

# **Polanyi in Brussels:<sup>1</sup> European Institutions and the Embedding of Markets in Society**

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Figure One

The Classical Polanyian Paradigm  
With Examples from Early  
Nineteenth Century Britain

*Type of Actors*

	State Institutions	Non-State Actors
Movement	Poor Law Revision	Liberal Political Economy
<i>Processes</i>		
Counter- Movement	Factory Legislation	Swing Movement

*Sources:* Karl Polanyi, *The Great Transformation*; and Charles Tilly, *Popular Contention in Great Britain, 1758-1834* Cambridge: Harvard University Press, 1995.

Figure Two

An Internationalized Polanyian Paradigm  
With Examples from Early  
Twenty-First Century Europe

*Type of Actors*

	European Institutions	Non-State Actors
Movement	Single European Act	Neo-Liberal Political Economy
<i>Processes</i>		
Counter- Movement	EU Social Chapter	Global Justice Movement

We begin this paper with three complaints, but like the agents of any countermovement, we move rapidly from complaint- to claims-making:

- First, we are troubled by the overemphasis in much of the work on the European Union on cultural construction. We refer in particular to the assumption that as European identities grow they will produce a Better European Union (Borneman and Fowler 1997, Delanty 1995, Hermann, Risse and Brewer, eds. (2004)).<sup>2</sup> As Diéz Medrano writes; “the Eurobarometer and other surveys provide conclusive evidence that the transformations of the European Union in the last twenty years and the Europeanization of national societies have had no impact whatsoever on the degree of identification with Europe by European citizens. The degree of identification with Europe has remained constant through these years of European integration and of concomitant Europeanization” (Diéz Medrano 2006: 1);
- Second, we are concerned that Europeanists have made of European integration a distinct subfield, failing to place it in the broader field of transnational and global politics that has been developing outside of Europe. That literature teaches both that globalization is a many-headed

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<sup>2</sup> Not all constructivists are as purpose-driven as this. For a useful distinction among varieties of European constructivism, see Checkel 2007. For an attempt to bring together constructivist and rationalist perspectives on European integration, see Caporaso, Checkel and Jupille (2003).

creature and that international institutions intersect in a variety of ways with the international political economy;<sup>3</sup>

- Third, we are disturbed at the turn in European Union studies to focus on conjunctural crises from long-term structural trends. We will argue that not even dramatic crises like the failure of the 2005 Constitution have prevented the Union's central institutions from working to "embed" market making within society (Höpner and Schäfer 2007). We will use the European Court of Justice to illustrate this embedding process.

Our use of the Polanyian term "embed" may surprise readers who have come to think of the EU as a fundamentally *diseembedding* agency, through the priority it accords to economic efficiency. But although the central rationale for the EU is to foster freedom of movement in goods, services, and productive factors (Caporaso 2006:1), we see the EU as multivocal, reflecting essentially political logics, and not easily reduced to the institutional expression of market liberalization. While the central mission of the EU is market-making, even some of its market-making policies instill social considerations into market-driven practices. We will argue that structural changes in Europe's political economy are producing the lineaments of a movement/countermovement interaction at the transnational level not unlike the one that Karl Polanyi discerned in England in the early 19<sup>th</sup> century in his masterpiece *The Great Transformation* (2001).

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<sup>3</sup> See Abdelal and Meunier 2007 and Jacoby and Meunier (2007) for sensitive examinations of the relationship between globalization and European policy reactions. For some signposts in the broader literature, see Boli and Thomas eds., 1999; Keck and Sikkink 1998; Smith and Johnston, eds. 2002; della Porta and Tarrow, eds. 2005.

In the last decade, the Union's key regulatory institutions – the Commission and the European Court of Justice – have adopted an aggressive program of liberalization. Careful analysts like Höpner and Schäfer (2007) have examined policy initiatives like the Services Directive, the Takeover Directive, and company law to show how the Commission – and to a lesser extent, the Court – are attempting to attack the institutions of what Hall and Soskice and others have described as “organized capitalism.”<sup>4</sup> We do not deny that these recent attempts aim at liberalizing European economies at the same time as they attack some of the foundations of national economic frameworks. But we see the central institutions of the Union working within the political balance of power and the different parallelogram of interests engaged in each policy decision. We draw on the inspiration of Polanyi's *Great Transformation* to examine a symbolically and practically important aspect of the implementation of the Treaties in which the Court has increasingly embedded social content in the making of the transnational market : the free movement of labor.

We begin, as Polanyi did, with the role of states and markets in Europe's first great transformation, drawing heavily on the interpretation of that work by American sociologist Fred Block.<sup>5</sup> We then transpose Polanyi's conclusions about

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<sup>4</sup> In addition to Peter Hall and David Soskice's path-setting *Varieties of Capitalism* (2001), key works that spell out the characteristics of these political economies are Kozo Yamamura and Wolfgang Streeck, eds., *The End of Diversity? Prospects for German and Japanese Capitalism*. (2003), Jonas Pontusson, *Inequality and Prosperity: Social Europe vs. Liberal America*. (2005), and Bob Hancké, Martin Rhodes, and Mark Thatcher (eds.), *Beyond Varieties of Capitalism: Conflict, Contradictions, and Complementarities in the European Economy* (2007).

<sup>5</sup> We are especially in debt to Block's Introduction to *The Great Transformation* (2001); to his “Karl Polanyi and the writing of the Great Transformation” (2003) and to his “Understanding the

that transformation to the debate about efficiency in the European Union, examining in some detail the work of Giandomenico Majone, whose idea of the EU as a regulatory state has been particularly influential. We then turn to ECJ decisions regarding the free movement of labor, a prime policy area in which we find evidence that the Court has both worked to perfect markets and has gone beyond market making to embed the market in society. Finally, we finish the empirical analysis with an assessment of the ways in which the Court has moved to an expansive interpretation of the role of social considerations (e.g. the place of family) in its jurisprudence regarding the free movement of persons.

### **States and Markets in the Great Transformation**

For Karl Polanyi (2001) the growth of a market society in the early 19<sup>th</sup> century was not spontaneous; it was driven by the ideology of liberalism that found expression in a legislative and regulatory program based on the naturalization of the market and of market discourse as the common sense of the emerging capitalist system. This made it possible for the first industrializers to release their economies from their mercantilist and corporatist strictures and ignore the severe costs of the transformation for both traditional and new subordinate groups. In Polanyian terms: "Economic society was subject to laws which were not human laws" (Polanyi, p. 131).

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Diverging Trajectories of the United States and Western Europe: A Neo-Polanyian Analysis" (2007) which focuses centrally on the American case but is full of suggestive insights about Europe.

That process could be seen most easily in Britain, the first modern industrializer, where Townsend, Bentham, Burke, Malthus and Ricardo constructed an intellectual system in which “the drive for a competitive market acquired the irresistible impetus of a process of Nature.” The self-regulating market,” Polanyi famously wrote, “was now believed to follow from the inexorable laws of Nature, and the unshackling of the market to be an ineluctable necessity” (p. 132).

This intellectual revolution was the essence of Polanyi’s “movement” – not in the narrow sense of a “*social* movement” as scholars of contentious politics would define the term today (della Porta and Diani 2004, Tilly and Tarrow 2007), but in the Gramscian sense of a “move” from one way of seeing the world to another. Like today’s international business class (Sklair 2001), Polanyi’s early industrializers and their ideological mentors were empowered by a vision of how the unfettering of markets would release societies’ energies and increase their wealth. Their vision was even powerful enough to hold sway among Britain’s aristocratic elite, which did away with the vestiges of paternalism in the 1834 reform of the poor laws (Tilly 1995), and to create a “common sense” in many sectors of society that free markets are the natural way to organize an economy.

