public service networks has been based on different rules over the years, we are continuing to call for the adoption of a European legal framework for public services.

This call is now becoming more feasible than before thanks to the new political deal on public services offered by the Lisbon Treaty. This in fact provides for a legal basis (the future Article 14 of the Treaty on the Functioning of the European Union) to legislate on services of general economic interest (SGEI) using the co-decision procedure.

In concrete terms, we think that the legal framework that we are calling for could take the form of a proposal for a regulation on SGEI which, without claiming to regulate everything, aims to pave the way for what

could be a genuine consistent and innovative legislative 'package' on matters such as users' rights, the quality and evaluation of SGEI; the awarding of public service contracts; SGEI funding; the relationship between authorities regulating SGEI; and the status of social services of general interest.²

The importance of our call becomes clear when one considers the great difficulties encountered in the implementation of the Services Directive by the member states, which has to be completed by the end of 2009.

Implementation is facing serious problems, not least because the European Commission is refusing to say exactly which social services are outside the scope of the Services Directive. It maintains a distinction between public service missions, which Brussels calls services of general interest and which come under the regulatory powers of the member states, and economic activities which come under competition and include 'services of general economic interest' (SGEI). But once the directive has been incorporated into national law social services will probably be described as a sub-category of SGEI. A report by a French National Assembly fact-finding team on the funding and governance of associations published on 1st October emphasises that with such a description there is a risk that the rules on state aid applying to SGEI will be made to cover associations handling such activities as tutoring, aid for the elderly or managing local social centres.

According to the report, 'the risk for these activities receiving financial support from the pub-

'Associations, mutuals and foundations need a recognised European legal framework in order to guarantee them equal treatment alongside other business models'

lic authorities is to have their subsidies reclassified as state aid by the European Commission'. The second risk, says the report, 'is to see the traditional type of relationship between associations and the public authorities jeopardised by moving from a subsidy to a calls-for-projects set-up'. This threat is not theoretical: in Finland, a number of associations which provided welfare and medical services in sectors open to competition have seen their financial support from the state withdrawn.

Another extremely sensitive subject for local authority management of public services is the questioning of joint authority management methods.

In a reasoned opinion of 27th June 2007, the Commission told France that transferring the provision of services from one local authority to a group of authorities was governed by competition law. The Commission therefore asked that the article on the 'Local Authorities' General Code'³ authorising such transfers be amended. This would mean that all the laws governing local authority groupings would have to be reviewed, and not just in France. However, this line appears to be extremely flawed as regards its compatibility with the Charter of Local Self-Government, the principles

of which have been incorporated into the Lisbon Treaty.

For the European agenda post 2009 the socialist and social democratic representatives on the Committee of the Regions have three other points to make:

1. In our introduction we mentioned public investment against the background of the financial crisis. This financial crisis comes at a time when the Commission is starting its review of the action plan on state aid for 2004-2009.

This action plan is due to end soon and it is extremely important to amend its contents and philosophy.

For example, we feel that the quantitative approach to state aid, namely to cut the total volume of state aid in Europe to below 1% of GDP, must be revised. Instead, we feel that a distinction should be drawn between the various types of aid and their respective benefits in terms of the general interest.

We also have reservations about the focus given by the Commission to 'market failures'. If we just take the example of innovation-related activities, these are specific in that they are often distant from the market. But

experience shows that it is very difficult to know in advance which innovative products and services will become successful in the market.⁴

Lastly on state aid: we note that the European Commission is not always very clear about what the general interest involves. It needs more clarity and political 'guidance'. To give an example, we know that various Commission DGs are currently tearing themselves to bits to know if local authority funding of harbour infrastructures has to be considered as state aid.

2. Greater attention has to be paid to the social economy, which is a very significant sector of activity (accounting for 10% of all European businesses and 10% of all jobs) and is particularly appreciated by socialists and social democrats because it provides many services of genuine general interest. We feel that associations, mutuals and foundations need a recognised European legal framework in order to guarantee them equal treatment alongside other business models that already benefit from, or are moving towards, recognition of their status (the European cooperative society, the European company and the proposed European private company).
3. Finally, we call for greater recognition of the cross-sector nature of public services in Community policies, particularly cohesion policy.

