

A EUROPEAN SOCIAL UNION AFTER THE CRISIS

Today, many people agree that the EU lacks solidarity and needs a social dimension. The debate is not new, but until now the notion of a ‘social Europe’ remained vague and elusive. To make progress, we need a coherent conception of the reasons behind, and the agenda for, not a ‘social Europe’, but a new idea: a European Social Union. We must motivate, define, and demarcate an appropriate notion of European solidarity. We must also understand the legal and political obstacles, and how these can be tackled. In short, we need unequivocal answers to questions of why, what, and how: on that basis, we can define a clear-cut normative and institutional concept. That is the remit of this book: it provides an in-depth interdisciplinary examination of the rationale and the feasibility of a European Social Union. Outstanding scholars and top-level practitioners reflect on obstacles and solutions, from an economic, social, philosophical, legal, and political perspective.

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Edited by Frank Vandebroucke , Catherine Barnard , Geert De Baere

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Preface

For over fifty years we have been debating whether European integration requires an active social dimension. The number of publications describing the weaknesses of ‘Social Europe’ has reached the size of a small mountain. All too often, these writings were merely lamentations of the unattainable. Nevertheless, the experience of the succession of economic, social, and political crises hitting the European Union since 2008 creates an opportunity to put the social dimension firmly back on the agenda. Rather than a lamentation, what is needed now is a coherent conception of the reasons behind, the agenda for, and the governance of, a European Social Union. In short, we need an unequivocal answer to questions of *why*, *what*, and *how*. On that basis we have to define a clear-cut normative and institutional concept. This explains our title, ‘A European Social Union after the Crisis’.

We deliberately use the expression ‘European Social Union’, rather than the elusive notion of ‘a Social Europe’. Our core idea – explained and developed in Chapter 1 – can be summarised as follows: a Social Union would create a holding environment that enables Member States to be flourishing welfare states. Therefore, a Social Union would support national welfare states on a systemic level in some of their key functions (such as stabilisation when economic shocks occur). As a corollary to this systemic support, a Social Union would guide the development of national welfare states by establishing general social standards and objectives. The ways and means to implement social policy would be left to Member States, with due respect to their different historical legacies and institutions. The argument motivating this book is not that the EU should become a welfare state itself.

The idea of a ‘union of welfare states’ that is *not* a federal state leads us into uncharted territory. There is no historical template to follow and important issues have to be clarified. Therefore, we have discussed this idea in two

conferences, one organised by the *Euroforum*¹ of the University of Leuven in September 2014, another organised in Cambridge, UK, in September 2015. Our aim was to confront our concept of a European Social Union with state-of-the-art legal scholarship, normative philosophy, political science, and economic analysis. This book is the outcome of that critical, interdisciplinary process. The analysis presented here is not meant to be exhaustive, but rather it reflects ongoing debate, with sometimes conflicting views. It should be read as a plea for rigorous and clear thinking on key issues that have to be settled, if we are serious about having a meaningful, functioning social dimension to the EU.

Our discussion of the *why* question (why is a Social Union needed?) emphasises the Eurozone problematic and the ‘legacy of unresolved tensions’ between economic principles and free movement on one hand and the scope for domestic social regulation on the other hand. The *what* question (what should be on the agenda of a European Social Union?) is examined first through the lens of normative political theory: we cannot set out an operational agenda for a European Social Union, without clarification of the nature and purpose of ‘European solidarity’.

Our discussion of the *how* question focuses predominantly on the legal constellation of the EU and its impact on the actual feasibility of a Social Union; but it also covers the role of social dialogue, the flexibility of social and employment governance in the European Semester, and the EU’s investment agreements; it also explores the politics of legislative action.

Obviously, political developments did not stop in 2015 when our second conference finished. In September 2015, Brexit was a faint possibility; in June 2016 it became a reality. In March 2016, the European Commission launched the idea of a ‘European Pillar of Social Rights’. These recent developments are taken on board in different chapters, but they are also elaborated upon in two specific contributions.

The book is divided into four parts. The first part sets out the main guiding ideas of a European Social Union, with a strong focus on notions of solidarity, justice, and legitimacy. The second part focuses on specific policy topics and the third part discusses legal challenges. Finally, a short but important fourth part returns to the politics of European social policy and European integration.

¹ Euroforum was created by Metaforum, an initiative of the University of Leuven to stimulate interdisciplinary debate on socially relevant issues; see www.kuleuven.be/metaforum (accessed 13 March 2017). We are grateful for the financial support offered by Metaforum to make these conferences possible. We also thank the Centre for European Legal Studies, Law Faculty Cambridge, and Trinity College, Cambridge, the main sponsors of the second conference.