But Polanyi never believed that the market could *really* be disembedded from society; this is why he said that the “ineluctable necessity” of the “unshackling of the market” was “*believed*”; for him it was not a social reality. And while this vision was aimed at unleashing the spontaneous hand of the market, it was actually produced by deliberate agency. “When Polanyi wrote that ‘the idea of



a self-adjusting market implied a stark utopia,” writes Fred Block, “he meant that the project of disembedding the economy was an impossibility” (Block 2007:3; Polanyi, p.139). Markets, concludes Block from his exhaustive analysis of Polanyi’s work, are “always embedded” (2007:5-6).

### ***The Embeddedness of Markets***

Why do we insist so on the embeddedness of markets? There are three reasons: First, much of neo-Polanyian scholarship has been deceived by the peculiar way in which *The Great Transformation* was written to infer that Polanyi thought markets actually *could be* disembedded. The confusion, as Block persuasively shows, stems both from the fact that the book was written over a long period, under very different circumstances, and from the fact that Polanyi’s relationship to Marxism was shifting. Second, in England, the only case Polanyi studied in detail, there was a cyclical pattern between the conquest of the market and the movement for social protection (Polanyi, chapter 11), leaving the impression that the market was in fact disembedded, and then re-embedded. But in his theoretical discussion, Polanyi uses the term “simultaneously” to describe the countermovement against liberalism (*Polanyi, p. 136*) and believed that the movement/ countermovement interaction was continuous – albeit unbalanced. Third, Polanyi “rejects conceptualizations of the economy as an analytically autonomous – or even potentially autonomous – realm” (Block 2007:5). He thought the market was always embedded in society.

If Block is right in his interpretation of Polanyi – and we think he is – then all economies are embedded in political and legal arrangements, and much of political conflict in modern states turns on which arrangements should be made and to whose benefit. This variation in the nature of economic and social conflict will help us to understand Polanyi's concept of the "countermovement", which was not simply a "social movement" following a market "movement" but a reaction against market innovations with simultaneous and uncoordinated state and non-state agents.

### ***States and the Counter-Movement***

Neo-Polanyians generally specify the counter-movement as made up largely of non-state actors resisting marketization, globalization, or the states and institutions that embody these processes (for example, see McMichael 2005). But looking back at what Polanyi actually wrote, the British state did not simply advance the logic of the market. Freed markets not only harmed the lower classes, creating problems of public order and a drain on the Treasury; it also harmed those sectors of the upper classes that depended on protected markets. Liberating markets disrupted traditional ways of life, left armies of displaced peasants tramping the public roads, produced a need for professional policing, and triggered races for foreign markets that involved increasing the size of the armed forces. States embraced the teachings of Ricardo, Malthus and (eventually) Hayek and Friedman, but they also responded to the costs and

benefits of liberalizing markets as they do to any crisis: incrementally, around short-term goals, and with a political logic.

To some extent, in fact, the British state's commitment to market making was in flat contradiction with its simultaneous commitment to state-building (Tilly 1990). While the state was a prime mover in the move to a market society, it was also an active agent of the counter-movement, as Polanyi made clear in his long list of regulatory efforts to harness the market (Polanyi 2001: 152-56). In Figure One, we map some concrete expressions of the movement/counter-movement dynamic in early nineteenth century Britain from *The Great Transformation* to illustrate the complexity of Polanyi's actual argument, in contrast to the simplified "social movement" version we find in much of the neo-Polanyian literature.

Figure One here

### ***From State-Led to International Regulation of Markets***

How can we use Polanyi's insights about early nineteenth-century Britain to understand European political economy today? We can do so, first, by realizing that the idea of a disembedded market is a myth, as Polanyi realized about nineteenth century England. We can also use it by understanding that the conflict between movement and counter-movement does not boil down to a bimodal conflict between states and social movements but includes elements of

state and society on both sides of the movement/countermovement divide. And we can also use it by shifting the scale of that conflict from the intra-national level in which Polanyi embedded it to the level of the international political economy today.

Polanyi largely couched his analysis of the pre-World War One market system at the national level. The only exceptions were the gold standard and international banking -- which really were disembedded (Block 2003:13-14). In fact, it was the contradiction between the embedded facets of the liberal market economy and its international financial links that ultimately destroyed the prewar system. Since today's market economy is far more globalized, and its regulation is internationalized we need to project Polanyi's insights onto a higher level, *substituting globalization* for the national market system and internationalization for the national governance of the economy.

Here is our central logic: since the capitalist system is far more globalized today than it was in Polanyi's time,<sup>6</sup> the public/private components of both the movement of the market and the counter-movement against it must be found both in the globalized nature of the market system and in the halting and partial, but nevertheless insistent creation of an international institutional structure that both represents and regulates global capitalism. We define *globalization*, with Robert Keohane, as the increasing volume and speed of flows of capital and

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<sup>6</sup> Although he recognized the global nature of the market system (pp. 120, 136, 144, 166, 190), Polanyi operationalized the tension between movement and countermovement largely at the national level. This is one reason why the cost of the international gold standard – and its contradictory logic to social protection – emerges only sporadically in his book. On this critical point, see Block 2003:13-14.

goods, information and ideas, people and forces that connect actors between countries (Keohane 2002:194). We define *internationalization* today not only as the horizontal relations among states but as the triangular structure of relations among states and international institutions, producing opportunities for non-state actors to engage in collective action at different levels of the system (Tarrow 2005:25).

Of course, institutions like the IMF and the World Trade Organization are major international players on behalf of liberal economic markets, and we would not expect to find much evidence of the counter-movement against market-making in those institutions.<sup>7</sup> But other expressions of the institutional management of the international political economy are not as one-sidedly arrayed on behalf of neo-liberalism (O'Brien et al. 2000). The most powerful set of international economic institutions is the European Union, the archetypical site of market making and market modification in the early twenty-first century.

Here is the crux of our argument: like the market system and the national state in the nineteenth century, globalization and internationalization partially intersect and are partially independent. Both globalization and internationalization involve concrete policy choices and ideological justifications – the former in favor of forms of regulation that favor “free markets”; the latter favoring the regulation and modification of these markets. When Europe’s central

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<sup>7</sup> Worth noting, however, is the observation of Fox and Brown that even the World Bank is internally divided between those sectors (mainly economists) who push single-mindedly for neo-liberal objectives and a minority who work to insert social conflict in the neoliberal policies of the Bank. See Fox and Brown 1998)

institutions work to liberalize the European market, it is in response to what is perceived as the inexorable force of globalization; they do so with a similar mixture of motives, interests, and obligations as the nineteenth century liberal state did when faced by the industrial revolution. Like the nineteenth-century liberal state, the EU faces problems of public order, regulation, and correcting market failures. As a result, its policy positions are short-term, contradictory, and respond to the balance of forces at any moment in time.

In other words, like the 19<sup>th</sup> century state that Polanyi studied, Europe is both a “market maker” and a “market modifier”, an institutional expression of both the global neo-liberal movement and of the countermovement to regulate and modify its effects. Many of the conflicts and contradictions in European economic and social policy can be understood as the result of this Polanyian duality. This is not to say that non-state actors have disappeared from the Polanyian equation: on the contrary, as business and financial groups gravitate to Washington and Brussels to advance their interests, as McMichael and others have argued, a movement opposed to global neo-liberalism has developed (McMichael 2005; Evans 2005; della Porta, ed. 2007). We do not ignore the importance of these varied and disorganized reactions to globalization, but emphasize that they are accompanied by institutional responses to the same forces. In Figure Two, we shift the scale of the Polanyian paradigm of movement/countermovement interaction, respectively, to the globalization of the market economy and the

internationalization of state action in both market making and market modification.