Let us take two examples:

Apart from the Protocol on Services of General Interest, the future Lisbon Treaty only refers to public services, or - to be precise - services of general economic interest, in Articles 14 and 106. But Article 14 refers to a new objective inserted in the Treaty: that of territorial cohesion.

To give concrete form to this objective of territorial cohesion, the European Commission last week brought out a Green Paper. So for us, the Socialist Group in the Committee of the Regions, it is essential that in the consultations on this Green Paper on Territorial Cohesion a maximum number of contributions should take a look at the indissoluble link between the new objective of territorial cohesion and the requirements of quality and access to services of general interest. On reflection one wonders whether the Commission proposal on the liberalisation of the postal sector could have been the same if the Commission had been obliged to study the territorial impact of its proposal beforehand.

However, this greater recognition of the cross-sector and trans-European nature of public services must also occur when a sphere of activity of a social nature and of general interest does not fall within the European sphere of competence, in the sense that there is no legal basis in the treaties for legislation in that area.

Indeed, a service of general interest may well be at odds with Community policies. Such interactions should be anticipated by the law rather than by jurisprudence. This is a matter of security for both citizens and

operators, whether they be public or private.

The example of social housing is a case in point. Under the treaties, of course, Europe has no power to take action on social housing. However, it has to be noted that the European Union does act in the field of social housing through, for example, the rules on state aid: hence the call for European legislation on state aid to take greater account of its impact on public services and territorial cohesion.

Examining public services in depth can seem a dry subject when one gets so much into the details.

However, we cannot cut corners here on the pretext that there are no legal powers to act or fall back on the defence that this is a local matter under the principle of subsidiarity. Let us remember how worked up public opinion became in 2005 during the debates on the Services Directive. Public opinion is highly sensitive about matters affecting services of general interest. Europeans are expecting action by the EU which is not the bare minimum, but which reflects their concern about preserving the quality of public services, defines what public services are in a positive way and clearly sets out what can be done through regulation. In short, no European legislation on public services will get anywhere if it leads to a cutback in public services and, ultimately, lower social standards.

For this reason the three public service goals of 'protection, modernisation and consolidation' must be among the priorities for the next European election in June 2009.

Endnotes

¹ Communication from the Commission accompanying the Communication on 'A single market for 21st century Europe' – Services of general interest, including social services of general interest: a new European commitment COM (2007) 725 final

² See CoR opinion presented by Jean-Louis Destans (PES/FR) on 6 December 2006 (CdR 181/2006)

³ L.5211-4-1L.5211-4-1 II CGCT

⁴ See CoR opinion presented by Gabor Bihary (PES/HU) on 16 November 2005 (CdR225/2005)

Why are we all so interested in American Presidential elections?



Lewis Baston
Director of Research,
The Electoral Reform
Society

THE 2008 AMERICAN Presidential election has captured the attention and enthusiasm of millions of Europeans. Perhaps my little patch of north London is an unusual area, but one sees the occasional 'Obama 08' poster displayed in house windows. I am not sure we will see any more posters, for anyone, in the European Parliament elections in June 2009. The British political classes were following the Presidential race avidly, and by all accounts there was a similar picture in other EU states. Why is this, given that we seem so unenthusiastic about our own politics, let alone what is going on in our partner states and at European level?

Two answers come immediately to mind. US Presidential campaigns are entertaining, and US Presidential politics matters. But before that, I shall consider another couple of aspects of American politics which are worthy of interest.

American politics is a testing environment for political techniques and technology. With a major set of elections every two years, and vast amounts of money, there is a very rapid cycle of development and strong techniques should quickly evolve

while the weak die out (although the Democratic Party has had a touching faith in failed techniques and unsuccessful campaign consultants). The conservative movement from the 1970s until recently has been innovative with its use of direct mail, sophisticated demographic analysis, ability to organise people to talk about politics with other members of their communities, and understanding of the subtle links between lifestyle and politics (realising in 2004 for instance that most men who watch television channels about fishing vote Republican).