In the first chapter of Part I, Frank Vandembroucke introduces and explains the idea of a European Social Union and considers the relationship between this concept and the other contributions in the book. He then focuses on normative questions, notably the definition and demarcation of ‘European solidarity’. Thus, Chapter 1 engages extensively with the following two chapters, one by Maurizio Ferrera (who tackles the ambiguous notion of ‘Social Europe’) and one by Helder De Schutter (who presents arguments in favour of European integration based on distributive justice). With Ferrera and De Schutter the book juxtaposes two approaches in normative political philosophy, a ‘realist’ and an ‘idealist’ one. In Chapter 4, Christian Joerges emphasises the distinction between justice ‘within’ and justice ‘between’ Member States and the respect for diversity within the union, on the backdrop of long-standing debates among legal scholars. With the final chapter of Part I, by Marc Hooghe and Soetkin Verhaegen, we turn from normative theory to the empirical study of public support for social policy at the EU level.

The first policy topic examined in Part II of the book concerns the governance of the Eurozone, which is a key issue in the argument for a European Social Union. László Andor describes the impact of Eurozone governance on welfare state stability in Chapter 6: he calls for a substantial reconstruction of the monetary union and discusses the potential of a European unemployment benefit scheme. In Chapter 7, Paul De Grauwe and Yuemei Ji elaborate upon the same problem and question the traditional textbook treatment of shocks in a monetary union. They argue that when shocks are the result of business-cycle movements, the way to deal with them is by stabilisation efforts, not by structural reforms for more flexibility. In his discussion of the ‘European Pillar of Social Rights’, Simon Deakin (Chapter 8) develops a congenial argument with regard to the monetary union, but from a very different academic perspective: coordinated wage bargaining and adequate protection of workers can be assets in a monetary union rather than liabilities; in that respect, the Pillar initiative merits a cautious welcome. The next two chapters consider the role of social dialogue at EU level: what is its future? In Chapter 9, an employers’ perspective is presented by Philippe de Buck and Maxime Cerutti; in Chapter 10, a trade union perspective is developed by Philippe Pochet and Christophe Degryse. Chapter 11, by Sonja Bekker, examines the actual governance of unemployment, wage-setting and pension schemes in the European Semester, notably its adaptability and the leeway it grants to Member States. Finally, Part II adds a trade and investment dimension to the idea of a European Social Union in Chapter 12: Rumiana Yotova

examines how economic objectives and social considerations are balanced in the new EU investment agreements, a salient legal and political issue in today's Europe.

Part III of the book discusses legal challenges for the development of a European Social Union. In Chapter 13, Sjoerd Feenstra revisits the controversies created by the *Viking* and *Laval* judgments by the European Court of Justice and their implications for collective standard-setting and the balancing of economic freedoms and fundamental social rights. He adds nuance to the debate and discusses legal solutions. In Chapter 14, Geert de Baere and Kathleen Gutman address one of the key challenges of this book's project head-on: does the legal constellation of the EU admit progress towards a European Social Union, and if so, on what basis? However, the difficulty is not just in the nature of the European Treaties, but also in the legal constellations of the Member States, as Gerhard van der Schyff points out in Chapter 15, which compares Member States' constitutional controls on EU social policy developments. In Chapter 16, Alexander Kornezov formulates a sobering analysis with regard to the potential of the Charter of Fundamental Rights of the EU to become the constitutional foundation of the European Social Model. He concludes that the ideal of a more social Europe has been put into a legal straitjacket in the Charter: it is there, but it can hardly move. Koen Lenaerts and José A. Gutiérrez-Fons examine two questions in Chapter 17: first, the scope of application of EU social law – in particular, that of the Charter – in situations where a Member State is the recipient of financial assistance; and second, the horizontal application and justiciability of primary EU social law, once a national measure falls within the scope of EU law. The upshot of their analysis is more upbeat than Kornezov's account, which may testify to the fact that we are in new and hence uncharted territory.

In Part IV of the book, we venture into the political. In Chapter 18, Dorte Martinsen analyses the politics of legislative action in the EU in the social domain. She revisits thorny issues discussed in preceding chapters (from a normative and legal perspective), such as posting of workers, and underscores the importance of legislative politics. For a European Social Union to turn into reality, she argues it needs a political mandate and political ownership. The final chapter of the book is permeated with the harsh reality of politics: looking back on the developments that led to Brexit, Catherine Barnard reflects on the role of social policy in a post-Brexit Europe.

Given the importance of some legal cases discussed by legal scholars in this book, we provide a Table of Cases and brief summaries of the essence of the most important (in the context of this book) judgments by the European Court of Justice.

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Edited by Frank Vandenbroucke , Catherine Barnard , Geert De Baere

Frontmatter

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Preface

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Compiling this book was a demanding project: establishing a real dialogue between scholars from different disciplines, and pairing deep-felt commitment to sober analysis are two notoriously difficult tasks. As editors, we are grateful to our co-authors that they made this journey together with us. But we would not have been able to deliver without the permanent and highly efficient management and editorial support by Chris Luigjes (UvA). We are also grateful to Veerle Achten (Metaforum, University of Leuven), for her organisational support at the two conferences, and to Ad-Willem Dashorst (UvA) for additional support in the final editing process and the compilation of the Table of Cases.

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