Figure Two here

In the next section we briefly review the most ambitious and explicit attempt by the EU to complete the market-making project entailed by the Rome Treaty, the Single European Act. To set the stage, we argue that the overall political underpinnings of market creation were both deregulatory and reregulatory. We also see elements of a counter-movement to market making in the actions of institutional actors like the European Court of Justice. In contrast with Giandomenico Majone<sup>8</sup> and others, who see the new regulatory thrust of the EU as guided by the visible hand of efficiency standards, we will argue that there are elements of a countermovement to market-making in the emergence, growth, and thickening of social protection at the European level.

### **The SEA, De-Regulation, and Re-Regulation**

Since our theoretical baseline is provided by the idea of efficiency, a few words of clarification about this concept are needed. By efficiency we mean the capacity to conduct economic exchanges when preferences, resources, and

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<sup>8</sup> We use the work of Giandomenico Majone as representative of the regulatory tradition that stresses efficiency. He might also be singled out for "best practices" in this analytic tradition. Among his many works that can be consulted are *Regulating Europe* (1996), "The European Community Between Social Policy and Social Regulation (1993), and "The European Community: An Independent Fourth Branch of Government?", (1994).

technology are favorable, i.e. when agents have preferences, when resources and opportunities are present, and when there is no technical barrier to these exchanges. Yet, there are many situations in which the above conditions are met but exchanges do not occur, because legal, institutional, or policy barriers lead to market failures, which, by definition, lower the level of overall efficiency. The removal of these barriers opens up exchanges that were previously blocked, thus enabling Pareto improvements.<sup>9</sup> We will be concerned with the removal, coordination, or harmonization of these barriers to exchange at the EU level.

The negative role of regulations is generally recognized—regulations as the villain getting in the way of beneficial trades. But the positive role of regulations—regulations which permit and facilitate exchanges -- is equally important and is less often recognized. We will argue that in the case of the free movement of labor, the ECJ's market interventions work to facilitate labor exchanges but go well beyond the correction of market failures to embed the market in society. In other words, the principles that guide the embedding process go well beyond efficiency and include social purposes such as family considerations and fair treatment.

### ***The Single European Act***

We start with the The Single European Act (SEA, 1987) since this Act initiated the EU's most ambitious project for instituting the market in goods, services, and productive factors. The SEA was fully consistent with the original

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<sup>9</sup> This statement assumes no externalities. If externalities occur, regulations may be devised to force private actors to internalize the external costs to align private with social costs.



goals of the Rome Treaty; indeed, it was logically implied by this Treaty, which called for completion of the common market and the realization of the four fundamental freedoms of movement of goods, services, labor, and capital.

The SEA was supported by important political changes in the major countries of Western Europe. In the late 1970s and the early 1980s, the twofold effect of economic stagnation and inflation gave rise to conservative governments in numerous Western European countries. As is well known, when Margaret Thatcher took office in 1979, her government undertook a program of deregulation, tax reductions, and privatization. Her election was not alone: it was quickly followed by the election of Wilfried Martens in Belgium in 1981, by the election of a center-right coalition headed by Ruud Lubbers in the Netherlands, and by the replacement of a social democratic government in Denmark by a four-party non-socialist government in 1982 (Cameron 1992). And in October 1982, under the leadership of Helmut Kohl, a three-party coalition of Christian Democratic Union (CDU), Christian Socialist Union (CSU) and Free Democratic Party (FDP) assumed power in the Federal Republic of Germany (Cameron, 1992:56-58).

By early 1983, the only major EU country which did not have a conservative government in place was France. Yet, during this year the French socialist government did a major turnaround, accepting the implications of a globalized economy (especially capital mobility) and putting in place more conservative policies, especially fiscal and monetary policies (see Cameron,

1992:58). Once this cross-country coalition was in place, there was clearly a market-making movement afoot in Europe and the EU was ready to relaunch itself through the SEA (Abdelal 2007).

To simplify greatly, the SEA included proposals for both political reform (e.g., the expansion of qualified majority voting and new powers for European Parliament) and market liberalization. The market liberalization side was not as coherent and streamlined as is often thought (Fligstein, 2001). Jabko (2006) has convincingly demonstrated that there was no single goal or constituency behind the SEA. Loosely cobbled together, the proposals included approximately 300 measures to improve the functioning of the market. Many of these measures called for the elimination or modification of existing non-tariff barriers (NTBs). There was a general enthusiasm for market reform throughout Europe.

### ***Reregulation and Deregulation***

By the standards of economic efficiency, the SEA was judged a success. Capital controls were liberalized, workers were given greater freedom of movement, and obstacles to the exchange of goods and services were removed or eased by the application of "mutual recognition".<sup>10</sup> However, there is disagreement about the nature of re-regulation and its impact on various social, economic or political actors. While some, like Fritz Scharpf, worried that extant national systems would increasingly find themselves in regulatory competition

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<sup>10</sup> Mutual recognition was the regulatory principle promulgated in the Cassis de Dijon case (1979). Basically, it asserted that if a good or service was produced within a member country in accord with its own regulatory principles, another country could not deny entry of this good or services by appealing to its own (presumably different) regulatory standards.

(Scharpf 1999:3), others saw the content of regulations as increasingly supplied by efficiency standards.

In the section below, we argue that “regulation for efficiency” by itself implies a great deal of social content, but that the social content of the market is likely to exceed what can be explained on efficiency grounds alone. By “regulation for efficiency” we simply mean that regulations are crafted so as to improve prospects for economic exchanges -- in our case by transnational labor market exchanges. International regulations might do this by outright removal of barriers to exchange (e.g. defining work in other EU countries as illegal), coordinating different regulatory environments (e.g. social security), or harmonizing incompatible national regulations (e.g. credentials regarding work certification). Under the guise of adapting existing economic practices to market-making, regulation can also produce an embedding of markets in inherited social practices.

### ***From Market Perfection to Market Correction***

This is where Polanyi comes in. Responding incrementally to the ravages of liberalized markets, nineteenth century states passed a plethora of social regulations -- some of them repressive, others ameliorative, and still others regulatory of entrepreneurial discretion. These reforms were founded on broad-based coalitions with diverse aims going well beyond the management and control of externalities created by free markets. We see a counter-movement in some elements of the European Union’s response to globalization. First, we

examine Giandomenico Majone's approach to reregulation based on the management of market failures. Second, we argue that Majone's account is not so much wrong as incomplete.

Majone's work starts from the generally shared assumption that the EU is not a traditional tax-and-spend state. Its extractive capacity is remarkably weak, reflecting both the designs of the founders and the failure of the ambitious attempts by Walter Hallstein (one of the first Commission presidents) to provide the Community with independent resources (Caporaso, 1996:39). Indeed, the EU is constitutionally limited to spending no more than 1.3 percent of the gross domestic product of the EU members.

Yet the EU is generally recognized as a strong international governance structure. One answer to this paradox is that the EU departs from traditional state functions in that it specializes in the making and implementation of regulations; in short, it is a *regulatory* rather than a Westphalian state. Support for this notion is found in the fact that the EU is not only weak in the areas of defense and foreign policy (areas which are almost completely under intergovernmental control) but also in social policy and redistribution.