However, in the last five years, kick-started by Howard Dean's campaign in 2003-04 and channelled through blogs, particularly www.dailykos.com, progressive Democrats have been fighting back. The Democratic 'netroots' is a powerful force – it probably gave the party control over the Senate in 2006 thanks to its support in close contests in Virginia and Montana. It has marshalled an enormous number of small donors in 2008, not only for Obama but for Congressional elections in key states and districts. There is a sense of freshness, optimism, fun and serious purpose to be found in the netroots, a combination that is largely absent from European politics of any stripe. The army of donors co-ordinated by the blogs lacks any real counterpart either. To work out how to replicate the netroots in Europe would be a huge achievement – in terms of giving a political movement new energy and also redistributing power away from

'US Presidential campaigns are entertaining, and US Presidential politics matters'

the party elites. One of the exciting things about US politics is that sometimes, within a political party, it just takes some determined individuals (including for instance Markos Moulitsas of Daily Kos, or long before him Richard Viguerie on the right) taking the initiative into their own hands, finding a movement that just snowballs around them, and compelling the political world to adapt.

The use of the net (and the transplantation of some of the irreverence and humour of the blogs) into campaigning is just one American innovation that anyone who is interested in campaigning should study. The Democrats, under Howard Dean as chair of the Democratic National Committee, have built up what they call a 50 state strategy. This does not mean spraying resources around wildly, but making sure that there is an organisation and a party presence across the country. Having this meant that the party could take advantage of favourable circumstances, as with its win in a Congressional special election even in Mississippi. The strategy replaced the previous excessive concentration on a small number of swing states. Many European parties, particularly the Labour Party in the UK, could do with learning that being a national party is about more than rhetoric or even ideology, it is a matter of organisation and electoral strategy as well.

The 2008 election was particularly entertaining. It could share a title with a fine British study of the 1968 contest: 'An American Melodrama'. As a story arc, as a Hollywood version of an election, it was hard to beat. There was John McCain, the veteran military hero, going for one last campaign when those with less steel and ambition would be retiring and critics had written him off, a classic narrative from sports movies translated into politics. The Democratic side was a gripping contest between two candidates, either of whom represented a massive sym-

bolic change in the form of the first woman or first black nominee of a major party for the Presidency. Obama's victory was another classic story, the charismatic, clean outsider coming to change the way Washington works.

However, even without this year's particular flavour, the story of an American Presidential politics presents different facets at different times. The primary season is when a thousand flowers bloom, most of which are rapidly cut down – it introduces us to some new characters and ideas, and gives the media and the public a chance to build up and knock down candidates. John McCain, like Bill Clinton in 1992, proved his staying power by surviving a gruelling primary season, while Rudy Giuliani's one state strategy focused on Florida doomed his campaign. Then the narrative converges to the contest of the two nominees, joined at the conventions by their Vice Presidential choices, before heading to the debates and the hectic nationwide tours culminating in election day itself (and sometimes as in 2000 the conflict continues even after that date).

From a British point of view, European political contests that excite interest are relatively infrequent. French Presidential elections arouse some comment, and I discussed the relative merits of Sarko and Ségol with fellow British. There is continual, head-shaking despair at Berlusconi, not just because of his antics but because of Italy's economic failure and the growing threat of racism. The British left pays less attention to Spanish politics than it should – a genuinely confident, radical government in an asymmetrically devolved and traditionally conservative polity and society should get more coverage than it does.

Perhaps a general principle can be ascertained. Good government makes bad entertainment. Countries with consistently high standards of living, sta-

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ble democratic arrangements, social solidarity, growing economies and sex equality rarely find their internal politics attracting the interest of outsiders, with the partial exception of the European left’s interest in Sweden. The everyday business of politics in Sweden, Denmark, Estonia, Slovenia, the Netherlands and Norway is often sensible, consensual, conducted through rational means – and simply not very interesting. A re-balancing of the coalition parties and government programme in the Netherlands following an election is not box-office material, while American presidential elections present drama, conflict and ultimately resolution. The clear choice they appear to offer may often be illusory. Presidents ultimately have to work with Congress, and are constrained by circumstances the way every other politician is, and agendas converge. But, particularly since 2000, nobody can plausibly argue that Presidential elections do not have consequences.