But what exactly is a regulatory state? In the case of the EU it is an international and increasingly supranational state that specializes in the management and control of international externalities. The making of rules and broad oversight of them take place in Brussels and Luxembourg (where the European Court of Justice sits) while the fiscal implications of such regulations

are passed on to the member states. As a result, the revenue base of the EU is a misleading indicator of its capacity.

When are international regulations called for? First, there must be an international externality, i.e. an uncompensated cost imposed by the actions of one country on another<sup>11</sup>. For the sake of example, think of a policy (e.g. a health regulation) in country A which has the effect of damaging the exports of B. Second, this externality may not be solvable by the responses of national governments, either unilaterally or bilaterally. That is, neither country A nor B alone or bilaterally, can manage the externality. This failure may be due to the lack of an effective strategy of commitment, since both unilateral and bilateral declarations are unlikely to be credible. After all, even if (some would say “especially if”), promises are made, there are still incentives to renege, opportunistically exploiting the situation for one-sided gain. When these conditions exist, governments may delegate to an “independent” body, one that is at least partly outside of their control. This is a strategic response familiar to those who study the creation of independent regulatory agencies. Thus, Majone argues

...international regulatory failure, rather than market failure, explains the willingness of Member States to delegate regulatory powers to the EC.”

(Majone, 1994:37)

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<sup>11</sup> We focus here only on costs simply for ease of presentation. Market failures apply to uncompensated benefits also.

Our response to Majone's work, and the line of regulatory politics he advances, is that it is not so much wrong as incomplete. It recognizes that part of the countermovement is based on reregulation, rather than market emancipation, even if it is in the service of efficiency.<sup>12</sup> A broader idea of efficiency – social efficiency — may promote health and safety values, environmental values, and values related to the management of risk. Social efficiency requires that regulations be so designed as to narrow the gap between private costs and benefits and social costs and benefits. A firm that is required to pay for the costs of cleaning up after itself (internalization of the negative external cost) provides a good example of how this works.

Nevertheless, regulations promoting efficiency are not enough to capture the breadth and depth of the countermovement. The counter-movement we envision goes far beyond regulation for efficiency. Just as the nineteenth century "liberal" state advanced policies of social protection, we see EU responses to globalization and market-making that promote gender equality, regional equality, environmental protection, and laws that take into account the solidarity of the family when the mobility of labor is in question.

To illustrate the process by which the market becomes embedded, and the role of both efficiency and non-efficiency components of this process, we move to a case study of labor markets in the E.U. Using as our central example decisions of the European Court of Justice with respect to labor markets, we

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<sup>12</sup> We hasten to add that efficiency is not a bad word. Indeed, if regulations are designed to assure that firms internalize the costs of the environmental damage they cause, then the regulations are environmental friendly.

illustrate the substance of these market corrections and attempt to show that they extend beyond the efficiency orientation, embracing standards based on family solidarity, protection of children, and emerging European citizenship.

### **Free Movement and its Social Embedding**

The general idea motivating this section is that ECJ judgments as well as EU legislation will not treat workers atomistically but will embed them within social networks. What this means operationally is that spouses, children, and family relations will be taken into account when making law about movement across national borders. Beginning with the Rome Treaty, Article 48 [post-Amsterdam article 39] has established that workers in any member state have the right to move to another member state to work there, and to settle in another country with their families. The self-employed have the right of establishment under article 52 and the right to provide services under article 59. Furthermore, secondary legislation (Regulation 1408/71) lays down that persons residing in the territory of one member state where certain provisions apply to nationals are subject to the same obligations and enjoy the same benefits under its legislation as nationals of that state (Cornelissen, 1996: 440). This principle, free movement of workers, is an economic right in that workers are entitled to move from country to country in search of work. This right is backed by specific Treaty provisions which have direct effect and which are enforceable in courts. Nevertheless, the Treaty itself provides only the barest outline of the social

conditions surrounding worker movement, i.e. the social embeddedness of workers.

The law of the European Union regarding free movement of labor, including case and statutory law, can be divided into three overlapping phases of development of the social market. These three phases illustrate the growth and thickening of labor market policy to include more and more social content. In terms of sequence, this focus is the opposite of the liberalization of the market. Instead of the emancipation of the market from social and political structures, here we see the gradual embedding of the labor market in social relations.

This process takes place slowly and undramatically. Yet over time the results are significant. The first phase is one of laying the foundations for free movement, giving the relevant Treaty provisions direct effect, and clearly establishing the meaning of worker. The second phase of the Court's jurisprudence has to do with the use of the logic of market failure in expanding the scope of free movement. Even when viewed through the lens of economic efficiency, labor market transactions acquire considerable social significance. That is, a considerable amount of what is normally considered social must be incorporated into labor market transactions to make for a fluid and efficient labor market. The third phase is the "externality plus" stage in which the social standing of workers and people in general is taken into account. Here the jurisprudence of the Court of Justice and secondary legislation shape labor markets beyond the common understanding of efficiency.



### ***First phase, the foundation***

The right to free movement has been interpreted by the Court as a fundamental right with direct effect. Direct effect means that provisions of the Treaty are directly effective (without national mediation) and that individuals can seek legal recourse if they think their personal rights have been abridged under the Treaty. While this point may seem obvious, the legal standing of workers cannot be taken for granted once outside the context of the national state. National labor legislation generally applies to nationals, i.e. to citizens of the state in question. If a national from state A moves to state B and assumes a position of work, it is not clear what if any labor legislation applies to this worker. The Treaty of Rome contains provisions relevant to the position of migrant workers but when the Treaty was signed it was not clear what practical effect this would have, since provisions of treaties do not usually directly create rights and obligations. Indeed, the Treaty of Rome and subsequent treaties say many things about a variety of issues, only a small portion of which are given direct effect. It was not until the Van Gend en Loos case (1963) that the principle of direct effect was promulgated for any part of the Treaty and it was not until later that this basic judicial principle spread to other areas, such as gender equality policy.

The ECJ established direct effect for workers and construed efforts on the part of governments to establish conditions that intentionally or not, had the effect of restricting the access of foreign workers as violations of the Treaty.

The Court stated in Royer (case 48/75 Joel Noel Royer, 1976, E.C.R.) that articles 48, 52, and 59 “which may be construed as prohibiting Member States from setting up restrictions or obstacles to the entry into and residence in their territory of nationals of other Member States, have the effect of conferring rights directly on all persons falling within [in] their ambit.” (cited in Ball, 1996: 347)

The Court also clarified the meaning of worker, refusing to allow the Dutch government to disallow the label “worker” to a person who worked only part-time in another country for a wage the Dutch government considered too low for subsistence. In doing so (in Levin v. Staatssecretaris van Justitie, 1981), the Court drew on earlier jurisprudence from a 1963 case in which it made clear that the definition of worker was a matter of Community law. This was not an arbitrary move on the part of the Court but was instead seen as necessary for the implementation of the free movement provisions of the Treaty.

If states could decide what it meant to be a worker, members could in effect escape the reach of EU law by defining workers in a narrow way. This foundational phase put in place the tools for the second and third phases examined below.

### ***Second phase, market-failure jurisprudence***

In a sense, the logic of market failure is the master variable behind the jurisprudence of the free movement of workers. The very reason the Treaties contain provisions for free movement of workers is the belief that the barriers to worker movements across borders are great, and that some of these barriers are

legal and institutional, i.e. not due to a “failure of preferences” or the simple absence of job opportunities. For a market failure to be categorized as such, preferences (to move) and opportunities (to find work) must be present, yet there is a failure of exchange, i.e. of a labor contract between individuals in different countries.

Thus, when national practices exist, such as discriminatory treatment in favor of domestic workers, access to special benefits on the part of nationals, or failure to coordinate social security provisions across countries, Treaty provisions can be invoked by injured parties to claim redress. In this sense, the Treaty aims to correct failures of labor mobility when movement otherwise would have taken place. A fluid labor market requires non-discriminatory treatment. It may also require laws to coordinate separate legal systems, whether they are discriminatory in intent or not. In this sense, laws or institutions are permissive rather than restrictive. They permit actions to take place that otherwise would not take place.

Two striking examples of market-failure-driven jurisprudence concern the continuity of the working lives of workers who labor in different countries and the Court’s case law regarding tying benefits to residence. Consider the continuity issue. What happens when a worker completes part of his or her life’s work in one country and another part in a different country? It is quite possible that the minimum number of years required to collect benefits (or full benefits) will not be met in either country. A worker who works 14 years in Italy and 4

years in Germany satisfies the minimum conditions neither for an Italian pension (15 to 20 years) nor a German pension (minimum of 5 years) (Cornelissen, 1996:451). Here the market and nationally defined benefits are arranged in such a way as to prevent benefits from being collected for a transnational worker. Surely separate national treatment will result in labor market failures, and a less than optimal number of workers will cross national frontiers for this reason.

The Court has begun to tackle cases of this type. One case arose out of the denial by Dutch authorities of cash benefits to a Dutch woman, Ms. Klaus, who had worked successively in the Netherlands, Spain, the Netherlands, and Spain once again (C-482/93, Klaus, [1995], E.C.R.). She was denied benefits because of a provision of Dutch law stating that no cash benefits should go to a person who, at the moment of entry into the insurance scheme, was not capable of work. After being turned down by the Dutch social security institution, she appealed her case to a Dutch Tribunal who put questions to the ECJ under the Article 177 procedure. The Court rendered a Judgment that supported Ms. Klaus, saying that "the working life of the person concerned should be seen *as a whole*, and not just from the limited standpoint of a particular job in one country, at one period of time." (Cornelissen, 1996:453).

What about the link between residence requirements and the distribution of pensions? Here the Council of Ministers and the ECJ have teamed up to provide an impressive legal structure facilitating worker rights in the face of residence requirements of entrenched welfare states. Some states require

residence in the country of employment in order for pensions to be paid. This would mean that a Danish worker who had worked his or her entire life in Denmark could not choose to retire in Portugal, and collect benefits. Such territorially-based provisions are obviously prejudicial to migrant workers.

Having taken advantage of the region-wide market, and having accumulated a pension, the worker must choose between the benefits and preferred place of living. Legislation passed by the Council of Ministers (Article 10 of Regulation 1408/71) has waived residence requirements and the ECJ has aggressively interpreted Council Regulations so as to broaden the scope of their application. The Court has decided, again using the free movement provisions of the treaty as well as secondary legislation that a pension already acquired cannot be subject to a residence condition. Also one cannot be denied entitlement to a pension solely because of residence in another member state (Cornelissen, 1996:455).

### ***A Bridge to Social Protection***

These are straightforward examples of case law that are intended to further the free movement of workers and peoples. But the logic of market failure can only be pushed so far. There is a "bridge case" that we think captures the limits of the market failure rationale. It applies to tourists rather than workers but the logic is the same. The case is *Cowan v. Tresor Public*. (Case 186/87, *Cowan v. Tresor Public*, 1989 E.C.R.) Mr. Cowan, a British national, was mugged on a trip (holiday) to Paris. He applied for monetary

compensation under a provision of the French criminal law. That provision allowed for compensation only for French nationals, or if there were a reciprocal agreement between France and the victim's country (which there was not). The French Administrative Tribunal referred the case to Luxembourg, where the French government argued that compensation was a right which is a manifestation of national solidarity. The Court rejected France's efforts to couple benefits with nationality since free movement of persons was involved. Instead, the ECJ found in favor of Cowan, arguing that freedom of services implies the right to be protected from harm in the member states in question, and on the same basis as the nationals residing there. (Ball, 1996:204)

In the economist's world, a fully developed vision of market failure would allow for the possibility that others would be discouraged by Cowan's experience (had Cowan been successfully denied by the French government) and would not take advantage of opportunities for tourism in light of the fear of being mugged without compensation. The ECJ apparently showed some concern that discriminatory treatment would create disincentives for tourists, thus raising the market failure flag, but this must surely be the most expansive interpretation ever of market failure on historical record. In any case, the Court made no effort to explore the nature of these incentives. It was enough for the ECJ that Mr. Cowan was a Community citizen and that he was seeking access to services which were his right under Community law. (Ball, 1996:204) This suggests that Cowan's right to be compensated rested more on his citizenship in the E.U., i.e.

on his membership in a political community, than on his economic status as tourist. Cowan, a British and EU citizen, is seen as politically embedded both with respect to French and EU citizenship rights. The Cowan case may represent the exhaustion of externality-driven jurisprudence in free movement.

### ***The Third phase; Market failure plus social embedding***

The construction of social policy through the legislative route has not been successful for the EU (Leibfried and Pierson 1995). This is not surprising for several reasons. First, social policy often involves redistribution and redistribution is by definition conflict-laden. This argues in favor of “solving” welfare questions at the national level where values are more homogenous and where there is a belief in the “essential sameness” of a people grounded in common historical experiences, language, and culture (Scharpf, 1999:8; Offe, 1998). Second, the national member states jealously guard their turf on welfare issues, strictly for electoral reasons. Third, the voting rules in the Council of Ministers regarding social policy require unanimity and a revision of the rules of the game itself requires unanimity. Getting agreement from all members on disputatious matters is not easy. Fourth, there is no obvious efficiency argument in the area of social policy—a clear EU-wide social policy externality—that argues for a single E.U. social policy, the way there might be for trade and environmental policy. Yet, despite these obstacles, the Court has been able to stitch together a social policy through its case law.

It may have been the intention of the Treaty's framers to separate free movement from social policy but this was difficult in practice. This point can be made in a variety of ways since the Court's jurisprudence is quite extensive in this regard. One context in which family and other social considerations are in evidence relates to access to benefits for non-national workers with or without family.

What happens when a person employed in a foreign member state becomes unemployed? Whose laws apply? How long does the worker have to work in a different member state before he or she becomes eligible for benefits? Do these benefits apply fully? Suppose the worker has a spouse and dependents? Do the full allowances apply, including increased support for spouse and dependents, and if they do apply, does this coverage extend to the circumstance in which dependents live in the home country (not the country where the worker is employed)? These are difficult questions for which no ex ante answer can be given by either Treaty law or statutory law. Wide discretion was given to the ECJ to answer questions on a case by case basis.

Many countries have provision for increased benefits for workers with dependents, including migrant workers with dependents, as long as they reside in the state in question. National laws relating to worker rights were potentially in conflict with developing law of the E.U. The Court has begun to test these national legislative requirements and while it is still too early to know what the outcome will be, there are some indications. The free movement provisions of



the Treaty are potentially quite powerful and exchange of persons, particularly wage contracts across borders, may implicate a host of social phenomena not likely to be anticipated.