Different sorts of political institution seem to excite different sorts of response from the public – not necessarily on turnout, although it can have an effect, but on the perception of the election. Direct election of a chief executive with strong powers, as in the US and France, focuses and personalises the election in a way in which legislative elections cannot. Elections for bodies whose predominant role is scrutiny and oversight, vital functions in gov-

ernment, seem to mystify the public. Examples of this are the Greater London Assembly and the European Parliament. The work clearly needs to be done, and people will grudgingly acknowledge this, but it seems boring. The European Union political system, in which executive power is nominated or intergovernmental, seems almost designed to be boring and disconnected. I have long thought that a directly elected President would at least make things a bit more interesting, and test for instance whether European-wide ideology or national identification has a greater effect on the role, and whether the need to get Europe-wide support would affect party strategies.

Some of the entertainment value of American elections comes through our fascination with the genre of American Bizarre. The election is a window through which one can study all sorts of strange phenomena, and perhaps feel vindicated in one’s, not always well hidden, feelings of contempt as well as fear and resentment for America. One can pat oneself complacently on the back for our rationalism, our lack of naïve credulity, corrupt televangelists, moose-shooting governors or bigoted talk-show personalities, and even perhaps the relative scarcity of virulent racism, rank ignorance and desperate inequality. However, this is to risk caricaturing ourselves as well as the Americans, ignoring Europe’s record at producing vicious irrationalist ideologies, and the strength that knowledge and progress have always drawn from the United States and its cultural and intellectual vitality.

But there is also a serious point. Most Europeans consider themselves on the rational, liberal side of a conflict which divides America down the middle. The immense power and influence of the United States may, or may not, end up on the side of those who regard science and reason as superior to faith and ideology as a guide to how to use it. The American cultural civil war

matters to the rest of the planet as well as to the American electorate.

American Presidential politics matters.

Most of us do not treat American elections purely as entertainment. Most of us pick a side that is congruent with our general political views, and make an emotional and political investment in its success. The European left is more or less unanimous for the Democrats, and in the last election was more strongly than ever for Obama (although it was interesting during the primary season to try to work out the dividing lines that made Europeans lean either to Clinton or Obama). The right is a little more divided, reflecting the commitment to social conservatism, religion and plutocracy of the Republican Party which is too strong a brew for many European moderate conservatives.

A key reason that the 2008 election was the object of such fascination is to be found in the extraordinary history of the Bush administration. It has governed, confrontationally and unilaterally, from the far right at home and abroad. It has encouraged every form of anti-Americanism while disheartening those, such as myself, who are progressive admirers of America. From the point at which it seized office through chicanery and the Supreme Court (in what we would call a coup in most countries), it has been a depressing experience. First came the attacks on science and the environment. Then Bush betrayed those of us who rallied around America after the appalling attacks of 11 September 2001 – in using that tragedy as an excuse for violating the noble principles of the US Constitution, wholesale lying, going into war on a frighteningly casual basis and even worse presiding over a disgusting regime of disappearances and torture. As a final show-stopping performance, Wall Street has collapsed and the next administration's money mortgaged to pay for the damage.

The next administration inherits a

disastrous legacy, and a need to prove to the world that the last eight years have been an aberration rather than business as usual. In fairness to McCain, he had in the past opposed Bush on the environment and torture. But as the campaign went on he sold his soul to his party, and to the attack machine that had smeared him and his family when he had challenged Bush in the 2000 primary season. But to see Obama elected has delighted pro-Americans throughout the world. While Bush embodies the arrogant, ignorant side of America, Obama is a powerful symbol of the hope and renewal that America offers too, and (like Clinton in 1992, only more so) would start with an immense fund of goodwill. The fact that America, by the clearly expressed will of its people, has produced a black leader, will change the relationship between America and the rest of the world. Perhaps Obama can build on that, and restore America's status as that shining city on a hill, a place of opportunity and progress with a benevolent influence on the rest of us, projected by action and example.

Ultimately, America is in the consciousness of all of us – to some as a nightmare, but to most of us as an ambivalent object of attraction. So much of the world, and its culture, are permeated with America that in order to understand the times we live in, and attain a minimum of cultural literacy, we need to understand a bit about America. An election is a time for insight not only into what its next leader intends to do for the next four years and how that will affect us, but into why America makes the decisions it does about the choices on offer. Particularly in 2008, no politically minded European can afford not to be interested in American elections.

Endnotes

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