We examine a number of cases from the jurisprudence of the ECJ, selected so as to illustrate the social content of the free movement provisions. The first case is *Commission v. Italy*. (case 63/86, 1988 European Court Reports). While this case does not directly involve family considerations relating to free movement, it does interpret free movement in a broadly social way, that is, in such a way as to take into account the social situation of workers who cross national boundaries. This case involved an Italian law that required that persons who rented or bought property which was itself renovated with public funds be Italian nationals, on the not unreasonable rule that consumption of benefits and payment for the goods should be linked. The Court rejected the position of the Italian government and made a quite broad defense of free movement, by arguing that the Treaty's position on free movement "is concerned not solely with the specific rules on the pursuit of occupational activities but also with the rules relating to the various general facilities which are of assistance in the pursuit of those activities." (Opinion of Advocate General Da Cruz Vilaca in Case 63/86, *Commission v. Italy* E.C.R., p. 53; as cited by Ball, 1996:357) In the same opinion of the Advocate General, it was noted that for free movement to be effective, access to broad benefits was necessary to foster integration of "self-employed workers and their families into the host country..." (Opinion of

Advocate General Da Cruz Vilca in Case 63/86, p. 42, as cited by Ball, 1996: 358).

In taking on this difficult issue, the ECJ weakened the link between national payment and national consumption. To be sure, this link was not complete, since migrant workers also might contribute via payroll taxes, sales taxes (value-added taxes), and property taxes. Nevertheless, one kind of solidarity (among nationals and their political institutions) was weakened and another was strengthened (between E.U. institutions and foreign workers).

From here the Court's jurisprudence and legislation of the Council of Ministers tackled questions that more directly involved family considerations. The national legislation of almost all member states requires residence of family members on their territory in order to receive benefits. Following this rule would inhibit worker movement, since in many cases workers would be deprived of family benefits in both country of employment and country of residence (home country). As Cornelissen (1996) points out, "a frontier worker resident with his family in Belgium and working in Germany fulfils neither the conditions to entitlement required by Belgian legislation for Belgian family benefits (he is not insured in Belgium) nor those required by German legislation for German family benefits (his children are not resident in Germany)." (1996:461) Anomalies such as this one are removed by legislation, specifically Regulation 1408/1971 which provides for removal of residence requirements for family members to receive benefits.

A Court case which tested these provisions (case C-228/88, *Bronzino*, [1990] ECR) involved two Italians working in Germany, who claimed family benefits for their children who were unemployed but in Italy. The relevant German unemployment institutions refused the benefits on grounds that the children were in Italy and not Germany. The case was sent by the German Tribunal (where the case was first tried) to the ECJ under preliminary reference procedure. The ECJ replied that the registration of a person looking for work in Italy should be treated as equivalent to one looking for work in Germany and thus, benefits should be paid. Here the family, even while residing in different countries, is treated as a unit for purpose of unemployment benefits. Territoriality is subordinated to family relations and economics, or rather to a particular conception of family embedded within the economy. (Cornelissen, 1996:461)

A related case dealing with free movement and family benefits is illustrated in the *Acciardi* case (Case C-66/92, ECR [1993]). Mr. Acciardi, an Italian national who worked in the Netherlands, received Dutch unemployment benefits and special benefits for persons with partial incapacity to work. A provision of the Dutch legislation stated that the amount of the benefits was to be increased for dependents, so long as the members of the family of the unemployed worker resided in the Netherlands. Mr. Acciardi's wife and child resided in Italy. The ECJ ruled that residence was irrelevant to the reception of benefits and ordered the Dutch agency to pay the additional allowances. This

may be taken as another example that territorial control of social security benefits are weakening in the face of the requirements of labor mobility and family considerations. The language of the Court does not allow us to distinguish whether social considerations are put on a separate foundation or whether they simply give full meaning to requirements of efficiency in a transnational labor market (Cornelissen, 1996: 458).

An additional case illustrates the increasing detachment of worker rights from the actual movement of workers across borders and hints at the growth of an independent body of social rights only partially grounded in efficiency considerations. This case, *Mary Carpenter v. Secretary of State* (Case C-60/00, *Mary Carpenter v. Secretary of State for the Home Department*, [2002] E.C.R.) has to do with free movement by a person who never tried to exercise his right to access services in another country. This is a complex case which suggests the intricate relationship between law, markets, and social institutions. Ms. Carpenter was not a national of any EU state but rather a Philippine national. She visited the U.K. for six months and overstayed her permit and subsequently married Peter Carpenter, a U.K. national. Then Ms. Carpenter applied for permission to stay in the U.K. as the spouse of Mr. Carpenter. Her application was refused and the Secretary of State decided to deport her to the Philippines. Ms. Carpenter argued that her right to reside in the U.K. derived from Mr. Carpenter's freedom to provide services to other E.U. states (under Art 49EC). Her deportation would either require Mr. Carpenter to give up his business or separate his family. The

ECJ decided that even if the derivative right of residence is not provided by secondary legislation, it can be imputed from the clause "protection of the family life of nationals of member states in order to eliminate obstacles to exercise of fundamental freedoms". This is a good example of the embedded nature of economic relationships, even in a case where the citizen of the member state never tried to exercise his rights with regard to freedom of services.

While space does not permit us to provide more detail, we conclude this section by noting that the Court's jurisprudence has expanded into many areas, including definition of family (from heterosexual nuclear family to co-habitants and same sex marriages), the emotional bonds between children, parents and relatives, pregnancy rights, custodial and visitation rights regarding parents and children in different countries and so on. Widows of EU workers retain rights even after the death of a spouse and separated (and perhaps divorced) spouses retain residency rights in the state where they reside. Unmarried companions of EU nationals may accompany nationals to another member state. In one recent case, rights of residency were awarded even though no economic activity at all was at issue. Thus, efficiency considerations could not be at work. (Zhu and Chen, 2004) In this case, a Chinese couple gave birth to a baby girl while they were in Ireland, at which point the child received Irish nationality. The mother claimed a right along with her child to remain in Ireland, and subsequently to move to other EU countries. The court awarded these rights. As Hatzopoulos points out, this case is groundbreaking in that it decouples the assignment of

rights from the exercise of economic activity. The child is the basic beneficiary and the parents enjoy derivative rights by virtue of the association to the child (Hatzpoulos 2005).

In summary, law concerning free movement of workers and others has expanded significantly and the economic aspects of the law have become increasingly infused with social content. The ECJ and national courts have interpreted the social objectives of the treaties and secondary legislation broadly and have used the jurisprudence of the European Court of Human Rights to fill in the gaps in the EU Treaties. In all of this, it is not so much the case that social policy has been created *de novo* as that social policy has been progressively “read into” the rules of the market concerning free movement. Not only that: in many of these cases, far from acting as an agent of globalization, the Court has taken on the role of social protection against policies of member states which have responded to globalization by shrinking the social rights of citizens.

### ***The European Double Movement***

These cases also suggest a contradictory role of the state in relation to its own citizens. States typically justify their resistance to EU policies as the defense of their citizens, and they are sometimes even telling the truth. But states are increasingly driven by the forces of globalization to defend their competitive positions by reducing the rights of their citizens to social protection. For example, when Italy welcomed the move to capital liberalization and towards a single currency in the 1990s, it used the EU as a wedge against its own citizens’

entitlements. But the Italian government also fights tooth and nail on behalf of Italian farmers' access to EU subsidies for dairy products and for the support of endless hectares of olives, many of which are virtual, to put it kindly.

What we are saying is that the role of the EU with respect to citizen social rights is no less two-sided; while the Union is capable of rolling over whole sectors of its productive populations in the name of market making, like the 19<sup>th</sup> century liberal state that Polanyi studied, it is also an agency for social protection. And to the degree that social rights are calibrated to meet a European – rather than a purely national – standard, Europe may end up as an agency for the construction of a European civil society as well as of a unified market.

How do European civil society actors respond to this double role? With their own double movement. When Imig and Tarrow did a statistical analysis of Europeans' collective action in response to EU policies in the late 1990s, they found that most resistance to these policies occurred on native ground, against *national* elites and institutions (Imig and Tarrow 2001: ch. 1). But increasingly, civil society groups seem to be turning their efforts for social protection directly to Brussels, Strasbourg and Luxembourg. Just as the construction of a consolidated national state in Britain in the early 19<sup>th</sup> century produced an upward movement of contentious politics from local riots, barn burnings and forced illuminations towards Britain's Parliament (Tilly 1995), European civil society groups may be turning to Europe for redress of their grievances, often

against the very national states that vaunt their roles as defenders of national sovereignty. With less panache, but possibly with longer-term effect, our cases, and others like it, show that, through the European litigation process, civil society actors are contributing to the double movement (Cichowski 2007. Caporaso and Jupille 2001).

### **Conclusion**

We started from a premise argued most forcefully by Karl Polanyi, namely that markets are always embedded within society. “Actually existing markets” are never the anonymous, arms-length, impersonal constructions of pure economic theory.<sup>13</sup> Few analysts would subscribe to the straw person (indeed confectionary person) of pure economic theory as an accurate description of the world. However, there are many who would also not subscribe to the strong version of embeddedness put forth here. In part, this may be due to the quiet, incremental, and piecemeal way in which the social content of the market has been inserted into market-making purposes. While completion of the single market, and implementation of the four freedoms, came with much fanfare (“Europe 1992”), there was no equivalent social policy<sup>14</sup> in terms of broad legislative initiatives by the Commission, Council of Ministers, and European Parliament. We completely agree with Leibfried and Pierson that the legislative

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<sup>13</sup> In this context (of pure economic theory), it is interesting to note the title of Leon Walras’s book, *Elements d’Economie Pur* (Elements of Pure Economy, 1954). Walras is generally recognized as the father of general equilibrium theory based on the abstract model of pure economic exchange.

<sup>14</sup> We use “social policy” and “social content of the market” as stand-ins for embeddedness. The term “embeddedness” is an analytic category—not a word used by policy makers and EU officials.



route to social policy “has been a saga of high aspirations and modest results.” (1995:46) Instead, the ECJ has interpreted existing Treaty provisions and secondary legislation in an increasingly social way.

Our counter-movement story does not start with the beginnings of European integration or with our own thinking. In a prescient article, John Ruggie (1982) long ago argued that a crucial lesson of the interwar period was that governments could not ignore the domestic ramifications of an open economy, particularly trade. Disembedding the market and treating it as a separate sphere are analytical devices that may work for some parts of economic theory, but they do not describe the ties between economy and society that policy makers face. In short, disembedding the market runs some serious risks.

Ruggie’s insightful thesis ties into a line of empirical research that we conveniently stipulate as starting with the appearance of David Cameron’s “The Expansion of the Public Economy” (1978). Cameron’s argument and empirical research demonstrated a strong connection between the openness of a country to trade and the level of spending by governments. Dani Rodrik, in *Has Globalization Gone Too Far?* (1997:5), argues that exposure to trade increases pressures to arbitrage differences between domestic social arrangements, because different social arrangements have different cost implications (a generous welfare program for early retirement might make a country’s goods less competitive in global markets). Fritz Scharpf (1997:18-19) makes a similar

point when he voices concern that competition among welfare states, implied by broader economic competition, will erode national welfare systems.

This concern is aggravated by the difficulty of reassembling the welfare state at the European level, a path that seems foreclosed by the diversity of welfare systems coupled with the institutional requirement of unanimity in the Council of Ministers on social policy issues. Yet, despite the acknowledged pressures caused by globalization, including pressures on the welfare state, a strong relationship exists between globalization and welfare compensation. Without calling it “welfare”, the European Court of Justice’s judgments regarding the free movement of labor have begun to embed social content within this market-making precept.

It may be useful to contrast our paper to related work on the relationship between social policy and the market. One line of research is represented by Fritz Scharpf (1999), Wolfgang Streeck (1995a, 1995b), and Streeck and Philippe Schmitter (1991). Simplifying greatly, these analysts argue that the spirit of integration symbolized by the SEA was based on a tacit agreement that EU initiatives reinforce market structures. Thus the heavy emphasis on negative integration in their work. Majone (1993, 1996, 2006), coming from the opposite end of the ideological spectrum, agrees that the European project was and is predicated on a radical decoupling of economic and political integration. It is this decoupling which allows market integration to go ahead, while most political functions (including the redistributive functions of the welfare state) remain at

the national level. Further, this decoupling is sanctioned by the electorates of the member states, who are far less pro-Europe than the elites, and this in turn makes the concern with the democratic deficit irrelevant, even a category mistake (Majone, 2006). Scharpf, Streeck, and Schmitter would like to see the social component of national and supranational political structures invigorated, while Majone is content with the management of social policy externalities.

We think both lines of research underestimate the social content of the market at the European level. We have argued that social policy is already “here” in the EU, that the lines between market and social policy, between regulatory and redistributive politics, are increasingly blurred and that the logic of economic exchange cannot be kept separate from broad social considerations. In short, the economy is always embedded, part of an ongoing “instituted process”, and the interplay between market forces and society continues.

## **Sources**

Abdelal, Rawi (2007): *Capital Rules: The Construction of Global Finance*. Cambridge MA: Harvard University Press.

Abdelal, Rawi and Sophie Meunier (2007): "The Paradox of Managed Globalization". Presented to the conference on "Europe and the Management of Globalization," Princeton University, February.

Ball, Carlos (1996): "The Making of a Transnational Capitalist Society: The Court of Justice, Social Policy, and Individual Rights." *Harvard Journal of International Law* 37:307-88.

Block, Fred (2003): "Karl Polanyi and the Writing of *The Great Transformation*". *Theory and Society* 36: 1-32.

Block, Fred (2007): "Understanding the Diverging Trajectories of the United States and Western Europe: A Neo-Polanyian Analysis." *Politics and Society* 35:3-33.

Boli, J. and G. Thomas, Eds. (1999): *Constructing World Culture: International Nongovernmental Organizations Since 1875*. Stanford, Stanford University Press.

Borneman, John and Nick Fowler (1997): "Europeanization." *Annual Review of Anthropology* 26: 487-514.

Cameron, David R. (1978): "The Expansion of the Public Economy: A Comparative Analysis." *American Political Science Review* 72:1243-61. (1992):

Cameron, David R. (1992). "The 1992 Initiative: Causes and Consequences", in Alberta M. Sbragia (ed.), *Europolitics*. Washington, D.C., Brookings Institute:23-74.

Caporaso, James A. (1996). "The European Union and Forms of State: Westphalian, Regulatory, or Post-Modern?", *Journal of Common Market Studies* 34:29-52.

Caporaso, James A. 2006): "Polanyi in Luxembourg: Market Participation, Embeddedness, and Rights in the European Union." Unpublished paper presented to the International Political Economy Society, Princeton N.J.

Caporaso, James A., Jeffrey T. Checkel and Joseph Jupille, eds., (2003): *Integrating Institutions: "Rationalism, Constructivism and the Study of the European Union."* Special Issue of *Comparative Political Studies* 36:5-231).

Caporaso, James A. and Joseph Jupille (2001): "The Europeanization of Gender Equality Policy and Domestic Structural Change," in M. G. Cowles, J. A. Caporaso and T. Risse, eds., *Transforming Europe: Europeanization and Domestic Change*, Ithaca, Cornell University Press: 21-43.

Checkel, Jeffrey T. (2007): "Constructivism and EU Politics." In Knud Erik Joergensen, Mark Pollack, Bend Rosamond, eds., *Handbook of European Union Politics*. London: Sage Publications, ch. 3.

Cichowski, Rachel A. (2007): *The European Court and Civil Society*. New York and London: Cambridge University Press.

Cornelissen, Rob (1996): "The Principle of Territoriality and the Community Regulations on Social Policy," *Common Market Law Review* 33: 439-71.

Delanty, Gerard (1995): *Inventing Europe: Idea, Identity, Reality*. London: Macmillan.

Della Porta, Donatella, ed. (2007): *The Global Justice Movement*. Boulder, Paradigm Press.

Della Porta, D. and M. Diani (1999): *Social Movements: An Introduction*. Oxford, Blackwell Publishers.

Della Porta, D. and S. Tarrow, eds. (2005): *Transnational Protest and Global Activism* Lanham, MD, Rowman and Littlefield.

Díez Medrano, Juan (2006): "Europeanization and the Emergence of a European Society." Unpublished paper. Departamento de Teoría Sociológica, Filosofía del Derecho y Metodología de las Ciencias Sociales Universidad de Barcelona.

Evans, Peter (2005): "Counter-Hegemonic Globalization: Transnational Social Movements in the Contemporary Global Political Economy." In Thomas Janoski, et a., *Handbook of Political Sociology*. Cambridge and New York: Cambridge University Press, ch. 32.

Fligstein, Neil (2001): "Institutional Entrepreneurs and Cultural Frames: the Case of the European Union's Single Market Program", *European Societies*, vol. 3, no.3:261-287.

Fox, Jonathan and L. David Brown (1998): *The Struggle for Accountability: The World Bank, NGOs and Grassroots Movements*. Cambridge MA: MIT Press.

- Hall, Peter and David Soskice, eds. (2001): *Varieties of Capitalism: The Institutional Foundations of Comparative Advantage* (2001): Oxford: Oxford University Press.
- Hancké, Bob, Martin Rhodes, and Mark Thatcher (eds.) (2007). *Beyond Varieties of Capitalism: Conflict, Contradictions, and Complementarities in the European Economy*. Oxford, England: Oxford University Press.
- Hatzpoulos, Vassilis. 2005), "A (More) Social Europe: A Political Cross Road or a Legal One-Way Dialogue", *Common Market Law Review*, vol 42, no 6 (Dec.): 1599-1635)
- Hermann, Richard K., Thomas Risse, and Marilyn b. Brewer, eds. (2004): *Transnational Identities: Becoming European in the EU*. Lanham MS: Rowman and Littlefield.
- Höpner, Martin and Armin Shafer (2007): "A New Phase of European Integration: Organized Capitalisms in Post-Ricardian Europe." MPIfG Discussion Paper 07/4. Cologne, Max Planck Institute for the Study of Societies.
- Imig, Doug and Sidney Tarrow, eds. (2001): *Contentious Europeans: Protest and Politics in Europeanizing Polity*. Rowman and Littlefield, Inc.
- Jacoby, Wade and Sophie Meunier (2007): "Europe and the Management of Globalization: Defensive and Offensive Responses to Globalization Pressures." Presented to the conference on "Europe and the Management of Globalization, February 2007, Princeton University.
- Jabko, Nicolas (2006): *Playing the Market: A Political Strategy for Uniting Europe, 1985-2005*. Ithaca, N.Y., Cornell University Press
- Keck, Margaret and Kathryn Sikkink (1998): *Activists Beyond Borders: Transnational Activist Networks in International Politics*. Ithaca and London, Cornell University Press.
- Keohane, Robert O. (2002): *Power and Governance in a Partially Globalized World*. New York, Routledge.
- Leibfried, Stephan and Paul Pierson (eds.)(1995): *European Social Policy: Between Fragmentation and Integration*. Washington, DC: Brookings Institution.
- Majone, Giandomenico (1993): "The European Community Between Social Policy and Social Regulation", *Journal of Common Market Studies*, vol. 31, no. 2:153-170.

Majone, Giandomenico (1994): "The European Community: An Independent Fourth Branch of Government?", in Bruggemeier, G. (ed.), *Verfassungen fuer ein ziviles Europa*. (Baden-Baden, Germany:Nomos), pp. 23-43.

Majone, Giandomenico (1996): *Regulating Europe*. London and New York: Routledge.

Majone, Giandomenico(2006). "The Common Sense of European Integration", *Journal of European Public Policy*, Vol. 13, no. 5:607-626.

McMichael, Philip (2005): "Globalization," in T. Janoski, R. Alford, A. M. Hicks and M. Schwartz, eds., *Handbook of Political Sociology*. New York and Cambridge, Cambridge University Press, ch. 29.

O'Brien, Robert, et al. (2000): *Contesting Global Governance: Multilateral Economic Institutions and Global Social Movements*. Cambridge, Cambridge University Press.

Polanyi, Karl (2001 [1944]): *The Great Transformation: The Political and Economic Origins of Our Time*. Boston: Beacon Press.

Pontusson, Jonas (2005): *Inequality and Prosperity: Social Europe vs. Liberal America*. New York: Century Foundation)

Rodrik, Dani (1997): *Has Globalization Gone Too Far?* Washington, D.C., Institute for International Economics.

Ruggie, John G. (1982): "International Regimes, Transaction Costs and Change: Embedded Liberalism in the Post-War Economic Order", *International Organization*, vol. 47, no. 2:379-415.

Scharpf, Fritz (1997): "Economic Integration, Democracy, and the Welfare State", *Journal of European Public Policy*, vol. 4, no. 1:18-36. (1999): *Governing in Europe: Effective and Democratic?* Oxford, England: Oxford University Press.

Scharpf, Fritz. (1999). *Governing in Europe: Effective and Democratic?* England: Oxford University Press.

Sklair, Leslie (2001): *The Transnational Capitalist Class*. Oxford, Blackwell.

Smith, Jackide and Hank Johnston, eds. (2002): *Globalization and Resistance: Transnational Dimensions of Social Movements*. Boulder, New York and Lanham, Rowman and Littlefield.

Streeck, Wolfgang (1995a). "From Market Making to State Building? Reflections on the Political Economy of European Social Policy", in Stephan Leibfried and Paul Pierson (eds.), *European Social Policy*. Washington, D.C.: Brookings Institution, pp. 389-431.

Streeck, Wolfgang (1995b). "Neo-Voluntarism: a New European Social Policy Regime", *European Law Journal*, vol. 1:31-59.

Streeck, Wolfgang and Philippe C. Schmitter (1991). "From National Corporatism to Transnational Pluralism: Organized Interests in the Single Market", *Politics and Society*, vol. 19:133-164.

Tarrow, Sidney (2005): *The New Transnational Activism*. Cambridge and New York: Cambridge University Press.

Tilly, Charles (1990): *Coercion, Capital and European States*. Cambridge Mass: Blackwells. (1995): *Popular Contention in Great Britain, 1758-1834*. Cambridge, MA, Harvard University Press.

Tilly, Charles and Sidney Tarrow (2006): *Contentious Politics*. Boulder CO: Paradigm Press.

Walras, Léon (1954): *Elements of Pure Economics, or The Theory of Social Wealth*, London: Allen and Unwin.

Yamamura, Kozo and Wolfgang Streeck, eds. (2003): *The End of Diversity? Prospects for German and Japanese Capitalism*. Ithaca and London: Cornell University Press.